STATE OF NEW YORK

Court of Appeals

APL-2013-00278

SUE/PERIOR CONCRETE & PAVING, INC.,
Plaintiff-Respondent,

vs.

LEWISTON GOLF COURSE CORPORATION,
Defendant-Appellant,

SENECA NIAGARA FALLS GAMING CORPORATION, SENECA GAMING CORPORATION, JEFFREY L. GILL, MARK I. HALFTOWN, GLORIA HERON, MAURICE A. JOHN, SR., MICHAEL L. JOHN, KAREN KARSTEN, INA K. LOCKE, ROBERT E. MELE, RICHARD K. NEPHEW, MARIBEL PRINTUP, COCHISE REDEYE, GARY SANDEN, KEVIN W. SENECA, BARRY E. SNYDER, SR., STEVE TOME, NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, NIAGARA MOHAWK POWER CORPORATION and JOHN DOE,

Defendants.

Appellate Division Docket Number: CA 12-01827.
Niagara County Index No.: 141212.

RECORD ON APPEAL

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP
GREGORY P. PHOTIADIS, ESQ.
ELIZABETH A. KRAENGEL, ESQ.
Attorneys for Plaintiff-Respondent
1800 Main Place Tower
350 Main Street
Buffalo, New York 14202
Telephone: (716) 855-1111

PHILLIPS LYTLE LLP
MICHAEL B. POWERS, ESQ.
SEAN C. MCPHEE, ESQ.
One Canalside
125 Main Street
Buffalo, New York 14203-2887
Telephone: (716) 847-8400

HOBBS, STRAUS, DEAN & WALKER, LLP
EDMUND C. GOODMAN, ESQ.
806 S.W. Broadway
Portland, Oregon 97205
Telephone: (503) 242-1745

Attorneys for Defendant-Appellant

BATAVIA LEGAL PRINTING, INC.— Telephone (866) 768-2100

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ADDITIONAL PAPERS TO THE COURT OF APPEALS

Statement Pursuant to CPLR 5531.

STATE OF NEW YORK : COURT OF APPEALS

SUE/PERIOR CONCRETE & PAVING, INC.,

Plaintiff-Respondent,

v.

STATEMENT PURSUANT TO CPLR 5531

LEWISTON GOLF COURSE CORPORATION,

Defendant-Appellant,

APL-2013-00278

SENECA NIAGARA FALLS GAMING CORPORATION, SENECA GAMING CORPORATION, JEFFREY L. GILL, MARK I. HALFTOWN, GLORIA HERON, MAURICE A. JOHN, SR., MICHAEL L. JOHN, KAREN KARSTEN, INA K. LOCKE, ROBERT E. MELE, RICHARD K. NEPHEW, MARIBEL PRINTUP, COCHISE REDEYE, GARY SANDEN, KEVIN W. SENECA, BARRY E. SNYDER, SR., STEVE TOME NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, NIAGARA MOHAWK POWER CORPORATION, and JOHN DOE,

Defendants.

---

1. The Index Number of the case in the court below is CA-12-01827.

2. The full names of the original parties are as follows:

   Plaintiff: SUE/PERIOR CONCRETE & PAVING, INC.

   Defendants: LEWISTON GOLF COURSE CORPORATION;

   NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY;

   NIAGARA MOHAWK POWER CORPORATION; and JOHN DOE.

Statement Pursuant to CPLR 5531.

Plaintiff amended its complaint on September 13, 2010 and added additional defendants. The full names of the parties after amendment of plaintiff's complaint are as follows:

Plaintiff: SUE/PERIOR CONCRETE & PAVING, INC.

Defendants: LEWISTON GOLF COURSE CORPORATION;

SENECA NIAGARA FALLS GAMING CORPORATION;

SENECA GAMING CORPORATION;

JEFFREY L. GILL;

MARK I. HALFTOWN;

GLORIA HERON;

MAURICE A. JOHN, SR.;

MICHAEL L. JOHN;

KAREN KARSTEN;

INA K. LOCKE;

ROBERT E. MELE;

RICHARD K. NEPHEW;

MARIBEL PRINTUP;

COCHISE REDEYE;

GARY SANDEN;

KEVIN W. SENECA;

BARRY E. SNYDER, SR.;

STEVE TOME;

Statement Pursuant to CPLR 5531.

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY;

NIAGARA MOHAWK POWER CORPORATION; and

JOHN DOE.

3. In its responding brief in the court below, plaintiff withdrew its claims against all defendants except Lewiston Golf Course Corporation. The full names of the remaining parties are:

Plaintiff: SUE/PERIOR CONCRETE & PAVING, INC.

Defendant: LEWISTON GOLF COURSE CORPORATION.

4. The action was commenced in the Supreme Court of the State of New York, County of Niagara.

5. The action was commenced by the filing of a summons and complaint on June 29, 2010, which was served the same day. Defendants Lewiston Golf Course Corporation and Niagara County Industrial Development Agency served answers on August 23, 2010. Plaintiff filed and served an amended complaint on September 13, 2010. Defendants Lewiston Golf Course Corporation, Seneca Niagara Falls Gaming Corporation, Seneca Gaming Corporation, Jeffrey L. Gill, Mark I. Halftown, Gloria Heron, Maurice A. John, Sr., Michael L. John, Karen Karsten, Ina K. Locke, Robert E. Mele, Richard K. Nephew. Maribel Printup, Cochise Redeye, Gary Sanden, Kevin W. Seneca, Barry E. Snyder, Sr. and Steve Tome (collectively, the "Gaming Defendants") served a motion to dismiss plaintiff's amended complaint on December 13, 2010. The Gaming Defendants served a supplemental motion to dismiss on March 14, 2011. The Gaming Defendants served their answer to the amended complaint on March 27, 2012.

6. A brief description of the nature and object of the action is as follows:

Statement Pursuant to CPLR 5531.

The action arises out of a golf course construction project for which plaintiff was a contractor. Plaintiff seeks to foreclose a mechanic's lien and also seeks damages for alleged breach of contract, alleged breach of implied covenant of good faith and fair dealing, quantum meruit, promissory estoppel and alleged fraud. The Gaming Defendants moved to dismiss the action for lack of subject matter jurisdiction and failure to state a cause of action based on, among other things, their sovereign immunity. Defendant Niagara County Industrial Development Agency ("NCIDA") moved to dismiss plaintiff's amended complaint on the ground that it failed to state a cause of action against it. NCIDA also opposed the Gaming Defendants' motion to dismiss inasmuch as it relied on sovereign immunity. The trial court denied the motions to dismiss except for NCIDA's motion as to plaintiff's third and sixth causes of action, which was granted.

7. This appeal is from an Opinion and Order of the Appellate Division, Fourth Department, entered June 14, 2013, which unanimously modified on the law the order of the Hon. Catherine Nugent-Panepinto, J.S.C. granted February 28, 2012, ("Order") by granting the Gaming Defendants' motion in part and dismissing plaintiff's third cause of action. As modified, the Appellate Division affirmed the Order without costs.

8. The method of appeal being used is on a new full record, as provided in 22 N.Y.C.R.R. 500.14(a)(3).

DATED: Buffalo, New York
October 30, 2013

PHILLIPS LYTLE LLP

By: _____

Michael B. Powers
Sean C. McPhee
Attorneys for Defendant-Appellant
Lewiston Golf Course Corporation,
One HSBC Center - Suite 3400
Buffalo, New York 14203
Telephone No.: (716) 847-8400

Doc #01-2714698.1

Order of Appellate Division, Fourth Judicial Department, Granting Leave to Appeal, Entered September 27, 2013.

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

MOTION NO. 478/13
DOCKET NO. CA 12-01827

PRESENT: PERADOTTO, J.P., LINDLEY, VALENTINO, AND WHALEN, JJ.

SUE/PERIOR CONCRETE & PAVING, INC., PLAINTIFF-RESPONDENT,

V

LEWISTON GOLF COURSE CORPORATION, SENECA NIAGARA FALLS GAMING CORPORATION, SENECA GAMING CORPORATION, JEFFREY L. GILL, MARK I. HALFTOWN, GLORIA HERON, MAURICE A. JOHN, SR., MICHAEL L. JOHN, KAREN KARSTEN, INA K. LOCKE, ROBERT E. MELE, RICHARD K. NEPHEW, MARIBEL PRINTUP, COCHISE N. REDEYE, GARY SANDEN, KEVIN W. SENECA, BARRY E. SNYDER, SR., AND STEVE TOME, DEFENDANTS-APPELLANTS,
NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, DEFENDANT-RESPONDENT,
ET AL., DEFENDANTS.

Appellant Lewiston Golf Course Corporation having moved for leave to appeal to the Court of Appeals from the order of this Court entered June 14, 2013,

Now, upon reading and filing the affidavit of Michael B . Powers, Esq., sworn to July 22, 2013, the notice of motion with proof of service thereof, and the affirmation of Elizabeth A. Kraengel, Esq., dated August 2, 2013, and due deliberation having been had thereon,

It is further ORDERED that the motion is granted, this Court being of the opinion that a question of law has arisen that ought to be reviewed by the Court of Appeals, and the following question is hereby certified: Was the order of this Court entered June 14, 2013, properly made?

Entered: September 27, 2013 FRANCES E. CAFARELL, Clerk

Order of Appellate Division, Fourth Judicial Department, Granting Leave to Appeal, Entered September 27, 2013.

Supreme Court
APPELLATE DIVISION
Fourth Judicial Department
Clerk's Office, Rochester, N.Y.

I, **FRANCES E. CAFARELL,** *Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original order, now on file in this office.*

SUPREME COURT APPELLATE DIVISION • FOURTH DEPARTMENT •

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this SEP 27 2013

Frances E. Cafarell

Clerk

Order Appealed From of Appellate Division, Fourth Judicial Department, Entered June 14, 2013.

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

478

CA 12-01827

PRESENT: PERADOTTO, J.P., LINDLEY, VALENTINO, AND WHALEN, JJ.

SUE/PERIOR CONCRETE & PAVING, INC.,
PLAINTIFF-RESPONDENT,

V

OPINION AND ORDER

LEWISTON GOLF COURSE CORPORATION, SENECA NIAGARA FALLS GAMING CORPORATION, SENECA GAMING CORPORATION, JEFFREY L. GILL, MARK I. HALFTOWN, GLORIA HERON, MAURICE A. JOHN, SR., MICHAEL L. JOHN, KAREN KARSTEN, INA K. LOCKE, ROBERT E. MELE, RICHARD K. NEPHEW, MARIBEL PRINTUP, COCHISE N. REDEYE, GARY SANDEN, KEVIN W. SENECA, BARRY E. SNYDER, SR., AND STEVE TOME, DEFENDANTS-APPELLANTS,
NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY,
DEFENDANT-RESPONDENT,
ET AL., DEFENDANTS.

PHILLIPS LYTLE LLP, BUFFALO (MICHAEL BRIAN POWERS OF COUNSEL), AND HOBBS STRAUS DEAN & WALKER LLP, PORTLAND, OREGON (EDMUND C. GOODMAN, OF THE OREGON AND WASHINGTON BARS, ADMITTED PRO HAC VICE, OF COUNSEL), FOR DEFENDANTS-APPELLANTS.

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP, BUFFALO (GREGORY P. PHOTIADIS OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Niagara County (Catherine Nugent Panepinto, J.), entered March 1, 2012. The order denied the motion of defendants-appellants to dismiss the first amended complaint.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by granting the motion of defendants-appellants in part and dismissing the third cause of action and as modified the order is affirmed without costs.

Opinion by PERADOTTO, J.:

The central question on this appeal is whether defendant Lewiston Golf Course Corporation (LGCC), a corporation formed under the laws of the Seneca Nation of Indians (Nation or SNI), is protected by the Nation's sovereign immunity. Contrary to the contention of defendants-appellants, we conclude that Supreme Court properly denied that part of their motion seeking to dismiss the first amended complaint against LGCC on sovereign immunity grounds inasmuch as LGCC

is not an "arm of the tribe" for purposes of sovereign immunity. We conclude, however, that the court should have granted that part of their motion seeking to dismiss the third cause of action, and thus that the order should be modified accordingly.

I

This matter arises out of the construction of the Hickory Stick Golf Course on a parcel of vacant land in the Town of Lewiston, New York. Defendant Seneca Niagara Falls Gaming Corporation (SNFGC) purchased the 250-acre parcel in 2006 from a private party on the open market for $2.1 million. SNFGC is a wholly-owned subsidiary of defendant Seneca Gaming Corporation (SGC), which, in turn, is wholly owned by the Nation. In July 2007, SNFGC conveyed the parcel to LGCC, a wholly-owned subsidiary of SNFGC created for the purpose of developing and operating a golf course on the property. SGC, SNFGC, and LGCC are all "corporation[s] . . . duly formed under the laws of [SNI]." The Nation's legislative body, the Council, appoints the members of SGC's board of directors, and the boards of SNFGC and LGCC are comprised "solely of the members of the board of directors of [SGC]."

In August 2007, LGCC contracted with plaintiff to construct an "18-hole championship golf course with an associated driving range, club house and pro shop" on the Lewiston property for the sum of $12.7 million. In connection with the project, LGCC applied for and received over $1 million in tax breaks through agreements with defendant Niagara County Industrial Development Agency (NCIDA). The project had a substantial completion date of November 30, 2008, but it was not completed until December 2, 2009. Upon the completion of construction, plaintiff claimed that LGCC owed it $4.1 million for extra work performed by plaintiff and for delay-related damages. LGCC disputed the sums sought by plaintiff and refused to pay. As a result, plaintiff filed a mechanic's lien against the property in February 2010 and thereafter commenced this action asserting causes of action for foreclosure of the mechanic's lien, breach of contract, breach of the implied covenant of good faith and fair dealing, quantum meruit, promissory estoppel, and fraud. LGCC, SNFGC, SGC, NCIDA, the Niagara Mohawk Power Corporation, and various individuals were named as defendants in the first amended complaint.

Defendants-appellants, i.e., LGCC, SNFGC, SGC, and the individual directors and/or officers thereof (hereafter, defendants), moved to dismiss the first amended complaint against them on sovereign immunity grounds, asserting that they are "entitled to the full protection of the Nation's sovereign immunity, which prevents the [c]ourt from exercising jurisdiction over [them]." They further moved to dismiss the third cause of action, for breach of the implied covenant of good faith and fair dealing, and the sixth cause of action, for fraud, as duplicative of the breach of contract cause of action. In support of the motion, defendants submitted, inter alia, LGCC's bylaws; minutes from an August 2002 Council session enacting the charters of SNFGC and SGC; minutes from a June 2007 Council session approving the creation of the LGCC; certificates of existence for SNFGC, SGC and LGCC; and

LGCC's Charter.

In approving the creation of LGCC, the Council declared that the "economic success of the Nation's gaming operations is vitally important to the economy of the Nation and the general welfare of its members" and that, "in furtherance of the economic success of the Nation's gaming operations, [SNFGC] has commenced development of a . . . golf course located in the Town of Lewiston, New York, including related clubhouse, retail and food and beverage operations, at a total projected cost of up to $20 million."

According to the Council:

> "[T]he Lewiston Golf Course will be developed and operated as an amenity to the SNFGC's casino operations, together with the casino's lodging, dining, retail and entertainment amenities, the purpose of which amenities is to enhance the overall success and profitability of the casino's operations consistent with the powers described in SNFGC's charter and the purposes for which SNFGC was formed . . . [T]he use of a separate corporation or legal entity to own and operate the Lewiston Golf Course is advisable due to various legal and accounting considerations, including the status of the Lewiston Golf Course as an off-territory business venture of the Nation, subject to legal, tax and other requirements that are not applicable to the Nation's on-territory business . . . [T]he Nation desires to establish [LGCC] as a separate legal entity, governmental instrumentality of the Nation, and wholly-owned subsidiary of SNFGC, for the purpose of developing and operating the Lewiston Golf Course in the Town of Lewiston, New York, and legally doing business in such jurisdictions."

The Council therefore authorized and directed SNFGC and LGCC "to develop and implement legitimate tax strategies to minimize any tax obligations of [LGCC], including, but not limited to, maximizing the tax savings benefits offered by [NCIDA]."

LGCC's Charter states that it was "organized for the purpose of developing, constructing, owning, leasing, operating, managing, maintaining, promoting and financing the Lewiston Golf Course on land (currently owned by SNFGC as of the date of this Charter) in the Town of Lewiston, New York." According to the Charter, LGCC is "indirectly owned by the Nation through [SGC] and its wholly-owned subsidiary, SNFGC, and shall constitute a governmental instrumentality of the Nation, having autonomous existence separate and distinct from the Nation." The Charter further provides that "the Nation shall not be liable for the debts or obligations of [LGCC], and [LGCC] shall have no power to pledge or encumber the assets of the Nation."

Plaintiff opposed the motion, contending, inter alia, that LGCC was not entitled to sovereign immunity. In opposition to the motion, plaintiff submitted, inter alia, an October 2007 agent agreement between NCIDA and LGCC; a Payment-in-Lieu of Taxes (PILOT) agreement between NCIDA and LGCC; and a November 2007 lease and leaseback agreement between NCIDA and LGCC. The agreements between NCIDA and LGCC specify that they are governed by and enforced in accordance with the laws of New York State, and that the parties agree to submit to the personal jurisdiction of federal or state courts located in Niagara County, New York. The PILOT agreement provides that "[t]he parties hereto recognize that the purpose of the Project is to create or retain permanent private sector jobs in Niagara County," and that LGCC would be obligated to pay only a portion of its normal tax burden during the five-year term of the agreement.

NCIDA supported that part of defendants' motion seeking to dismiss the third and sixth cause of actions as duplicative of the second cause of action, but opposed the motion insofar as it sought dismissal of the first amended complaint against defendants on sovereign immunity grounds. NCIDA asserted that LGCC, through its predecessor Seneca Management Development Corporation (SMDC), "consistently held [itself] out as a profit making corporation, separate and independent from the [Nation]." According to NCIDA, in applying for tax exemptions and deferrals relative to the golf course project, LGCC did not "imply that it is an arm of the [Nation's] government or that it is entitled to the protections of sovereign immunity. To the contrary, the application shows that the LGCC and the SMDC are separate and independent for[-]profit corporations intended to construct and operate a championship level golf course on non[-] native land to support tourism in the Niagara Region." NCIDA thus contended that "LGCC is not entitled to the protections of sovereign immunity afforded to the [Nation]."

NCIDA submitted, inter alia, an affidavit of its former assistant director, and LGCC's application for assistance in connection with the project. The former assistant director averred that, when SMDC representatives approached NCIDA to secure tax breaks for the golf course project, they indicated "that the land and project would not be considered part of the native territory, but instead would remain on the tax rolls under the jurisdiction of the State of New York." SMDC "also indicated that the land would be owned, and the golf course would be operated, by a for[-]profit corporation independent of [SNI]." According to the former assistant director, SMDC "represented that this project was intended to be a profit making venture outside the compact territories[, and] held [itself] out as a separate and independent profit making corporation." NCIDA granted the project partial real property tax abatements and sales and use tax exemptions for purchases and rentals related to the acquisition, construction and equipping of the golf course, which were worth an estimated $1 million.

In its application for assistance, SMDC stated that it was "looking to create a championship level public/semi-private golf course offering the millions of visitors of the Niagara Falls region

and the patrons of the Seneca Niagara Casino & Hotel a new tourist destination project that will attract golf enthusiasts from Canada and the United States and to capitalize on the growing tourist market, which will create new jobs and allow for prolonged stays in the area." It requested sales tax exemptions of $429,503 and real property tax exemptions of $618,790.

The court denied defendants' motion, concluding, inter alia, that LGCC is not an "arm" of the Nation entitled to sovereign immunity under the factors set forth in *Matter of Ransom v St. Regis Mohawk Educ. & Community Fund* (86 NY2d 553, 558-560). This appeal ensued. Plaintiff has since withdrawn its claims against SGC, SNFGC, and the individual defendants, so only LGCC is at issue on this appeal.

II

It is well settled that "Indian tribes are immune from lawsuits in both state and federal court unless 'Congress has authorized the suit or the tribe has waived its immunity' " (*Warren v United States*, 859 F Supp 2d 522, 539, *affd* 2013 WL 1748957 [2d Cir 2013], quoting *Kiowa Tribe of Okla. v Manufacturing Tech., Inc.*, 523 US 751, 754; *see Breakthrough Mgt. Group, Inc. v Chukchansi Gold Casino & Resort*, 629 F3d 1173, 1182, *cert dismissed* ___ US ___, 132 S Ct 64; *see also Ransom*, 86 NY2d at 558-559). As particularly relevant here, "[t]ribes enjoy immunity from suits on contracts, whether those contracts involve governmental or commercial activities and whether they were made on or off a reservation" (*Kiowa Tribe of Okla.*, 523 US at 760; *see Allen v Gold Country Casino*, 464 F3d 1044, 1046, *cert denied* 549 US 1231).

Less settled is the law governing whether, and to what extent, economic entities created by a tribe share in the tribe's immunity from suit (*see generally American Prop. Mgt. Corp. v Superior Court*, 206 Cal App 4th 491, 500). "Tribal subagencies and corporate entities created by the Indian Nation to further governmental objectives, such as providing housing, health and welfare services, may also possess attributes of tribal sovereignty, and cannot be sued absent a waiver of immunity" (*Ransom*, 86 NY2d at 558-559; *see Breakthrough Mgt. Group, Inc.*, 629 F3d at 1183). The critical question is "whether the entity acts as an arm of the tribe so that its activities are properly deemed to be those of the tribe" (*Allen*, 464 F3d at 1046), i.e., whether the entity is "so closely allied with and dependent upon the [t]ribe that it is entitled to the protection of tribal sovereign immunity" (*Ransom*, 86 NY2d at 560; *see Gristede's Foods, Inc. v Unkechuage Nation*, 660 F Supp 2d 442, 477).

Federal and state courts have articulated various factors to be considered in evaluating whether a particular entity is an "arm" of a tribal government for sovereign immunity purposes (*see e.g. Warren*, 859 F Supp 2d at 540, *affd* 2013 WL 1748957; *Breakthrough Mgt. Group, Inc.*, 629 F3d at 1187-1188; *Gristede's Foods, Inc.*, 660 F Supp 2d at 477-478; *Ransom*, 86 NY2d at 559; *Seneca Niagara Falls Gaming Corp. v Klewin Bldg. Co., Inc.*, 2005 WL 3510348, *3-5 [Conn]). In *Ransom*, the

New York Court of Appeals stated that, "[a]lthough no set formula is dispositive, in determining whether a particular tribal organization is an 'arm' of the tribe entitled to share the tribe's immunity from suit, courts generally consider such factors as whether:

> the entity is organized under the tribe's laws or constitution rather than Federal law; the organization's purposes are similar to or serve those of the tribal government; the organization's governing body is comprised mainly of tribal officials; the tribe has legal title or ownership of property used by the organization; tribal officials exercise control over the administration or accounting activities of the organization; and the tribe's governing body has power to dismiss members of the organization's governing body . . . *More importantly, courts will consider whether the corporate entity generates its own revenue, whether a suit against the corporation will impact the tribe's fiscal resources, and whether the subentity has the 'power to bind or obligate the funds of the [tribe]'* . . . The vulnerability of the tribe's coffers in defending a suit against the subentity indicates that the real party in interest is the tribe" (*id.* at 559-560 [emphasis added]).

Factors cited by other courts include whether the tribe intended to cloak the entities with sovereign immunity and whether the fundamental purposes of tribal sovereign immunity, i.e., "promot[ing] the goal of Indian self-government, including its overriding goal of encouraging tribal self-sufficiency and economic development" (*Oklahoma Tax Commn. v Citizen Band Potawatomi Indian Tribe of Okla.*, 498 US 505, 510 [internal quotation marks omitted]), are served by extending immunity to the entities (*see Breakthrough Mgt. Group, Inc.*, 629 F3d at 1181; *Dixon v Picopa Constr. Co.*, 160 Ariz 251, 258, 772 P2d 1104, 1111). "[C]ommon among these factors is that the tribal entity operates 'not as a mere business,' . . . but rather as an extension of the tribe's own economic activity, 'so that its activities are properly deemed to be those of the tribe' itself" (*Gristede's Foods, Inc.*, 660 F Supp 2d at 478). Notably, "the burden of proof for an entity asserting immunity as an arm of a sovereign tribe is on the entity to establish that it is, in fact, an arm of the tribe" (*id.* at 466).

III

As defendants correctly note, several federal and state courts have determined that SGC and SNFGC are entitled to sovereign immunity as subordinate arms or instrumentalities of SNI (*see e.g. Warren*, 859 F Supp 2d at 541 ["SGC is a governmental instrumentality entitled to tribal immunity"]; *Myers v Seneca Niagara Casino*, 488 F Supp 2d 166, 168 n 2 [SNFGC "enjoys all of the privileges and immunities of the

Nation"]; *Seneca Niagara Falls Gaming Corp.*, 2005 WL 3510348, at *6 [SNFGC "is a tribal entity entitled to tribal immunity"]). Defendants contend that there is "no legally relevant distinction" between SGC, SNFGC, and LGCC, and thus that LGCC is similarly protected by the Nation's sovereign immunity. We reject that contention. Applying the *Ransom* factors and the general principles enunciated by the federal courts and our sister states, we conclude that LGCC is not an "arm" of the Nation and therefore falls outside the Nation's cloak of sovereign immunity (*see generally Dixon*, 160 Ariz at 252-259, 772 P2d at 1105-1112).

As the court properly found, several of the *Ransom* factors weigh in favor of extending sovereign immunity to LGCC. There is no question that LGCC is "organized under the tribe's laws or constitution rather than Federal law" (*id.* at 559). Further, LGCC's "governing body is comprised mainly of tribal officials," and "the tribe's governing body has power to dismiss members of the organization's governing body" (*id.*). LGCC's board is comprised "solely of the members of the board of directors of [SGC]," all of whom are appointed by the Nation's Council. SGC's board consists of between four and seven members, a supermajority of whom must be enrolled members of the Nation. The Council may remove a board member for cause "upon a recommendation of the majority of the [b]oard" or on its own initiative with the votes of at least 10 members of the Council. Moreover, the Nation "exercise[s] control over the administration or accounting activities of [LGCC]" (*id.*). LGCC's Charter requires it to seek the Council's "review and approval" before engaging in any activities that "require a significant expenditure of Company resources." Similarly, although LGCC can give guarantees and incur liabilities, "significant guarantees or liabilities shall be subject to the approval of [the] Council." Any contracts or agreements with governmental entities must be approved by the Council. Further, "purchases of real property and significant expenditures of personal property shall be subject to the approval of [the] Council." LGCC is required to prepare quarterly reports and an annual report, copies of which are provided to the Council, and the Nation may inspect LGCC's books, records, and property at all reasonable times.

Other factors, however, including what the Court of Appeals has characterized as the "[m]ore important[]" financial factors, weigh in favor of a determination that LGCC does not share in the Nation's sovereign immunity (*id.*). With respect to whether LGCC's "purposes are similar to or serve those of the tribal government" (*id.*), we conclude that this factor supports the denial of sovereign immunity to LGCC. In minutes from its August 2002 meeting approving the creation of SGC, the Council declared that "it is . . . the policy of the Nation to promote the welfare and prosperity of its members and to actively promote, attract, encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic stagnation," and that "the Gaming industry is vitally important to the economy of the Nation and the general welfare of its members." To that end, the Council created SNFGC for the purpose of "developing, financing, operating and conducting the Nation's gaming operations on its Niagara Falls

Territory at the Niagara Falls Gaming Facility." In creating the LGCC, the Council declared that, "in furtherance of the economic success of the Nation's gaming operations, [SNFGC] has commenced development of a . . . golf course located in the Town of Lewiston, New York[, which] *will be developed and operated as an amenity to . . . SNFGC's casino operations*, . . . the purpose of which amenities is to enhance the overall success and profitability of the casino's operations" (emphasis added). In that manner, the Council believed that the golf course project "may reasonably be expected to benefit, directly *or indirectly*, the Nation" (emphasis added). Thus, the Council's own statements reflect that the purpose of LGCC - to develop a golf course as an "amenity" to the Nation's gaming operations - is several steps removed from the purposes of tribal government, e.g., "promoting tribal welfare, alleviating unemployment, [and] providing money for tribal programs" (*Gristede's Foods, Inc.*, 660 F Supp 2d at 477; *cf. Ransom*, 86 NY2d at 560).

The documents LGCC submitted to NCIDA in support of its request for tax relief and other economic assistance further indicate that the central purpose of the golf course project was not to provide funds for traditional governmental programs or services but, rather, was to serve as a regional economic engine (*see generally Dixon*, 160 Ariz at 258, 772 P2d at 1111). In the PILOT agreement, LGCC and NCIDA explicitly recognized that the purpose of the project "is to *create or retain permanent private sector jobs in Niagara County*" (emphasis added). In its application for assistance, LGCC's predecessor in interest asserted that it was

> "looking to create a championship level public/semi-private golf course *offering the millions of visitors of the Niagara Falls region and the patrons of the Seneca Niagara Casino & Hotel a new tourist destination project* that will attract golf enthusiasts from Canada and the United States and to capitalize on the growing tourist market, *which will create new jobs and allow for prolonged stays in the area*" (emphasis added).

Notably absent is any reference to improving the quality of life on reservation lands, creating jobs for Native Americans living on the reservation, or generating funds to support educational, social, or other government-related programs for tribal members. Indeed, even in the construction of the golf course, LGCC pledged to use Niagara County contractors and subcontractors (not tribal businesses) for the project.

Moreover, contrary to the assertion of defendants, the record establishes that LGCC, not the Nation, "has legal title or ownership of" the golf course property (*Ransom*, 86 NY2d at 559). The only alleged support for defendants' assertion that the Nation "owns all of [LGCC]'s improvements and assets, including the golf course property" is the provision in LGCC's Charter that, upon LGCC's dissolution or

liquidation, its "remaining property and assets . . . shall be distributed to SNFGC or, at the Nation's direction, to one or more organizations designated pursuant to a plan of distribution." That fact does not, however, establish legal title or ownership of the property at issue. With respect to what defendants term the "financial interconnectedness factors" (*see id.* at 559-560), we conclude that such factors weigh *against* extending the Nation's sovereign immunity to LGCC. With respect to the *Ransom* financial factors, we note that: (1) LGCC generates its own revenue; (2) there is no evidence in the record (and there is significant evidence to the contrary) that a suit against LGCC would impact the Nation's fiscal resources; and (3) LGCC does not have binding authority over the Nation's funds (*see id.*). In creating the LGCC, the Council stated that it decided to form a "separate corporation or legal entity to own and operate the Lewiston Golf Course . . . due to various legal and accounting considerations, including the status of the Lewiston Golf Course as an off-territory business venture of the Nation, subject to legal, tax and other requirements that are not applicable to the Nation's on-territory businesses." To that end, the Council "authorized and directed" LGCC to "develop and implement legitimate tax strategies to minimize any tax obligations of [LGCC], including, but not limited to, maximizing the tax savings benefits offered by the [NCIDA] and utilizing net operating losses, if any, incurred by the Company, to offset the Company's future profits." Thus, unlike the Nation itself or its closely-associated gaming entities, i.e., SNG and SNFGC, LGCC was intended to function as a regular business entity, with profits, losses, and legal and tax obligations applicable to any other business operated outside the confines of an Indian reservation by a non-native entity.

Further, LGCC's Charter clearly provides that LGCC has no power to bind or otherwise obligate the funds of the Nation, stating, inter alia, that "[n]o activity of the Company nor any indebtedness incurred by it shall encumber, implicate or in any way involve assets of the Nation or another Nation Entity not assigned or leased in writing to the Company"; "the Nation shall not be liable for the debts or obligations of the Company, and the Company shall have no power to pledge or encumber the assets of the Nation"; "[t]he Obligations of the Company shall not be a debt of the Nation or of [SGC] or any other Nation-chartered Gaming corporation"; and "[t]he Company shall not have[] any power . . . to borrow or lend money on behalf of the Nation, or to grant or permit or purport to grant or permit any right, lien, encumbrance or interest in or on any of the assets of the Nation" (*see id.* at 559).

Moreover, the record is devoid of evidence that a lawsuit against LGCC would adversely impact the Nation's treasury either directly or indirectly (*see id.* at 559-560). Unlike SGC, SNFGC, and other tribal entities that are obligated to pay large sums to the Nation on a regular basis (*see Warren*, 859 F Supp 2d at 541, *affd* 2013 WL 1748957 ["(Al)though a suit against SGC will not directly impact the Nation's fiscal revenues, a large judgment could render it unable to meet its significant financial obligations to the SNI"]; *Breakthrough Mgt. Group, Inc.*, 629 F3d at 1194-1195 [casino required to pay up to $1

million each month to the tribe]), there is no evidence on this record that LGCC is so obligated. Indeed, LGCC's certificate of existence states that "the corporation has no obligation to pay any franchise taxes to [SNI]." Further, unlike the Nation's heavily regulated gaming operations, the revenue from which must only be used "to fund tribal government operations or programs . . . [,] to provide for the general welfare of the Indian tribe and its members . . . [,] to promote tribal economic development . . . [,] to donate to charitable organizations[,] or . . . to help fund operations of local government agencies" (25 USC § 2710 [b] [2] [B]), there is no evidence that the funds generated by the golf course project are earmarked for the Nation in general or its governmental programs in particular (*cf. Breakthrough Mgt. Group, Inc.*, 629 F3d at 1195 ["(T)he evidence reveals that the Tribe depends heavily on the Casino for revenue to fund its governmental functions, its support of tribal members, and its search for other economic development opportunities. One hundred percent of the Casino's revenue goes to the Authority and then to the Tribe. Therefore, . . . any reduction in the Casino's revenue that could result from an adverse judgment against it would therefore reduce the Tribe's income"]).

Finally, we note that declining to extend sovereign immunity to LGCC under the circumstances of this case will not diminish the policies underlying tribal sovereign immunity. "Indeed, an Indian tribe's ability to create a legally distinct non-immune entity . . . promotes commercial dealings between Indians and non-Indians by allowing tribes to participate in commercial transactions without the added complexity and expense that sovereign immunity concerns bring to a transaction" (*American Prop. Mgt. Corp.*, 206 Cal App 4th at 507-508). Here, permitting LGCC to retreat behind the Nation's cloak of sovereign immunity after it held itself out as an independent, market-participating entity subject to the jurisdiction of the State of New York, including its courts, would discourage non-Indians from entering into business relationships with the Nation's corporations, which "may well retard [the Nation's] economic growth" and undermine one of the purposes of its sovereign immunity (*Dixon*, 160 Ariz at 259, 772 P2d at 1112). We thus conclude that the court properly denied that part of defendants' motion seeking to dismiss the first amended complaint against LGCC on sovereign immunity grounds.

IV

We agree with defendants, however, that the court should have granted that part of their motion seeking to dismiss plaintiff's third cause of action, which alleges breach of the implied covenant of good faith and fair dealing, as duplicative of the breach of contract cause of action inasmuch as the first amended complaint "fails to allege defendants' violation of a duty independent of the . . . agreement" (*Williams v Coppolla*, 23 AD3d 1012, 1013, *lv dismissed* 7 NY3d 741; *see Makuch v New York Cent. Mut. Fire Ins. Co.*, 12 AD3d 1110, 1111). We therefore modify the order accordingly.

Contrary to the further contention of defendants, however, we conclude that the court properly denied that part of their motion

seeking to dismiss the sixth cause of action, which alleges fraud. Plaintiff stated a cause of action for fraudulent inducement sufficient to withstand a motion to dismiss (*see generally Deerfield Communications Corp. v Chesebrough-Ponds, Inc.*, 68 NY2d 954, 956; *Wagner Trading Co. v Tony Walker Retail Mgt. Co.*, 277 AD2d 1012, 1012) and, on this record, it cannot be determined whether the fraud cause of action is merely duplicative of the breach of contract cause of action (*see generally Contacare, Inc. v CIBA-Geigy Corp.*, 49 AD3d 1215, 1216, *lv denied* 10 NY3d 714; *Crawford Furniture Mfg. Corp. v Pennsylvania Lumbermens Mut. Ins. Co.*, 244 AD2d 881, 881-882).

V

Accordingly, we conclude that the order should be modified by granting that part of defendants' motion seeking to dismiss the third cause of action and that the order should otherwise be affirmed.

Entered: June 14, 2013

Frances E. Cafarell
Clerk of the Court

Order Appealed From of Appellate Division,
Fourth Judicial Department, Entered June 14, 2013.

Supreme Court
APPELLATE DIVISION
Fourth Judicial Department
Clerk's Office, Rochester, N.Y.

I, **FRANCES E. CAFARELL,** *Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original order, now on file in this office.*

SUPREME COURT APPELLATE DIVISION FOURTH DEPARTMENT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this JUN 14 2013

Frances E. Cafarell
Clerk

Stipulation in Lieu of Certification Pursuant to CPLR 5532.

STATE OF NEW YORK : COURT OF APPEALS

SUE/PERIOR CONCRETE & PAVING, INC.,

Plaintiff-Respondent,

v.

LEWISTON GOLF COURSE CORPORATION,

Defendant-Appellant,

SENECA NIAGARA FALLS GAMING CORPORATION, SENECA GAMING CORPORATION, JEFFREY L. GILL, MARK I. HALFTOWN, GLORIA HERON, MAURICE A. JOHN, SR., MICHAEL L. JOHN, KAREN KARSTEN, INA K. LOCKE, ROBERT E. MELE, RICHARD K. NEPHEW, MARIBEL PRINTUP, COCHISE REDEYE, GARY SANDEN, KEVIN W. SENECA, BARRY E. SNYDER, SR., STEVE TOME NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, NIAGARA MOHAWK POWER CORPORATION, and JOHN DOE,

Defendants.

STIPULATION IN LIEU OF CERTIFICATION OF RECORD ON APPEAL PURSUANT TO CPLR 5532

APL-2013-00278

IT IS HEREBY STIPULATED pursuant to CPLR 5532, that the foregoing constitutes a true and correct copy of the entire Record on Appeal.

Dated: Buffalo, New York
November 4, 2013

PHILLIPS LYTLE LLP

By: _____
Michael B. Powers, Esq.
Sean C. McPhee, Esq.
Attorneys for Defendant-Appellant
Lewiston Golf Course Corporation,
One HSBC Center
Suite 3400
Buffalo, New York 14203
Telephone No.: (716) 847-8400
Doc #01-2714674.1

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP

By: _____
Gregory P. Photiadis, Esq.
Elizabeth A. Kraengel, Esq.
Attorneys for Plaintiff-Respondent
Sue/Perior Concrete & Paving Inc.
1800 Main Place Tower
350 Main Street
Buffalo, New York 14202
Telephone No.: (716) 855-1111

RECORD ON APPEAL FROM THE APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT

Statement Pursuant to CPLR 5531.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FOURTH DEPARTMENT

SUE/PERIOR CONCRETE & PAVING, INC.,

Plaintiff-Respondent,

v.

LEWISTON GOLF COURSE CORPORATION, SENECA NIAGARA FALLS GAMING CORPORATION, SENECA GAMING CORPORATION, JEFFREY L. GILL, MARK I. HALFTOWN, GLORIA HERON, MAURICE A. JOHN, SR., MICHAEL L. JOHN, KAREN KARSTEN, INA K. LOCKE, ROBERT E. MELE, RICHARD K. NEPHEW, MARIBEL PRINTUP, COCHISE REDEYE, GARY SANDEN, KEVIN W. SENECA, BARRY E. SNYDER, SR., and STEVE TOME,

Defendants-Appellants,

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY,

Defendant-Respondent,

NIAGARA MOHAWK POWER CORPORATION and JOHN DOE,

Defendants.

STATEMENT PURSUANT TO CPLR 5531

Niagara County
Index No.: 141212

1. The Index Number of the case in the court below is 141212.

2. The full names of the original parties are as follows:

   Plaintiff: SUE/PERIOR CONCRETE & PAVING, INC.

   Defendants: LEWISTON GOLF COURSE CORPORATION;

   NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY;

   NIAGARA MOHAWK POWER CORPORATION; and

Statement Pursuant to CPLR 5531.

JOHN DOE.

Plaintiff amended its complaint on September 13, 2010 and added additional defendants. The full names of the parties after amendment of plaintiff's complaint are as follows:

Plaintiff: SUE/PERIOR CONCRETE & PAVING, INC.

Defendants: LEWISTON GOLF COURSE CORPORATION;

SENECA NIAGARA FALLS GAMING CORPORATION;

SENECA GAMING CORPORATION;

JEFFREY L. GILL;

MARK I. HALFTOWN;

GLORIA HERON;

MAURICE A. JOHN, SR.;

MICHAEL L. JOHN;

KAREN KARSTEN;

INA K. LOCKE;

ROBERT E. MELE;

RICHARD K. NEPHEW;

MARIBEL PRINTUP;

COCHISE REDEYE;

GARY SANDEN;

KEVIN W. SENECA;

BARRY E. SNYDER, SR.;

STEVE TOME;

Statement Pursuant to CPLR 5531.

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY;

NIAGARA MOHAWK POWER CORPORATION; and

JOHN DOE.

3. The action was commenced in the Supreme Court of the State of New York, County of Niagara.

4. The action was commenced by the filing of a summons and complaint on June 29, 2010, which was served the same day. Defendants Lewiston Golf Course Corporation and Niagara County Industrial Development Agency served answers on August 23, 2010. Plaintiff filed and served an amended complaint on September 13, 2010. Defendants Lewiston Golf Course Corporation, Seneca Niagara Falls Gaming Corporation, Seneca Gaming Corporation, Jeffrey L. Gill, Mark I. Halftown, Gloria Heron, Maurice A. John, Sr., Michael L. John, Karen Karsten, Ina K. Locke, Robert E. Mele, Richard K. Nephew. Maribel Printup, Cochise Redeye, Gary Sanden, Kevin W. Seneca, Barry E. Snyder, Sr. and Steve Tome (collectively, the "Gaming Defendants") served a motion to dismiss plaintiff's amended complaint on December 13, 2010. The Gaming Defendants served a supplemental motion to dismiss on March 14, 2011. The Gaming Defendants served their answer to the amended complaint on March 27, 2012.

5. A brief description of the nature and object of the action is as follows: The action arises out of a golf course construction project for which plaintiff was a contractor. Plaintiff seeks to foreclose a mechanic's lien and also seeks damages for alleged breach of contract, alleged breach of implied covenant of good faith and fair dealing, quantum meruit, promissory estoppel and alleged fraud. The Gaming Defendants moved to dismiss the action for lack of subject matter jurisdiction and failure to state a cause of action based on, among other

Statement Pursuant to CPLR 5531.

things, their sovereign immunity. Defendant Niagara County Industrial Development Agency opposed the Gaming Defendants' motion to dismiss inasmuch as it relied on sovereign immunity.

6. This appeal is from the Order of the Hon. Catherine Nugent-Panepinto, J.S.C., granted February 28, 2012 and entered March 1, 2012, which denied the Gaming Defendants' motion to dismiss, but dismissed plaintiff's third and sixth causes of action as against defendant Niagara County Industrial Development Agency.

7. The method of appeal being used is on the full record.

DATED: Buffalo, New York
June 6, 2012

PHILLIPS LYTLE LLP

By:_____
Michael B. Powers
Sean C. McPhee
Ryan G. Pitman
Attorneys for Defendants
Lewiston Golf Course Corporation,
Seneca Niagara Falls Gaming Corporation,
Seneca Gaming Corporation,
Jeffrey L. Gill, Mark I. Halftown,
Gloria Heron, Maurice A. John, Sr.,
Michael L. John, Karen Karsten,
Ina K. Locke, Robert E. Mele,
Richard K. Nephew, Maribel Printup,
Cochise Redeye, Gary Sanden,
Kevin W. Seneca, Barry E. Snyder, Sr., and
Steve Tome
3400 HSBC Center
Buffalo, New York 14203
Telephone No.: (716) 847-8400

Doc # 01-2574367.3

Notice of Appeal, Dated April 2, 2012, with Affidavit of Service.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.,

Plaintiff,

v.

LEWISTON GOLF COURSE CORPORATION, SENECA NIAGARA FALLS GAMING CORPORATION, SENECA GAMING CORPORATION, JEFFREY L. GILL, MARK I. HALFTOWN, GLORIA HERON, MAURICE A. JOHN, SR., MICHAEL L. JOHN, KAREN KARSTEN, INA K. LOCKE, ROBERT E. MELE, RICHARD K. NEPHEW, MARIBEL PRINTUP, COCHISE N. REDEYE, GARY SANDEN, KEVIN W. SENECA, BARRY E. SYNDER, SR., STEVE TOME, NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, NIAGARA MOHAWK POWER CORPORATION, and JOHN DOE

Defendants.

NOTICE OF APPEAL

Index No.: 141212

Hon. Catherine Nugent-Panepinto, J.S.C.

ORIGINAL FILED
APR 03 2012
WAYNE F. JAGOW
NIAGARA COUNTY CLERK

PAID
APR 03 2012
WAYNE F. JAGOW
NIAGARA COUNTY CLERK

Defendants Lewiston Golf Course Corporation, Seneca Niagara Falls Gaming Corporation, Seneca Gaming Corporation, Jeffrey L. Gill, Mark I. Halftown, Gloria Heron, Maurice A. John, Sr., Michael L. John, Karen Karsten, Ina K. Locke, Robert E. Mele, Richard K. Nephew, Maribel Printup, Cochise N. Redeye, Gary Sanden, Kevin W. Seneca, Barry E. Synder, Sr. and Steve Tome appeal to the Appellate Division, Fourth Department of the Supreme Court of the State of New York, from an order entered in the above-titled action, filed in the office of the Niagara County Clerk on March 1, 2012 and served by mail on March 2, 2012, denying defendants' motion to dismiss Sue/Perior Concrete & Paving, Inc.'s First Amended Complaint,

except for Niagara County Industrial Development Agency's motion as to the third and sixth causes of action.

This appeal is taken from each and every part of the order, as well as from the whole thereof.

DATED: Buffalo, New York
April 2, 2012

PHILLIPS LYTLE LLP

By _____
Michael B. Powers
Ryan G. Pitman
Attorneys for Defendants
Lewiston Golf Course Corporation, Seneca Niagara Falls Gaming Corporation, Seneca Gaming Corporation, Jeffrey L. Gill, Mark I. Halftown, Gloria Heron, Maurice A. John, Sr., Michael L. John, Karen Karsten, Ina K. Locke, Robert E. Mele, Richard K. Nephew, Maribel Printup, Cochise N. Redeye, Gary Sanden, Keven W. Seneca, Barry E. Snyder, Sr., and Steve Tome
3400 HSBC Center
Buffalo, New York 14203
Telephone No.: (716) 847-8400

Notice of Appeal, Dated April 2, 2012, with Affidavit of Service.

TO: DUKE, HOLZMAN, PHOTIADIS
& GRESENS LLP
Gregory Photiadis
Elizabeth A. Kraengel
Attorneys for Plaintiff Sue/Perior Concrete
& Paving, Inc.
1800 Main Place Tower
350 Main St.
Buffalo, New York 14202
Telephone No.: (716) 855-1111

WEBSTER SZANYI LLP
Charles E. Graney
Attorneys for Niagara County
Industrial Development Agency
1400 Liberty Building
Buffalo, New York 14202
Telephone No.: (716) 842-2800

NIAGARA COUNTY CLERK
Niagara County Courthouse
1st Floor
P.O. Box 461
Lockport, NY 14095-0461
Telephone No.: (716) 439-7025

Doc # 01-2567764.1

Notice of Appeal, Dated April 2, 2012, with Affidavit of Service.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.,

Plaintiff,

vs.

AFFIDAVIT OF SERVICE BY HAND DELIVERY

Index No.: 141212

LEWISTON GOLF COURSE CORPORATION, SENECA NIAGARA FALLS GAMING CORPORATION, SENECA GAMING CORPORATION, JEFFREY L. GILL, MARK I. HALFTOWN, GLORIA HERON, MAURICE A. JOHN, SR., MICHAEL L. JOHN, KAREN KARSTEN, INA K. LOCKE, ROBERT E. MELE, RICHARD K. NEPHEW, MARIBEL PRINTUP, COCHISE N. REDEYE, GARY SANDEN, KEVIN W. SENECA, BARRY E. SYNDER, SR., STEVE TOME, NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, NIAGARA MOHAWK POWER CORPORATION, and JOHN DOE

Defendants.

STATE OF NEW YORK)
) SS.:
COUNTY OF ERIE)

Sharon Hedger, being duly sworn, deposes and says:

I am not a party to the action, am over the age of 18 years and reside in Clarkson, New York; that on March 27, 2012, I served the annexed Notice of Appeal of defendants Lewiston Golf Course Corporation, Seneca Niagara Falls Gaming Corporation, Seneca Gaming Corporation, Jeffrey L. Gill, Mark I. Halftown, Gloria Heron, Maurice A. John, Sr., Michael L. John, Karen Karsten, Ina K. Locke, Robert E. Mele, Richard K. Nephew, Maribel Printup, Cochise N. Redeye, Gary Sanden, Kevin W. Seneca, Barry E. Synder, Sr., and Steve

Notice of Appeal, Dated April 2, 2012, with Affidavit of Service.

Tome. Please also find enclosed deposition notices for a representative of Sue/Perior Concrete and Paving, Inc., David Pfeiffer, Thomas Colton and Donald Heater on:

Gregory Photiadis, Esq.
DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP
1800 Main Place Tower
350 Main St.
Buffalo, New York 14202

and

Elizabeth A. Kraengel, Esq.
DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP
1800 Main Place Tower
350 Main St.
Buffalo, New York 14202

and

Charles E. Graney, Esq.
WEBSTER SZANYI LLP
1400 Liberty Building
Buffalo, New York 14202

by hand delivering it to a person of suitable age and discretion.

Sharon Hayes

Sworn to before me this
2 th day of April, 2012

James B Ferris
Notary Public

JAMES B. FERRIS
No. 01FE6256995
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Mar. 5, 20__

Doc # 01-2567835.1

Order Appealed From Granted February 28, 2012 and Filed March 1, 2012, with Exhibit A.

ORIGINAL FILED
MAR - 1 2012
WAYNE F. JAGOW
NIAGARA COUNTY CLERK

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.

Plaintiff,

vs.

LEWISTON GOLF COURSE CORPORATION, SENECA NIAGARA FALLS GAMING CORPORATION, SENECA GAMING CORPORATION, JEFFREY L. GILL, MARK I. HALFTOWN, GLORIA HERON, MAURICE A. JOHN, SR., MICHAEL L. JOHN, KAREN KARSTEN, INA K. LOCKE, ROBERT E. MELE, RICHARD K. NEPHEW, MARIBEL PRINTUP, COCHISE N. REDEYE, GARY SANDERN, KEVIN W. SENECA, BARRY E. SNYDER, SR., STEVE TOME, NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, NIAGARA MOHAWK POWER CORPORATION and JOHN DOE

Defendants.

ORDER

Index No.: 141212

Assigned Justice:
Hon. Catherine Nugent Panepinto

Defendants Seneca Gaming Corporation, Seneca Niagara Falls Gaming Corporation, Lewiston Golf Course Corporation ("LGCC") (collectively referred to as the "Corporate Defendants") and Niagara County Industrial Development Agency's ("NCIDA"), Jeffrey L. Gill, Mark I. Halftown, Gloria Heron, Maurice John, Sr., Michael L. John, Karen Karsten, Ina Locke, Robert Mele, Richard K. Nephew, Maribel Printup, Cochise N. Redeye, Gary Sanden, Kevin W. Seneca, Barry E. Snyder, Sr., and Steve Tome (collectively the "Individual Defendants") having duly moved this Court pursuant to CPLR 3211 for an Order dismissing Sue/Perior Concrete & Paving, Inc.'s ("Plaintiff") First Amended Complaint,

Order Appealed From Granted February 28, 2012 and Filed March 1, 2012, with Exhibit A.

NOW, upon reading and filing the Notice of Motion to Dismiss, dated December 13, 2010, Affirmation of Patrick D. Crandell, Esq. sworn to December 13, 2010, with exhibits, Notice of Motion dated March 14, 2011, Affirmation of Ryan G. Pitman, Esq. dated March 14, 2010 *[sic]*, with exhibits, Memorandum of Law in Support dated March 14, 2011, Affidavit of Gregory P. Photiadis, Esq., sworn to April 27, 2011, with exhibits, Memorandum of Law in Opposition to Certain Defendants' Motion to Dismiss, dated April 27, 2011, Memorandum of Law in Opposition to Lewiston Golf Course Corporation's Motion to Dismiss, dated April 27, 2011, the Affirmation of Ryan G. Pitman, Esq., dated May 12, 2011, with exhibits, Defendants' Memorandum of Law in Reply, dated May 12, 2011, Amended Affirmation of Ryan G. Pitman, Esq. dated May 16, 2011, with exhibits, the affirmation of Charles E. Graney, Esq., dated September 30, 2010 *[sic]*, with exhibits, and Defendants' Memorandum of Law in Response to NCIDA's Submission Concerning Sovereign Immunity, dated November 15, 2011, and the appearance of counsel for Plaintiff (Gregory P. Photiadis, Esq., and Elizabeth A. Kraengel, Esq.) and counsel for the Corporate Defendants and Individual Defendants (Michael B. Powers, Esq., Ryan Pitman, Esq., Edmund Goodman, Esq.), and counsel for NCIDA (Charles E. Graney, Esq.) and on all the pleadings and proceedings heretofore, it is hereby

ORDERED, that Defendants' motion to dismiss Plaintiff's First Amended Complaint is denied, except for NCIDA's motion as to Plaintiff's third and sixth causes of actions, which is granted, in accordance with the Decision and Order of this Court, granted February 7, 2012, and annexed hereto as **Exhibit A.**

SO ORDERED.

Hon. Catherine Nugent Panepinto, J.S.C.

GRANTED:

GRANTED

FEB 28 2012

2

BY Sally M Lemley
SALLY M. LEMLEY
COURT CLERK

Order Appealed From Granted February 28, 2012 and Filed March 1, 2012, with Exhibit A.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.

Plaintiff,

vs.

DECISION & ORDER
Index No. 141212

LEWISTON GOLF COURSE CORPORATION, SENECA NIAGARA FALLS GAMING CORPORATION, SENECA GAMING CORPORATION, JEFFREY L. GILL, MARK I. HALFTOWN, GLORIA HERON, MAURICE A. JOHN, SR., MICHAEL L. JOHN, KAREN KARSTEN, INA K. LOCKE, ROBERT E. MELE, RICHARD K. NEPHEW, MARIBEL PRINTUP, COCHISE N. REDEYE, GARY SANDEN, KEVIN W. SENECA, BARRY E. SNYDER, SR., STEVE TOME, NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, NIAGARA MOHAWK POWER CORPORATION, and JOHN DOE

Defendants.

Appearances:
Gregory P. Photiadis, Esq.
Duke, Holzman, Photiadis & Gresens, LLP
Attorneys for Plaintiff
1800 Main Place Tower
Buffalo, New York 14202

Michael B. Powers, Esq.
Patrick D. Crandell, Esq.
Philips Lytle, LLP
Attorneys for Defendants
3400 HSBC Center
Buffalo, New York 14203

Charles E. Graney, Esq.
Webster Szanyi, LLP
Attorneys for Defendant Niagara County Industrial Development Agency
1400 Liberty Building
Buffalo, New York 14202

Hon. Catherine Nugent Panepinto, J.S.C.

Order Appealed From Granted February 28, 2012 and Filed March 1, 2012, with Exhibit A.

Defendants, Lewiston Golf Course Corporation (hereinafter, "LGCC") as well as Seneca Niagara Falls Gaming Corporation (hereinafter, "SNFGC"), Seneca Gaming Corporation (hereinafter, "SGC"), Jeffrey L. Gill, Mark I. Halftown, Gloria Heron, Maurice A. John, Sr., Michael L. John, Karen Karsten, Ina K. Locke, Robert E. Mele, Richard K. Nephew, Maribel Printup, Cochise N. Redeye, Gary Sanden, Kevin W. Seneca, Barry E. Snyder, Sr., and Steve Tome (hereinafter, "Individual Defendants") moved to dismiss the Amended Complaint of Plaintiff Sue/Perior Concrete & Paving (hereinafter, "SPCP") for lack of subject matter jurisdiction. The Individual Defendants have also moved to Dismiss the Plaintiff's Amended Complaint on the basis that they are not in privity with Plaintiff and that they are directors acting within the scope of their authority. Defendants LGCC, SNFGC, and SGC (collectively, "Corporate Defendants") and Defendant Niagara County Industrial Development Agency (hereinafter, "NCIDA") further move to dismiss the Plaintiff SPCP's third cause of action asserting a breach of the implied covenant of good faith and fair dealing and sixth cause of action's claim of fraud, as duplicative of its second cause of action alleging breach of contract.

This action involves an attempt by Plaintiff SPCP to foreclose on a mechanic's lien in connection with work performed on property commonly known as the Hickory Stick Golf Course located in Lewiston, New York. The record reflects that the Plaintiff appears to have entered into a contract with Defendant LGCC to construct the Hickory Stick Golf Course on or about August 9, 2007. The project has been completed, but according to Plaintiff's Amended Complaint the sum of $4,130,538.00 plus interest remains unpaid and owed by Defendant LGCC.

Order Appealed From Granted February 28, 2012 and Filed March 1, 2012, with Exhibit A.

Defendant LGCC asserts that it is protected from suit as a "government instrumentality" and "subordinate arm" of the Seneca Nation of Indians (hereinafter, "Nation") under the doctrine of sovereign immunity. As a result, it argues that the action should be dismissed based upon lack of subject matter jurisdiction pursuant to CPLR 3211 (a) (2). However, the Plaintiff claims that Defendant LGCC is not entitled to the sovereign immunity defense. Specifically, the Plaintiff asserts that the golf course property was acquired in fee from a private party and was never classified as Indian land. In support of its position, the Plaintiff points to the fact that although LGCC may or may not have been incorporated under the laws of the Seneca nation, it is registered as a foreign corporation doing business in the State of New York. Further, LGCC requested financial assistance in connection with the golf course project from the NCIDA and entered into an Agent Agreement, Lease Agreement and Leaseback Agreement and a Payment-In-Lieu-of-Tax Agreement. Therefore, Plaintiff contends that LGCC's application for financial assistance from the NCIDA constitutes an admission from LGCC that the property is not sovereign territory and is subject to the taxation and jurisdiction of the State of New York.

In response, the Defendants argue that a waiver of tribal sovereign immunity cannot be implied but must be unequivocally expressed See, *Ransom v St. Regis Mohawk Educ. & Community Fund*, 86 NY2d 553 (1995); *Oneida Indian Nation v Hunt Constr. Group, Inc.*, 67 AD3d 1345 (4th Dept 2009). Defendants also claim that tribal sovereign immunity may extend to subdivisions of a tribe, including subagencies and corporate entities created by an Indian Nation to further governmental objectives, provided that the relationship between the tribe and the entity is sufficiently close to

properly permit the entity to share in the tribe's immunity. See, *Ransom v St. Regis Mohawk Educ. & Community Fund*, 86 NY2d 553 (1995).

It is well settled that in order to determine whether a particular tribal organization like LGCC is to be considered an "arm" of the tribe entitled to benefit from the tribe's immunity from suit, courts must consider the following factors: whether the entity is organized under the tribe's laws or constitution; whether the entity's purposes are similar to or serve those of the tribal government; whether the entity's governing body is comprised mainly of tribal officials; whether the tribe has legal title or ownership of property used by the entity; whether the tribal officials exercise control over the administration or accounting activities of the entity and whether the tribe's governing body has the authority to dismiss members of the entity's governing body *Id.* Defendant LGCC asserts that it has satisfied the factors and is entitled to immunity. This Court disagrees.

Though LGCC did satisfy some of the basic factors referenced above dealing with organizational structure and administrative authority, unlike the entity in the *Ransom* case, LGCC was not specifically established to enhance the health, education and welfare of the Nation, which function is generally reserved for a governmental agency. In fact, the primary purpose of the LGCC was to construct and operate a championship level golf course to promote tourism in the Niagara region, as evidenced by the agreements entered into with the NCIDA in exchange for various tax exemptions.

Moreover, the factors that have been found to have greater significance by the Court of Appeals involve whether the corporate entity generates its own revenue,

Order Appealed From Granted February 28, 2012 and Filed March 1, 2012, with Exhibit A.

whether a suit against the corporate entity will impact the tribe's fiscal resources and whether the entity has the power to bind or obligate the funds of a tribe See, *Ransom, Supra.* Clearly, LGCC has the ability to generate its own revenue and defend any lawsuit without impact to the Nation's resources. In fact, the agreements entered into with the NCIDA required LGCC to obtain insurance against any liability that may be incurred. Even more telling, LGCC was not given the authority by the Nation to bind or obligate the Nation in connection with the general operation of the golf course. As a result, the Court can not conclude that LGCC is an "arm" of the Nation entitled to the protection of sovereign immunity.

Furthermore, this Court notes that an action to foreclose a mechanic's lien on real property is considered an *in rem* proceeding. *Cass County Joint Water Res. Dist. v. 1.43 Acres of Land in Highland Twp.*, 2002 ND 83 (ND, 2002); *Cody v Turn Verein of New York*, 48 AD 279 (1st Dept 1900), *affd.* 167 NY 607 (1901); *Parisi v Hubbard*, 226 AD 280 (4th Dept 1929). Therefore, the issue of sovereign immunity does not impact at all the lien foreclosure claim since personal jurisdiction over the owners of the golf course (LGCC) is not necessary in the context of such relief.

In determining whether the Plaintiff has established various other causes of action, this Court must accept as true the facts alleged in Plaintiff's Complaint *Cron v Hargro Fabrics*, 91 NY2d 362 (1998); *Millers Wood Dev. Corp. v HSBC Bank USA*, 300 AD2d 1015 (4th Dept 2002). Further, this Court must accord the Plaintiff the benefit of every possible favorable inference in determining whether such facts establish any "cognizable legal theory" *Cron, supra*; *MetLife Auto & Home v Joe Basil Chevrolet, Inc.*,

303 AD2d 30 (4th Dept 2002). Plaintiff's third cause of action asserting a breach of the implied covenant of good faith and fair dealing and sixth cause of action asserting fraud contain allegations describing various Defendants engaging in fraudulent and/or bad faith above and beyond the breach of contract claim. At this early stage of litigation, Plaintiff is allowed to plead alternative theories. See CPLR §3002. Of course, once Defendants have answered and all parties engage in discovery, it may be appropriate to revisit dismissal of certain claims, as well as certain defendants. See, *Niagara Foods, Inc. v Ferguson Elec. Serv. Co., Inc.*, 86 AD3d 919, (4th Dept 2010) ["Where the alleged fraudulent representation is collateral to the contract, i.e., it is a fraudulent representation regarding present fact as opposed to one reflecting an intent to perform, the fraud and breach of contract causes of action simultaneously may be maintained."]; *La Barte v. Seneca Resources* Corp., 285 AD2d 974 (4th Dept 2001).

As to the individual Defendants who argue for dismissal because they are not in privity with Plaintiff and are allegedly merely directors acting within the scope of their authority; their lack of privity does not excuse them from the non-breach of contract allegations. Moreover, the individual defendants may not be entitled to a corporate shield if it is determined during the course of discovery that various among the entities were not properly incorporated, as alleged. In addition, it cannot be said as a matter of law that each individual defendant only acted in the alleged corporate interests, as opposed to his or her own personal interest. See, *Hoag v. Chancellor, Inc.* , 246 AD2d 224, 230 (1st Dept., 1998) [A director "is liable when he acts for his personal, rather than the corporate interests."].

Order Appealed From Granted February 28, 2012 and Filed March 1, 2012, with Exhibit A.

Defendant NCIDA's motion to dismiss Plaintiff's third and sixth causes of action is hereby granted in its entirety, as it is agreed that NCIDA, as well as Niagara Mohawk Power Corporation, are part of this litigation only to the extent both claim to have some interest in the subject premises, as described in Plaintiff's Amended Complaint.

All other claims not specifically addressed herein have been considered by the Court and are found to be without merit and/or moot in light of the decision reached herein.

Accordingly, Defendants' various motions to dismiss the Plaintiff's Amended Complaint are denied, except for NCIDA's motion as to Plaintiff's third and sixth causes of action, which is granted.

Plaintiff is hereby directed to submit the appropriate order on notice.

Hon. Catherine Nugent Panepinto
Supreme Court Justice

Dated: February 6, 2012
Niagara Falls, New York

ENTER

GRANTED

FEB 07 2012

BY PATRICIA HALL
COURT CLERK

First Amended Summons and Complaint,
Dated September 13, 2010.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.
1500 Union Road, Suite 201
West Seneca, New York 14224

Plaintiff,

vs.

FIRST AMENDED
SUMMONS

Index No.: 141212

LEWISTON GOLF COURSE CORPORATION
310 Fourth Street
Niagara Falls, New York 14303

SENECA NIAGARA FALLS GAMING CORPORATION
310 Fourth Street
Niagara Falls, New York 14303

SENECA GAMING CORPORATION
310 Fourth Street
Niagara Falls, New York 14303

JEFFREY L. GILL
310 Fourth Street
Niagara Falls, New York 14303

MARK I. HALFTOWN
310 Fourth Street
Niagara Falls, New York 14303

GLORIA HERON
310 Fourth Street
Niagara Falls, New York 14303

MAURICE A. JOHN, SR.
310 Fourth Street
Niagara Falls, New York 14303

MICHAEL L. JOHN
310 Fourth Street
Niagara Falls, New York 14303

KAREN KARSTEN
310 Fourth Street
Niagara Falls, New York 14303

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
700 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

ORIGINAL FILED
SEP 13 2010
WAYNE F. JAGOW
NIAGARA COUNTY CLERK

First Amended Summons and Complaint,
Dated September 13, 2010.

INA K. LOCKE
310 Fourth Street
Niagara Falls, New York 14303

ROBERT E. MELE
310 Fourth Street
Niagara Falls, New York 14303

RICHARD K. NEWPHEW
310 Fourth Street
Niagara Falls, New York 14303

MARIBEL PRINTUP
310 Fourth Street
Niagara Falls, New York 14303

COCHISE N. REDEYE
310 Fourth Street
Niagara Falls, New York 14303

GARY SANDEN
310 Fourth Street
Niagara Falls, New York 14303

KEVIN W. SENECA
310 Fourth Street
Niagara Falls, New York 14303

BARRY E. SNYDER, SR.
310 Fourth Street
Niagara Falls, New York 14303

STEVE TOME
310 Fourth Street
Niagara Falls, New York 14303

NIAGARA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY
Vantage Center, Suite 1
Sanborn, New York 14132

NIAGARA MOHAWK POWER CORPORATION
300 Erie Blvd West
Syracuse, New York 13202,

JOHN DOE, the name of said Defendant being fictitious, it being intended to designate any and all lienors, tenants or occupants of the premises being foreclosed,

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

the true names of such lienors, tenants or occupants being unknown to the Plaintiff,

Defendants.

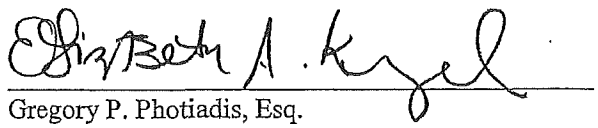
TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED AND REQUIRED to serve upon Plaintiff's attorney, at the address stated below, a written Answer to the attached Complaint. If this Summons is served upon you within the State of New York by personal service you must respond within TWENTY (20) days after service, not counting the day of service. If this Summons is not personally delivered to you within the State of New York you must respond within THIRTY (30) days after service is completed, as provided by law.

If you do not respond to the attached Complaint within the applicable time limitation stated above a Judgment will be entered against you by default for the relief demanded in the Complaint, without further notice to you. This action is brought in the County of Niagara because the real property subject of the action is located therein.

DATED: September 13, 2010
Buffalo, New York

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP

By: 

Gregory P. Photiadis, Esq.
Elizabeth A. Kraengel, Esq.
Attorneys for Plaintiff
1800 Main Place Tower, 350 Main Street
Buffalo, New York 14202
(716) 855-1111

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3719
716-855-1111
FAX 716-855-0327

First Amended Summons and Complaint,
Dated September 13, 2010.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.

Plaintiff,

vs.

LEWISTON GOLF COURSE CORPORATION
SENECA NIAGARA FALLS GAMING CORPORATION
SENECA GAMING CORPORATION
JEFFREY L. GILL
MARK I. HALFTOWN
GLORIA HERON
MAURICE A. JOHN, SR.
MICHAEL L. JOHN
KAREN KARSTEN
INA K. LOCKE
ROBERT E. MELE
RICHARD K. NEWPHEW
MARIBEL PRINTUP
COCHISE N. REDEYE
GARY SANDEN
KEVIN W. SENECA
BARRY E. SNYDER, SR.
STEVE TOME
NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY
NIAGARA MOHAWK POWER CORPORATION, and
JOHN DOE

Defendants.

FIRST AMENDED
VERIFIED COMPLAINT

Index No.: 141212

ORIGINAL FILED
SEP 13 2010
WAYNE F. JAGOW
NIAGARA COUNTY CLERK

Plaintiff Sue/Perior Concrete & Paving, Inc., by its attorneys, Duke, Holzman, Photiadis & Gresens LLP, as and for its First Amended Verified Complaint against the above-named defendants, states and alleges as follows:

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
200 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

First Amended Summons and Complaint,
Dated September 13, 2010.

THE PARTIES

1. Plaintiff Sue/Perior Concrete & Paving, Inc. ("Sue/Perior" or "Plaintiff"), is a New York corporation (Certified Native American Company) duly organized and existing under the laws of the State of New York with an office for the regular transaction of business located at 1500 Union Road, in the Town of West Seneca, County of Erie, State of New York.

2. Sue/Perior is in the business of performing construction and site work.

3. Upon information and belief, defendant Lewiston Golf Course Corporation ("LGCC") purports to be a foreign corporation, authorized to do business in the State of New York with its principal place of business located at 310 Fourth Street in the City of Niagara Falls, County of Niagara, State of New York.

4. Upon information and belief, LGCC is the record owner of, and is the lessor of, real property located in the Town of Lewiston, County of Niagara, State of New York commonly known as the Hickory Stick Golf Course/Club and more particularly bounded and described in **Exhibit A** annexed hereto (the "Premises").

5. LGCC purports to be a corporation organized and existing under the laws and constitution of the Seneca Nation of Indians ("SNI"), which is an Indian Tribe recognized by the United States of America and the State of New York, and purports to be a subsidiary of defendant Seneca Niagara Falls Gaming Corporation ("SNFGC").

6. LGCC purports to have been created by the SNI Resolution of the SNI Council under the SNI Constitution and refers to itself as a "tribally chartered corporation" and/or a "governmental instrumentality of the SNI."

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

First Amended Summons and Complaint,
Dated September 13, 2010.

7. There are no provisions in the SNI Constitution which allow or authorize the formation of corporations or authorities or "governmental instrumentalities" nor are there any other laws under which LGCC was formed or exists.

8. LGCC therefore has no separate existence from the persons who carry out acts or engage in conduct under the name of this invalid and nonexistent entity.

9. Plaintiff brings this action against LGCC because it is the owner of record of the Premises, and because defendants Gill, Halftown, Heron, M. John, M.L. John, Karsten, Locke, Mele, Nephew, Printup, Redeye, Sanden, K. Seneca, Snyder and Tome, have held LGCC out to the world to be a separate entity with its own assets and authority to engage in business and transactions.

10. Plaintiff also brings this action against each and every individual Director of the LGCC and Member of the LGCC Board, personally and jointly and severally with each other because LGCC does not provide a corporate veil to these individuals and because the acts of LGCC are the acts of the individuals themselves for themselves and in concert with one another.

11. The allegations against LGCC are allegations against the LGCC Board of Directors and the individual members of the LGCC Board of Directors, individually and in concert with one another.

12. Upon information and belief, defendant SNFGC purports to be a corporation organized and existing under the laws and constitution of the SNI, with an office for the transaction of business located at 310 Fourth Street in the City of Niagara Falls, County of Niagara, State of New York, and purports to be a subsidiary of defendant Seneca Gaming Corporation ("SGC").

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

First Amended Summons and Complaint,
Dated September 13, 2010.

13. SNFGC is the immediate past record owner of the Premises, which it conveyed to LGCC on or about July 20, 2007.

14. Upon information and belief, defendant SGC purports to be a corporation organized and existing under the laws and constitution of the SNI, with an office for the transaction of business located at 310 Fourth Street in the City of Niagara Falls, County of Niagara, State of New York.

15. Upon information and belief SNFGC is wholly owned by SGC.

16. Upon information and belief, defendant, Jeffrey L. Gill ("Gill"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint a Director of LGCC, and as such a Member of the LGCC Board of Directors.

17. Upon information and belief, defendant, Mark I. Halftown ("Halftown"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint a Director of LGCC, and as such a Member of the LGCC Board of Directors.

18. Upon information and belief, defendant, Gloria Heron ("Heron"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint a Director of LGCC, and as such a Member of the LGCC Board of Directors.

19. Upon information and belief, defendant, Maurice A. John, Sr. ("M. John"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint a Director of LGCC, and as such a Member of the LGCC Board of Directors.

20. Upon information and belief, defendant, Michael L. John ("M.L. John"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint a Director of LGCC, and as such a Member of the LGCC Board of Directors.

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

First Amended Summons and Complaint,
Dated September 13, 2010.

21. Upon information and belief, defendant, Karen Karsten ("Karsten"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint a Director of LGCC, and as such a Member of the LGCC Board of Directors.

22. Upon information and belief, defendant, Ina K. Locke ("Locke"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint a Director of LGCC, and as such a Member of the LGCC Board of Directors.

23. Upon information and belief, defendant, Robert E. Mele ("Mele"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint a Director of LGCC, and as such a Member of the LGCC Board of Directors.

24. Upon information and belief, defendant, Richard K. Nephew ("Nephew"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint a Director of LGCC, and as such a Member of the LGCC Board of Directors.

25. Upon information and belief, defendant, Maribel Printup ("Printup"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint a Director of LGCC, and as such a Member of the LGCC Board of Directors.

26. Upon information and belief, defendant, Cochise N. Redeye ("Redeye"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint a Director of LGCC, and as such a Member of the LGCC Board of Directors.

27. Upon information and belief, defendant, Gary Sanden ("Sanden"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint a Director of LGCC, and as such a Member of the LGCC Board of Directors.

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

First Amended Summons and Complaint,
Dated September 13, 2010.

28. Upon information and belief, defendant, Kevin W. Seneca ("K. Seneca"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint a Director of LGCC, and as such a Member of the LGCC Board of Directors.

29. Upon information and belief, defendant, Barry E. Snyder, Sr. ("Snyder"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint a Director of LGCC, and as such a Member of the LGCC Board of Directors.

30. Upon information and belief, defendant, Steve Tome ("Tome"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint a Director of LGCC, and as such a Member of the LGCC Board of Directors.

31. Upon information and belief, defendant Niagara County Industrial Development Agency is a party claiming to have some interest in the Premises by the recording of a Lease and Memorandum of Leaseback in the Office of the Clerk of the County of Niagara on or about November 27, 2007.

32. Upon information and belief, defendant Niagara Mohawk Power Corporation is a party claiming to have some interest in the Premises by the recording of an Easement in the Office of the Clerk of the County of Niagara or about June 30, 2008.

FIRST CAUSE OF ACTION
(Lien Foreclosure)

33. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "32" of the within First Amended Verified Complaint with the same force and effect as if fully set forth herein again at length.

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
'0 MAIN PLACE TOWER
250 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

**First Amended Summons and Complaint,
Dated September 13, 2010.**

34. Upon information and belief, the immediate former owner of the Premises, SNFGC, together with SGC, proposed to design and build a golf course upon the Premises known as Hickory Stick Golf Course/Club ("Project") in or about 2006.

35. Upon information and belief, the SNFGC and/or SGC engaged the services of Architect Robert Trent Jones, Golf Course Architects (the "Architect") to design the Project.

36. Upon information and belief, Golf Course Construction, Inc. ("Golf"), is a foreign corporation authorized to do business in the State of New York with its principal place of business located at 1150 Victor Drive in the Town of Howell, County of Bronx, State of Michigan. Golf holds itself out to be in the business of providing golf course construction services.

37. Upon information and belief, Glenn Caverly ("Caverly") is a resident of the State of Michigan and is the President and sole shareholder, director and/or officer of Golf.

38. Upon information and belief, defendant, W. Gary Paumen, a/k/a Warren Paumen, a/k/a Gary Paumen ("Paumen"), from in or about October 2006 to February 2009, was a representative acting on behalf of SGC, SNFGC and/or LGCC.

39. Upon information and belief, Paumen, had a prior relationship with Golf and Caverly, and in or about January 2007 introduced Golf and Caverly to Plaintiff.

40. In or about February 2007, Caverly and Paumen met with Plaintiff's representatives Thomas Colton, David Pfeiffer and Donald Heater at Plaintiff's office in West Seneca, New York.

41. At said meeting and on prior and subsequent occasions, Caverly expressly represented to Plaintiff that he was an officer of the board of the Golf Course Builders of

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

America Association ("GCBAA") which writes the industry standards for golf course construction, that he was knowledgeable, skilled and experienced in constructing golf course features such as creeks, lakes, sand bunkers, fairways, tees, greens and other landscapes and that he possessed the equipment, labor and resources to properly bid the Project and perform the Project.

42. Paumen represented to Plaintiff at said meeting that LGCC approved, and the Architect vetted and qualified, Golf and Caverly.

43. Upon the release of the Project plans and specifications, the LGCC directed Plaintiff to partner with Golf and submit a joint bid.

44. Plaintiff justifiably relied upon Golf, Caverly and Paumen's representations as to Golf and Caverly's qualifications and ability to bid and perform the Project. Plaintiff and Golf entered into a joint venture agreement (the "Joint Venture Agreement"), under which the parties agreed to engage and carry on as joint venturers in contemplation of being awarded a contract by the Seneca Gaming Commission and/or the SNI for construction of a golf course on the Premises.

45. On or about April 26, 2007, Plaintiff and Golf submitted a joint bid to Seneca Management Development Corporation for the Project in the amount of $13,833,000.

46. On or about May 21, 2007, SNFGC issued a letter of intent to Plaintiff and Golf advising that their bid was the lowest qualified bid submitted.

47. On or about August 9, 2007, Plaintiff and Golf, jointly and severally entered into a contract with the LGCC for construction of the Project for the adjusted amount of $12,700,000.00 (the "Project Contract").

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
'O MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

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48. The Architect's bid tabulations reveal that the next bid closest to Plaintiff's was $9,000,000.00 more than Plaintiff's bid.

49. The adjusted amount of $12,700,000.00 eliminated and/or modified several items from the original contract specifications as enumerated in Article 2 of the Project Contract, including: Section E of bid - retaining wall; Section L of bid - PVC liner; Section R of bid - Greens Seedbed mixture; Section W of bid - irrigation; Section S of bid - concerning tee seedbed mixture. In addition, the LGCC and Plaintiff agreed that: no bond would be required; the electrical work, Section E, Item 604 would be eliminated; the Hydro Mulch, Section Item 556 Hydro Seed and Section Z, Item 9 would be eliminated; no overtime would be included in the final contract price; screening of topsoil would be accomplished by using Barber Turf Rakes in place; and the cost for the Tee Seedbed Mixture would be $29,000.00 (price provided by Paumen).

50. The substantial completion date was specified in the Project Contract as November 20, 2008.

51. In March 2008, the lead architect on the Project was changed, which resulted in the new architect directing Plaintiff to change the location, size and drainage that had already been constructed and thus required the Plaintiff to perform extra work.

52. These and other changes and extra work requested by LGCC and changed conditions caused a completion delay and the Project Contract was completed on December 2, 2009.

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
U MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3716
716-855-1111
FAX 716-855-0327

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Extra Work Items Unpaid by LGCC

53. At the special request and insistence of the LGCC and its agents, the Plaintiff supplied various work, labor, services and materials to improve the Premises.

54. The aforesaid work, labor, services and materials were performed and furnished and the Premises with the knowledge and consent of the LGCC.

55. Plaintiff was required to perform in several changed manners, including but not limited to the following extra work items, totaling $2,577,563.28:

A. Water Main - additional cost $22,939.00

B. Sanitary Sewers - additional cost $14,244.64

C. Pavements - additional cost $32,900.00

D. Mobilization - additional cost $65,470.00

E. Additional Bury Pits - additional cost $799,336.25

F. Topsoil - additional cost $156,000.38

G. Additional Earthwork - additional cost $212,706.88

H. Rough Grading - additional cost $62,675.00

I. Golf Course and Site Work Drainage - additional cost $151,038.90

J. Bunker Construction - additional cost $73,432.80

K. Grassing - additional cost $30,954.60

L. Adjustment for Fuel Prices - additional cost $270,362.69

M. Adjustment for Asphalt Prices - additional cost $130,636.42

N. Lake F Dewatering and Earthwork - additional cost $393,553.20

O. Groundbreaking - additional cost $11,110.80

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PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
7 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

P. Tee Seedbed Material - additional cost $113,615.89

Q. Cart Path Removal and Repaving - additional cost $24,523.08

R. Clubhouse Site Work - additional cost $12,062.76

Financial Impact to Sue/Perior

56. After crediting LGCC for work not performed under the Project Contract in the sum of $760,872.00, the adjusted Project Contract amount was $11,939,128.00.

57. To date, the sum of $11,462,210.00 has been paid.

58. The following summarizes the unpaid costs incurred by Plaintiff on the Project:

Extra Work Costs		$2,577,563.28
Other Damages - Delay Related		
Wage Escalation	$5,692.80	
Overtime	$417,229.42	
Extended Supervision/Job Costs	$488,447,55	
Home Office Overhead - Manshul	$204,687.68	
		$1,076,057.45
		$3,653,620.73
Unpaid Contract Balance & Retainage		$476,918.00

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PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
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TOTAL: $4,130,538.00

59. To summarize, the sum of $4,130,538.00, together with interest as provided by law, remains due and owing to Plaintiff by LGCC.

60. Hill International, Inc., evaluated Plaintiff's claims and prepared a seventy-five (75) page report dated January 19, 2010 (the "Report") detailing Plaintiff's claims for extra work and additional costs incurred on the Project. The Report was submitted to the LGCC and the Architect on or about January 20, 2010.

61. LGCC has, in bad faith, refused to adjust the Contract price and to compensate Plaintiff for any of its extra costs and claims as described in the Report and for which such extra costs and claims are now made in this Complaint.

62. The amount due and owing has not been paid, although duly demanded.

63. On or about February 17, 2010, and within eight (8) months after the last items of work and materials were furnished to the Premises, the Plaintiff filed a Notice of Lien in writing in the Office of the Clerk of the County of Niagara against the Premises.

64. The Notice contained all of the information required by the appropriate sections of the N.Y. Lien Law.

65. The Lien has not been paid, cancelled or discharged of record, and no other proceeding has heretofore been brought in law or in equity to recover the amount claimed therein.

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
'O MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

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SECOND CAUSE OF ACTION
(Breach of Contract)

66. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "65" of the within First Amended Verified Complaint with the same force and effect as if fully set forth herein again at length.

67. LGCC caused a host of delays over the course of the Project which resulted in requiring Plaintiff to work overtime, which was specifically excluded under the Project Contract, and through the 2008-2009 winter to compensate for the delays caused by LGCC.

68. LGCC issued conflicting directions which resulted in delay of the Project, including but not limited to numerous representatives and agents, including the Architect, Paumen, Rob Chamberlain, John LaBelle, Rob Jimerson, and Jon Mallery who at different times oversaw the Project and directed changes and extras to be performed on behalf of LGCC.

69. Plaintiff has fully performed under the Project Contract.

70. LGCC has unjustifiably and in bad faith failed and refused to make the payments due and owing to Plaintiff for base Project Contract work and extra work and costs in the amount of $4,130,538.00.

71. By reason thereof, Plaintiff has been damaged and is entitled to is to entry of judgment against defendants LGCC, Gill, Halftown, Heron, M. John, M.L. John, Karsten, Locke, Mele, Nephew, Printup, Redeye, Sanden, K. Seneca, Snyder and Tome personally jointly and severally, in the amount of $4,130,538.00, plus appropriate interest as provided by law.

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
9 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

THIRD CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing)

72. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "71" of the within First Amended Verified Complaint with the same force and effect as if fully set forth herein again at length.

73. There is an implied covenant of good faith and fair dealing present in every contract.

74. Defendants LGCC, Gill, Halftown, Heron, M. John, M.L. John, Karsten, Locke, Mele, Nephew, Printup, Redeye, Sanden, K. Seneca, Snyder and Tome, have deprived Plaintiff of the benefit of the Project Contract by failing and refusing to make payment owing Plaintiff under the Project Contract.

75. Defendants LGCC, Gill, Halftown, Heron, M. John, M.L. John, Karsten, Locke, Mele, Nephew, Printup, Redeye, Sanden, K. Seneca, Snyder and Tome have acted unjustifiably and in bad faith-malevolence by withholding the balance of the base Project Contract and extra work and costs, in the amount of $4,130,538.00 which is justly due and owing.

76. Defendants LGCC, Gill, Halftown, Heron, M. John, M.L. John, Karsten, Locke, Mele, Nephew, Printup, Redeye, Sanden, K. Seneca, Snyder and Tome have unjustifiably and in bad faith used their political power and position to harm Plaintiff by withholding funds duly owed to Plaintiff for the balance of the base Project Contract and extra work and costs, in the amount of $4,130,538.00 which is justly due and owing.

77. By reason thereof, Plaintiff has been damaged and is entitled to is to entry of judgment against defendants LGCC, Gill, Halftown, Heron, M. John, M.L. John, Karsten, Locke,

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

Mele, Nephew, Printup, Redeye, Sanden, K. Seneca, Snyder and Tome personally jointly and severally, in the amount of $4,130,538.00, plus appropriate interest as provided by law.

FOURTH CAUSE OF ACTION
(Quantum Meruit)

78. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "77" of the within First Amended Verified Complaint with the same force and effect as if fully set forth herein again at length.

79. Plaintiff provided services and labor and furnished goods on the Project in good faith, which LGCC accepted, for the base work under the Project Contract, extra work and costs.

80. Plaintiff had a reasonable expectation of compensation from LGCC for services and labor rendered and materials furnished on the Project for the base work under the Project Contract, extra work and costs.

81. The reasonable value of the extra work costs for services and labor rendered, and materials furnished, to LGCC on the Project is $4,130,538.00.

82. By reason thereof, Plaintiff has been damaged and is entitled to is to entry of judgment against defendants LGCC, Gill, Halftown, Heron, M. John, M.L. John, Karsten, Locke, Mele, Nephew, Printup, Redeye, Sanden, K. Seneca, Snyder and Tome personally jointly and severally, in the amount of $4,130,538.00, plus appropriate interest as provided by law.

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
0 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

FIFTH CAUSE OF ACTION
(Promissory Estoppel)

83. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "82" of the within First Amended Verified Complaint with the same force and effect as if fully set forth herein again at length.

84. LGCC is estopped from denying Plaintiff entitlement to payment for changes and extra work performed on the Project because of its promise to pay Plaintiff for such changes and extra work at the conclusion of the Project.

85. Plaintiff reasonably relied, to its detriment, on LGCC's promises to pay extra costs and claims upon the conclusion of the Project.

86. By reason thereof, Plaintiff has been damaged and is entitled to is to entry of judgment against defendants LGCC, Gill, Halftown, Heron, M. John, M.L. John, Karsten, Locke, Mele, Nephew, Printup, Redeye, Sanden, K. Seneca, Snyder and Tome personally jointly and severally, in the amount of $4,130,538.00, plus appropriate interest as provided by law.

SIXTH CAUSE OF ACTION
(Fraud)

87. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "86" of the within First Amended Verified Complaint with the same force and effect as if fully set forth herein again at length.

88. SGC and SNFGC exert complete dominion and control over the operations of LGCC.

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
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FAX 716-855-0327

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89. Upon information and belief, since April 2009, the LGCC Board of Directors has been identical to the SGC Board of Directors.

90. LGCC undertook obligations under the Project Contract without the means to perform and knowingly and intentionally failed to disclose that it needed authorization and funding from SGC to perform under the Project Contract.

91. SGC, SNFGC and LGCC, by and through their agents, including but not limited to Paumen and Chamberlain, made material misrepresentations to Plaintiff throughout the course of the Project to the effect that LGCC would pay Plaintiff for the performance under changed conditions and for extra work undertaken because of changed conditions.

92. LGCC's agents, including Paumen and Chamberlain, directed Plaintiff throughout the Project to perform changes and extra work items verbally with the promise that the claims would be paid at the end of the Project.

93. LGCC authorized its agents to make the representations to Plaintiff to induce Plaintiff to perform changes and provide extras on the Project without intention to make payment and/or with reckless disregard as to whether it could make payment.

94. On or about October 25, 2007, Chamberlain represented at a Project operational meeting, attended by Caverly and Paumen, among others, to build the golf course and "any changes that need to be made can be taken care of after the fact."

95. In or about August 2008, at an operational meeting held in the trailer at the Project site attended by Pfeiffer, Chamberlain, Caverly, Joseph Ventresca, Paumen and Brian Dooley, Chamberlain specifically represented that fuel and asphalt adjustments would be compensated at the end of the Project.

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
0 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

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96. Following said operational meeting, Chamberlain asked to speak with Caverly and Plaintiff's representative, Pfeiffer, outside the office trailer at the Project site.

97. Chamberlain expressly told Caverly and Pfeiffer that as regarding the changed conditions and extra work items, that "we will be fair, you know how we work... just keep working and we will pay you on the extras at the end of the job when you submit claims."

98. The Project progressed, and in or about early 2009 there was a change of power in management of the LGCC, SNFGC, SGC and/or SNI, which resulted in a change in management of the Project -- Paumen departed and was replaced by Rob Jimerson for a short period, followed by Jon Mallery.

99. LGCC intended to deceive Plaintiff though these misrepresentations to induce Plaintiff to furnish changes and extra work on the Project.

100. The representations that LGCC would compensate Plaintiff for changes and extras at the end of the Project were false when made and LGCC knew such representations to be false and/or made the representations recklessly without regard to whether they were true or false.

101. LGCC made said representations and promises to induce Sue/Perior to rely upon them.

102. Sue/Perior justifiably relied upon LGCC's representations and sustained damages as a result.

103. By reason thereof, Plaintiff has been damaged and is entitled to is to entry of judgment against defendants LGCC, SNFGC, SGC, Gill, Halftown, Heron, M. John, M.L. John, Karsten, Locke, Mele, Nephew, Printup, Redeye, Sanden, W. Seneca, Snyder and Tome,

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

personally jointly and severally, in the amount of $4,130,538.00, plus appropriate interest as provided by law.

WHEREFORE, Plaintiff prays for Judgment against the Defendants for the following relief:

1. As to the First Cause of Action: **(i)** that the Court adjust and determine the equities of all the parties to this action and determine the respective priorities of the various Liens, if any, and the interest of all the parties herein; **(ii)** that it be adjudged that the Plaintiff, Sue/Perior Concrete & Paving, Inc., has a valid Lien in the amount of $4,130,538.00 against the hereinbefore described premises; **(iii)** that all other parties claiming under the Defendant be forever foreclosed of any and all equity of redemption or other interest in said premises; **(iv)** that said premises be sold, as provided by law, and from the proceeds of such sale, the Plaintiff be paid the amount of $4,130,538.00 against the hereinbefore described premises, with interest as provided by law, together with costs and disbursements of this action;

2. As to the Second Cause of Action, entry of judgment against defendants LGCC, Gill, Halftown, Heron, M. John, M.L. John, Karsten, Locke, Mele, Nephew, Printup, Redeye, Sanden, K. Seneca, Snyder and Tome personally jointly and severally, in the amount of $4,130,538.00, plus appropriate interest as provided by law;

3. As to the Third Cause of Action, entry of judgment against defendants LGCC, Gill, Halftown, Heron, M. John, M.L. John, Karsten, Locke, Mele, Nephew, Printup, Redeye, Sanden, K. Seneca, Snyder and Tome personally jointly and severally, in the amount of $4,130,538.00, plus appropriate interest as provided by law;

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

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4. As to the Fourth Cause of Action, entry of judgment against defendants LGCC, Gill, Halftown, Heron, M. John, M.L. John, Karsten, Locke, Mele, Nephew, Printup, Redeye, Sanden, K. Seneca, Snyder and Tome personally jointly and severally, in the amount of $4,130,538.00, plus appropriate interest as provided by law;

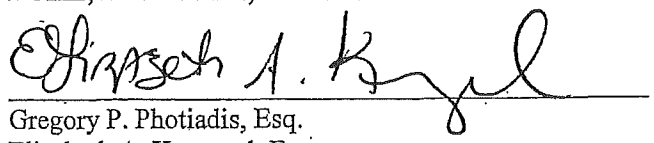
5. As to the Fifth Cause of Action, entry of judgment against defendants LGCC, Gill, Halftown, Heron, M. John, M.L. John, Karsten, Locke, Mele, Nephew, Printup, Redeye, Sanden, K. Seneca, Snyder and Tome personally jointly and severally, in the amount of $4,130,538.00, plus appropriate interest as provided by law;

6. As to the Sixth Cause of Action, entry of judgment against defendants LGCC, SNFGC, SGC, Gill, Halftown, Heron, M. John, M.L. John, Karsten, Locke, Mele, Nephew, Printup, Redeye, Sanden, W. Seneca, Snyder and Tome, personally jointly and severally, in the amount of $4,130,538.00, plus appropriate interest as provided by law; and

7. That the Plaintiff have any other and further relief that this Court deems just and proper.

DATED: September 13, 2010
Buffalo, New York

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP

By: 

Gregory P. Photiadis, Esq.
Elizabeth A. Kraengel, Esq.
Attorneys for Plaintiff
1800 Main Place Tower, 350 Main Street
Buffalo, New York 14202
Tel: (716) 855-1111

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

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VERIFICATION

STATE OF NEW YORK)

COUNTY OF ERIE) ss.:

Thomas Colton, being duly sworn, deposes and says that he is the President of Sue/Perior Concrete and Paving, Inc., the corporation named as plaintiff in the within action; that deponent has read the foregoing First Amended Summons and First Amended Verified Complaint and knows the contents thereof; that the same is true to deponent's own knowledge and based upon the books and records of the corporation, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

Thomas Colton, President

Sworn to before me, this

13th day of September, 2010.

Notary Public
ELIZABETH A. KRAENGEL
Notary Public, State of New York
Qualified in Erie County
My Commission Expires July 7, 2012

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
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FAX 716-855-0327

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PARCEL A, B AND C

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of lot 43, township 14, range 9 of the Holland Land Company Survey bounded and described as follows:

Beginning at a point in the centerline of Blairville-Creek Road, also known as Creek Road, a distance of 225.0 feet north of the southeast corner of lot 43.

Thence, S 89° 25' 40" W along the north line of lands conveyed to Marlene Burns by deed recorded in the Niagara County Clerk's Office in Liber 1952 at Page 135, a distance of 355.14 feet to the northwest corner of said Burns lands;

Thence, S 00° 10' 35" W along the west line of said Burns land, a distance of 228.86 feet to the southwest corner of said Burns land in the south line of lot 43;

Thence, S 88° 48' 26" W along the south line of lot 43, a distance of 256.36 feet to the northwest corner of land conveyed to Robert and Deborah Kenney by deed recorded in the Niagara County Clerk's Office in Liber 2107 at page 315;

Thence, N 87° 37' 11" W continuing along the south line of lot 43, a distance of 650.10 feet to the northeast corner of subdivision lot 257 of Lewistowne Park, Phase 9;

Thence, N 89° 12' 48" W continuing along the south line of lot 43 a distance of 1187.85 feet to the southwest corner of lot 43 being in the east line of lands appropriated for the Niagara Parkway, Section 4 (Robert Moses State Parkway);

Thence, northerly along the east line of lands appropriated for the Niagara Parkway, Section 4 of the following three (3) courses and distances:

(1) N 08° 18' 24" E, a distance of 800.98 feet to a point;
(2) N 06° 22' 35" E, a distance of 2670.71 feet to a point;
(3) N 00° 22' 47" W, a distance of 433.59 feet to the southwest corner of lands appropriated for Blairville Creek Road, State Highway 9322, Niagara County, Map 186 Parcel 130 filed in the Niagara County Clerk's Office in Liber 1428 at Page 923;

Thence, S 89° 47' 37" E along the south line of the last described parcel, a distance of 1066.38 feet to an angle point in said south line;

Thence, S 00° 26' 05" W parallel with the centerline of Blairville-Creek Road, a distance of 900.77 feet to a point;

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Thence, S 26° 23' 35" W a distance of 137.07 feet to a point;

Thence, S 89° 46' 51" W a distance of 72.28 feet to a point;

Thence, S 00° 26' 05" W, parallel with the centerline of Blairville Creek Road, a distance of 650.04 feet to a point;

Thence, N 89° 46' 51" E a distance of 125.62 feet to a point;

Thence, S 00° 26' 05" W parallel with the centerline of Blairville Creek Road, a distance of 222.13 feet to a point;

Thence, N 89° 46' 51" E a distance of 1008.22 feet to a point in the centerline of Blairville-Creek Road;

Thence, S 00° 26' 05" W along the centerline of said road a distance of 182.06 feet to the northeast corner of lands conveyed to Norton and Rose Douglas by deed recorded in Liber 2302 at Page 61;

Thence, S 89° 46' 50" W along the north line of said Douglas lands, a distance of 355.00 feet to the northwest corner of said lands;

Thence, S 00° 26' 05" W along the west line of said Douglas lands and said line extended, a distance of 467.00 feet to the southwest corner of lands conveyed to Mary and Carla Bagler by deed recorded in Liber 2971 at Page 245;

Thence, N 89° 46' 50" E along the south line of said Bagler lands, a distance of 355.00 feet to a point in the centerline of said Blairville Creek Road;

Thence, S 00° 26' 05" W along the centerline of said road, a distance of 66.00 feet to the northeast corner of lands conveyed to Charles and Eleanor Zelinski by deed recorded in Liber 1225 at page 443;

Thence, S 89° 46' 50" W along the north line of said Zelinski lands, a distance of 355.00 feet to the northwest corner of said lands;

Thence, S 00° 26' 05" W along the west line of said Zelinski lands and said line extended, a distance of 500.24 feet to the southwest corner of lands conveyed to John and Patricia Bartko by deed recorded in Liber 2156 at Page 171;

Thence, N 89° 25' 40" E along the south line of said Bartko lands, a distance of 355.03 feet to a point in the centerline of Blairville-Creek Road;

Thence, S 00° 26' 05" W along the centerline of said road, a distance of 65.00 feet to the northeast corner of lands conveyed to Walter and Patricia Yacus by deed recorded in Liber 2056 at page 172;

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Thence, S 89° 25' 40" W along the north line of said Yacus lands, a distance of 355.00 feet to the northwest corner of said lands;

Thence, S 00° 26' 05" W along the west line of said Yacus lands and said line extended, a distance of 445.41 feet to the southwest corner of lands conveyed to Robert Wojtowicz by deed recorded in Liber 3288 at page 822;

Thence, N 89° 25' 40" E along the south line of said Wojtowicz lands, a distance of 355.00 feet to a point in the centerline of Blairville Creek Road;

Thence, S 00° 26' 05" W along the centerline of said road a distance of 66.00 feet to the point or place of beginning, containing 140.22 acres, more or less.

Excepting and reserving from the above described parcel the following parcels of land appropriated by the New York Department of Public Works:

Map 103, Parcel 111 filed in the Niagara County Clerk's Office in Liber 1437 at page 527 (0.03 acres).

Map 108, Parcel 116 filed in the Niagara County Clerk's Office in Liber 1437 at page 546 (0.03 acres).

Map 114, Parcel 122 filed in the Niagara County Clerk's Office in Liber 1439 at page 19 (0.03 acres).

Map 114, Parcel 123 filed in the Niagara County Clerk's Office in Liber 1439 at page 19 (0.02 acres).

Part of Map 120, Parcel 129 filed in the Niagara County Clerk's Office in Liber 1432 at page 449 (0.08 acres).

The above described parcel containing 140.03 acres more or less.

PARCEL D1

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of lot 42, township 14, range 9 of the Holland Land Company Survey bounded and described as follows:

Beginning at a point in the westerly line of Blairville Creek Road (110.0 Feet Wide) at a distance of 260.00 feet south of the point of intersection of the said line with the north line of Lot 42;

Thence S 00° 03' 39" W along said west bounds of Blairville Creek Road, a distance of 75.02 feet to a point in the north line of lands conveyed to Mathew and Kathleen Wrobel by deed recorded in the Niagara County Clerk's Office in Liber 1621 at page 976;

Thence S 88° 48' 30" W along the north line of said Wrobel lands, a distance of 556.83 feet to the northwest corner of said lands;

Thence, S 00° 02' 15" W along the west line of said Wrobel lands and said line extended, a distance of 478.40 feet to the southwest corner of lands conveyed to Angelo J. Fiabo by deed recorded in the Niagara County Clerk's Office in Liber 2598 at page 171;

Thence, S 00° 26' 14" W along the west line of lands conveyed to Anthony and Chris Iannucci by deed recorded in the Niagara County Clerk's Office in Liber 3156 at page 170 and said line extended, a distance of 405.31 feet to a point at the northwesterly corner of sub-lot 1703 on Ridge View Village Part IV;

Thence, S 00° 36' 57" W along the westerly line of said sub-lot, a distance of 47.58 feet to an angle point in said sub-lot;

Thence, S 62° 35' 27" W, along a northerly line of sub-lot 1704 of the aforementioned Ridge View Village Part IV, a distance of 100.00 feet to a point at the northwesterly corner of said sub-lot,

Thence S 47° 36' 13" W, a distance of 8.27 feet to a point at the northeasterly corner of sub-lot 80 of Lewistowne Park, Phase 3;

Thence, S 49° 32' 31" W, along the northerly line of sub-lots 80 and 81 of said Lewistowne Park, Phase 3, a distance of 126.42 feet to a point at the northwesterly corner of said sub-lot 81;

Thence N 87° 02' 41" W, along the northerly line of sub-lot 82 of said Lewistowne Park, Phase 3, a distance of 109.76 feet to the point of intersection with the easterly right-of-way line of Curtis Court North(66 feet wide);

Thence, northeasterly, along said easterly right-of-way line, along a curve to the right, having a radius of 300.00 feet, through a central angle of 10°-46'-32", an arc length of 56.45 feet to the southwest corner of sub-lot 107 of Lewistowne Park, Phase 4;

Thence, S 76° 15' 49" E, along said southerly line of sub-lot 107, a distance of 115.00 feet to the southeast corner of said sub-lot,

Thence the following sixteen (16) courses and distances along the rear lines of sub-lots 107-121 of said Lewistowne Park,
Phase 4:

(1) N 43° 53' 40" E, a distance of 117.25 feet to a point;
(2) N 14° 07' 45" W, a distance of 98.21 feet to a point;
(3) N 02° 49' 28" W, a distance of 91.84 feet to a point;
(4) N 09° 27' 13" W, a distance of 91.84 feet to a point;
(5) N 02° 10' 35" E, a distance of 99.74 feet to a point;
(6) N 07° 15' 15" E, a distance of 105.00 feet to a point;

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Dated September 13, 2010.

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(7) N 33° 00' 02" W, a distance of 150.00 feet to a point;
(8) N 72° 40' 34" W, a distance of 175.00 feet to a point;
(9) S 59° 48' 15" W, a distance of 185.00 feet to a point;
(10) S 11° 04' 03" W, a distance of 195.00 feet to a point;
(11) S 17° 59' 30" E, a distance of 122.96 feet to a point;
(12) S 20° 32' 34" E, a distance of 69.59 feet to a point;
(13) S 06° 34' 46" E, a distance of 69.59 feet to a point;
(14) S 00° 11' 17" W, a distance of 69.59 feet to a point;
(15) S 10° 28' 50" W, a distance of 90.00 feet to a point;
(16) S 52° 23' 12" E, a distance of 150.00 feet to a point of intersection with the westerly right-of-way line of Curtis Court North;

Thence southwesterly, along said westerly right-of-way line, along a curve to the left, having a radius of 366.00 feet, through a central angle of 05° 54'-04", an arc length of 37.70 feet to the northeast corner of sub-lot 83 of the aforementioned Lewistowne Park, Phase 3;

Thence the following three (3) courses and distances along the rear lines of sub-lot 83-87 of the aforementioned Lewistowne Park, Phase 3;

(1) N 84° 25' 49" W, a distance of 92.09 feet to a point;
(2) N 76° 10' 02" W, a distance of 168.20 feet to a point;
(3) N 48° 52' 06" W, a distance of 74.61 feet to a point at the southeasterly corner of sub-lot 122 of Lewistowne Park, Phase 4;

Thence the following nine (9) courses and distances along the rear line of sub-lots 122-130 of Lewistowne Park, Phase 4;

(1) N 17° 06' 54" W, a distance of 75.00 feet to a point;
(2) N 29° 09' 19" W, a distance of 71.40 feet to a point;
(3) N 27° 25' 36" W, a distance of 85.00 feet to a point;
(4) N 25° 15' 56" E, a distance of 19.87 feet to a point;
(5) N 29° 06' 08" E, a distance of 85.00 feet to a point;
(6) N 28° 43' 16" E, a distance of 101.35 feet to a point;
(7) N 40° 43' 31" E, a distance of 111.58 feet to a point;
(8) N 06° 20' 26" E, a distance of 130.00 feet to a point;
(9) N 33° 39' 40" W, a distance of 175.00 feet to a point at the northwesterly corner of sub-lot 130 of Lewistowne Park, Phase 4.

Thence, N 03° 57' 24" E in part along the east line of sub-lots 258 and 257 of Lewistowne Park, Phase 9, a distance of 554.29 feet to a point of intersection with the north line of lot 42 at the northeast corner of said sub-lot 257;

Thence, S 87° 37' 11" E along the north line of lot 42 a distance of 650.10 feet to the northwest corner of lands conveyed to Robert A. and Deborah Kenney by deed recorded in the Niagara County Clerk's Office in Liber 2107 at page 315, said point being a distance of 612.21 feet west from the centerline of Blairville-Creek Road;

First Amended Summons and Complaint,
Dated September 13, 2010.

Thence, S 00° 01' 09" E along the west line of said Kenney lands and said line extended, a distance of 260.00 feet to the southwest corner of lands conveyed to Shannon L. Liganmari by deed recorded in the Niagara County Clerk's Office in Liber 3150 at page 60;

Thence, N 88° 48' 23" E, along the south line of said Liganmari lands, a distance of 566.83 feet to the point or place of beginning, containing 15.83 acres, more or less.

PARCEL D2

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of Lot 42, Township 14, Range 9 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at the southeast corner of Subdivision Lot 164 as shown on a map of Lewistowne Park, Phase 5, filed in Book 51 of Microfilmed Maps at Page 5101-5102;

Thence N 15° 51' 56" E along the easterly line of Subdivision Lot 164, a distance of 150.00 feet to the northeast corner thereof;

Thence N 73° 29' 50" W along the northerly line of Subdivision Lot 164, a distance of 87.89 feet to the northwest corner thereof, said point being the southeast corner of Subdivision Lot 226 as shown on a map of Lewistowne Park, Phase 8, filed in Book 57 of Microfilmed Maps at Pages 5713-5714;

Thence N 18° 08' 40" E along the easterly line of Subdivision Lot 226, a distance of 79.28 feet to the southeast corner of Subdivision Lot 225 as shown on a map of Lewistowne Park, Phase 8, filed in Book 57 of Microfilmed Maps at Page 5713-5714;

Thence N 8° 17' 39" E along the easterly lines of Subdivision Lots 225, 224 and 223 as shown on a map of Lewistowne Park, Phase 8, filed in Book 57 of Microfilmed Maps at Pages 5713-5714, a distance of 270.00 feet to the southeast corner of Subdivision Lot 263 as shown on a map of Lewistowne Park, Phase 9 filed in Book 59 of Microfilmed Maps at page 5900-5901;

Thence N 8° 17' 38" E along the easterly line of Subdivision Lot 263, a distance of 80.55 feet to the southwest corner of Subdivision lot 261 as shown on a map of Lewistowne Park, Phase 9;

Thence, S 71° 10' 46" E along the southerly line of Subdivision Lots 261 and 260 a distance of 223.36 feet to the southwest corner of Subdivision Lot 259 as shown on a map of Lewistowne Park, Phase 9;

Thence, N 70° 10' 48" E along the southeasterly line of Subdivision Lot 259, a distance of 228.03 feet to the southeast corner of Subdivision Lot 259, said corner being located on the westerly line of a parcel of land conveyed to the Town of Lewiston by Deed recorded in Liber 2529 at Page 219;

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Thence, S 3° 57' 24" W along the westerly line of said parcel conveyed to the Town of Lewiston, a distance of 166.98 feet to the northeast corner of Subdivison Lot 131 as shown on a map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at Page 4925-4926;

Thence, N 83° 48' 14" W along the northerly line of Subdivision Lot 131, a distance of 202.46 feet to the northerly corner of Subdivision Lot 132 as shown on a map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at pages 4925-4926;

Thence, S 45° 43' 01" W along the northwesterly line of Subdivision Lot 132, a distance of 180.11 feet to northwesterly corner of Subdivision Lot 133 as shown on a map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at pages 4925-4926;

Thence S 12° 31' 57" W along the westerly line of Subdivision Lot 133, a distance of 80.00 feet to the northwest corner of Subdivision Lot 134 as shown on a map of Lewistowne Park, Phase 4, file in Book 50 of Microfilmed Maps at Page 4925-4926;

Thence, S 16° 48' 20" W along the westerly line of Subdivision Lot 134, a distance of 70.00 feet to the northwest corner of Subdivision Lot 135 as shown on map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at Pages 4925-4926;

Thence, S 21° 07' 46" W along the westerly line of Subdivision Lot 135, a distance of 70.00 feet to the northwest corner of Subdivision of Lot 136 as shown on a map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at Page 4925-4926;

Thence S 16° 03: 16" W along the westerly line of Subdivision Lot 136, a distance of 128.12 feet to the southwesterly corner thereof, said point being on the northerly line of Raymond Drive;

Thence northwesterly along the northerly line of Raymond Drive along a curve to the left having a radius of 461.0 feet an arc length of 19.40 feet to the place of beginning. Containing 2.14 acres more or less.

PARCEL E

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of lot 44, township 14, range 9 of the Holland Land Company Survey bounded and described as follows:

Beginning at a point in the centerline of Pletcher Road, being also the north line of lot 44, at the northwest corner of lands conveyed to Eugene and Maureen Polin by deed recorded in the Niagara County Clerk's Office in Liber 1478 at page 377, said point being 1229.70 feet west from the intersection of said centerline with the centerline of Blairville Creek Road;

Thence, S 01° 28' 55"E along the west line of said Polin lands a distance of 353.60 feet to the southwest corner of said lands;

Thence, S 89° 35' 08"E along the south line of said Pollis lands a distance of 200.00 feet to a point in the west line of lands conveyed to Donald and Yvonne Stephenson by deed recorded in the Niagara County Clerk's Office in Liber 3322 at page 666;

Thence, S 00° 23' 18"W along the west line of said Stephenson lands and said line extended, a distance of 2916.67 feet to the northwest corner of lands conveyed to Fred and Geraldine Vanoni by deed recorded in the Niagara County Clerk's Office in Liber 1495 at page 205;

Thence, S 00° 22' 01"W along the west line of said Vanoni lands and said line extended, a distance of 231.17 feet to the southeast corner of lands conveyed to Pletcher Associates by deed recorded in the Niagara County Clerk's Office in Liber 1613 at page 894, being also in the south line of lot 44;

Thence, N 89° 39' 17"W along the south line of lot 44, a distance of 1058.60 feet to a point in the east line of lands appropriated for the Niagara Parkway, Section 4 (Robert Moses Parkway);

Thence, northerly, along the east line of lands appropriated for the Niagara Parkway, Section 4, the following three (3) courses and distances:

(1) N 00° 22' 47"W a distance of 608.91 feet to a point;
(2) N 08° 07' 23"W a distance of 1594.88 feet to a point;
(3) N 12° 43' 39"W a distance of 803.98 feet to the southerly corner of lands acquired by the Niagara Frontier State Park Commission by deed recorded in the Niagara County Clerk's Office in Liber 1363 at page 171;

Thence, N 29° 19' 14"E along the boundary of the last described parcel a distance of 413.00 feet to an angle point in said boundary;

Thence, N 01° 42' 24"W continuing along the boundary of the last above described parcel, a distance of 624.90 feet to a point;

Thence, easterly along the arc of a circular curve to the left with a radius of 1180 feet an arc length of 132.04 feet to a point in the south bounds of Pletcher Road (66.0 feet wide);

Thence, N 89° 35' 08"W along the south bounds of Pletcher Road a distance of 664.30 feet to a point in the west line of lot 44;

Thence, N 22° 53' 39"W along the west line of lot 44 a distance of 35.91 feet to a point in the centerline of Pletcher Road, being the northwest corner of lot 44;

Thence, S 89° 35' 08"E along the centerline of Pletcher Road a distance of 677.42 feet to the northwest corner of lands conveyed to Joseph and Ingeborg Prata by deed recorded in the Niagara County Clerk's Office in Liber 1411 at page 109;

First Amended Summons and Complaint,
Dated September 13, 2010.

Thence, S 01° 28' 55" E along the west line of said Fraus land and said line extended, a distance of 853.60 feet to the southwest corner of lands conveyed to Marc and Cheryl Brunett by deed recorded in the Niagara County Clerk's Office in Liber 1719 at page 80;

Thence, S 89° 35' 08"E along the south line of said Brunett lands and said line extended, a distance of 884.00 feet to the southeast corner of lands conveyed to Marc and Cheryl Brunett by deed recorded in the Niagara County Clerk's Office in Liber 2520 at page 285;

Thence, N 01° 28' 55"W along the east line of said Brunett lands, a distance of 853.60 feet to the northeast corner of said lands in the centerline of Pletcher Road;

Thence, S 89° 35' 08"E along the centerline of Pletcher Road, a distance of 66.00 feet to the point or place of beginning containing 93.18 acres, more or less.

Notice of Motion to Dismiss Amended Complaint, Dated December 13, 2010.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.,

Plaintiff,

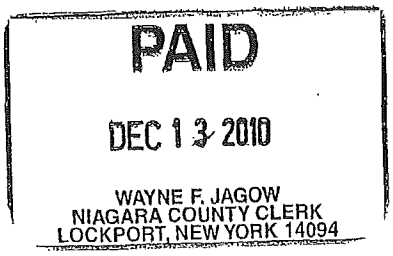
vs.

LEWISTON GOLF COURSE CORPORATION, SENECA NIAGARA FALLS GAMING CORPORATION, SENECA GAMING CORPORATION, JEFFREY L. GILL, MARK I. HALFTOWN, GLORIA HERON, MAURICE A. JOHN, SR., MICHAEL L. JOHN, KAREN KARSTEN, INA K. LOCKE, ROBERT E. MELE, RICHARD K. NEPHEW, MARIBEL PRINTUP, COCHISE N. REDEYE, GARY SANDEN, KEVIN W. SENECA, BARRY E. SYNDER, SR., STEVE TOME, NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, NIAGARA MOHAWK POWER CORPORATION, and JOHN DOE

Defendants.

NOTICE OF MOTION

Index No.: 141212



PLEASE TAKE NOTICE, that upon the Affirmation of Patrick D. Crandell, dated December 13, 2010, and the exhibits attached thereto, defendants Seneca Niagara Falls Gaming Corporation ("SNFGC"), Seneca Gaming Corporation ("SGC"), Jeffrey L. Gill, Mark I. Halftown, Gloria Heron, Maurice A. John, Sr., Michael L. John, Karen Karsten, Ina K. Locke, Robert E. Mele, Richard K. Nephew, Maribel Printup, Cochise N. Redeye, Gary Sanden, Kevin W. Seneca, Barry E. Snyder Sr. and Steve Tome (the "Individual Defendants") (collectively, the "Gaming Defendants"), will move this Court at a Special Term to be held at ____ a.m. on _____, before the Hon. _____ at

Notice of Motion to Dismiss Amended Complaint, Dated December 13, 2010.

_____, or as soon after as counsel may be heard, for an Order pursuant to CPLR 3211 as follows:

1. Dismissing plaintiff's Amended Complaint in its entirety as to SNFGC, SGC and the Individual Defendants for lack of subject matter jurisdiction;

2. Dismissing plaintiff's third and sixth causes in its Amended Complaint in their entirety for failure to state a cause of action;

3. Alternatively dismissing plaintiff's Amended Complaint in its entirety as to the Individual Defendants for failure to state a cause of action; and

4. Awarding such other and further relief as to the Court may seem just and proper.

Under CPLR 2214(b), answering papers, if any, are required to be served by defendants upon attorneys for plaintiff no later than seven (7) days before the return date of this motion.

Dated: Buffalo, New York
December 13, 2010

Notice of Motion to Dismiss Amended Complaint, Dated December 13, 2010.

PHILLIPS LYTLE LLP

By: _____
Michael B. Powers
Patrick D. Crandell
Attorneys for Defendants
Lewiston Golf Course Corporation,
Seneca Niagara Falls Gaming Corporation,
Seneca Gaming Corporation,
Jeffrey L. Gill, Mark I. Halftown,
Gloria Heron, Maurice A. John, Sr.,
Michael L. John, Karen Karsten,
Ina K. Locke, Robert E. Mele,
Richard K. Nephew, Maribel Printup,
Cochise N. Redeye, Gary Sanden,
Kevin W. Seneca, Barry E. Snyder, Sr.,
Steve Tome and Niagara County
Industrial Development Agency
3400 HSBC Center
Buffalo, New York 14203
Telephone No.: (716) 847-8400

TO: DUKE, HOLZMAN, PHOTIADIS
& GRESENS LLP
Gregory Photiadis
Elizabeth A. Kraengel
Attorneys for Plaintiff Sue/Perior Concrete
& Paving, Inc.
1800 Main Place Tower
350 Main St.
Buffalo, New York 14202
Telephone No.: (716) 855-1111

Doc # 01-2417349.1

Notice of Motion to Dismiss Amended Complaint, Dated March 14, 2011.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.,

Plaintiff,

vs.

LEWISTON GOLF COURSE CORPORATION, SENECA NIAGARA FALLS GAMING CORPORATION, SENECA GAMING CORPORATION, JEFFREY L. GILL, MARK I. HALFTOWN, GLORIA HERON, MAURICE A. JOHN, SR., MICHAEL L. JOHN, KAREN KARSTEN, INA K. LOCKE, ROBERT E. MELE, RICHARD K. NEPHEW, MARIBEL PRINTUP, COCHISE N. REDEYE, GARY SANDEN, KEVIN W. SENECA, BARRY E. SYNDER, SR., STEVE TOME, NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, NIAGARA MOHAWK POWER CORPORATION, and JOHN DOE

Defendants.

NOTICE OF MOTION

Index No.: 141212

PLEASE TAKE NOTICE, that upon the Affirmation of Ryan G. Pitman, dated March 14, 2011, and the exhibits attached thereto, defendants Seneca Niagara Falls Gaming Corporation ("SNFGC"), Seneca Gaming Corporation ("SGC"), Lewiston Golf Course Corporation ("Lewiston"), and Jeffrey L. Gill, Mark I. Halftown, Gloria Heron, Maurice A. John, Sr., Michael L. John, Karen Karsten, Ina K. Locke, Robert E. Mele, Richard K. Nephew, Maribel Printup, Cochise N. Redeye, Gary Sanden, Kevin W. Seneca, Barry E. Snyder Sr. and Steve Tome (the "Individual Defendants") (collectively, the "Gaming Defendants"), will move this Court at a Special Term to be held at 9:30 a.m. on March 30, 2011 before the Hon. Ralph A. Boniello, III at

Notice of Motion to Dismiss Amended Complaint, Dated March 14, 2011.

775 Third St., Niagara Falls, NY, or as soon after as counsel may be heard, for an Order pursuant to CPLR 3211 as follows:

1. Dismissing plaintiff's Amended Complaint in its entirety as to the Gaming Defendants for lack of subject matter jurisdiction;

2. Dismissing plaintiff's third and sixth causes in its Amended Complaint in their entirety for failure to state a cause of action;

3. Alternatively dismissing plaintiff's Amended Complaint in its entirety as to the Individual Defendants for failure to state a cause of action; and

4. Awarding such other and further relief as to the Court may deem just and proper.

Under CPLR 2214(b), answering papers, if any, are required to be served by defendants upon attorneys for plaintiff no later than seven (7) days before the return date of this motion.

Dated: Buffalo, New York
March 14, 2011

Notice of Motion to Dismiss Amended Complaint, Dated March 14, 2011.

PHILLIPS LYTLE LLP

By: _____
Michael B. Powers
Ryan G. Pitman
Attorneys for Defendants
Lewiston Golf Course Corporation,
Seneca Niagara Falls Gaming Corporation,
Seneca Gaming Corporation,
Jeffrey L. Gill, Mark I. Halftown,
Gloria Heron, Maurice A. John, Sr.,
Michael L. John, Karen Karsten,
Ina K. Locke, Robert E. Mele,
Richard K. Nephew, Maribel Printup,
Cochise N. Redeye, Gary Sanden,
Kevin W. Seneca, Barry E. Snyder, Sr.,
Steve Tome and Niagara County
Industrial Development Agency
3400 HSBC Center
Buffalo, New York 14203
Telephone No.: (716) 847-8400

TO: DUKE, HOLZMAN, PHOTIADIS
& GRESENS LLP
Gregory Photiadis
Elizabeth A. Kraengel
Attorneys for Plaintiff Sue/Perior Concrete
& Paving, Inc.
1800 Main Place Tower
350 Main St.
Buffalo, New York 14202
Telephone No.: (716) 855-1111

Doc # 01-2417349.2

Affirmation of Ryan G. Pitman In Support of Motion to Dismiss, Dated March 14, 2011.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.,

Plaintiff,

vs.

LEWISTON GOLF COURSE CORPORATION, SENECA NIAGARA FALLS GAMING CORPORATION, SENECA GAMING CORPORATION, JEFFREY L. GILL, MARK I. HALFTOWN, GLORIA HERON, MAURICE A. JOHN, SR., MICHAEL L. JOHN, KAREN KARSTEN, INA K. LOCKE, ROBERT E. MELE, RICHARD K. NEPHEW, MARIBEL PRINTUP, COCHISE N. REDEYE, GARY SANDEN, KEVIN W. SENECA, BARRY E. SYNDER, SR., STEVE TOME, NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, NIAGARA MOHAWK POWER CORPORATION, and JOHN DOE

Defendants.

AFFIRMATION

Index No.: 141212

RYAN G. PITMAN, an attorney duly admitted to practice before this Court in the State of New York, hereby affirms under penalty of perjury, pursuant to CPLR 2106, that:

1. I am associated with Phillips Lytle, LLP, attorneys for defendants Lewiston Golf Course Corporation ("Lewiston"), Seneca Niagara Falls Gaming Corporation ("SNFGC"), Seneca Gaming Corporation ("SGC"), Jeffrey L. Gill, Mark I. Halftown, Gloria Heron, Maurice A. John, Sr., Michael L. John, Karen Karsten, Ina K. Locke, Robert Mele, Richard K. Nephew, Maribel Printup, Cochise N. Redeye, Gary Sanden, Kevin W. Seneca, Barry E. Snyder, Sr., Steve Tome (the "Individual Defendants") (collectively, the "Gaming

Defendants") and Niagara County Industrial Development Agency (the "IDA") (collectively, "Defendants"). I am fully familiar with the facts and proceedings in this action.

2. I make this affirmation in support of Defendants' motion, pursuant to CPLR 3211(a)(2), (7), to dismiss the action against certain Defendants for lack of subject matter jurisdiction and failure to state a cause of action.

3. I adopt and affirm each and every affirmation contained in Paragraphs 1 through 68 of the Attorney Affirmation of Patrick D. Crandell, dated December 13, 2010, attached hereto as Exhibit A.

4. Defendants seek to provide the Court with additional key documents relevant and applicable to Defendants' motion. Each is a true and accurate copy of the referenced original.

5. Attached as Exhibit B is the Seneca Nation of Indians Gaming Ordinance, as amended (January 20, 2009).

6. Attached as Exhibit C is the Constitution of the Seneca Nation of Indians of 1848, as amended (effective November 9, 1993).

7. As set forth in the accompanying Memorandum of Law, and as the above-referenced documents and exhibits demonstrate, SGC, SNFGC, Lewiston and the Individual Defendants are entitled to the full protections of the Nation's sovereign immunity, which prevents the Court from exercising jurisdiction over those defendants.

March 14, 2010

RYAN G. PITMAN

Exhibit "A" Annexed to Affirmation of Pitman.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.,

Plaintiff,

vs.

AFFIRMATION

LEWISTON GOLF COURSE CORPORATION, SENECA NIAGARA FALLS GAMING CORPORATION, SENECA GAMING CORPORATION, JEFFREY L. GILL, MARK I. HALFTOWN, GLORIA HERON, MAURICE A. JOHN, SR., MICHAEL L. JOHN, KAREN KARSTEN, INA K. LOCKE, ROBERT E. MELE, RICHARD K. NEPHEW, MARIBEL PRINTUP, COCHISE N. REDEYE, GARY SANDEN, KEVIN W. SENECA, BARRY E. SYNDER, SR., STEVE TOME, NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, NIAGARA MOHAWK POWER CORPORATION, and JOHN DOE

Index No.: 141212

Defendants.

PATRICK D. CRANDELL, an attorney duly admitted to practice before this Court in the State of New York, hereby affirms under penalty of perjury, pursuant to CPLR 2106, that:

1. I am associated with Phillips Lytle, LLP, attorneys for defendants Lewiston Golf Course Corporation ("Lewiston"), Seneca Niagara Falls Gaming Corporation ("SNFGC"), Seneca Gaming Corporation ("SGC"), Jeffrey L. Gill, Mark I. Halftown, Gloria Heron, Maurice A. John, Sr., Michael L. John, Karen Karsten, Ina K. Locke, Robert Mele, Richard K. Nephew, Maribel Printup, Cochise N. Redeye, Gary Sanden, Kevin W. Seneca, Barry

E. Snyder, Sr., Steve Tome and Niagara County Industrial Development Agency (the "IDA") (collectively, "Defendants"). I am fully familiar with the facts and proceedings in this action.

2. I make this affirmation in support of Defendants' motion, pursuant to CPLR 3211(a)(2), (7), to dismiss the action against various Defendants for lack of subject matter jurisdiction and failure to state a cause of action.

FACTUAL BACKGROUND

The Agreement

3. On or about July 5, 2007, Lewiston, plaintiff Sue/Perior Concrete & Paving, Inc. ("Sue/Perior"), and Golf Course Construction, Inc. ("GCCI") entered into a contract to construct the project known as the Hickory Stick Golf Course (the "Agreement").

4. Pursuant to the Agreement, Sue/Perior acted as the general contractor.

5. The Agreement authorizes Sue/Perior to make monthly applications for progress payments to Robert Trent Jones II, LLC ("RTJ"), the golf course architect, which are then either certified or rejected by RTJ.

6. The Agreement requires Sue/Perior to, among other things, submit to RTJ "a schedule of values allocating the entire Contract Sum to various portions of the work...."

7. Applications for payment are also required to state the percentage of work completed as of the end of each monthly pay period.

8. Sue/Perior is also required to compute the amounts claimed to be due based on a formula contained within the Agreement.

Exhibit "A" Annexed to Affirmation of Pitman.

Payment Application 19

9. On or about April 29, 2009, Sue/Perior applied for payment for work allegedly done during the period from March 26, 2009 to April 25, 2009 ("Payment Application 19"), in the amount of $284,028.75.

10. RTJ discovered errors in Payment Application 19 on June 4, 2009, and Lewiston, on behalf of RTJ, asked Sue/Perior to revise and resubmit a revised payment application.

11. Sue/Perior's errors included, but were not limited to: (1) billing Lewiston for quantities of drainage end sections in excess of what had been installed; (2) requesting completion payments for work that was not complete; (3) requesting progress payments for significantly higher percentages of work than had actually been performed; and (4) failing to credit Lewiston for cheaper substitutions.

12. Instead of working with RTJ to correct its errors, Sue/Perior filed an exaggerated Mechanic's Lien with the Niagara County Clerk in the amount of $284,028.78 on June 26, 2009 ("Lien 1").

13. On July 29, 2009, RTJ rejected the amount requested in Payment Application 19 and certified only the amount of $159,441.31. It did so as full payment of all amounts owed under Payment Application 19.

14. Lewiston paid that amount to Sue/Perior on July 31, 2009.

15. On August 8, 2009, Lewiston filed, by Order to Show Cause, a motion to vacate and cancel Lien 1, and gave Sue/Perior 30 days to either vacate Lien 1 or to commence a foreclosure action.

16. The uncompleted work for which Sue/Perior improperly demanded payment under Payment Application 19 was subsequently completed, certified by RTJ and paid as part of Payment Application 20(3) on September 11, 2009. By submitting this work as part of Payment Application 20(3) after it was finally completed, Sue/Perior tacitly acknowledged that it had not completed (and was not entitled to payment for) work it improperly included in Payment Application 19.

17. Sue/Perior provided, and Lewiston filed, a discharge of Sue/Perior's exaggerated Lien 1, on September 11, 2009.

Payment Application 20

18. On or about August 10, 2009, Sue/Perior applied for payment for the period from April 30, 2009 to July 14, 2009 ("Payment Application 20"), in the amount of $387,063.26.

19. Upon review of Payment Application 20, RTJ discovered severe accounting discrepancies and requested, through Lewiston, that Sue/Perior withdraw, revise and resubmit Payment Application 20.

20. Sue/Perior agreed to RTJ's request and withdrew, revised and resubmitted Payment Application 20 on or about August 18, 2009 ("Payment Application 20(2)").

21. Upon review of Payment Application 20(2), RTJ discovered additional accounting discrepancies and requested, through Lewiston, that Sue/Perior withdraw, revise and resubmit Payment Application 20(2).

22. Sue/Perior agreed to RTJ's request and withdrew, revised and resubmitted Payment Application 20(2) on or about August 19, 2009 ("Payment Application 20(3)").

23. RTJ reviewed Payment Application 20(3) and found, among other irregularities, that Sue/Perior: (1) billed Lewiston for installation of a "Silt Fence" that had not been installed; (2) billed Lewiston for "Lake Control Structures" that had not been installed per contract design; (3) requested completion payments for work that was not complete; and (4) requested progress payments for higher percentages of work than had actually been performed.

24. On or about September 8, 2009, RTJ certified Payment Application 20(3) only to the extent of $287,858.45 for work actually done. On September 11, 2009, Lewiston submitted a check to Sue/Perior in the amount of $287,858.45 in full payment of all amounts owed on Payment Application 20(3).

Payment Application 21

25. On or about August 26, 2009, Sue/Perior applied for payment for the period from July 15, 2009 to August 27, 2009 ("Payment Application 21"), in the amount of $843,092.50.

26. On September 29, 2009, Lewiston advised Sue/Perior that due to significant accounting discrepancies and irregularities, RTJ was unable to certify Payment Application 21 and, therefore, rejected it in its entirety. On behalf of RTJ, Lewiston requested that Sue/Perior revise and resubmit Payment Application 21 with only amounts listed for work actually done and certified.

27. On September 30, 2009, Sue/Perior filed an exaggerated Mechanic's Lien with the Niagara County Clerk in the amount of $942,297.31, based on the amounts not certified in Payment Applications 20(3) and 21 ("Lien 2").

28. On October 26, 2010, Lewiston filed a motion to vacate and cancel Lien 2, and gave Sue/Perior 30 days to either vacate Lien 2 or to commence a foreclosure action.

29. Pursuant to RTJ's demand, through Lewiston, Sue/Perior withdrew its application for payment for the period from July 15, 2009 to August 27, 2009, and submitted a new version in the amount of $258,955.80, reflecting less than 1/3 of the amount previously demanded and for which exaggerated Lien 2 was filed. ("Payment Application 21(2)").

30. Sue/Perior removed its request for retainage from Payment Application 21(2) and submitted it as a separate payment application On November 22, 2009, RTJ certified Payment Application 21(2) for the new amount – $258,955.80 – and Lewiston paid that amount on November 25, 2009. Incredibly, however, Sue/Perior would provide Lewiston with only a Partial Release of Lien (which was filed with the Niagara County Clerk on November 30, 2009). This left $683,341.51 outstanding under Lien 2 even though none of that amount was owed.

Payment Application 22

31. On or about November 24, 2009, Sue/Perior applied for payment for work performed during the period from August 28, 2009 to November 24, 2009 ("Payment Application 22") in the amount of $429,423.94.

32. In Payment Application 22, Sue/Perior resubmitted its request for payment for the work not certified as complete by RTJ in Payment Application 20(3). In doing so, Sue/Perior tacitly acknowledged that it did not complete (and was not entitled to payment for) work in Payment Application 20(3), further confirming the exaggeration of Lien 2.

33. On November 24, 2009, Sue/Perior submitted its request for payment of retainage ("Retainage Request"), in the amount of $585,008.37.

34. On or about December 18, 2009, the Court ordered Sue/Perior to commence a foreclosure action on Lien 2 on or before March 9, 2010 or it would immediately vacate and cancel Lien 2.

Exhibit "A" Annexed to Affirmation of Pitman.

The Underlying Lien

35. On February 17, 2010, Sue/Perior filed a discharge of its exaggerated Lien 2, and filed an exaggerated lien in the amount of $4,130,538 for additional work costs, delay damages, unpaid contract balance and retainage for work allegedly done on the golf course (the "Lien 3").

36. Additionally, Sue/Perior submitted a document purportedly justifying its right to this exaggerated amount.

37. Lewiston spent several months reviewing Sue/Perior's claim and, on June 14, 2010, provided Sue/Perior with a comprehensive response: (1) addressing each of Sue/Perior's claims; (2) identifying offsets and credits owed; and (3) demanding Sue/Perior withdraw Lien 3, return overpayments, complete its punchlist and issue a final release.

PROCEDURAL HISTORY

38. On June 29, 2010, Sue/Perior filed and served a lien foreclosure action on Lien 3, seeking amounts it claimed it was owed under the Agreement. A copy of Sue/Perior's Summons and Complaint is attached as Exhibit A.

39. Sue/Perior's complaint effectively sought relief solely against Lewiston[1], the contracting party.

40. Indeed, Lewiston answered Sue/Perior's complaint on or about August 23, 2010, and asserted four counterclaims: (1) willful exaggeration of Lien 3; (2) fraud; (3) breach of contract; and (4) unjust enrichment. A copy of Lewiston's Answer is attached as Exhibit B.

41. Moreover, Lewiston served various discovery demands on Sue/Perior.

---

[1] The IDA, Niagara Mohawk Power Corporation and John Doe were also defendants, but solely as parties claiming to have some interest in the property. A copy of the IDA's Answer is attached as Exhibit C.

Exhibit "A" Annexed to Affirmation of Pitman.

42. Rather than prosecuting its unsupported allegations and defending against Lewiston's claims, Sue/Perior chose instead, in an apparent attempt to distract the Court from its baseless claims, to both amend its complaint to seek relief from unrelated parties and entities, and to seek double recovery through a sister court.

43. On September 13, 2010, Sue/Perior filed and served its Amended Summons and Complaint, which added fifteen individual defendants and two additional corporate defendants all with the baseless claim that they somehow contributed to Sue/Perior's exaggerated lien. A copy of the Amended Summons and Complaint is attached as Exhibit D.

44. Moreover, Sue/Perior also filed a separate action in Erie County Supreme Court against nearly all of the same defendants seeking the same $4,130,538 claimed in this action. A copy of the Erie County Summons and Complaint is attached as Exhibit E.

45. It appears clear that when presented with reasoned and articulated opposition to its straightforward lien foreclosure action, Sue/Perior panicked and chose to throw everything against the wall to see what, if anything, stuck.

KEY DOCUMENTS

46. Additionally, Defendants seek to provide the Court with key documents relevant and applicable to Defendants' motion. Each is a true and accurate copy of the referenced original.

47. Attached as Exhibits F, G and H are copies of the following unpublished opinions:

a. Magigues v. County of Niagara, Index No: I-2007-002572 (Sup.Ct. Erie County Aug. 10, 2007) (Glownia, J.);

b. Lechlitner v. Seneca Alleghany [sic Allegany] Casino & Hotel, Seneca Gaming Corporation, et al., CV-09-688749 (Ct. Common Pleas, Ohio, May 18, 2009); and

c. Jacobs et al. v. Brown and Seneca Niagara Falls Gaming Corp., Supreme Appellate Court of the Seneca Nation of Indians, Aug. 17, 2004.

48. Attached as Exhibit I are certified copies of the SGC and SNFGC's bylaws.

49. Attached as Exhibit J is a copy of Lewiston's bylaws.

50. Attached as Exhibit K is the August 2002 resolution of the Council of the Seneca Nation of Indians ("Nation's Council") authorizing the SGC's formation.

51. Attached as Exhibit L is the August 2002 Nation's Council resolution authorizing the SNFGC's formation.

52. Attached as Exhibit M is the June 2007 Nation's Council resolution authorizing Lewiston's formation.

53. Attached as Exhibit N is the SGC's Certificate of Existence, issued by the Seneca Nation of Indians Clerk, Lenith K. Waterman.

54. Attached as Exhibit O is the SNFGC's Certificate of Existence, issued by the Seneca Nation of Indians Clerk, Lenith K. Waterman.

55. Attached as Exhibit P is Lewiston's Certificate of Existence, issued by the Seneca Nation of Indians Clerk, Lenith K. Waterman.

56. Attached as Exhibit Q is a certified copy of the SGC's Sixth Amended and Restated Charter.

57. Attached as Exhibit R is a copy of the SNFGC's Fourth Amended and Restated Charter.

58. Attached as Exhibit S is a copy of Lewiston's Amended and Restated Charter.

59. Attached as Exhibit T is a certified copy of the Nation's Ethics Law.

60. Attached as Exhibit U is the April 2009 Nation's Council resolution amending the SGC and SNFGC Charters for the sixth and fourth times, since August 2002.

61. Attached as Exhibit V is a copy of the National Indian Gaming Commission's January 2009 Approval of the Nation's Class III Gaming Ordinance.

RELEVANT SEC FILINGS FOR COURT'S JUDICIAL NOTICE

62. Also germane to the Court's consideration of Defendants' motion are certain portions of SGC's filing made with the United States Securities and Exchange Commission ("SEC").

63. The first filing presented for the Court's judicial notice and consideration and, incorporated by reference herein, is SGC's 10-K for the year ending September 30, 2009, which may be found at http://www.sec.gov/Archives/edgar/data/1296785/000110465909071125/a09-35586_110k.htm.

64. At page 17, under a note captioned "The Nation," appears the following text:

> The Seneca Nation of Indians is a federally recognized, self-governing Indian nation operating under a Constitution originally adopted in 1848 and most recently amended in 1993. The Nation's current total enrolled population is approximately 7,800. The Seneca Nation is one of the Six Nations of the Iroquois Confederacy that consists of the Seneca, Cayuga, Onondaga, Oneida, Mohawk and Tuscarora nations. The members of the nation originally lived in the area between the Genesee River and

> Seneca Lake in the Finger Lakes region of New York. Today, the Seneca Nation holds title to five distinct Territories in Western New York State, including land in Niagara Falls and Buffalo and land set aside by the 1794 Treaty of Canandaigua: the Allegany, Cattaraugus and Oil Spring Territories. These three Territories designated by the Treaty encompass parts of four counties in New York State: Allegany, Cattaraugus, Chautauqua, and Erie counties. The Oil Springs Territory is 640 acres, or one square mile, of land located 43 miles southeast of the Cattaraugus Territory and 24 miles east of the Allegany Territory. The Allegany Territory is composed of 31,097 acres and includes the City of Salamanca which is located within its territorial boundaries. The Cattaraugus Territory is 35 miles north of Allegany and encompasses 22,012 acres of land. In addition, approximately 24 acres of land (of the approximate 50 acre parcel identified in Appendix I of the Compact) in Niagara Falls and approximately nine acres of land in Erie County have been converted into restricted fee lands pursuant to the SNLCSA. By operation of federal law, these lands and other parcels that may be acquired in the future pursuant to the SNLCSA, whether in Niagara Falls or Erie County, are subject to restrictions against alienation, constitute Indian country subject to the jurisdiction of the Nation, and qualify as gaming eligible Indian lands pursuant to IGRA. For further discussion of land acquisitions in Niagara Falls, New York, see "Niagara Falls Real Estate Acquisitions," above.

65. Defendants also respectfully direct the Court's attention to a relevant portion of the audit financial statement of the 10-K, which may be found at http://www.sec.gov/Archives/edgar/data/1296785/000110465909071125/a09-35586_110k.htm#/Item1a_RiskFactors_004311. Page 36 of the filing.

66. In the "Risk Factors" section of the audited financial statements the following notes illustrate the interrelatedness of the SGC's finances, its subsidiaries and the Nation:

> **We are controlled by the Nation and the interests of the Nation may conflict with the interests of senior note holders.**
>
> The [SGC subsidiaries] are wholly-owned, directly or indirectly, and controlled by the SGC, which in turn is wholly-owned and controlled by the Nation. Circumstances may occur in which the

interests of the Nation, the Council or the members of the Nation could be in conflict with the interests of a holder of the senior notes. In particular, the Nation, the Council or members of the Nation could make business or other decisions that may affect a senior note holder. For example, the Nation, subject to the restrictions in the Indenture, the Distribution Agreement, and Senior Secured Revolving Loan Agreement, could decide to expand our facilities, incur more debt, increase distributions or other payments to the Nation, dispose of assets or enter into other transactions that, in its judgment, are in its interest, even though those transactions might involve risks to holders of the senior notes, including making it more difficult for us to make payments on the senior notes and for the restricted subsidiary guarantors to guarantee those payments. Additionally, the Nation's sovereign interests may result in policies or decisions that may conflict with the interests of the senior note holders. For example, the Nation may determine not to approve a limited waiver of sovereign immunity in connection with a potential commercially favorable transaction between us and a third party, based principally on sovereignty considerations rather than customary commercial considerations, resulting in the loss of that commercially favorable business opportunity. The loss of this opportunity could adversely affect us and, as a result, the senior note holders.

We are governmentally owned and will not necessarily be operated in the same way as if we were a privately owned for-profit business, which may materially adversely affect our ability to meet our financial obligations.

As a sovereign government, that Nation is governed by elected officials who have responsibility for the welfare of all Nation members. The Nation's elected officials appoint the SGC board of directors and retain certain approval authority over certain actions by the SGC board of directors. In making decisions relative to appointment of SGC's board or directors and certain other aspects of SGC's gaming business, these officials may consider the interests of their electorate, instead of pure economic or other business factors. Therefore, SGC's gaming business will not be necessarily operated in the same manner as a private for-profit business, and we cannot assure you that this fact will not materially adversely affect senior note holders.

Changes in the membership of the Council, its policies or the Nation's constitution could adversely affect our operations.

Exhibit "A" Annexed to Affirmation of Pitman.

> The Nation is governed by a Council, consisting of sixteen members, of which eight members are elected from each of the two principal Nation territories. Councilors are elected to four-year terms, which are staggered. The Nation holds an election every two years for its three executive branch officers: the President, the Treasurer and the Clerk. These officers alternate between the two principal Nation territories, thus ensuring that the occupants of those offices will change at each election. The most recent election of the executive branch officers and eight council members took place on November 4, 2008. We cannot assure that the current council, or any subsequently elected Council, will pursue the same agenda or goals as the prior government, in particular with respect to us, our expansion projects, reinvestment philosophy, or regarding compliance with the Compact and our other obligations including the covenants contained in the Indenture. In addition, the Council acts by majority vote and with respect to any issue or policy, a change in views by one or more members could result in a change in the policy adopted by the Council. Changes in the Council or its policies could result in significant changes in our structure or operations or in our planned expansion. In particular, the Council appoints the members of SGC's board of directors and may remove a member of SGC's board of directors for cause either upon the recommendation of a majority of SGC's board or directors, or upon its own initiative with a vote of at least ten Councilors. The term cause has not been defined in SGC's charter or in Nation law; therefore, it is uncertain how this term will be interpreted. As a result, a change in the membership of Council or in the view of existing members of Council, adverse to the existing board or management could result in a change in SGC's board of directors and potentially in SGC's management. Any such changes could adversely affect our business plan or otherwise result in a material adverse effect in our business, financial condition, results from operations or ability to meet our financial conditions, including the senior notes.

67. The SGC's 10-K is also critical to an understanding of the financial impact to the Nation of the SGC's and SNFGC's gaming operations, including, in particular, the portions of the 10-K that show the distributions and rental payments made to the Nation. These sections show, among other things, that, for the fiscal year ending September 30, 2009, SGC and its subsidiaries, including SNFGC, paid the Nation approximately $132.6 million in aggregate

distributions and rental payments, which funds are used to fund the Seneca Nation government and its programs.

68. As set forth in the accompanying Memorandum of Law, and as the above-referenced documents and exhibits demonstrate, the SGC, SNFGC and the individual defendants are entitled to the full protections of the Nation's sovereign immunity, which prevents the Court from exercising jurisdiction over those defendants.

December 13, 2010

PATRICK D. CRANDELL

Doc # 01-2414119.1

Exhibit "A" Attached to Exhibit "A".

CASE#: 141212 06/29/2010 SUMMONS Image: 1 of 2

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.
1500 Union Road, Suite 201
West Seneca, New York 14224

Plaintiff,

SUMMONS
141212
06/29/2010 03:03:31 PM
Receipt # 201049010
2 Pages
Clerk: OK
Wayne F. Jagow, Niagara County Clerk

vs.

LEWISTON GOLF COURSE CORPORATION
310 Fourth Street
Niagara Falls, New York 14303

Index No.:

NIAGARA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY
Vantage Center, Suite 1
Sanborn, New York 14132

NIAGARA MOHAWK POWER CORPORATION
300 Erie Blvd West
Syracuse, New York 13202, and

JOHN DOE, the name of said Defendant being fictitious, it being intended to designate any and all lienors, tenants or occupants of the premises being foreclosed, the true names of such lienors, tenants or occupants being unknown to the Plaintiff,

Defendants.

TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED AND REQUIRED to serve upon Plaintiff's attorney, at the address stated below, a written Answer to the attached Complaint. If this Summons is served upon you within the State of New York by personal service you must respond within TWENTY (20) days after service, not counting the day of service. If this Summons is not personally delivered to you within the State of New York you must respond within THIRTY (30) days after service is completed, as provided by law.

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3719
716-855-1111
FAX 716-855-0327

Exhibit "A" Attached to Exhibit "A".

If you do not respond to the attached Complaint within the applicable time limitation stated above a Judgment will be entered against you by default for the relief demanded in the Complaint, without further notice to you. This action is brought in the County of Niagara because the real property subject of the action is located therein.

DATED: June 29, 2010
Buffalo, New York

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP

By: _____

Gregory P. Photiadis, Esq.
Elizabeth A. Kraengel, Esq.
Attorneys for Plaintiff
1800 Main Place Tower, 350 Main Street
Buffalo, New York 14202
(716) 855-1111

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

Exhibit "A" Attached to Exhibit "A".

CASE#: 141212 06/29/2010 VERIFIED COMPLAINT Image: 1 of 20

VERIFIED COMPLAINT
141212
06/29/2010 03:03:31 PM
Receipt # 201049010
20 Pages
Clerk: DK
Wayne F. Jagow, Niagara County Clerk

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.,

Plaintiff,

vs.

LEWISTON GOLF COURSE CORPORATION

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

NIAGARA MOHAWK POWER CORPORATION

JOHN DOE, the name of said Defendant being fictitious, it being intended to designate any and all lienors, tenants or occupants of the premises being foreclosed, the true names of such lienors, tenants or occupants being unknown to the Plaintiff,

Defendants.

VERIFIED COMPLAINT

Index No.:

Plaintiff Sue/Perior Concrete & Paving, Inc., by its attorneys, Duke, Holzman, Photiadis & Gresens LLP, for its Complaint against the above-named Defendants, states and alleges as follows:

THE PARTIES

1. Plaintiff Sue/Perior Concrete & Paving, Inc., ("Sue/Perior" or "Plaintiff") is a New York corporation (Certified Native American Company) duly organized and existing under the laws of the State of New York with an office for the regular transaction of business located at 1500 Union Road Suite 201 in the Town of West Seneca, County of Erie, State of New York.

DUKE, HOLZMAN, PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1600 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

Exhibit "A" Attached to Exhibit "A".

2. Sue/Perior is in the business of performing construction and site work.

3. Upon information and belief, defendant Lewiston Golf Course Corporation (sometimes referred to as "Owner") is a foreign corporation, authorized to do business in the State of New York with its principal place of business located at 310 Fourth Street in the City of Niagara Falls, County of Niagara, State of New York.

4. Upon information and belief, Owner is the record owner of, and is the lessor of, real property located in the Town of Lewiston, County of Niagara, State of New York commonly known as the Hickory Stick Golf Club and more particularly bounded and described in Exhibit A annexed hereto (the "Premises").

5. Upon information and belief, defendant Niagara County Industrial Development Agency is a party claiming to have some interest in the Premises by the recording of a Lease and Memorandum of Leaseback in the Office of the Clerk of the County of Niagara on or about November 27, 2007.

6. Upon information and belief, Defendant Niagara Mohawk Power Corporation is a party claiming to have some interest in the Premises by the recording of an Easement in the Office of the Clerk of the County of Niagara or about June 30, 2008.

FIRST CAUSE OF ACTION
(Lien Foreclosure)

7. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs 1 through 6 of the within Verified Complaint with the same force and effect as if fully set forth herein again at length.

DUKE, HOLZMAN, PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
FFALO, NEW YORK 14202-3710
716-855-1111
FAX 716-855-0327

8. Upon information and belief, the former owner of the Premises, Seneca Niagara Falls Gaming Corporation, proposed to design and build a golf course upon the Premises known as Hickory Stick Golf Course/Club ("Project") in or about 2006.

9. Upon information and belief, the Owner engaged the services of Architect Robert Trent Jones, Golf Course Architects (the "Architect") to design the Project.

10. Upon information and belief, Golf Course Construction, Inc. ("Golf"), is a foreign Corporation authorized to do business in the State of New York with its principal place of business located at 1150 Victor Drive in the Town of Howell, County of Bronx, State of Michigan. Golf holds itself out to be in the business of providing golf course construction services.

11. Upon information and belief, Glen Caverly ("Caverly") is a resident of the State of Michigan and is the President and sole shareholder, director and/or officer of Golf.

12. Upon information and belief, Owner's representative Gary Paumen (also known as Warren Paumen) ("Paumen") had a prior relationship with Golf and Caverly and in or about January 2007 introduced Glen and Caverly to Plaintiff.

13. In or about February 2007, Caverly and Paumen met with Plaintiff's representatives Thomas Colton, David Pfeiffer and Donald Heater at Plaintiff's office in West Seneca, New York.

14. At said meeting and on prior and subsequent occasions, Caverly expressly represented to Plaintiff that he was an officer of the board of the Golf Course Builders of America Association ("GBAA") which writes the industry standards for golf course construction, that he was knowledgeable, skilled and experienced in constructing golf course

DUKE, HOLZMAN, PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
FFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-853-0327

features such as creeks, lakes, sand bunkers, fairways, tees, greens and other landscapes and that he possessed the equipment, labor and resources to properly bid the Project and perform the Project.

15. Paumen represented to Plaintiff at said meeting that Owner approved, and the Architect vetted and qualified, Golf and Caverly.

16. Upon the release of the Project plans and specifications, the Owner directed Plaintiff to partner with Golf and submit a joint bid.

17. Plaintiff justifiably relied upon Golf, Caverly and Paumen's representations as to Golf and Caverly's qualifications and ability to bid and perform the Project. Plaintiff and Golf entered into a joint venture agreement (the "Joint Venture Agreement"), under which the parties agreed to engage and carry on as joint venturers in contemplation of being awarded a contract by Seneca Gaming for construction of a golf course on the Property.

18. On or about April 26, 2007, Plaintiff and Golf submitted a joint bid to Seneca Gaming for the Project in the amount of $13,833,000.

19. On or about May 21, 2007, Seneca Gaming issued a letter of intent to Plaintiff and Golf advising that their bid was the lowest qualified bid submitted.

20. On or about August 9, 2007, Plaintiff and Golf, jointly and severally entered into a contract with the Owner for construction of the Project for the adjusted amount of $12,700,000.00 (the "Project Contract").

21. The Architect's bid tabulations reveal that the next bid closest to Plaintiff's was $9,000,000.00 more than Plaintiff's bid.

DUKE, HOLZMAN, PHOTIADIS & GRESENS, LLP
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1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

22. The adjusted amount of $12,700,000.00 eliminated and/or modified several items from the original contract specifications as enumerated in Article 2 of the Project Contract, including: Section E of bid - retaining wall; Section L of bid - PVC liner; Section R of bid - Greens Seedbed mixture; Section W of bid - irrigation; Section S of bid - concerning tee seedbed mixture. In addition, the Owner and Plaintiff agreed that: no bond would be required; the electrical work, Section E, Item 604 would be eliminated; the Hydro Mulch, Section Item 556 Hydro Seed and Section Z, Item 9 would be eliminated; no overtime would be included in the final contract price; screening of topsoil would be accomplished by using Barber Turf Rakes in place; and the cost for the Tee Seedbed Mixture would be $29,000.00 (price provided by Pauman).

23. The substantial completion date was specified in the Project Contract as November 20, 2008.

24. In March 2008, the lead architect on the Project was changed, which resulted in the new architect directing Plaintiff to change the location, size and drainage that had already been constructed and thus required the Plaintiff to perform extra work.

25. These and other changes and extra work requested by Owner and changed conditions caused a completion delay and the Project Contract was completed on December 2, 2009.

Extra Work Items Unpaid by Owner

26. At the special request and insistence of the Owner and its agents, the Plaintiff supplied various work, labor, services and materials to improve the Premises.

DUKE, HOLZMAN, PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3710
716-855-1111
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Exhibit "A" Attached to Exhibit "A".

27. The aforesaid work, labor, services and materials were performed and furnished and the Premises with the knowledge and consent of the Owner.

28. Plaintiff was required to perform in several changed manners, including but not limited to the following extra work items, totaling $2,577,563.28:

A. Water Main - additional cost $22,939.00

B. Sanitary Sewers - additional cost $14,244.64

C. Pavements - additional cost $32,900.00

D. Mobilization - additional cost $65,470.00

E. Additional Bury Pits - additional cost $799,336.25

F. Topsoil - additional cost $156,000.38

G. Additional Earthwork - additional cost $212,706.88

H. Rough Grading - additional cost $62,675.00

I. Golf Course and Site Work Drainage - additional cost $151,038.90

J. Bunker Construction - additional cost $73,432.80

K. Grassing - additional cost $30,954.60

L. Adjustment for Fuel Prices - additional cost $270,362.69

M. Adjustment for Asphalt Prices - additional cost $130,636.42

N. Lake F Dewatering and Earthwork - additional cost $393,553.20

O. Groundbreaking - additional cost $11,110.80

P. Tee Seedbed Material - additional cost $113,615.89

Q. Cart Path Removal and Repaving - additional cost $24,523.08

R. Clubhouse Site Work - additional cost $12,062.76

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
FFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-853-0327

Exhibit "A" Attached to Exhibit "A".

Financial Impact to Sue/Perior

29. After crediting the Owner for work not performed under the Project Contract in the sum of $760,872.00, the adjusted Project Contract amount was $11,939,128.00

30. To date, the sum of $11,462,210.00 has been paid.

31. The following summarizes the unpaid costs incurred by Plaintiff on the Project:

Extra Work Costs		$2,577,563.28
Other Damages - Delay Related		
Wage Escalation	$5,692.80	
Overtime	$417,229.42	
Extended Supervision/Job Costs	$488,447,55	
Home Office Overhead - Manshul	$204,687.68	
		$1,076,057.45
		$3,653,620.73
Unpaid Contract Balance & Retainage		$476,918.00
TOTAL:		$4,130,538.00

32. To summarize, the sum of $4,130,538.00, together with interest as provided by law, remains due and owing to Plaintiff by Owner.

DUKE, HOLZMAN, PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

Exhibit "A" Attached to Exhibit "A".

33. Hill International, Inc., evaluated Plaintiff's claims and prepared a seventy-five (75) page report dated January 19, 2010 (the "Report") detailing Plaintiff's claims for extra work and additional costs incurred on the Project. The Report was submitted to the Owner and the Architect on or about January 20, 2010.

34. The Owner has, in bad faith, refused to adjust the Contract price and to compensate Plaintiff for any of its extra costs and claims as described in the Report and for which such extra costs and claims are now made in this Complaint.

35. The amount due and owing has not been paid, although duly demanded.

36. On or about February 17, 2010, and within eight (8) months after the last items of work and materials were furnished to the Premises, the Plaintiff filed a Notice of Lien in writing in the Office of the Clerk of the County of Niagara against the Premises.

37. The Notice contained all of the information required by the appropriate sections of the N.Y. Lien Law.

38. The Lien has not been paid, cancelled or discharged of record, and no other proceeding has heretofore been brought in law or in equity to recover the amount claimed therein.

WHEREFORE, Plaintiff prays for Judgment against the Defendants for the following relief:

1. That the Court adjust and determine the equities of all the parties to this action and determine the respective priorities of the various Liens, if any, and the interest of all the parties herein;

DUKE, HOLZMAN, PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

Exhibit "A" Attached to Exhibit "A".

2. That it be adjudged that the Plaintiff, Sue/Perior Concrete & Paving, Inc., has a valid Lien in the amount of $4,130,538.00 against the hereinbefore described premises;

3. That all other parties claiming under the Defendant be forever foreclosed of any and all equity of redemption or other interest in said premises;

4. That said premises be sold, as provided by law, and from the proceeds of such sale, the Plaintiff be paid the amount of $4,130,538.00 against the hereinbefore described premises, with interest as provided by law, together with costs and disbursements of this action; and

5. That the Plaintiff have any other and further relief that this Court deems just and proper.

DATED: June 29, 2010
Buffalo, New York

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP

By: _____

Gregory P. Photiadis, Esq.
Elizabeth A. Kraengel, Esq.
Attorneys for Plaintiff
1800 Main Place Tower, 350 Main Street
Buffalo, New York 14202
Tel: (716) 855-1111

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

Exhibit "A" Attached to Exhibit "A".

VERIFICATION

STATE OF NEW YORK)

COUNTY OF ERIE) ss.:

Thomas Colton, being duly sworn, deposes and says that he is the President of Sue/Perior Concrete and Paving, Inc., the corporation named as plaintiff in the within action; that deponent has read the foregoing Summons and Verified Complaint and knows the contents thereof; that the same is true to deponent's own knowledge and based upon the books and records of the corporation, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

President

Thomas Colton, President

Sworn to before me, this
29th day of June, 2010.

Kimberly A. Roth
Notary Public, State of New York
Qualified In Cattaraugus County
My Commission Expires May 21, 20 11

Notary Public

Exhibit "A" Attached to Exhibit "A".

Real Property Record is the same as that printed at pages 43 - 51.

Exhibit "B" Attached to Exhibit "A".

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.,

Plaintiff,

ANSWER

vs.

LEWISTON GOLF COURSE CORPORATION, NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, NIAGARA MOHAWK POWER CORPORATION, and JOHN DOE

Index No.: 141212

Defendants.

Defendant Lewiston Golf Course Corporation ("Lewiston"), by its attorneys Phillips Lytle LLP, answering the Complaint of plaintiff Sue/Perior Concrete & Paving, Inc. ("Sue/Perior"), states upon information and belief, as follows:

1. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 1, 2, 5, 6, 10, 11, 12, 13, 14, 15, 17, 21, 36, 38.

2. Admits that Lewiston began formal plans to construct the Hickory Stick Golf Course in 2006, as alleged in paragraph 8, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

3. Denies the allegations in paragraphs 9, 16, 24, 25, 26, 28, 29, 31, 32, 34, 35, 37.

4. Admits that plaintiff and Golf Course Construction Inc. ("GCCI") submitted a bid for the Project, as alleged in paragraph 18, and that the bid speaks for itself.

5. Admits that on May 21, 2007, Sue/Perior was issued a letter of intent, as alleged in paragraph 19, and that the letter speaks for itself.

Exhibit "B" Attached to Exhibit "A".

6. Admits that on August 9, 2007, Lewiston, Sue/Perior and GCCI executed the Golf Course Construction Agreement Between Owner and Contractors (the "Agreement"), dated July 5, 2007, as alleged in paragraph 20, and that the Agreement speaks for itself, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

7. Concerning the allegations contained in paragraphs 22 and 23, the Agreement speaks for itself.

8. The allegations contained in paragraph 27 are unclear and confusing, therefore, no response is possible.

9. Admits that Lewiston received a seventy-five page report on January 20, 2010, dated January 19, 2010, as alleged in paragraph 33, and that the report speaks for itself.

FIRST AFFIRMATIVE DEFENSE

10. This Court lacks jurisdiction over this matter.

SECOND AFFIRMATIVE DEFENSE

11. The Complaint fails to state a cause of action against Lewiston.

THIRD AFFIRMATIVE DEFENSE

12. Plaintiff has failed to mitigate its damages.

FOURTH AFFIRMATIVE DEFENSE

13. Plaintiff's claims are barred by the doctrines of laches, waiver and estoppel.

Exhibit "B" Attached to Exhibit "A".

FIRST COUNTERCLAIM
(Willfully Exaggerated Lien)

14. Paragraphs 1 through 13 are re-alleged.

15. Upon information and belief, Sue/Perior Concrete & Paving, Inc. ("Sue/Perior") is a domestic business corporation, with offices for the transaction of business in the Town of West Seneca, Erie County, New York.

16. Defendant Lewiston Golf Course Corporation ("Lewiston") is a foreign business corporation, with offices for the transaction of business in the City of Niagara Falls, Niagara County, New York.

17. On August 9, 2007, Lewiston, Sue/Perior and Golf Course Construction Inc. executed the Golf Course Construction Agreement Between Owner and Contractors (the "Agreement"), dated July 5, 2007.

18. The Agreement governed and controlled the construction of the Hickory Stick Golf Course in Lewiston, New York (the "Course" or "Project").

19. On or about January 19, 2010, Sue/Perior demanded $4,196,154.86 from Lewiston as compensation for claimed additional work (i.e. not specified in the Agreement) on the Project. As part of this demand, Sue/Perior sent Lewiston a 75 page report allegedly prepared by Hill International, detailing its basis for such claim (the "Demand").

20. In its Demand, Sue/Perior sought inter alia: (1) $2,577,563.28 as compensation for claimed additional work (i.e. not specified in the Agreement) on the Project; (2) $1,076,057.45 for delay-related costs; and (3) $476,918 for unpaid contract balance and retainage.

21. On or about February 18, 2010, Sue/Perior filed and served on Lewiston a willfully exaggerated $4,130,538 Mechanics Lien (the "Lien").

Exhibit "B" Attached to Exhibit "A".

22. On June 14, 2010, Lewiston responded to the Demand refuting each of Sue/Perior's claims, demanding that Sue/Perior withdraw its willfully exaggerated Lien and requesting that Sue/Perior repay to Lewiston $809,251.80 for work and materials that Sue/Perior was paid for under the Agreement but did not complete or provide.

23. Instead, Sue/Perior commenced the instant action, and continues to maintain its willfully exaggerated Lien.

24. Sue/Perior is, therefore, liable to Lewiston in the amount of $4,130,538 for willfully exaggerating the Lien.

SECOND COUNTERCLAIM
(Fraud)

25. Paragraphs 1 through 24 are re-alleged

26. Sue/Perior materially misrepresented to Lewiston that it had completed work and provided materials under the Agreement that it did not complete and did not provide.

27. Sue/Perior made this material misrepresentation knowing it was false for the purpose of inducing Lewiston to pay for that work and for those materials.

28. Lewiston justifiably relied on Sue/Perior's material misrepresentation, and paid Sue/Perior for that work and for those materials.

29. Sue/Perior also materially misrepresented to Lafarge North America, Inc. ("Lafarge") that Lewiston had not paid Sue/Perior for materials Sue/Perior purchased from Lafarge and used on the Course.

30. Upon information and belief, Lafarge relied on Sue/Perior's material misrepresentation, and filed a mechanic's lien on the course for the value of those materials.

31. Sue/Perior has, therefore, committed a fraud against Lewiston.

Exhibit "B" Attached to Exhibit "A".

32. Sue/Perior's fraud is gross, wanton or willful and entitles Lewiston to punitive damages.

33. Sue/Perior is, therefore, liable to Lewiston in an amount to be determined at trial for fraud.

THIRD COUNTERCLAIM
(Breach of Contract)

34. Paragraphs 1 through 33 are re-alleged.

35. Pursuant to the Agreement, Sue/Perior agreed to a Substantial Completion date of November 30, 2008.

36. Sue/Perior failed to meet this Substantial Completion date, and, in fact, took an additional 18 months to complete its work.

37. Additionally, Sue/Perior sought and received payment under the Agreement for work it did not complete and for materials it did not provide.

38. Additionally, portions of Sue/Perior's work on the Course are defective, and require significant repair at significant expense.

39. Sue/Perior has, therefore, breached the Agreement.

40. Lewiston has been damaged by inter alia losing an entire season of Course play, by its overpayment for work not completed and materials not provided and by the expense to repair the defective conditions.

41. Sue/Perior is, therefore, liable to Lewiston in an amount to be determined at trial for breach of the Agreement.

FOURTH CAUSE OF ACTION
(Unjust Enrichment)

42. Paragraphs 1 through 41 are re-alleged.

Exhibit "B" Attached to Exhibit "A".

43. Lewiston overpaid Sue/Perior for time and materials called for under the Agreement that Sue/Perior never provided.

44. Under principles of equity and good conscience, Sue/Perior should not be permitted to retain the overpaid compensation for work it did not perform and for materials it did not provide.

45. Sue/Perior has been unjustly by the value of the overpaid compensation, and is liable to Lewiston for restitution of those amounts.

46. Sue/Perior is, therefore, liable to Lewiston for an amount to be determined at trial for unjust enrichment.

WHEREFORE, Lewiston demands judgment as follows:

(1) Dismissing plaintiffs' complaint, together with the costs and disbursements of this action;

(2) Granting judgment against Sue/Perior on the first counterclaim in the amount of $4,130,538, together with costs and interest from February 18, 2010;

(3) Granting judgment against Sue/Perior on the second counterclaim in an amount to be determined at trial, together with punitive damages, costs and interest from June 14, 2010;

(4) Granting judgment against Sue/Perior on the third counterclaim in an amount to be determined at trial, together with costs and interest from November 30, 2008;

(5) Granting judgment against Sue/Perior on the fourth counterclaim in an amount to be determined at trial, together with costs and interest from June 14, 2010; and

(6) For such other and further relief as the Court deems just and proper.

Exhibit "B" Attached to Exhibit "A".

Dated: Buffalo, New York
August 23, 2010

PHILLIPS LYTLE LLP

By: _____
Michael B. Powers
Patrick D. Crandell
Attorneys for Defendant
Lewiston Golf Course Corporation
3400 HSBC Center
Buffalo, New York 14203
Telephone No.: (716) 847-8400

TO: DUKE, HOLZMAN, PHOTIADIS
& GRESENS LLP
Gregory Photiadis
Attorneys for Plaintiff Sue/Perior Concrete
& Paving, Inc.
1800 Main Place Tower
350 Main St.
Buffalo, New York 14202
Telephone No.: (716) 855-1111

Doc # 01-2384200.4

Exhibit "B" Attached to Exhibit "A".

VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF ERIE)

PATRICK D. CRANDELL, being duly sworn, deposes and says: that I am associated with the firm Phillips Lytle LLP, attorneys for LEWISTON GOLF COURSE CORPORATION, defendant in this action; that I have read the foregoing answer; which is true to my knowledge, except as to the matters stated to be alleged upon information and belief, and as to those matters, I believe them to be true based upon information supplied by my client; and that the reason the verification is made by me is because said defendant is not in the county where I have my principal office.

PATRICK D. CRANDELL

Sworn to before me this
the 25 day of August, 2010.

Notary Public

ELIZABETH A. REINHARDT
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 1/31/ 14

Exhibit "C" Attached to Exhibit "A".

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.,

Plaintiff,

ANSWER

vs.

LEWISTON GOLF COURSE CORPORATION,
NIAGARA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY,
NIAGARA MOHAWK POWER CORPORATION, and
JOHN DOE

Index No.: 141212

Defendants.

Defendant Niagara County Industrial Development Agency ("IDA"), by its attorneys Phillips Lytle LLP, answering the Complaint of plaintiff Sue/Perior Concrete & Paving, Inc., states upon information and belief, as follows:

1. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 1, 2, 3, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38.

FIRST AFFIRMATIVE DEFENSE

2. The Court lacks jurisdiction over this matter.

SECOND AFFIRMATIVE DEFENSE

3. The Complaint fails to state a cause of action.

THIRD AFFIRMATIVE DEFENSE

4. Plaintiff has failed to mitigate its damages.

Exhibit "C" Attached to Exhibit "A".

FOURTH AFFIRMATIVE DEFENSE

5. Plaintiff's claims are barred by the doctrines of laches, waiver and estoppel.

WHEREFORE, the IDA demands judgment as follows:

(1) Dismissing plaintiffs' complaint, together with the costs and disbursements of this action; and

(2) For such other and further relief as the Court deems just and proper.

Dated: Buffalo, New York
August 23, 2010

PHILLIPS LYTLE LLP

By: _____
Michael B. Powers
Patrick D. Crandell
Attorneys for Defendant
Niagara County Industrial Development Agency
3400 HSBC Center
Buffalo, New York 14203
Telephone No.: (716) 847-8400

TO: DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP
Gregory Photiadis
Attorneys for Plaintiff Sue/Perior Concrete & Paving, Inc.
1800 Main Place Tower
350 Main St.
Buffalo, New York 14202
Telephone No.: (716) 855-1111

Doc # 01-2390544.2

Exhibit "C" Attached to Exhibit "A".

VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF ERIE)

PATRICK D. CRANDELL, being duly sworn, deposes and says: that I am associated with the firm Phillips Lytle LLP, attorneys for NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, defendant in this action; that I have read the foregoing answer; which is true to my knowledge, except as to the matters stated to be alleged upon information and belief, and as to those matters, I believe them to be true based upon information supplied by my client; and that the reason the verification is made by me is because said defendant is not in the county where I have my principal office.

PATRICK D. CRANDELL

Sworn to before me this
the 25 day of August, 2010.

Notary Public

ELIZABETH A. REINHARDT
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 1/31/ 14

Exhibit "D" Attached to Exhibit "A".

Exhibit "D" - First Amended Summons and Complaint, Dated September 13, 2010 is the same as that printed at pages 19 - 51.

Exhibit "E" Attached to Exhibit "A".

FILED: ERIE COUNTY CLERK 08/30/2010 INDEX NO. 800073/2010
NYSCEF DOC. NO. 1 RECEIVED NYSCEF: 08/30/2010

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

RECEIVED
SEP 01 2010
BY SGC BOARD OFFICE

SUE/PERIOR CONCRETE & PAVING, INC.
1500 Union Road
West Seneca, New York 14224

Plaintiff,

SUMMONS

Index No.: 800073/2010

vs.

SENECA GAMING CORPORATION
310 Fourth Street
Niagara Falls, New York 14303

SENECA NIAGARA FALLS GAMING CORPORATION
310 Fourth Street
Niagara Falls, New York 14303

KEVIN W. SENECA
310 Fourth Street
Niagara Falls, New York 14303

BRIAN HANSBERRY
310 Fourth Street
Niagara Falls, New York 14303

BERGAL MITCHELL III
310 Fourth Street
Niagara Falls, New York 14303

MARTIN E. SENECA, JR.
310 Fourth Street
Niagara Falls, New York 14303

MICHAEL L. JOHN
310 Fourth Street
Niagara Falls, New York 14303

BARRY E. SNYDER, SR.
310 Fourth Street
Niagara Falls, New York 14303

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

Exhibit "E" Attached to Exhibit "A".

ROBERT MELE
310 Fourth Street
Niagara Falls, New York 14303

MARK I. HALFTOWN
310 Fourth Street
Niagara Falls, New York 14303

INA LOCKE
310 Fourth Street
Niagara Falls, New York 14303

RICHARD K. NEPHEW
310 Fourth Street
Niagara Falls, New York 14303

MAURICE JOHN, SR.
310 Fourth Street
Niagara Falls, New York 14303

MARIBEL PRINTUP
310 Fourth Street
Niagara Falls, New York 14303

GLORIA HERON
310 Fourth Street
Niagara Falls, New York 14303

JEFFREY L. GILL
310 Fourth Street
Niagara Falls, New York 14303

COCHISE REDEYE
310 Fourth Street
Niagara Falls, New York 14303

KAREN KARSTEN
310 Fourth Street
Niagara Falls, New York 14303

RODNEY PIERCE
345 Third Street, Suite 610
Niagara Falls, New York 14303

Defendants.

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1600 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3710
716-855-1111
FAX 716-855-0327

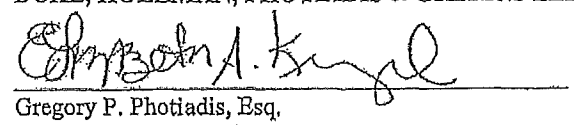
Exhibit "E" Attached to Exhibit "A".

TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED AND REQUIRED to serve upon Plaintiff's attorney, at the address stated below, a written Answer to the attached Complaint. If this Summons is served upon you within the State of New York by personal service you must respond within TWENTY (20) days after service, not counting the day of service. If this Summons is not personally delivered to you within the State of New York you must respond within THIRTY (30) days after service is completed, as provided by law. If you do not respond to the attached Complaint within the applicable time limitation stated above a Judgment will be entered against you by default for the relief demanded in the Complaint, without further notice to you. This action is brought in the County of Erie because Plaintiff maintains an office for the transaction of business in Erie County.

DATED: August 30, 2010
Buffalo, New York

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP

By: 

Gregory P. Photiadis, Esq.
Elizabeth A. Kraengel, Esq.
Attorneys for Plaintiff
1800 Main Place Tower
350 Main Street
Buffalo, New York 14202
(716) 855-1111

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

Exhibit "E" Attached to Exhibit "A".

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

SUE/PERIOR CONCRETE & PAVING, INC.

Plaintiff,

vs.

COMPLAINT

SENECA GAMING CORPORATION
SENECA NIAGARA FALLS GAMING CORPORATION Index No. 800073/2010
KEVIN W. SENECA
BRIAN HANSBERRY
BERGAL MITCHELL III
MARTIN E. SENECA, JR.
MICHAEL L. JOHN
BARRY E. SNYDER, SR.
ROBERT MELE
MARK I. HALFTOWN
INA LOCKE
RICHARD K. NEPHEW
MAURICE JOHN, SR.
MARIBEL PRINTUP
GLORIA HERON
JEFFREY L. GILL
COCHISE REDEYE
KAREN KARSTEN
RODNEY PIERCE

Defendants.

Plaintiff Sue/Perior Concrete & Paving, Inc., by its attorneys, Duke, Holzman, Photiadis & Gresens LLP, for its Complaint against the above-named Defendants, states and alleges on personal knowledge as to its actions and upon information and belief as to the actions of others, as follows:

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

Exhibit "E" Attached to Exhibit "A".

THE PARTIES

1. Plaintiff, Sue/Perior Concrete & Paving, Inc. ("Sue/Perior" or "Plaintiff") is a New York corporation (Certified Native American Company) duly organized and existing under the laws of the State of New York with an office for the regular transaction of business located at 1500 Union Road in the Town of West Seneca, County of Erie, State of New York.

2. Sue/Perior is in the business of performing site work and has substantial experience and a proven track record of successful completion of site contracts. Sue/Perior has successfully performed and completed a number of site and construction contracts for entities purportedly owned and controlled by the Seneca Nation of Indians ("SNI") and its alleged affiliates.

3. Defendant, Seneca Gaming Corporation ("SGC"), is purported to be a corporation organized and existing under the laws and constitution of the SNI, which is an Indian Tribe recognized by the United States of America and the State of New York.

4. SGC purports to have been created by the SNI by Resolution of the SNI Council under the SNI Constitution and refers to itself as a "tribally chartered corporation" and/or a "governmental instrumentality of the SNI."

5. There are no provisions in the SNI Constitution which allow or authorize the formation of corporations or authorities or "governmental instrumentalities" nor are there any other laws under which this corporation was formed or exists.

6. SGC therefore has no separate existence from the persons who carry out acts or engage in conduct under the name of this invalid and nonexistent entity.

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-853-0327

Exhibit "E" Attached to Exhibit "A".

7. Plaintiff brings these actions against SGC because the Defendants have held SGC out to the world to be a separate entity with its own assets and authority to engage in business and transactions.

8. Plaintiff also brings these actions against each and every individual director of SGC and Member of the SGC Board of Directors ("SGC BOD") personally and jointly and severally with each other because SGC does not provide a corporate veil to these individuals and because the acts of SGC are the acts of the individuals themselves, for themselves, and in concert with one another.

9. The allegations against SGC are allegations against the SGC BOD, the individual members of the SGC BOD, individually and in concert with one another and with SGC.

10. Defendant, SNFGC, purports to be a corporation organized and existing under the laws and constitution of the SNI, which is an Indian Tribe recognized by the United States of America and the State of New York, and purports to be a wholly owned subsidiary of SGC.

11. SNFGC purports to have been created by the SNI by Resolution of the SNI Council under the SNI Constitution and refers to itself as a "tribally chartered corporation" and/or a "governmental instrumentality of the SNI."

12. There are no provisions in the SNI Constitution which allow or authorize the formation of corporations or authorities or "governmental instrumentalities" nor are there any other laws under which this corporation was formed or exists.

13. SNFGC therefore has no separate existence from the persons who carry out acts or engage in conduct under the name of this invalid and nonexistent entity.

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3710
716-855-1111
FAX 716-855-0327

Exhibit "E" Attached to Exhibit "A".

14. Plaintiff brings these actions against SNFGC because the Defendants have held SNFGC out to the world to be a separate entity with its own assets and authority to engage in business and transactions.

15. Plaintiffs also bring these actions against each and every individual director of SNFGC and Member of the SNFGC Board of Directors ("SNFGC BOD"), personally and jointly and severally with each other because SNFGC does not provide a corporate veil to these individuals and because the acts of SNFGC are the acts of the individuals themselves, for themselves, and in concert with one another.

16. The allegations against SNFGC are allegations against the SNFGC BOD, the individual members of the SNFGC BOD, individually and in concert with one another and with SNFGC.

17. Defendant, Kevin Seneca ("K. Seneca"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint, a Director of SGC and/or SNFGC, and as such, a Member of the SGC BOD and a Member of the SNFGC BOD, and at certain times acted as Chairman of SGC BOD and/or SNFGC BOD.

18. Defendant, Brian Hansberry ("Hansberry"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint, President and CEO of SGC and/or SNFGC.

19. Defendant, Bergal Mitchell III ("Mitchell"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint, a Director of SGC, and as such a Member of the SGC BOD.

DUKE, HOLZMAN, PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1600 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

Exhibit "E" Attached to Exhibit "A".

20. Defendant, Martin E. Seneca, Jr. ("M. Seneca"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint, a Director of SGC, and as such, a Member of the SGC BOD.

21. Defendant, Michael L. John ("M.L. John"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint, a Director of SGC, and as such, a Member of the SGC BOD.

22. Defendant, Barry E. Snyder, Sr. ("Snyder"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint, a Director of SGC, and as such, a Member of the SGC BOD.

23. Defendant, Robert Mele ("Mele"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint, a Director of SGC, and as such, a Member of the SGC BOD and at certain times acted as Vice Chairman of SGC BOD.

24. Defendant, Mark I. Halftown ("Halftown"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint, a Director of SGC, and as such, a Member of the SGC BOD.

25. Defendant, Ina Locke ("Locke"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint, a Director of SGC, and as such, a Member of the SGC BOD.

26. Defendant, Richard K. Nephew ("R. Nephew"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint, a Director of SGC, and as such, a Member of the SGC BOD and at times acted as Treasurer of the SGC.

DUKE, HOLZMAN, PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

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27. Defendant, Maurice John, Sr. ("M. John"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint, a Director of SGC, and as such, a Member of the SGC BOD and at times acted as Treasurer of the SGC.

28. Defendant, Maribel Printup ("Printup"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint, a Director of SGC, and as such, a Member of the SGC BOD and at times acted as Secretary of the SGC.

29. Defendant, Gloria Heron ("Heron"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint, a Director of SGC, and as such, a Member of the SGC BOD.

30. Defendant, Jeffrey L. Gill ("Gill"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint, a Director of SGC and, as such, a Member of the Board of Directors of SGC ("SGC BOD") and at certain times acted as Chairman of the SGC BOD.

31. Defendant, Cochise Redeye ("Redeye"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint, a Director of SGC, and as such, a Member of the SGC BOD, and at certain times acted as Chairman of the SGC BOD.

32. Defendant, Karen Karsten ("Karsten"), is a resident of the State of New York and was and/or is, at times pertinent to this Complaint, a Director of SGC, and as such, a Member of the SGC BOD at certain times acted as Vice Chairman of SGC BOD.

33. Defendants K. Seneca, Hansberry, Mitchell, M. Seneca, M.L. John, Snyder, Mele, Halftown, Locke, Nephew, M. John, Printup, Heron, Gill, Redeye and Karsten are named herein because they exercise or have exercised complete domination direction and control

DUKE, HOLZMAN, PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

over SGC and/or SNFGC and over the funds generated by the SGC and/or SNFGC operations, and because SGC and SNFGC as corporate nullities provide no corporate veil to shield the individuals from liability.

34. Defendant, Rodney Pierce ("Pierce"), is a resident of the State of New York and the allegations against him herein are against him personally, and in concert with the other defendants.

BACKGROUND

35. Sue/Perior has performed a number of contract/site work projects for purported SNI entities and affiliates over the past several years.

36. Without justification, Defendants have engaged in wrongful conduct in efforts to blacklist Sue/Perior from continuing to work in the construction industry.

Hickory Stick Golf Course Project

37. On or about August 9, 2007, Sue/Perior entered into a contract with purported SNI entity Lewiston Golf Course Corporation ("LGCC") to construct the Hickory Stick Golf Course in Lewiston, New York (the "Hickory Stick Contract").

38. LGCC purports to be a wholly owned subsidiary of SNFGC.

39. The land deal that secured the plot of land for the Hickory Stick Golf Course Project was rife with scandal and subject of an FBI investigation which revealed embezzlement and allegations of money-skimming by at least one SGC board member.

40. In or about the latter portion of 2008, SGC, SNFGC, headed by Redeye, Gill, M. John, Mele, among others, in concert and agreement with each other, formed an audit committee

DUKE, HOLZMAN, PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

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politically motivated to investigate Sue/Perior as a pretext to, and with intent to, unjustifiably harm Sue/Perior and cause damage to its business.

41. The alleged audit was nothing more than a red herring in light of the FBI investigation of SGC and SNFGC board members, designed in bad faith to injure Sue/Perior and motivated by political gains.

42. Moreover, the alleged audit was also a ploy towards SGC and SNFGC's deceitful end of getting a $20 million golf course constructed for half the cost.

43. In the Spring of 2009, SGC and SNFGC, specifically by Redeye, Gill and in concert with Pierce, among others, ordered and directed that no funds be paid by any purported SNI entities or affiliates to Sue/Perior, regardless of the contractual obligations governing the payment of funds duly owed Sue/Perior.

44. In or about May 2009, Sue/Perior received a letter from SNI Capital Improvements Authority ("CIA") Board of Directors Chairperson, Jacqueline Bowen, that the SNI CIA shall not award any future contracts to Sue/Perior and related companies. Defendants, specifically Redeye, Gill, Pierce, among others, used their political positions and power to cause SNI CIA to issue this letter to Sue/Perior.

45. Since March 2009, LGCC has repeatedly violated the payment provisions Hickory Stick Contract.

46. Despite Sue/Perior having completed construction of the Hickory Stick Golf Course Project in December 2009, Defendants caused and directed LGCC to refuse to make payments owing to Sue/Perior under the Hickory Stick Contract.

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3710
716-855-1111
FAX 716-855-0327

Exhibit "E" Attached to Exhibit "A".

47. As a result, Sue/Perior is still owed $4,130,538.00 by LGCC for work performed at the Hickory Stick Golf Course Project.

48. In July 2010, Sue/Perior filed a mechanic's lien foreclosure action against LGCC which is presently pending.

Allegany Projects

49. In addition to wrongfully interfering with the Hickory Stick Contract, Defendants knowingly and tortiously interfered with a number of other Sue/Perior contracts.

50. The directive issued by Defendants SGC and SNFGC not to honor payment obligations under Sue/Perior contracts interfered with a contact between Seneca Construction Management Company ("SCMC") and Sue/Perior, entered into on or about July 30, 2008 for the construction of the Allegany Waste Water Treatment Plant ("Treatment Plant Contract").

51. Sue/Perior completed the work under said contract and is owed a balance of $80,150.00 under the Treatment Plant Project.

52. Defendants' unjustified stop payment directive also interfered with the Sue/Perior contract with SCMC entered into on or about October 10, 2006, for certain work in connection with the construction of the Allegany Casino Hotel in Salamanca, New York ("Casino Hotel Phase III BP 2.06 Contract").

53. Sue/Perior completed the work under said contract and is owed a balance of $71,955.43 on the Casino Hotel Phase III BP 2.06 Contract.

54. Defendant's wrongful conduct to stop payments owing Sue/Prior also interfered with Sue/Perior's contract with SCMC entered into on or about December 8, 2006, for certain

DUKE, HOLZMAN, PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

work in connection with the construction of the Allegany Casino Hotel in Salamanca, New York ("Casino Hotel Phase III BP 2.02 Waterfall Contract").

55. Sue/Perior completed the work under said contract and is owed a balance of $35,000.00 on the Casino Hotel Phase III BP 2.02 Waterfall Contract.

56. Fueled by political motivations and acting in bad faith with the intent to harm Sue/Perior, Defendants caused SCMC to refuse to make payments owing to Sue/Perior on the Treatment Plant Contract, Casino Hotel Phase III BP 2.06 Contract, and the Casino Hotel Phase III BP 2.02 Waterfall Contract (collectively the "Allegany Contracts") regardless of SCMC's contractual obligations to make payments duly owing Sue/Prior.

57. As a result, SCMC has failed and refused to pay Sue/Perior in excess of $187,105.43 duly demanded on the Allegany Contracts.

Blacklisting Sue/Perior

58. In addition to knowingly and wrongfully interfering with Sue/Perior's existing contracts, the Defendants' conduct unjustifiably interfered with Sue/Perior's prospective business advantages.

59. Defendants, including but not limited to Pierce and Mele, have on several occasions threatened Sue/Perior that it is "done" in the construction business, including Sue/Perior concrete plant operations.

60. Defendants without justification caused Clark Patterson Lee (the design architects and/or engineers for the SNI Oil Spring One Stop Project in Cuba, New York) on or about August 20, 2009, to disseminate Bid Addendum No. 1 for the SNI Oil Spring One Stop Project

DUKE, HOLZMAN, PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1600 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3710
716-855-1111
FAX 716-853-0327

changing the project manual to advise that bids would not be accepted from, or including, Sue/Perior or related companies.

61. Then, in September 2009, Clark Patterson Lee issued notice to all general contractors on the SNI Oil Spring One Stop Project that they were prohibited from using Sue//Perior "as an onsite subcontractor to complete work."

62. Defendants intentionally interfered with Sue/Perior's prospective business by prohibiting the general contractors bidding on the SNI Oil Spring One Stop Project, including but not limited to Kirst Construction, Inc., Kessel Co., Paragon Environmental Construction, Inc., Sicoli & Massaro, RW Painting Inc., Christa Construction, LLC, LC Whitford and Northeast Paving from doing business with Sue/Perior.

63. Defendants also intentionally interfered with Sue/Perior's prospective business by instructing Wilson Gonzalez of Wilson Concrete, and Kerry John of J & J Construction, among others, not to purchase concrete from Sue/Perior and that they would be severely penalized if they did business with Sue/Perior.

64. The disparaging projections and inferences Defendants have disseminated into the construction industry and concrete consumers about Sue/Perior have injured its prospective business relations.

FIRST CAUSE OF ACTION
(Tortious Interference with Contract)

65. Plaintiff repeats and realleges paragraphs "1" through "64."

66. Defendants were aware of the Hickory Stick Contract existing between LGCC and Sue/Perior of and the Allegany Contracts existing between SCMC and Sue/Perior.

DUKE, HOLZMAN, PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

67. Defendants intentionally interfered with the Hickory Stick Contract and the Allegany Contracts by causing LGCC and SCMC, respectively, to refuse to make payments to Sue/Perior under said contracts.

68. The individual defendants, specifically including but not limited to Redeye, Gill and Pierce, used their power, influence, positions and political connections to cause LGCC and SCMC to breach their respective contracts with Sue/Perior.

69. Defendants' interference with the Hickory Stick Contract and the Allegany Contracts by directing LGCC and SCMS, respectively not to pay funds due and owing Sue/Perior was done in bad faith, maliciously and with the intent to harm Sue/Perior, blacklist Sue/Perior from working in the construction industry, and cause Sue/Perior damage.

70. Sue/Perior suffered damages as a result.

71. By reason of the foregoing, Sue/Perior is entitled to entry of judgment against Defendants, jointly and severally, awarding damages in an amount to be determined at trial in excess of the jurisdictional limits of lower courts otherwise having jurisdiction.

SECOND CAUSE OF ACTION
(Tortious Interference with Prospective Business Advantage)

72. Plaintiffs repeat and reallege paragraphs "1" through "71."

73. Defendants knew of the prospective business between Sue/Perior and the general contractors on the SNI Oil Spring One Stop Project in or about the Fall of 2009.

74. Defendants intentionally interfered with that prospective business by prohibiting the general contractors on the SNI Oil Spring One Stop Project from doing business with Sue/Perior.

DUKE, HOLZMAN, PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

75. Were it not for Defendants' interference, Sue/Perior's prospective business relations would have been realized.

76. Defendants' wrongful interference was motivated by political gains, done in bad faith and with the intent to harm Sue/Perior, blacklist Sue/Perior from working in the construction industry, and cause Sue/Perior damage.

77. Sue/Perior suffered damages as a result.

78. By reason of the foregoing, Sue/Perior is entitled to entry of judgment against Defendants, jointly and severally, awarding damages in an amount to be determined at trial in excess of the jurisdictional limits of lower courts otherwise having jurisdiction.

THIRD CAUSE OF ACTION
(Concerted Action)

79. Plaintiff repeats and realleges paragraphs "1" through "78."

80. Each defendant herein has acted tortiously to interfere with Sue/Perior's existing contracts and prospective business advantages, and at minimum one of the Defendants herein committed an act in pursuance of the agreement to commit such torts, which in itself constitutes a tort.

81. By reason of the foregoing, Sue/Perior is entitled to entry of judgment against Defendants, jointly and severally, awarding damages in an amount to be determined at trial in excess of the jurisdictional limits of lower courts otherwise having jurisdiction.

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3718
716-855-1111
FAX 716-855-0327

Exhibit "E" Attached to Exhibit "A".

FOURTH CAUSE OF ACTION
(Prima Facie Tort - Punitive Damages as to all Defendants)

82. Plaintiff repeats and realleges paragraphs "1" through "81."

83. The acts of the Defendants in committing a prima facie tort against Plaintiff are so egregious and conducted with such malice and intent to harm that punitive damages must be awarded.

84. By reason of the foregoing, Plaintiff is entitled to entry of judgment against Defendants, jointly and severally, awarding damages in an amount to be determined at trial in excess of the jurisdictional limits of lower courts otherwise having jurisdiction.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, as follows:

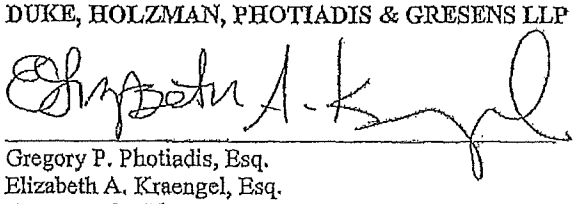
1. As to the First Cause of Action, in an amount to be determined at trial;
2. As to the Second Cause of Action, in an amount to be determined at trial;
3. As to the Third Cause of Action, in an amount to be determined at trial;
4. As to the Fourth Cause of Action, in an amount to be determined at trial;
5. Awarding punitive damages, appropriate interest on all amounts recovered together with Plaintiff's reasonable attorneys' fees, the costs and disbursements of this action, and such other and further relief as this Court deems just and proper.

DATED: August 30, 2010
Buffalo, New York

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3710
716-855-1111
FAX 716-855-0327

Exhibit "E" Attached to Exhibit "A".

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP

By: 

Gregory P. Photiadis, Esq.
Elizabeth A. Kraengel, Esq.
Attorneys for Plaintiff
1800 Main Place Tower
350 Main Street
Buffalo, New York 14202
(716) 855-1111

DUKE, HOLZMAN,
PHOTIADIS & GRESENS, LLP
ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
350 MAIN STREET
BUFFALO, NEW YORK 14202-3716
716-855-1111
FAX 716-853-0327

Exhibit "F" Attached to Exhibit "A".

At a Special Term of the New York State Supreme Court, held in and for the County of Erie on the 15th day of June, 2007.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

FRANK J. MAHIGUES and
DIANNE MAHIGUES,

Index No.: I-2007 002572

Plaintiffs,

v.

COUNTY OF NIAGARA, CITY OF NIAGARA FALLS,
SENECA NATION OF INDIANS,
SENECA GAMING CORPORATION, and
SENECA GAMING AUTHORITY

Defendants.

FILED
AUG 10 2007
ERIE COUNTY
CLERK'S OFFICE

ORDER

Defendant Seneca Gaming Corporation moved for an order dismissing the case based on sovereign immunity. In support of its motion, Seneca Gaming Corporation submitted a notice of motion dated April 13, 2007, the affidavit of R. Anthony Rupp III, Esq., sworn to on April 13, 2007 with exhibits, the affidavit of Michele Mitchell, sworn to on April 13, 2007 with exhibits, and a memorandum of law. In response, plaintiff submitted the affidavit of Kevin M. Maley, Esq. dated June 8, 2007.

Exhibit "F" Attached to Exhibit "A".

NOW, the Court having fully considered both parties' submissions, it is hereby

ORDERED that Seneca Gaming Corporation's motion to dismiss is granted and it hereby is further

ORDERED that the claims against Seneca Gaming Corporation are hereby dismissed.

Hon. Joseph R. Glownia, J.S.C.

ENTER:

GRANTED

AUG - 9 2017

BY ROBERT PAYES
COURT CLERK

Exhibit "F" Attached to Exhibit "A".

FILED
ACTIONS & PROCEEDINGS

AUG 23 2007

ERIE COUNTY
CLERK'S OFFICE

At a Term of the Supreme Court of the State of New York in and for the County of Erie, at Buffalo, New York on the 31st day of July, 2007.

PRESENT: Hon. Joseph R. Glowinski, Justice

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

FRANK MAHIQUES and
DIANNE MAHIQUES

Plaintiffs

vs.

ORDER and JUDGMENT

COUNTY OF NIAGARA,
CITY OF NIAGARA FALLS,
SENECA NATION OF INDIANS,
SENECA GAMING CORPORATION (SGC),
SENECA GAMING AUTHORITY (SGA), and
JOHN DOE CORPORATION

Index No. ~~12632/06~~ C 02572-2007

Defendant

Defendant Seneca Nation of Indians and Seneca Gaming Authority having moved this Court by Notice of Motion dated May 18, 2007 for an order dismissing the Plaintiffs' Complaint pursuant to CPLR§3211(2), (7) and (8) on the ground said Defendant Seneca Nation of Indians is a federally-recognized Indian tribe possessing common law sovereign immunity and Defendant Seneca Gaming Authority, as a governmental instrumentality, also possesses sovereign immunity; and on reading and filing the aforementioned Notice of Motion, the affidavit of Maurice A. John, Sr., President of the Seneca Nation of Indians, sworn to May 17, 2007, Defendant's Memorandum of Law dated May 18, 2007, in support of the motion, and the affidavits of Kevin M. Maley, Esq., sworn to June 8, 2007 and June 14, 2007,of counsel, in opposition thereto, and having heard Brady & Swenson, attorneys for Defendants Seneca Nation of Indians and Seneca Gaming Authority, Thomas C. Brady, Esq., of counsel, in support of the motion and Quinn, McGarry, Caffery & Patricia, P.C., attorneys for Plaintiffs, Kevin M. Maley, Esq., of counsel, in opposition thereto, and due deliberation having been had

NOW, upon motion of Brady & Swenson, attorneys for Defendants Seneca Nation of Indians and Seneca Gaming Authority, it is

ORDERED, ADJUDGED AND DECREED that the within action against Defendant Seneca Nation of Indians and Seneca Gaming Authority is hereby dismissed on the merits on the ground that said Defendants enjoy sovereign immunity from this suit; and it is further

Exhibit "F" Attached to Exhibit "A".

ORDERED, ADJUDGED AND DECREED that such relief is granted without costs to either party; and it is further

ORDERED, ADJUDGED AND DECREED that judgment shall be entered accordingly.

Signed this 24th day of July, 2007.

ENTER,

Hon. Joseph R. Glownia
Supreme Court Justice

GRANTED

JUL 30 2007

BY _____
ROBERT PAZIK
COURT CLERK

Exhibit "G" Attached to Exhibit "A".


57573275

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

LAURA LECHLITNER ET AL
Plaintiff

SENECA ALLEGHANY CASINO & HOTEL ET AL
Defendant

Case No: CV-09-688740

Judge: PETER J CORRIGAN

JOURNAL ENTRY

96 DISP.OTHER - FINAL

DEFENDANTS SENECA ALLEGHANY CASINO & HOTEL AND SENECA GAMING CORP. MOTION TO DISMISS FOR LACK OF JURISDICTION IS GRANTED.
COURT COST ASSESSED TO THE PLAINTIFF(S).

Judge Signature 05/18/2009

- 96
05/18/2009

RECEIVED FOR FILING
05/19/2009 09:34:22
By: CLTMP
GERALD E. FUERST, CLERK

Exhibit "H" Attached to Exhibit "A".

Seneca Nation of Indians

President - Rickey L. Armstrong, Sr.
Clerk - Sheila L. Kettle

P.O. BOX 231
SALAMANCA, NEW YORK 14779

Tel. (716) 945-1790
FAX (716) 945-1565

Treasurer - Shelley R. Huff

12837 ROUTE 438
IRVING, NEW YORK 14081

Tel. (716) 532-4900
FAX (716) 532-6272

SUPREME APPELLATE COURT

ORDER

Henry Lloyd Jacobs, Maxine Dowler, Robert W. Jones and 'Senecas for Justice and Preservation,' (SJP) vs. Michael "Mickey" Brown and Seneca Niagara Falls Gaming Corporation (SNFGC)

Re: "Bench Rulings - TRO #1129-03-1"

At a session of the Supreme Appellate Court held on Tuesday, August 17th 2004, on the Cattaraugus Territory, with a quorum being present, the court considered an Application for Writ of Permission, filed on August 13th 2004 by Seneca Niagara Falls Gaming Corporation, from the Nation's Court of Appeals "Bench Rulings" in the above matter dated August 10th which were served upon the Applicant by mail on August 12th, and upon granting of said Writ by affirmative vote of 10 Judges, upon the Court's own motion IT IS HEREBY ORDERED:

1. By operation of the Seneca Nation of Indians Rules of Appellate Civil Procedure, RACP, Section 304, "Writ of Permission, Stay on Appeal," subsection (b), [1]Applicant's filing of its application for Writ of Permission resulted in an automatic stay of all the proceedings below. By operation of the rule, pending further order of this

---

[1] The rule states: Section 304. Writ of Permission; Stay on Appeal

(b) The filing of the Application for a Writ of Permission shall stay the execution of the final order and/or judgment of the Trial Court and/or judgment of the Court of Appeals for the duration of the appeal, provided, that any injunctive relief ordered by the Trial Court or the Court of Appeals to preserve the status of the parties shall remain in force pending the outcome of the Application. If the Supreme Appellate Court denies Application for Writ of Permission, the automatic stay shall be removed upon such denial. If the Court grants a Writ of Permission, the stay shall remain in force pending the outcome of the appeal. Either the Supreme Appellate Court or the Court of Appeals may set aside the automatic stay pursuant to a party's motion, upon notice to all other parties, where the Court determines that the stay threatens immediate and irreparable harm to the moving party.

Court to direct or otherwise permit further action by the court below, the court below has no further jurisdiction in the above captioned matter. Moreover, upon the granting of the Writ application, upon its own motion, the Supreme Appellate Court specifically orders the Court of Appeals Judges, Maxine E. Black, Maurice A. John, Sr., and Sr. Judge Emery Williams from taking any action with respect to the above captioned matter, whether collectively or individually.

2. The "Bench Rulings" below constitute little more than a thinly veiled attempt to conclusively determine various issues of fact, law and Constitutional interpretation while purporting to act as 'interim rulings' which may not be appealed. One can hardly imagine a more final and conclusive 'bench ruling' than a death sentence, and the ruling below not only purported to pronounce multiple duly enacted legislative enactments as "unconstitutional" but also apparently intended to wipe out the very existence of the Corporations duly created by legislative enactments by calling each of them a 'nullity.' This Court notes in passing that RACP 304(b), see footnote one below, explicitly references "stay of execution of the final order and/or judgment of the Trial Court and / or judgment of the Court of Appeals...." Accordingly, this order deals with the 'judgment' of the above named Judges acting below, regarding various issues of fact, law and Constitutional interpretation which if undisturbed would have otherwise remained as conclusive determinations and this Court does so without regard to what the Judges chose to call their order.

Moreover, the Constitution of the Seneca Nation of Indians of 1848, as amended, controls the question of what may be subject to appeal to this Court. If any reading of any rule, order or 'bench ruling' might otherwise tend to contradict the Constitution then that rule must yield. Section IV of the Constitution states (at Page 5, paragraph two, the first sentence): "*All determinations of the Court of Appeals* shall be subject to appeal...upon the granting of a writ of permission by a vote of not less than seven Councillors." *Emphasis added.* "All" means "all." Any determination by the Court of Appeals that states it is not reviewable by this Court by its very terms violates the express language of the Constitution of 1848, as amended. The Supreme Appellate Court may review all determinations of the Court of Appeals, and the Court of Appeals Judges, individually and collectively, are hereby specifically ordered to cease and desist from signing any further orders stating or suggesting that such orders may not be appealed.

In its 'bench ruling' the court below states that Section I of the Constitution of the Seneca Nation of Indians of 1848, as amended, "contains **NO SUCH AUTHORITY**" to create corporations. **Emphasis added by the Court of Appeals.** As reprinted in its entirety on the fifth page of the second so-called bench ruling from the court below, Section I of the Constitution of the Seneca Nation of Indians of 1848, as amended, states (See, 'bench ruling' at page 5 or the Constitution itself at page one, second paragraph, first sentence):

> "The **legislative power** shall be vested in a Council of sixteen members, who shall be known as the Councillors of the Seneca Nation of Indians...." **Emphasis added by the Supreme Appellate Court.**

Exhibit "H" Attached to Exhibit "A".

The Seneca Nation of Indians has a longstanding history of creating Nation entities by duly enacted Tribal Council resolution, such resolutions more typically than not specifically detailing the rights and responsibilities as well as the duties and obligations of each such entity. Such entities visibly exist and serve vital government functions across all the Nation's territories - from housing to health, from education to enterprises. The legislative power which created each such entity is no less valid than the enactments governing the judiciary, the ethical norms to be followed by Nation officials and even the Nation's electoral processes. Such laws govern conduct relevant to such laws and the duly enacted Charters of the Nation's entities govern the Nation's duly created corporate entities.

Each of the Nation's Class III Gaming related entities, the Seneca Gaming Corporation, SGC; the Seneca Niagara Falls Gaming Corporation, SNFGC; the Seneca Erie Gaming Corporation, SEGC; and the Seneca Territory Gaming Corporation, STGC; were duly enacted under the legislative power vested in the Tribal Council by Section I of the Nation's Constitution. Their valid and continuing existence may be defined by the duly enacted Charters via which Tribal Council enacted them. Moreover, their rights and responsibilities as well as their duties and obligations have been firmly established not only via their charters but also via established Nation legal precedent (See Williams v Seneca Nation Enterprises, Seneca Nation App.Ct., November 9th, 1991, cited for the proposition that the Nation and its entities possess sovereign immunity and are immune from unconsented suit).

Any bench ruling, judgment or order of any type that may state otherwise, or may be misinterpreted as stating otherwise, must not be allowed to stand, lest the Nation's members suffer the consequences of such improvident 'judgment.' Accordingly, the "Bench Rulings" in the above matter dated August 10th from the Nation's Court of Appeals and which were served upon the Applicant by mail on August 12th are hereby **REVERSED**, and no party shall take any action with respect thereto pending further order of this Court.

IT IS FURTHER ORDERED directing that the SGC shall submit any application for costs and fees to the Supreme Appellate Court Clerk/Administrative Officer within two weeks of service of this order.

SO ORDERED.

CERTIFICATION

I, the undersigned administrative officer of the Supreme Appellate Court and Clerk of the Seneca Nation of Indians, do hereby certify that the Tribal Council of the Seneca Nation of Indians composed of 16 members, of whom 12 constituting a quorum were present at the Supreme Appellate Court Session duly called, noticed convened this 17th of August 2004, that the foregoing decision was duly adopted at such session by the affirmative action vote of 10 members.

Dated this 17th of August, 2004.

Sheila L. Kettle

SHEILA L. KETTLE, ADMINISTRATIVE OFFICER
SENECA NATION OF INDIANS

(SEAL)

Exhibit "I" Attached to Exhibit "A".

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SENECA GAMING CORPORATION

Secretary's Certificate

August 19, 2010

I, Ina K. Locke, the duly qualified and elected Secretary of Seneca Gaming Corporation ("*SGC*"), do hereby certify in such capacity and on behalf of SGC, that attached hereto as Exhibit A is a true, correct and complete copy of the bylaws of SGC, as in effect on the date hereof.

Ina K. Locke, Secretary

Name: Ina K. Locke
Title: Secretary

Exhibit "I" Attached to Exhibit "A".

EXHIBIT A

THIRD AMENDED AND RESTATED BY-LAWS

OF

SENECA GAMING CORPORATION
(the "Company")

I.

MEMBERS

The Company shall have no members.

II.

BOARD OF DIRECTORS

1. **Power Of Board of Directors**. Except as otherwise provided in the Charter or Nation law, the business and affairs of the Company shall be managed by or under the direction of the Board of Directors of the Company (the "Board").

2. **Appointment, Number, Qualifications, Term of Office and Number of Votes**.

(a) The Council ("Council") of the Seneca Nation of Indians (the "Nation") shall appoint all Board members.

(b) The Board shall consist of no less than four (4) nor more than seven (7) members.

(c) No less than five (5) members of the Board shall be enrolled Senecas. If the Board at any time consists of four (4) members, all shall be enrolled Senecas. No elected official of the Nation may serve on the Board, nor shall any Company employee or any person with an economic interest in any of the Company's activities. Board members shall constitute "public officials" for purposes of the Nation's Ethics Law.

(d) Any Board candidate shall be eligible to serve as a member of the Board only if the following additional criteria are satisfied: the Board candidate (i) is at least twenty-one years old, (ii) has earned a high school diploma or equivalent, (iii) has not been convicted of any Felony (as defined in the Charter), and (iv) has been certified by the Seneca Gaming Authority as having met the substantive standards necessary to obtain a license from the Authority if such candidate were a "Class III Gaming Key Employee," as that term is used in the Nation's Class III Gaming Ordinance. The Council shall appoint at least one (1) board member who shall (i) possess a Master of Business Administration or Juris Doctorate degree, or (ii) be a Certified Public Accountant, or (iii) have at least ten (10) years experience as a senior manager or board member of a publicly held gaming corporation.

(e) The Board shall be divided into three (3) term classes: Term A, Term B and Term C. Each director shall be assigned to a class at the time of his or her appointment. An appointment of a director shall take effect from the date and time at which the Council adopts the resolution authorizing such appointment, unless otherwise set forth in the applicable resolution of Council. Except as provided in Section 3 of this Article II, each director shall serve for a period of three (3) years and until his or her successor has been appointed and qualified or until his or her earlier death, resignation or removal. Director terms commence and expire as of the date of the annual meeting of a given year.

(f) Each director shall have one vote.

3. **Exceptions to Three Year Term.**

Directors shall be elected to a term of three years, except that:

(1) If the number of directors in any class is increased, the term of a director elected to such newly created vacancy shall end at the same time of other directors in that class;

(2) A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office, and until his successor is elected and qualified;

(3) In 2003 and every third year thereafter, the term of any director in Term A shall end at the annual meeting of the Board;

(4) In 2004 and every third year thereafter, the term of any director in Term B shall end at the annual meeting of the Board; and

(5) In 2005 and every third year thereafter, the term of any director in Term C shall end at the annual meeting of the Board.

The Board shall consist of two (2) Term A directors, two (2) Term B directors and three (3) Term C directors.

4. **Organization.**

(a) At each meeting of the Board, the Chairperson or, in the absence of the Chairperson, the Vice Chairperson shall preside, or in the absence of either such officers, a chairperson chosen by a majority of the directors present shall preside. The Secretary, or a person selected in the Secretary's absence, shall act as secretary.

(b) Any director or committee member may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means constitutes presence in person at a meeting. At least one director shall be present, in person, on the Nation's Cattaraugus or Allegany Territories.

Exhibit "I" Attached to Exhibit "A".

5. Resignations and Removal of Directors.

(a) Any director may resign at any time by giving written notice to the Board directed to the Chairperson or to the Secretary. Such resignation is effective at the time specified therein or, if no time is specified, on delivery of the notice, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective.

(b) After three consecutive absences with notice from Board meetings, or two consecutive absences without notice from Board meetings, a recommendation of the majority of the Board may be made to the Council to remove such director for cause.

(c) The Council, upon a recommendation of a majority of the Board, may remove a Board member for cause. The Council, upon its own initiative, may remove a Board member for cause upon the affirmative vote of at least ten (10) members of the Council.

6. Newly Created Directorships and Vacancies. Vacancies occurring in the Board for any reason shall be filled by appointment by the Council. The Clerk of the Nation shall give public notice of Board vacancies on or before February 1 of each year. The Clerk shall receive candidate applications and certify to the Council that all candidate qualifications set forth in subsection 2(c) have been met and that each candidate has certified that the candidate meets each of the additional criteria set forth in subsection 2(d). Upon certification, the Clerk shall notify the Councillors and coordinate with the Council Administrator an interview for each eligible candidate at least seven (7) days prior to his or her scheduled appointment. Vacancies shall be filled by Council appointment following at least thirty (30) days public notice of said vacancy, unless in the event of an emergency. Directors so appointed shall hold office in accordance with their classification, as provided in Section 3 above, and until qualified successors have been appointed.

7. Action by the Board of Directors. An action taken or approved by at least four (4) of the directors at a meeting at which a quorum is present shall be necessary to constitute an official act of the Company. Proxy voting shall not be permitted.

8. Place of Meeting. The Board shall hold its meetings at either the Allegany or Cattaraugus Territory.

9. Annual Meetings. The Board shall meet within thirty (30) days following the end of the second quarter of each fiscal year, or as soon as practical thereafter, to organize and to transact other business, and no notice to the newly elected directors of such meeting shall be necessary for such meeting to be lawful, provided a quorum is present thereat (and such first Board meeting after the second quarter of each fiscal year of the Company shall hereinafter be referred to as the "Annual Meeting").

10. Regular Meetings. Regular meetings of the Board shall be held monthly at such time and place within the Allegany or Cattaraugus Territory as from time to time may be determined by the Board upon such notice as may be required by these by-laws.

11. Special Meetings. Special meetings of the Board shall be held whenever called by the Chairperson, Vice Chairperson, President & CEO or any three (3) directors who sign a request to

the Chairperson, Vice Chairperson or President & CEO to call a special meeting. Said directors' request shall contain the subject matter for the agenda.

12. Notice of Meetings.

(a) Notice of the time, date and place of meetings may be communicated to directors either in writing or verbally. Notice must be provided in a manner reasonably calculated to allow all directors to attend the meeting, but in any event, to the extent practicable, at least twenty-four (24) hours notice shall be given of all meetings of the Board. The purpose of any regular meeting of the Board need not be stated in the notice thereof. All annual and regular meetings of the Board shall be general meetings, and any and all business may be transacted thereat whether or not stated in the notice thereof. Unless otherwise indicated in the notice thereof, all special meetings of the Board shall be general meetings, and any and all business may be transacted thereat whether or not stated in the notice thereof.

(b) Board meetings shall be open to the Seneca public. An agenda for every meeting of the Board shall be prepared by the Board Chairman and posted publicly at least three (3) days prior to the next scheduled meeting, unless in the event of an emergency. Such posting shall include, at a minimum, posting at the administrative offices on the Nation's Cattaraugus and Allegany Territories. Notwithstanding the foregoing, the Board may hold work sessions and closed executive sessions as may be reasonably determined necessary by the Board.

(c) The Board shall hold a meeting open to the Seneca public on the fourth Saturday of January, April, July and October every year at which the Board shall provide information on the health and well-being of the Company.

13. Waivers of Notice. Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting the lack of notice.

14. Quorum; Adjournment.

(a) Four (4) directors shall constitute a quorum for the transaction of business at each and every meeting of the Board.

(b) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place.

15. Compensation. Directors shall be entitled to such compensation for their services as directors as from time to time may be fixed by the Council, including, without limitation, for their services as members of committees of the Board, and in any event shall be entitled to reimbursement of all reasonable expenses incurred by them in attending meetings of the Board or any committee(s) of which they are members. Any director may waive any retainer for service as a director or compensation for any meeting.

16. Annual Report. The Board shall present at the Annual Meeting a report verified by the President & CEO and the Treasurer or by a majority of the directors, showing in appropriate

detail the following as of the end of the most recently completed fiscal year and most recently completed fiscal quarters for which information is available:

(a) a detailed report outlining the operations of the Company and of each Nation Gaming Facility (as defined in the Charter);

(b) the complete financial condition of the Company and of each Nation Gaming Facility, including without limitation assets and liabilities, and revenue or receipts and expenses or disbursements, both unrestricted and restricted to particular purposes;

(c) the principal changes in assets and liabilities during said fiscal year;

(d) any significant problems and accomplishments;

(e) plans for the upcoming year; and

(f) such other information as the Board or the Council deems pertinent.

The financial statements included in the report relating to the most recently concluded fiscal year shall be audited by an independent certified public accountant and filed with the records of the Company within 120 days of the Annual Meeting and a copy thereof entered in the minutes of the proceedings of the Annual Meeting.

III.

COMMITTEES

1. **Finance/Audit Committee.** There shall be a Finance/Audit Committee consisting of at least three directors, a majority of which shall be "independent directors," who shall be elected by a majority of the entire Board at each Annual Meeting and shall serve until the next Annual Meeting. The Finance/Audit Committee shall (1) recommend Board action related to the discharge of the Board's responsibilities with respect to overseeing the integrity of the Company's financial statements, the Company's compliance with legal and regulatory requirements, the Company's risk assessment and risk management policies and procedures, and the performance of the Company's internal and external audit functions; (2) hire, monitor the performance of and, if necessary, replace the independent auditors; (3) approve any significant non-audit relationship with the independent auditors and assess the independent auditor's qualifications and independence; (4) perform an annual evaluation of the committee itself; and (5) undertake any other action deemed appropriate or necessary by the Board or applicable rules or regulations.

2. **Other Standing or Special Committees.** The Board may designate from among its members other standing or special committees consisting of three (3) or more directors. The standing or special committees shall have such authority as the Board shall by resolution provide.

3. Meetings. Meetings of committees, of which no notice to the Board shall be necessary, shall be held at such time and place as shall be fixed by the Chairperson of the Company or the chairperson of the committee or by vote of a majority of all of the members of the committee.

4. Quorum and Manner of Acting. Unless otherwise provided by resolution of the Board, a majority of all of the members of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of all of the members of the committee shall be the act of the committee. The procedure and manner of acting of both standing and special committees shall be subject at all times to the directions of the Board.

5. Tenure of Members of Committees of the Board. Each committee of the Board and every member thereof shall serve at the pleasure of the Board.

6. Alternate Members. The Board may designate one or more directors as alternate members of any standing or special committee, who may replace any absent or disqualified member or members at any meeting of such committee. In the absence or disqualification of a member of a committee, the director or directors present at any meeting and not disqualified from voting, whether or not such directors constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified director.

7. Records. Minutes shall be kept of each meeting of each committee. Copies of the minutes of each such meeting shall be filed with the corporate records and supplied to each member of the Board.

IV.

OFFICERS

1. Number. The officers of the Company shall be a Chairperson, a Vice Chairperson, a Secretary, a President & CEO, and Treasurer, and such other officers as the Board may in its discretion determine. No person shall hold more than one office.

2. Term of Office and Qualifications. Those officers whose titles are specifically mentioned in Section 1 of this Article IV shall be elected by the Board at its Annual Meeting; provided, however, that such officers may be elected by resolution of the Board prior to the first Annual Meeting and serve until the first Annual Meeting; provided, further, that any such officer elected to fill a vacancy in any such office shall serve from the time of election until the next Annual Meeting. Unless a shorter term is provided in the resolution of the Board electing such officer, the term of office of each such officer elected at an Annual Meeting shall extend to the next Annual Meeting and until the officer's successor is elected or appointed and qualified or until such officer's earlier resignation or removal. The officers specifically mentioned in Section 1 of this Article IV, except for the President & CEO, shall be elected from among the directors.

3. Additional Officers. Any additional officers may be elected for such period, have such authority and perform such duties, either in an administrative or subordinate capacity, as the Board may from time to time determine.

Exhibit "I" Attached to Exhibit "A".

4. **Removal of Officers.** Any officer may be removed by a majority vote of the Board, with or without cause, at any time.

5. **Resignation.** Any officer may resign at any time by giving written notice to the Board, to the Chairperson, or to the Secretary. Any such resignation is effective at the time specified therein or, if no time is specified, on delivery of the notice.

6. **Vacancies.** A vacancy in any office shall be filled by the Board.

7. **Chairperson.** The Chairperson shall preside at all meetings of the Board. The Chairperson shall supervise generally the management of the business of the Company, subject only to the supervision of the Board. The Chairperson shall also perform such other duties as may be assigned from time to time by the Board.

8. **Vice Chairperson.** In the absence or incapacity of the Chairperson, the Vice Chairperson shall preside at all meetings of the Board, and shall perform the duties and exercise the powers of the Chairperson, subject to the right of the Board from time to time to extend or confine such powers and duties or to assign them to others. The Vice Chairperson shall have such powers and shall perform such other duties as may be assigned by the Board or the Chairperson.

9. **President & CEO.** The President & CEO shall be responsible for the day-to-day operations of the Company, and shall have such authority and perform such duties as the Board may from time to time determine.

10. **Vice President.** The Vice Presidents, in the order of priority designated by the Board (or if not designated, in order of their seniority as vice presidents), shall be vested with all the power and may perform all the duties of the President & CEO in the latter's absence. They may perform such other duties as may be prescribed by the Board or the President & CEO.

11. **Secretary.** It shall be the duty of the secretary to act as secretary of all meetings of the Board, and to keep the minutes of all such meetings in a proper book or books to be provided for that purpose. The Secretary shall see that all notices required to be given by the Company are duly given and served; the Secretary shall keep a current list of the Company's directors and officers and their residence addresses; and the Secretary shall be the custodian of the seal of the Company and shall affix the seal, or cause it to be affixed, to all agreements, documents and other papers requiring the same. The Secretary shall have custody of the minute book containing the minutes of all meetings of directors and any committees which may keep minutes, and of all other contracts and documents which are not in the custody of the Treasurer of the Company, or in the custody of some other person authorized by the Board to have such custody.

12. **Treasurer.** The Treasurer shall have the custody of, and be responsible for, all funds and securities of the Company. The Treasurer shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Company and shall deposit all monies and other valuable property of the Company in the name and to the credit of the Company in such banks or depositories as the Board may designate. Whenever required by the Board, the Treasurer shall render a statement of accounts. The Treasurer shall at all reasonable times exhibit the books and accounts to any officer or director of the Company, and shall perform all duties incident to the

office of the Treasurer, subject to the supervision of the Board, and such other duties as shall from time to time be assigned by the Board. The Treasurer shall, if required by the Board, give such bond or security for the faithful performance of his or her duties as the Board may require, for which he or she shall be reimbursed.

13. **Assistant Treasurer(s) and Secretary/ies.** The Board may designate from time to time Assistant Treasurers and Assistant Secretaries, who shall perform such duties as may from time to time be assigned to them by the Board or the CEO & President.

14. **Appointed Officers.** The Board may delegate to any officer or committee the power to appoint and remove any officer, agent or employee other than the Chairperson, Vice Chairperson, President & CEO, Treasurer and Secretary.

15. **Assignment and Transfer of Stocks, Bonds and Securities.** The Chairperson shall have power to assign or to endorse for transfer and to deliver any stock, bonds, subscription rights, or other securities, or any beneficial interest therein, held or owned by the Company.

V.

CONTRACTS, CHECKS, DRAFTS AND BANK ACCOUNTS

1. **Execution of Contracts.** The Board, except as in these by-laws otherwise provided, may authorize any officer or officers, agent or agents, in the name of and on behalf of the Company to enter into any contract or execute and deliver any instrument, and such authority may be general or confined to specific instances; but, unless so authorized by the Board, or expressly authorized by these by-laws, no officer, agent or employee shall have any power or authority to bind the Company by any contract or engagement or to pledge its creditor to render it liable pecuniarily in any amount for any purpose.

2. **Loans.** No loans shall be contracted on behalf of the Company unless specifically authorized by the Board.

3. **Checks, Drafts, etc.** All checks, drafts and other orders for the payment of money out of the funds of the Company, and all notes or other evidences of indebtedness of the Company, shall be signed on behalf of the Company by such officers or other person as the Board or the President & CEO may designate from time to time. The Board or the President & CEO may authorize the use of the facsimile signatures of any such persons.

4. **Deposits.** All funds of the Company not otherwise employed shall be deposited from time to time to the credit of the Company in such banks, trust companies or other depositories as the Board may select.

Exhibit "I" Attached to Exhibit "A".

VI.

OFFICE AND BOOKS

1. **Office.** The office of the Company shall be at 310 4th Street, Niagara Falls, New York 14303 (Seneca Nation territory), or at such other location within the Nation's territories as the Board may determine.

2. **Books and Records.** There shall be kept at the office of the Company (i) correct and complete books and records of account, (ii) minutes of the proceedings of the Board, (iii) a current list of the directors and officers of the Company and their residence addresses, and (iv) a copy of these by-laws.

VII.

INDEMNIFICATION AND INSURANCE

1. **Authorized Indemnification.** Unless clearly prohibited by law or Section 2 of this Article VII, the Company shall indemnify any person ("Indemnified Person") made, or threatened to be made, a party in any action or proceeding, whether civil, criminal, administrative or otherwise, including any action by or in the right of the Company, by reason of the fact that he or she (or his or her testator or intestate), whether before or after adoption of this by-law, (a) is or was a director or officer of the Company, or (b) in addition is serving or served, in any capacity, at the request of the Company, any other corporation, or any partnership, joint venture, trust, employee benefit plan or other enterprise. The indemnification shall be against all judgments, fines, penalties, amounts paid in settlement (provided the Company shall have consented to such settlement) and reasonable expenses, including attorney's fees and costs of investigation, incurred by an Indemnified Person with respect to any such threatened or actual action or proceeding, and any appeal thereof.

2. **Prohibited Indemnification.** The Company shall not indemnify any person if a judgment or other final adjudication adverse to the Indemnified Person (or to the person whose actions are the basis for the action or proceeding) establishes, or the Board in good faith determines, that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or that he or she personally gained in fact a financial profit or other advantage to which he was not legally entitled.

3. **Advancement of Expenses.** The Company shall, on request of any Indemnified Person who is or may be entitled to be indemnified by the Company, pay or promptly reimburse the Indemnified Person's reasonable incurred expenses in connection with a threatened or actual action or proceeding prior to its final disposition. However, no such advancement of expenses shall be made unless the Indemnified Person makes a binding, written commitment to repay the Company, with interest, for any amount advanced for which it is ultimately determined that he or she is not entitled to be indemnified under the law or Section 2 of this Article VII. An Indemnified Person shall cooperate in good faith with any request by the Company that common legal counsel be used by the parties to such action or proceeding who are similarly situated

unless it would be inappropriate to do so because of actual or potential conflicts between the interests of the parties.

4. **Indemnification of Others.** Unless clearly prohibited by law or Section 2 of this Article VII, the Board may approve Company indemnification as set forth in Section 1 of this Article VII, and advancement of expenses as set forth in Section 3 of this Article VII, to a person (or the testator or estate of a person) who is or was employed by the Company or who is or was a volunteer for the Company, and who is made, or threatened to be made, a party in any action or proceeding, by reason of the fact of such employment or volunteer activity, including actions undertaken in connection with service at the request of the Company in any capacity for any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

5. **Determination of Indemnification.** Indemnification mandated by a final order of a court of competent jurisdiction will be paid. After termination or disposition of any actual or threatened action or proceeding against an Indemnified Person, if indemnification has not been ordered by a court, the Board shall, upon written request by the Indemnified Person, determine whether and to what extent Indemnification is permitted pursuant to these by-laws. Before indemnification can occur, the Board must explicitly find that such indemnification will not violate the provisions of Section 2 of this Article VII. No Director with a personal interest in the outcome, or who is a party to such actual or threatened action or proceeding concerning which indemnification is sought, shall participate in this determination. If a quorum of disinterested directors is not obtainable, the Board shall act only after receiving the opinion in writing of independent legal counsel that indemnification is proper in the circumstances under then applicable law and these by-laws.

6. **Binding Effect.** Any person entitled to indemnification under these bylaws has a legally enforceable right to indemnification which cannot be abridged by amendment of these by-laws with respect to any event, action or omission occurring prior to the date of such amendment.

7. **Insurance.** The Company is not required to purchase directors' and officers' liability insurance, but the company may purchase such insurance if authorized and approved by the Board. To the extent permitted by law, such insurance may insure the Company for any obligation it incurs as a result of this Article VII or operation of law, and it may insure directly the directors, officers, employees or volunteers of the Company for liabilities against which they are not entitled to indemnification under this Article VII as well as for liabilities against which they are entitled or permitted to be indemnified by the Company.

8. **Nonexclusive Rights.** The provisions of this Article shall not limit or exclude any other rights to which any person may be entitled under law or contract. The Board is authorized to enter into agreements on behalf of the Company with any director, officer, employee or volunteer providing them rights to indemnification or advancement of expenses in connection with potential indemnification in addition of the provisions therefor in this Article subject in all cases to the limitations of Section 2 of this Article VII.

Exhibit "I" Attached to Exhibit "A".

VIII.

GENERAL

1. **Seal.** The corporate seal shall be in such form and shall have such inscription thereon as may be determined by resolution of the Board.

2. **Interested Director and Officer Transactions.** The Company's charter prohibits any director from having an economic interest in the Company's activities. No contract or other transaction between the Company and one or more of its officers, or between the Company and any other corporation, firm, association or other entity in which one or more of its officers are directors or officers, or have a substantial financial interest, shall be either void or voidable for this reason alone or by reason alone that such officer or officers are present at the meeting of the Board, or of a committee thereof, which authorizes such contract or transaction, provided that the material facts as to such officer's interest in such contract or transaction and as to any such common officership or financial interest are disclosed in good faith or known to the Board or committee, and the Board or committee authorizes such contract or transaction by a vote sufficient for such purpose.

3. **Compliance with Compact.** The Board shall establish such departments and systems of internal procedures and administrative and accounting controls, and otherwise shall cause the Company to operate, as may be required to ensure compliance with the Nation-State Gaming Compact between the Nation and the State of New York, to the extent the Company is acting in the capacity of "Nation Gaming Operation" under such Compact with respect to any Nation Gaming Facility.

IX.

FISCAL YEAR

The fiscal year of the Company shall be the fiscal year of the Nation.

X.

AMENDMENTS

These by-laws of the Company may be amended or repealed by the Board subject to the approval of Council.

* * *

Exhibit "I" Attached to Exhibit "A".

SENECA NIAGARA FALLS GAMING CORPORATION

Secretary's Certificate

August 19, 2010

I, Ina K. Locke, the duly qualified and elected Secretary of Seneca Niagara Falls Gaming Corporation ("*SNFGC*"), do hereby certify in such capacity and on behalf of SNFGC, that attached hereto as Exhibit A is a true, correct and complete copy of the bylaws of SNFGC, as in effect on the date hereof.

Ina K. Locke, Secretary

Name: Ina K. Locke
Title: Secretary

Exhibit "I" Attached to Exhibit "A".

EXHIBIT B

FOURTH AMENDED AND RESTATED BY-LAWS

OF

SENECA NIAGARA FALLS GAMING CORPORATION

(the "Company")

I.
MEMBERS

The Company shall have no members.

II.
BOARD OF DIRECTORS

1. Power Of Board of Directors. Except as otherwise provided in the Charter or Nation law, the business and affairs of the Company shall be managed by or under the direction of the Board of Directors of the Company (the "Board").

2. Appointment; Number, Qualifications, Term of Office and Number of Votes.

(a) The Board shall be comprised solely of the members of the board of directors of Seneca Gaming Corporation.

(b) Each director's term of office shall coincide with such director's term of office as a member of the board of directors of Seneca Gaming Corporation, and accordingly, any change in the members of the board of directors of Seneca Gaming Corporation shall automatically result in an identical change to the Board of the Company without any further action by the Company.

(c) Each director shall have one vote.

3. Organization.

Exhibit "I" Attached to Exhibit "A".

(a) At each meeting of the Board, the Chairperson or, in the absence of the Chairperson, the Vice Chairperson shall preside, or in the absence of either such officers, a chairperson chosen by a majority of the directors present shall preside. The Secretary, or a person selected in the Secretary's absence, shall act as secretary.

(b) Any director or committee member may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means constitutes presence in person at a meeting. At least one director shall be present, in person, on the Nation's Cattaraugus or Allegany Territories.

4. **Action by the Board of Directors**. An action taken or approved by at least four (4) of the directors at a meeting at which a quorum is present shall be necessary to constitute an official act of the Company. Proxy voting shall not be permitted.

5. **Place of Meeting**. The Board shall hold its meetings at either the Allegany or Cattaraugus Territory.

6. **Annual Meetings**. The Board shall meet within thirty (30) days following the end of the second quarter of each fiscal year, or as soon as practical thereafter, to organize and to transact other business, and no notice to the newly elected directors of such meeting shall be necessary for such meeting to be lawful, provided a quorum is present thereat (and such first Board meeting after the second quarter of each fiscal year of the Company shall hereinafter be referred to as the "Annual Meeting").

7. **Regular Meetings**. Regular meetings of the Board shall be held monthly at such time and place within the Allegany or Cattaraugus Territory as from time to time may be determined by the Board upon such notice as may be required by these by-laws.

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8. Special Meetings. Special meetings of the Board shall be held whenever called by the Chairperson, Vice Chairperson, President & CEO or any three (3) directors who sign a request to the Chairperson, Vice Chairperson or President & CEO to call a special meeting. Said directors' request shall contain the subject matter for the agenda.

9. Notice of Meetings.

(a) Notice of the time, date and place of meetings may be communicated to directors either in writing or verbally. Notice must be provided in a manner reasonably calculated to allow all directors to attend the meeting, but in any event, to the extent practicable, at least twenty-four (24) hours notice shall be given of all meetings of the Board. The purpose of any regular meeting of the Board need not be stated in the notice thereof. All annual and regular meetings of the Board shall be general meetings, and any and all business may be transacted thereat whether or not stated in the notice thereof. Unless otherwise indicated in the notice thereof, all special meetings of the Board shall be general meetings, and any and all business may be transacted thereat whether or not stated in the notice thereof.

(b) Board meetings shall be open to the Seneca public. An agenda for every meeting of the Board shall be prepared by the Board Chairman and posted publicly at least three (3) days prior to the next scheduled meeting, unless in the event of an emergency. Such posting shall include, at a minimum, posting at the administrative offices on the Nation's Cattaraugus and Allegany Territories. Notwithstanding the foregoing, the Board may hold work sessions and closed executive sessions as may be reasonably determined necessary by the Board.

(c) The Board shall hold a meeting open to the Seneca public on the fourth Saturday of January, April, July and October every year at which the Board shall provide information on the health and well-being of the Company.

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10. Waivers of Notice. Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting the lack of notice.

11. Quorum; Adjournment.

(a) Four (4) directors shall constitute a quorum for the transaction of business at each and every meeting of the Board.

(b) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place.

12. Compensation. Directors shall be entitled to such compensation for their services as directors as from time to time may be fixed by the Council, including, without limitation, for their services as members of committees of the Board, and in any event shall be entitled to reimbursement of all reasonable expenses incurred by them in attending meetings of the Board or any committee(s) of which they are members. Any director may waive any retainer for service as a director or compensation for any meeting.

13. Annual Report. The Board shall present at the Annual Meeting a report verified by the President & CEO and the Treasurer or by a majority of the directors, showing in appropriate detail the following as of the end of the most recently completed fiscal year and most recently completed fiscal quarters for which information is available:

(a) a detailed report outlining the operations of the Company and of the Niagara Falls Gaming Facility (as defined in the Charter);

(b) the complete financial condition of the Company and of the Niagara Falls Gaming Facility, including without limitation assets and liabilities, and revenue or receipts and expenses or disbursements, both unrestricted and restricted to particular purposes;

(c) the principal changes in assets and liabilities during said fiscal year;

(d) any significant problems and accomplishments;

(e) plans for the upcoming year; and

(f) such other information as the Board or the Council deems pertinent.

The financial statements included in the report relating to the most recently concluded fiscal year shall be audited by an independent certified public accountant and filed with the records of the Company within 120 days of the Annual Meeting and a copy thereof entered in the minutes of the proceedings of the Annual Meeting.

III.
COMMITTEES

1. Standing or Special Committees. The Board may designate from time to time among its members any standing or special committees consisting of three (3) or more directors. The standing or special committees shall have such authority as the Board shall by resolution provide.

2. Meetings. Meetings of committees, of which no notice to the Board shall be necessary, shall be held at such time and place as shall be fixed by the Chairperson of the Company or the chairperson of the committee or by vote of a majority of all of the members of the committee.

3. Quorum and Manner of Acting. Unless otherwise provided by resolution of the Board, a majority of all of the members of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of all of the members of the committee shall be the act of the committee. The procedure and manner of acting of both standing and special committees shall be subject at all times to the directions of the Board.

4. **Tenure of Members of Committees of the Board**. Each committee of the Board and every member thereof shall serve at the pleasure of the Board.

5. **Alternate Members**. The Board may designate one or more directors as alternate members of any standing or special committee, who may replace any absent or disqualified member or members at any meeting of such committee. In the absence or disqualification of a member of a committee, the director or directors present at any meeting and not disqualified from voting, whether or not such directors constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified director.

6. **Records**. Minutes shall be kept of each meeting of each committee. Copies of the minutes of each such meeting shall be filed with the corporate records and supplied to each member of the Board.

IV.
OFFICERS

1. **Number**. The officers of the Company shall be a Chairperson, a Vice Chairperson, a Secretary, a President & CEO, and Treasurer, and such other officers as the Board may in its discretion determine. No person shall hold more than one office.

2. **Term of Office and Qualifications**. Those officers whose titles are specifically mentioned in Section 1 of this Article IV shall be elected by the Board at its Annual Meeting; provided, however, that such officers may be elected by resolution of the Board prior to the first Annual Meeting and serve until the first Annual Meeting; provided, further, that any such officer elected to fill a vacancy in any such office shall serve from the time of election until the next Annual Meeting. Unless a shorter term is provided in the resolution of the Board electing such

officer, the term of office of each such officer elected at an Annual Meeting shall extend to the next Annual Meeting and until the officer's successor is elected or appointed and qualified or until such officer's earlier resignation or removal. The officers specifically mentioned in Section 1 of this Article IV, except for the President & CEO, shall be elected from among the directors.

3. **Additional Officers**. Any additional officers may be elected for such period, have such authority and perform such duties, either in an administrative or subordinate capacity, as the Board may from time to time determine.

4. **Removal of Officers**. Any officer may be removed by a majority vote of the Board, with or without cause, at any time.

5. **Resignation**. Any officer may resign at any time by giving written notice to the Board, to the Chairperson, or to the Secretary. Any such resignation is effective at the time specified therein or, if no time is specified, on delivery of the notice.

6. **Vacancies**. A vacancy in any office shall be filled by the Board.

7. **Chairperson**. The Chairperson shall preside at all meetings of the Board. The Chairperson shall supervise generally the management of the business of the Company, subject only to the supervision of the Board. The Chairperson shall also perform such other duties as may be assigned from time to time by the Board.

8. **Vice Chairperson**. In the absence or incapacity of the Chairperson, the Vice Chairperson shall preside at all meetings of the Board, and shall perform the duties and exercise the powers of the Chairperson, subject to the right of the Board from time to time to extend or confine such powers and duties or to assign them to others. The Vice Chairperson shall have such powers and shall perform such other duties as may be assigned by the Board or the Chairperson.

Exhibit "I" Attached to Exhibit "A".

9. **President & CEO**. The President & CEO shall be responsible for the day-to-day operations of the Company, and shall have such authority and perform such duties as the Board may from time to time determine.

10. **Vice President**. The Vice Presidents, in the order of priority designated by the Board (or if not designated, in order of their seniority as vice presidents), shall be vested with all the power and may perform all the duties of the President & CEO in the latter's absence. They may perform such other duties as may be prescribed by the Board or the President & CEO.

11. **Secretary**. It shall be the duty of the secretary to act as secretary of all meetings of the Board, and to keep the minutes of all such meetings in a proper book or books to be provided for that purpose. The Secretary shall see that all notices required to be given by the Company are duly given and served; the Secretary shall keep a current list of the Company's directors and officers and their residence addresses; and the Secretary shall be the custodian of the seal of the Company and shall affix the seal, or cause it to be affixed, to all agreements, documents and other papers requiring the same. The Secretary shall have custody of the minute book containing the minutes of all meetings of directors and any committees, and of all other contracts and documents which are not in the custody of the Treasurer, or in the custody of some other person authorized by the Board to have such custody.

12. **Treasurer**. The Treasurer shall have the custody of, and be responsible for, all funds and securities of the Company. The Treasurer shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Company and shall deposit all monies and other valuable property of the Company in the name and to the credit of the Company in such banks or depositories as the Board may designate. Whenever required by the Board, the Treasurer shall render a statement of accounts. The Treasurer shall at all reasonable times exhibit

the books and accounts to any officer or director of the Company, and shall perform all duties incident to the office of the Treasurer, subject to the supervision of the Board, and such other duties as shall from time to time be assigned by the Board. The Treasurer shall, if required by the Board, give such bond or security for the faithful performance of his or her duties as the Board may require, for which he or she shall be reimbursed.

13. Assistant Treasurer(s) and Secretary/ies. The Board may designate from time to time Assistant Treasurers and Assistant Secretaries, who shall perform such duties as may from time to time be assigned to them by the Board or the President & CEO.

14. Appointed Officers. The Board may delegate to any officer or committee the power to appoint and remove any officer, agent or employee other than the Chairperson, Vice Chairperson, President & CEO, Treasurer and Secretary.

15. Assignment and Transfer of Stocks, Bonds and Securities. The Chairperson shall have power to assign or to endorse for transfer and to deliver any stock, bonds, subscription rights, or other securities, or any beneficial interest therein, held or owned by the Company.

V.
CONTRACTS, CHECKS, DRAFTS AND BANK ACCOUNTS

1. Execution of Contracts. The Board, except as in these by-laws otherwise provided, may authorize any officer or officers, agent or agents, in the name of and on behalf of the Company to enter into any contract or execute and deliver any instrument, and such authority may be general or confined to specific instances; but, unless so authorized by the Board, or expressly authorized by these by-laws, no officer, agent or employee shall have any power or authority to bind the Company by any contract or engagement or to pledge its creditor to render it liable pecuniarily in any amount for any purpose.

2. **Loans**. No loans shall be contracted on behalf of the Company unless specifically authorized by the Board.

3. **Checks, Drafts, etc**. All checks, drafts and other orders for the payment of money out of the funds of the Company, and all notes or other evidences of indebtedness of the Company, shall be signed on behalf of the Company by such officers or other person as the Board or the President & CEO may designate from time to time. The Board or the President & CEO may authorize the use of the facsimile signatures of any such persons.

4. **Deposits**. All funds of the Company not otherwise employed shall be deposited from time to time to the credit of the Company in such banks, trust companies or other depositories as the Board may select.

VI.
OFFICE AND BOOKS

1. **Office**. The office of the Company shall be at 310 4th Street, Niagara Falls, New York 14303 (Seneca Nation territory), or at such other location within the Nation's territories as the Board may determine.

2. **Books and Records**. There shall be kept at the office of the Company (i) correct and complete books and records of account, (ii) minutes of the proceedings of the Board, (iii) a current list of the directors and officers of the Company and their residence addresses, and (iv) a copy of these by-laws.

VII.
INDEMNIFICATION AND INSURANCE

1. **Authorized Indemnification**. Unless clearly prohibited by law or Section 2 of this Article VII, the Company shall indemnify any person ("Indemnified Person") made, or

threatened to be made, a party in any action or proceeding, whether civil, criminal, administrative or otherwise, including any action by or in the right of the Company, by reason of the fact that he or she (or his or her testator or intestate), whether before or after adoption of this by-law, (a) is or was a director or officer of the Company, or (b) in addition is serving or served, in any capacity, at the request of the Company, any other corporation, or any partnership, joint venture, trust, employee benefit plan or other enterprise. The indemnification shall be against all judgments, fines, penalties, amounts paid in settlement (provided the Company shall have consented to such settlement) and reasonable expenses, including attorney's fees and costs of investigation, incurred by an Indemnified Person with respect to any such threatened or actual action or proceeding, and any appeal thereof.

2. **Prohibited Indemnification**. The Company shall not indemnify any person if a judgment or other final adjudication adverse to the Indemnified Person (or to the person whose actions are the basis for the action or proceeding) establishes, or the Board in good faith determines, that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or that he or she personally gained in fact a financial profit or other advantage to which he was not legally entitled.

3. **Advancement of Expenses**. The Company shall, on request of any Indemnified Person who is or may be entitled to be indemnified by the Company, pay or promptly reimburse the Indemnified Person's reasonable incurred expenses in connection with a threatened or actual action or proceeding prior to its final disposition. However, no such advancement of expenses shall be made unless the Indemnified Person makes a binding, written commitment to repay the Company, with interest, for any amount advanced for which it is ultimately determined that he or

she is not entitled to be indemnified under the law or Section 2 of this Article VII. An Indemnified Person shall cooperate in good faith with any request by the Company that common legal counsel be used by the parties to such action or proceeding who are similarly situated unless it would be inappropriate to do so because of actual or potential conflicts between the interests of the parties.

4. **Indemnification of Others**. Unless clearly prohibited by law or Section 2 of this Article VII, the Board may approve Company indemnification as set forth in Section 1 of this Article VII, and advancement of expenses as set forth in Section 3 of this Article VII, to a person (or the testator or estate of a person) who is or was employed by the Company or who is or was a volunteer for the Company, and who is made, or threatened to be made, a party in any action or proceeding, by reason of the fact of such employment or volunteer activity, including actions undertaken in connection with service at the request of the Company in any capacity for any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

5. **Determination of Indemnification**. Indemnification mandated by a final order of a court of competent jurisdiction will be paid. After termination or disposition of any actual or threatened action or proceeding against an Indemnified Person, if indemnification has not been ordered by a court, the Board shall, upon written request by the Indemnified Person, determine whether and to what extent Indemnification is permitted pursuant to these by-laws. Before indemnification can occur, the Board must explicitly find that such indemnification will not violate the provisions of Section 2 of this Article VII. No Director with a personal interest in the outcome, or who is a party to such actual or threatened action or proceeding concerning which indemnification is sought, shall participate in this determination. If a quorum of disinterested directors is not obtainable, the Board shall act only after receiving the opinion in writing of

independent legal counsel that indemnification is proper in the circumstances under then applicable law and these by-laws.

6. Binding Effect. Any person entitled to indemnification under these by-laws has a legally enforceable right to indemnification which cannot be abridged by amendment of these by-laws with respect to any event, action or omission occurring prior to the date of such amendment.

7. Insurance. The Company is not required to purchase directors' and officers' liability insurance, but the company may purchase such insurance if authorized and approved by the Board. To the extent permitted by law, such insurance may insure the Company for any obligation it incurs as a result of this Article VII or operation of law, and it may insure directly the directors, officers, employees or volunteers of the Company for liabilities against which they are not entitled to indemnification under this Article VII as well as for liabilities against which they are entitled or permitted to be indemnified by the Company.

8. Nonexclusive Rights. The provisions of this Article shall not limit or exclude any other rights to which any person may be entitled under law or contract. The Board is authorized to enter into agreements on behalf of the Company with any director, officer, employee or volunteer providing them rights to indemnification or advancement of expenses in connection with potential indemnification in addition of the provisions therefor in this Article subject in all cases to the limitations of Section 2 of this Article VII.

VIII.
GENERAL

1. Seal. The corporate seal shall be in such form and shall have such inscription thereon as may be determined by resolution of the Board.

2. **Interested Director and Officer Transactions**. Directors are prohibited from having an economic interest in the Company's activities. No contract or other transaction between the Company and one or more of its officers, or between the Company and any other corporation, firm, association or other entity in which one or more of its officers are directors or officers, or have a substantial financial interest, shall be either void or voidable for this reason alone or by reason alone that such officer or officers are present at the meeting of the Board, or of a committee thereof, which authorizes such contract or transaction, provided that the material facts as to such officer's interest in such contract or transaction and as to any such common officership or financial interest are disclosed in good faith or known to the Board or committee, and the Board or committee authorizes such contract or transaction by a vote sufficient for such purpose.

3. **Compliance with Compact.** The Board shall establish such departments and systems of internal procedures and administrative and accounting controls, and otherwise shall cause the Company to operate, as may be required to ensure compliance with the Nation-State Gaming Compact between the Nation and the State of New York, to the extent the Company is acting in the capacity of "Nation Gaming Operation" under such Compact.

IX.
FISCAL YEAR

The fiscal year of the Company shall be the fiscal year of the Nation.

X.
AMENDMENTS

These by-laws of the Company may be amended or repealed by the Board subject to the approval of Council.

Exhibit "I" Attached to Exhibit "A".

* * *

Exhibit "J" Attached to Exhibit "A".

AMENDED AND RESTATED BY-LAWS

OF

LEWISTON GOLF COURSE CORPORATION

(the "Company")

I.
MEMBERS

The Company shall have no members.

II.
BOARD OF DIRECTORS

1. Power Of Board of Directors. Except as otherwise provided in the Charter or Nation law, the business and affairs of the Company shall be managed by or under the direction of the Board of Directors of the Company (the "Board").

2. Appointment; Number, Qualifications, Term of Office and Number of Votes.

(a) The Board shall be comprised solely of the members of the board of directors of Seneca Gaming Corporation.

(b) Each director's term of office shall coincide with such director's term of office as a member of the board of directors of Seneca Gaming Corporation, and accordingly, any change in the members of the board of directors of Seneca Gaming Corporation shall automatically result in an identical change to the Board of the Company without any further action by the Company.

(c) Each director shall have one vote.

3. Organization.

(a) At each meeting of the Board, the Chairperson or, in the absence of the Chairperson, the Vice Chairperson shall preside, or in the absence of either such officers, a chairperson chosen by a majority of the directors present shall preside. The Secretary, or a person selected in the Secretary's absence, shall act as secretary.

(b) Any director or committee member may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means constitutes presence in

person at a meeting. At least one director shall be present, in person, on the Nation's Cattaraugus or Allegany Territories.

4. Action by the Board of Directors. An action taken or approved by at least five (5) of the directors at a meeting at which a quorum is present shall be necessary to constitute an official act of the Company. Proxy voting shall not be permitted.

5. Place of Meeting. The Board shall hold its meetings at either the Allegany or Cattaraugus Territory.

6. Annual Meetings. The Board shall meet within thirty (30) days following the end of the second quarter of each fiscal year, or as soon as practical thereafter, to organize and to transact other business, and no notice to the newly elected directors of such meeting shall be necessary for such meeting to be lawful, provided a quorum is present thereat (and such first Board meeting after the second quarter of each fiscal year of the Company shall hereinafter be referred to as the "Annual Meeting").

7. Regular Meetings. Regular meetings of the Board shall be held monthly at such time and place within the Allegany or Cattaraugus Territory as from time to time may be determined by the Board upon such notice as may be required by these by-laws.

8. Special Meetings. Special meetings of the Board shall be held whenever called by the Chairperson, Vice Chairperson, President & CEO or any three (3) directors who sign a request to the Chairperson, Vice Chairperson or President & CEO to call a special meeting. Said directors' request shall contain the subject matter for the agenda.

9. Notice of Meetings.

(a) Notice of the time, date and place of meetings may be communicated to directors either in writing or verbally. Notice must be provided in a manner reasonably calculated to allow all directors to attend the meeting, but in any event, to the extent practicable, at least twenty-four (24) hours notice shall be given of all meetings of the Board. The purpose of any regular meeting of the Board need not be stated in the notice thereof. All annual and regular meetings of the Board shall be general meetings, and any and all business may be transacted thereat whether or not stated in the notice thereof. Unless otherwise indicated in the notice thereof, all special meetings of the Board shall be general meetings, and any and all business may be transacted thereat whether or not stated in the notice thereof.

(b) Board meetings shall be open to the Seneca public. An agenda for every meeting of the Board shall be prepared by the Board Chairman and posted publicly at least three (3) days prior to the next scheduled meeting, unless in the event of an emergency. Such posting shall include, at a minimum, posting at the administrative offices on the Nation's Cattaraugus and Allegany Territories. Notwithstanding the foregoing, the Board may hold work sessions and closed executive sessions as may be reasonably determined necessary by the Board.

(c) The Board shall hold a meeting open to the Seneca public on the fourth Saturday of January, April, July and October every year at which the Board shall provide information on the health and well-being of the Company.

10. Waivers of Notice. Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting the lack of notice.

11. Quorum; Adjournment.

(a) Five (5) directors shall constitute a quorum for the transaction of business at each and every meeting of the Board.

(b) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place.

12. Compensation. Directors shall be entitled to such compensation for their services as directors as from time to time may be fixed by the Council, including, without limitation, for their services as members of committees of the Board, and in any event shall be entitled to reimbursement of all reasonable expenses incurred by them in attending meetings of the Board or any committee(s) of which they are members. Any director may waive any retainer for service as a director or compensation for any meeting.

13. Annual Report. The Board shall present at the Annual Meeting a report verified by the President & CEO and the Treasurer or by a majority of the directors, showing in appropriate detail the following as of the most recently completed fiscal year and most recently completed fiscal quarters for which information is available:

(a) a detailed report outlining the operations of the Company;

(b) the complete financial condition of the Company, including without limitation assets and liabilities, and revenue or receipts and expenses or disbursements, both unrestricted and restricted to particular

purposes;

(c) the principal changes in assets and liabilities during said fiscal year;

(d) any significant problems and accomplishments;

(e) plans for the upcoming year; and

(f) such other information as the Board or the Council deems pertinent.

The financial statements included in the report relating to the most recently concluded fiscal year shall be audited by an independent certified public accountant and filed wit the records of the Company within 60 days of the Annual Meeting and a copy thereof entered in the minutes of the proceedings of the Annual Meeting.

III.
COMMITTEES

1. Standing or Special Committees. The Board may designate from time to time among its members any standing or special committees consisting of three (3) or more directors. The standing or special committees shall have such authority as the Board shall by resolution provide.

2. Meetings. Meetings of committees, of which no notice to the Board shall be necessary, shall be held at such time and place as shall be fixed by the Chairperson of the Company or the chairperson of the committee or by vote of a majority of all of the members of the committee.

3. Quorum and Manner of Acting. Unless otherwise provided by resolution of the Board, a majority of all of the members of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of all of the members of the committee shall be the act of the committee. The procedure and manner of acting of both standing and special committees shall be subject at all times to the directions of the Board.

4. Tenure of Members of Committees of the Board. Each committee of the Board and every member thereof shall serve at the pleasure of the Board.

5. Alternate Members. The Board may designate one or more directors as alternate members of any standing or special committee, who may replace any absent or disqualified member or members at any meeting of such committee. In the absence or disqualification of a member of a committee, the director or directors present at any meeting and not disqualified from voting, whether or not such directors constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified director.

6. Records. Minutes shall be kept of each meeting of each committee. Copies of the minutes of each such meeting shall be filed with the corporate records and supplied to each member of the Board.

IV.
OFFICERS

1. Number. The officers of the Company shall be a Chairperson, a Vice Chairperson, a Secretary, a President & CEO, and Treasurer, and such other officers as the Board may in its discretion determine. No person shall hold more than one office.

2. Term of Office and Qualifications. Those officers whose titles are specifically mentioned in Section 1 of this Article IV shall be elected by the Board at its Annual Meeting; provided, however, that such officers may be elected by resolution of the Board prior to the first Annual Meeting and serve until the first Annual Meeting; provided, further, that any such officer elected to fill a vacancy in any such office shall serve from the time of election until the next Annual Meeting. Unless a shorter term is provided in the resolution of the Board electing such officer, the term of office of each such officer elected at an Annual Meeting shall extend to the next Annual Meeting and until the officer's successor is elected or appointed and qualified or until such officer's earlier resignation or removal. The officers specifically mentioned in Section 1 of this Article IV, except for the President & CEO, shall be elected from among the directors.

3. Additional Officers. Any additional officers may be elected for such period, have such authority and perform such duties, either in an administrative or subordinate capacity, as the Board may from time to time determine.

4. Removal of Officers. Any officer may be removed by a majority vote of the Board, with or without cause, at any time.

5. Resignation. Any officer may resign at any time by giving written notice to the Board, to the Chairperson, or to the Secretary. Any such resignation is effective at the time specified therein or, if no time is specified, on delivery of the notice.

6. Vacancies. A vacancy in any office shall be filled by the Board.

7. Chairperson. The Chairperson shall preside at all meetings of the Board. The Chairperson shall supervise generally the management of the business of the Company, subject only to the supervision of the Board. The Chairperson shall also perform such other duties as may be assigned from time to time by the Board.

Exhibit "J" Attached to Exhibit "A".

8. Vice Chairperson. In the absence or incapacity of the Chairperson, the Vice Chairperson shall preside at all meetings of the Board, and shall perform the duties and exercise the powers of the Chairperson, subject to the right of the Board from time to time to extend or confine such powers and duties or to assign them to others. The Vice Chairperson shall have such powers and shall perform such other duties as may be assigned by the Board or the Chairperson.

9. President & CEO. The President & CEO shall be responsible for the day-to-day operations of the Company, and shall have such authority and perform such duties as the Board may from time to time determine.

10. Vice President. The Vice Presidents, in the order of priority designated by the Board (or if not designated, in order of their seniority as vice presidents), shall be vested with all the power and may perform all the duties of the President & CEO in the latter's absence. They may perform such other duties as may be prescribed by the Board or the President & CEO.

11. Secretary. It shall be the duty of the secretary to act as secretary of all meetings of the Board, and to keep the minutes of all such meetings in a proper book or books to be provided for that purpose. The Secretary shall see that all notices required to be given by the Company are duly given and served; the Secretary shall keep a current list of the Company's directors and officers and their residence addresses; and the Secretary shall be the custodian of the seal of the Company and shall affix the seal, or cause it to be affixed, to all agreements, documents and other papers requiring the same. The Secretary shall have custody of the minute book containing the minutes of all meetings of directors and any committees, and of all other contracts and documents which are not in the custody of the Treasurer, or in the custody of some other person authorized by the Board to have such custody.

12. Treasurer. The Treasurer shall have the custody of, and be responsible for, all funds and securities of the Company. The Treasurer shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Company and shall deposit all monies and other valuable property of the Company in the name and to the credit of the Company in such banks or depositories as the Board may designate. Whenever required by the Board, the Treasurer shall render a statement of accounts. The Treasurer shall at all reasonable times exhibit the books and accounts to any officer or director of the Company, and shall perform all duties incident to the office of the Treasurer, subject to the supervision of the Board, and such other duties as shall from time to time be assigned by the Board. The Treasurer shall, if required by the Board, give such bond or security for the faithful performance of his or her duties as the Board may require, for which he or she shall be reimbursed.

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14. Appointed Officers. The Board may delegate to any officer or committee the power to appoint and remove any officer, agent or employee other than the Chairperson, Vice Chairperson, President & CEO, Treasurer and Secretary.

15. Assignment and Transfer of Stocks, Bonds and Securities. The Chairperson shall have power to assign or to endorse for transfer and to deliver any stock, bonds, subscription rights, or other securities, or any beneficial interest therein, held or owned by the Company.

V.
CONTRACTS, CHECKS, DRAFTS AND BANK ACCOUNTS

1. Execution of Contracts. The Board, except as in these by-laws otherwise provided, may authorize any officer or officers, agent or agents, in the name of and on behalf of the Company to enter into any contract or execute and deliver any instrument, and such authority may be general or confined to specific instances; but, unless so authorized by the Board, or expressly authorized by these by-laws, no officer, agent or employee shall have any power or authority to bind the Company by any contract or engagement or to pledge its creditor to render it liable pecuniarily in any amount for any purpose.

2. Loans. No loans shall be contracted on behalf of the Company unless specifically authorized by the Board.

3. Checks, Drafts, etc. All checks, drafts and other orders for the payment of money out of the funds of the Company, and all notes or other evidences of indebtedness of the Company, shall be signed on behalf of the Company by such officers or other person as the Board or the President & CEO may designate from time to time. The Board or the President & CEO may authorize the use of the facsimile signatures of any such persons.

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VI.
OFFICE AND BOOKS

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2. **Books and Records**. There shall be kept at the office of the Company (i) correct and complete books and records of account, (ii) minutes of the proceedings of the Board, (iii) a current list of the directors and officers of the Company and their residence addresses, and (iv) a copy of these by-laws.

VII.
INDEMNIFICATION AND INSURANCE

1. **Authorized Indemnification**. Unless clearly prohibited by law or Section 2 of this Article VII, the Company shall indemnify any person ("Indemnified Person") made, or threatened to be made, a party in any action or proceeding, whether civil, criminal, administrative or otherwise, including any action by or in the right of the Company, by reason of the fact that he or she (or his or her testator or intestate), whether before or after adoption of this by-law, (a) is or was a director or officer of the Company, or (b) in addition is serving or served, in any capacity, at the request of the Company, any other corporation, or any partnership, joint venture, trust, employee benefit plan or other enterprise. The indemnification shall be against all judgments, fines, penalties, amounts paid in settlement (provided the Company shall have consented to such settlement) and reasonable expenses, including attorney's fees and costs of investigation, incurred by an Indemnified Person with respect to any such threatened or actual action or proceeding, and any appeal thereof.

2. **Prohibited Indemnification**. The Company shall not indemnify any person if a judgment or other final adjudication adverse to the Indemnified Person (or to the person whose actions are the basis for the action or proceeding) establishes, or the Board in good faith determines, that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or that he or she personally gained in fact a financial profit or other advantage to which he was not legally entitled.

3. **Advancement of Expenses**. The Company shall, on request of any Indemnified Person who is or may be entitled to be indemnified by the Company, pay or promptly reimburse the Indemnified Person's reasonable incurred expenses in connection with a threatened or actual action or proceeding prior to its final disposition. However, no such advancement of expenses shall be made unless the Indemnified Person makes a binding, written

commitment to repay the Company, with interest, for any amount advanced for which it is ultimately determined that he or she is not entitled to be indemnified under the law or Section 2 of this Article VII. An Indemnified Person shall cooperate in good faith with any request by the Company that common legal counsel be used by the parties to such action or proceeding who are similarly situated unless it would be inappropriate to do so because of actual or potential conflicts between the interests of the parties.

4. **Indemnification of Others**. Unless clearly prohibited by law or Section 2 of this Article VII, the Board may approve Company indemnification as set forth in Section 1 of this Article VII, and advancement of expenses as set forth in Section 3 of this Article VII, to a person (or the testator or estate of a person) who is or was employed by the Company or who is or was a volunteer for the Company, and who is made, or threatened to be made, a party in any action or proceeding, by reason of the fact of such employment or volunteer activity, including actions undertaken in connection with service at the request of the Company in any capacity for any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

5. **Determination of Indemnification**. Indemnification mandated by a final order of a court of competent jurisdiction will be paid. After termination or disposition of any actual or threatened action or proceeding against an Indemnified Person, if indemnification has not been ordered by a court, the Board shall, upon written request by the Indemnified Person, determine whether and to what extent Indemnification is permitted pursuant to these by-laws. Before indemnification can occur, the Board must explicitly find that such indemnification will not violate the provisions of Section 2 of this Article VII. No Director with a personal interest in the outcome, or who is a party to such actual or threatened action or proceeding concerning which indemnification is sought, shall participate in this determination. If a quorum of disinterested directors is not obtainable, the Board shall act only after receiving the opinion in writing of independent legal counsel that indemnification is proper in the circumstances under then applicable law and these by-laws.

6. **Binding Effect**. Any person entitled to indemnification under these by-laws has a legally enforceable right to indemnification which cannot be abridged by amendment of these by-laws with respect to any event, action or omission occurring prior to the date of such amendment.

7. **Insurance**. The Company is not required to purchase directors' and officers' liability insurance, but the company may purchase such insurance if authorized and approved by the Board. To the extent permitted by law, such insurance may insure the Company for any obligation it incurs as a result of this Article VII or operation

of law, and it may insure directly the directors, officers, employees or volunteers of the Company for liabilities against which they are not entitled to indemnification under this Article VII as well as for liabilities against which they are entitled or permitted to be indemnified by the Company.

8. Nonexclusive Rights. The provisions of this Article shall not limit or exclude any other rights to which any person may be entitled under law or contract. The Board is authorized to enter into agreements on behalf of the Company with any director, officer, employee or volunteer providing them rights to indemnification or advancement of expenses in connection with potential indemnification in addition of the provisions therefor in this Article subject in all cases to the limitations of Section 2 of this Article VII.

VIII.
GENERAL

1. Seal. The corporate seal shall be in such form and shall have such inscription thereon as may be determined by resolution of the Board.

2. Interested Director and Officer Transactions. Directors are prohibited from having an economic interest in the Company's activities. No contract or other transaction between the Company and one or more of its officers, or between the Company and any other corporation, firm, association or other entity in which one or more of its officers are directors or officers, or have a substantial financial interest, shall be either void or voidable for this reason alone or by reason alone that such officer or officers are present at the meeting of the Board, or of a committee thereof, which authorizes such contract or transaction, provided that the material facts as to such officer's interest in such contract or transaction and as to any such common officership or financial interest are disclosed in good faith or known to the Board or committee, and the Board or committee authorizes such contract or transaction by a vote sufficient for such purpose.

IX.
FISCAL YEAR

The fiscal year of the Company shall be the fiscal year of the Nation.

Exhibit "J" Attached to Exhibit "A".

X.
AMENDMENTS

These by-laws of the Company may be amended or repealed by the Board subject to the approval of Council.

* * *

Exhibit "K" Attached to Exhibit "A".

Seneca Nation of Indians

President - Cyrus M. Schindler
Clerk - Shelley R. Huff

1490 ROUTE 438
IRVING, NEW YORK 14081

Tel. (716) 532-4900
FAX (716) 532-6272

Treasurer - Arnold N. Cooper, II

P.O. BOX 231
SALAMANCA, NEW YORK 14779

Tel. (716) 945-1790
FAX (716) 945-1565

AT THE SPECIAL SESSION OF COUNCIL OF THE SENECA NATION OF INDIANS HELD ON AUGUST 1, 2002, AT THE WILLIAM SENECA ADMINISTRATION BUILDING ON THE CATTARAUGUS INDIAN RESERVATION, IRVING, NEW YORK, 14081

CN: S-8-1-02-03

EXECUTIVES PRESENT:	PRESIDENT	-	CYRUS M. SCHINDLER
	CLERK	-	SHELLEY R. HUFF
	TREASURER	-	ARNOLD N. COOPER, II

SENECA GAMING CORPORATE CHARTER LAW ENACTMENT

MOTION: by Richard C. Jemison, seconded by Richard E. Mopinew, that Tribal Council approves the following resolution:

WHEREAS, Section I of the Constitution of the Seneca Nation of Indians of 1848, as amended, vests the Legislative Authority of the Seneca People in the Nation's Tribal Council; and,

WHEREAS, it is declared the policy of the Nation to promote the welfare and prosperity of its members and to actively promote, attract, encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic stagnation; and,

WHEREAS, the Gaming industry is vitally important to the economy of the Nation and the general welfare of its members; and,

WHEREAS, the ability of the Nation to finance, develop, construct, operate, and maintain certain Nation Gaming Facilities will be enhanced by the creation of a separate entity for such purposes, and the Company created by this Charter will be able to perform these functions, and, accordingly, will be of benefit to the Nation and its members;

WHEREAS, the Nation desires to grant the Company created by this Charter, the power, upon the direction of the Council and in a manner consistent with the purposes of such charter, to exercise any or all of its powers through the control, operation and management of a subsidiary company or other entity created by or under authority of the Nation for the purpose of developing, financing, operating and conducting the business of any one or more of Nation Gaming Facility;

NOW, THEREFORE, the Nation's Council, pursuant to its constitutional authority, does hereby, grant this Charter to create, appoint and constitute the SENECA GAMING CORPORATION.

All In Favor — MOTION CARRIED

Exhibit "K" Attached to Exhibit "A".

CERTIFICATION

I hereby certify the foregoing extract is a true and correct copy from the minutes of the Special Session of Council of the Seneca Nation of Indians held on August 1, 2002, on the Cattaraugus Indian Reservation, original of which is on file in the Clerk's Office of the Seneca Nation of Indians.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal to be affixed at the William Seneca Building on the Cattaraugus Reservation, Irving, New York 14081, on the 2nd day of August, 2002.

ATTEST:

{SEAL}

Shelley R. Huff, Clerk
SENECA NATION OF INDIANS

Exhibit "L" Attached to Exhibit "A".

Seneca Nation of Indians

President - Cyrus M. Schindler
Clerk - Shelley R. Huff

1490 ROUTE 438
IRVING, NEW YORK 14081

Tel. (716) 532-4900
FAX (716) 532-6272

Treasurer - Arnold N. Cooper, II

P.O. BOX 231
SALAMANCA, NEW YORK 14779

Tel. (716) 945-1790
FAX (716) 945-1565

AT THE REGULAR SESSION OF COUNCIL OF THE SENECA NATION OF INDIANS HELD ON AUGUST 1, 2002, AT THE WILLIAM SENECA ADMINISTRATION BUILDING ON THE CATTARAUGUS INDIAN RESERVATION, IRVING, NEW YORK, 14081

CN: S-8-1-02-04

EXECUTIVES PRESENT:	PRESIDENT	-	CYRUS M. SCHINDLER
	CLERK	-	SHELLEY R. HUFF
	TREASURER	-	ARNOLD N. COOPER, II

SENECA NIAGARA FALLS GAMING CORPORATE CHARTER LAW ENACTMENT

MOTION: by Richard C. Jemison, seconded by Rickey L. Armstrong, Sr., that Tribal Council approves the following resolution:

WHEREAS, Section I of the Constitution of the Seneca Nation of Indians of 1848, as amended, vests the Legislative Authority of the Seneca People in the Nation's Tribal Council; and,

WHEREAS, it is declared the policy of the Nation to promote the welfare and prosperity of its members and to actively promote, attract, encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic stagnation; and,

WHEREAS, the Gaming industry is vitally important to the economy of the Nation and the general welfare of its members; and,

WHEREAS, the Nation by charter has created the Seneca Gaming Corporation for purposes of developing, financing, operating and conducting the business of Nation Gaming Facilities, as more fully set forth in such charter; and,

WHEREAS, the charter of the Seneca Gaming Corporation grants to the Seneca Gaming Corporation the power, upon the direction of the Council and in a manner consistent with the purposes of such charter, to exercise any or all of its powers through the control, operation and management of a subsidiary company or other entity created by or under authority of the Nation for the purpose of developing, financing, operating and conducting the business of any one or more Nation Gaming Facility; and,

WHEREAS, the Nation desires to establish a separate legal entity for purposes of developing, financing, operating and conducting the business of the Nation Gaming Facility to be established on Nation territory within the exterior boundaries of Niagara County pursuant to the terms of the Nation-State Gaming Compact between the Nation and the State of New York, and further desires that such legal entity to be subject to the control, operation and management of the Seneca Gaming Corporation;

Exhibit "L" Attached to Exhibit "A".

NOW, THEREFORE, the Nation's Council, pursuant to its constitutional authority, does hereby, grant this Charter to create, appoint and constitute the SENECA NIAGARA FALLS GAMING CORPORATION, a subsidiary company subject to the control, operation and management of the Seneca Gaming Corporation.

All In Favor — MOTION CARRIED

CERTIFICATION

I hereby certify the foregoing extract is a true and correct copy from the minutes of the Special Session of Council of the Seneca Nation of Indians held on August 1, 2002, on the Cattaraugus Indian Reservation, original of which is on file in the Clerk's Office of the Seneca Nation of Indians.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal to be affixed at the William Seneca Building on the Cattaraugus Reservation, Irving, New York 14081, on the 2nd day of August, 2002.

ATTEST:

(SEAL)

Shelley R. Huff, Clerk
SENECA NATION OF INDIANS

Exhibit "M" Attached to Exhibit "A".

Seneca Nation of Indians

President - Maurice A. John, Sr.
Clerk - Jacqueline Bowen

P.O. BOX 231
SALAMANCA, NEW YORK 14779

Tel. (716) 945-1790
FAX (716) 945-0150

Treasurer - Kevin W. Seneca

12837 ROUTE 438
IRVING, NEW YORK 14081

Tel (716) 532-4900
FAX (716) 532-6272

AT THE SPECIAL SESSION OF COUNCIL OF THE SENECA NATION OF INDIANS HELD ON JUNE 28, 2007 AT THE WILLIAM SENECA BUILDING ON THE CATTARAUGUS TERRITORY IRVING, NEW YORK, 14081.

CN: S-06-28-07-02

EXECUTIVES PRESENT:

PRESIDENT - MAURICE A. JOHN
CLERK - JACQUELINE BOWEN
TREASURER - KEVIN W. SENECA

LEWISTON GOLF COURSE / CHARTER & BY-LAWS/ SENECA NIAGARA FALLS GAMING CORPORATION (SNFGC) / APPROVAL

MOTION: by Richard Frank, seconded by Llona Leroy that the Seneca Nation Council approves the following resolution as presented;

WHEREAS, Section I of the Constitution of the Seneca Nation of Indians of 1848, as amended (the "Constitution"), vests the Legislative Authority of the Seneca People in the Nation's Council (the "Council");

WHEREAS, it is declared the policy of the Nation to promote the welfare and prosperity of its members and to actively promote, attract, encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and stagnation;

WHEREAS, economic success of the Nation's gaming operations is vitally important to the economy of the Nation and the general welfare of its members;

WHEREAS, in furtherance of the economic success of the Nation's gaming operations, the Seneca Niagara Falls Gaming Corporation ("SNFGC") has commenced development of a Robert Trent Jones, Jr. designed golf course located in the Town of Lewiston, New York, including related clubhouse, retail and food and beverage operations, at a total projected cost of up to $20 million (collectively, the "Lewiston Golf Course");

Exhibit "M" Attached to Exhibit "A".

WHEREAS, the Lewiston Golf Course will be developed and operated as an amenity to the SNFGC's casino operations, together with the casino's lodging, dining, retail and entertainment amenities, the purpose of which amenities is to enhance the overall success and profitability of the casino's operations consistent with the powers described in SNFGC's charter and the purposes for which SNFGC was formed;

WHEREAS, the use of a separate corporation or legal entity to own and operate the Lewiston Golf Course is advisable due to various legal and accounting considerations, including the status of the Lewiston Golf Course as an off-territory business venture of the Nation, subject to legal, tax and other requirements that are not applicable to the Nation's on-territory businesses;

WHEREAS, the Constitution grants to the Nation the power, upon the direction of the Council and in a manner consistent with the purposes of the Constitution, to exercise any or all of its powers through the control, operation and management of a corporation or other legal entity created by or under authority of the Nation;

WHEREAS, the Nation desires to establish the Lewiston Golf Course Corporation (the "Company") as a separate legal entity, governmental instrumentality of the Nation, and wholly-owned subsidiary of SNFGC, for the purpose of developing and operating the Lewiston Golf Course in the Town of Lewiston, New York, and legally doing business in such jurisdictions;

WHEREAS, the Charter of the Lewiston Golf Course Corporation attached hereto as Exhibit A (the "Charter") establishes a Board of Directors for the Company, the purpose of which is to carry out the duties and powers of the Company set forth in the Charter;

WHEREAS, the Charter provides that the Council shall appoint members to the Board of Directors of the Company;

WHEREAS, the ability of SNFGC to proceed with the construction of the Lewiston Golf Course and to proceed in a manner that enhances tax savings will be enhanced by the immediate adoption of the Company's Charter and the appointment of the Company's Board of Directors to carry out the duties and powers of the Company; and

WHEREAS, the Council has determined that the formation of the Company as a corporation chartered by the Nation as a wholly-owned subsidiary of SNFGC: (a) is in the best interests of the Nation and SNFGC; (b) is necessary or convenient to the conduct, promotion or attainment of the business of the Nation; (c) may reasonably be expected to benefit, directly or indirectly, the Nation; and (d) is necessary or appropriate to accomplish the purposes of the Nation, as expressed or implied in the Constitution.

Exhibit "M" Attached to Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED, that the Council, pursuant to its constitutional authority, does hereby authorize the formation of the Lewiston Golf Course Corporation, and approves the Charter attached hereto as Exhibit A to create, appoint and constitute the Lewiston Golf Course Corporation, all in accordance with the Constitution of the Nation;

RESOLVED FURTHER, that the Council hereby approves the form of bylaws for the Company attached hereto as Exhibit B;

RESOLVED FURTHER, that the Council, pursuant to its constitutional authority and the Charter of the Lewiston Golf Course Corporation, does hereby appoint the following initial Board members to the Board of Directors of the Lewiston Golf Course Corporation:

Term A Directors (to serve a term of one (1) year):

Gary Sanden
Steve Tome

Term B Directors (to serve terms of two (2) years):

Kevin Seneca
Michael L. John
N. Cochise Redeye

Term C Directors (to serve terms of three (3) years):

Barry E. Snyder, Sr.
Maurice A. John, Sr.
Maribel Printup

RESOLVED FURTHER, that the Boards of Directors of SNFGC and the Company are authorized and directed by Council to develop and implement legitimate tax strategies to minimize any tax obligations of the Company, including, but not limited to, maximizing the tax savings benefits offered by the Niagara County Industrial Development Agency (IDA) and utilizing net operating losses (NOLs), if any, incurred by the Company, to offset the Company's future profits; and

RESOLVED FURTHER, that the Boards of Directors of the Seneca Gaming Corporation, SNFGC and the Company are hereby authorized and directed to take all necessary and appropriate actions to fulfill the purpose and intent of the foregoing recitals and resolutions.

ALL IN FAVOR MOTION CARRIED

Exhibit "M" Attached to Exhibit "A".

CERTIFICATION

I hereby certify the foregoing extract is a true and correct copy from the minutes of the Special Session of Council of the Seneca Nation of Indians held on June 28, 2007, on the Cattaraugus Territory, original of which is on file in the Clerk's Office of the Seneca Nation of Indians.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal to be affixed at the William Seneca Building, on the Cattaraugus Territory, on the 3rd day of July 2007.

ATTEST:

{S E A L}

JACQUELINE BOWEN, CLERK
SENECA NATION OF INDIANS

Exhibit "N" Attached to Exhibit "A".

THE SENECA NATION OF INDIANS

12837 Rt. 438
Irving, New York 14081
Phone (716) 532-4900
Fax (716) 532-6272

P.O. Box 231
Salamanca, New York 14779
Phone (716) 945-1790
Fax (716) 945-1565

PRESIDENT ..... *Barry E. Snyder Sr. — 11080 Old Lakeshore Rd., Irving, NY 14081*
CLERK ..... *Lenith Waterman — 13973 Four Mile Level Rd., Gowanda, NY 14070*
TREASURER ..... *Jacqueline Bowen — P.O. Box 283, Salamanca, NY 14779*

CERTIFICATE OF EXISTENCE

OF THE

SENECA GAMING CORPORATION

I HEREBY CERTIFY that the records on file at the Seneca Nation of Indians show that the above named corporation was duly formed under the laws of the Seneca Nation of Indians, and that the above named corporation is wholly owned by the Seneca Nation of Indians.

I FURTHER CERTIFY that as of the date of this certificate, no filing has been made with the Seneca Nation of Indians for the consolidation, dissolution or liquidation of the corporation and that the corporation is duly authorized to transact business in the corporate form in the lands and jurisdiction of the Seneca Nation of Indians.

Dated: August 17, 2010

By: Lenith K. Waterman

Lenith K. Waterman
Clerk

Exhibit "O" Attached to Exhibit "A".

THE SENECA NATION OF INDIANS

12837 Rt. 438
Irving, New York 14081
Phone (716) 532-4900
Fax (716) 532-6272

P.O. Box 231
Salamanca, New York 14779
Phone (716) 945-1790
Fax (716) 945-1565

PRESIDENT ..... *Barry E. Snyder, Sr. — 11080 Old Lakeshore Rd., Irving, NY 14081*
CLERK ..... *Lenith Waterman — 13973 Four Mile Level Rd., Gowanda, NY 14070*
TREASURER ..... *Jacqueline Bowen — P.O. Box 283, Salamanca, NY 14779*

CERTIFICATE OF EXISTENCE

OF THE

SENECA NIAGARA FALLS GAMING CORPORATION

I HEREBY CERTIFY that the records on file at the Seneca Nation of Indians show that the above named corporation was duly formed under the laws of the Seneca Nation of Indians, and that the above named corporation is wholly owned by the Seneca Gaming Corporation.

I FURTHER CERTIFY that as of the date of this certificate, no filing has been made with the Seneca Nation of Indians for the consolidation, dissolution or liquidation of the corporation and that the corporation is duly authorized to transact business in the corporate form in the lands and jurisdiction of the Seneca Nation of Indians.

Dated: August 17, 2010

By: Lenith Waterman
Lenith Waterman
Clerk

Exhibit "P" Attached to Exhibit "A".

SENECA NATION OF INDIANS

CLERK OF THE SENECA NATION OF INDIANS

I, Lenith Waterman, Clerk of the Seneca Nation of Indians hereby issue this

CERTIFICATE OF EXISTENCE

OF

LEWISTON GOLF COURSE CORPORATION

I CERTIFY that the records on file at the Seneca Nation of Indians (listed in the *Federal Register* as the Seneca Nation of New York) show that the above-named corporation was duly formed under the laws of the Seneca Nation of Indians.

I FURTHER CERTIFY that as of the date of this certificate, no filing has been made with the Seneca Nation of Indians for the consolidation, dissolution or liquidation of the corporation and that the corporation is duly authorized to transact business in the corporate form in the lands and jurisdiction of the Seneca Nation of Indians.

I FURTHER CERTIFY that as of the date of this certificate, that the corporation has no obligation to pay any franchise taxes to the Seneca Nation of Indians and has filed all annual reports required of it by the Seneca Nation of Indians.

DATED: November 1, 2010.

SENECA NATION OF INDIANS

By: Lenith Waterman
Name: Lenith Waterman
Title: Clerk

Exhibit "Q" Attached to Exhibit "A".

SIXTH AMENDED AND RESTATED CHARTER

OF THE

SENECA GAMING CORPORATION

WHEREAS, Section I of the Constitution of the Seneca Nation of Indians of 1848, as amended, vests the Legislative Authority of the Seneca People in the Nation's Tribal Council; and

WHEREAS, it is declared the policy of the Nation to promote the welfare and prosperity of its members and to actively promote, attract, encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic stagnation; and

WHEREAS, the Gaming industry is vitally important to the economy of the Nation and the general welfare of its members; and

WHEREAS, the ability of the Nation to finance, develop, construct, operate, and maintain certain Nation Gaming Facilities will be enhanced by the creation of a separate entity for such purposes, and the Company created by this Charter will be able to perform these functions, and, accordingly, will be of benefit to the Nation and its members; and

WHEREAS, on August 1, 2002, the Nation's Council granted a Charter to create, appoint and constitute the SENECA GAMING CORPORATION, which Charter has been previously amended and restated; and

WHEREAS, the need now arises to amend and restate the Fifth Amended and Restated Charter of the SENECA GAMING CORPORATION.

NOW, THEREFORE, the Nation's Council, pursuant to its constitutional authority, does hereby grant this Sixth Amended and Restated Charter to re-create, re-appoint and re-constitute the SENECA GAMING CORPORATION.

1. **Creation of Seneca Gaming Corporation and Principal Place of Business**

By this Charter, the Nation creates the Seneca Gaming Corporation (the "Company"). The Company shall have its principal place of business at the William Seneca Administration Building, 1490 Route 438, Cattaraugus Reservation, Irving, New York 14081, or at such other location within the Nation's territories that the Board of Directors of the Company shall determine.

2. **Purpose**

The Company is organized for the purpose of developing, constructing, owning, leasing, operating, managing, maintaining, promoting and financing Nation Gaming Facilities and engaging in any other lawful activity, subject to any limitations imposed by any contract, indenture or other instrument by which the Company is bound. The Nation intends that the Company shall assume all obligations, responsibilities and duties of the Nation under gaming law existing at the date of enactment of this Charter, with the sole exception of the power of gaming regulation, gaming licensing and enforcement of applicable law, which powers are reserved to the Nation.

3. **Relation to Nation**

a. The Company shall constitute a governmental instrumentality of the Nation,

having autonomous existence separate and distinct from the Nation.

b. For purposes of civil jurisdiction, regulatory jurisdiction and taxation, the Company shall be deemed a subordinate arm of the Nation and shall be entitled to all of the privileges and immunities of the nation.

c. The Company shall have no power to exercise any regulatory or legislative power; the Nation reserves from the Company all regulatory, legislative and other governmental power, including, but not limited to the power to grant, issue, revoke, suspend or deny licenses, conduct background investigations, and enact legislation regulating Gaming on the territories of the Nation.

4. **Definitions**

For purposes of this Charter, when capitalized, the following terms shall have the meanings respectively specified---

a. "Board of Directors" shall mean the Board of Directors of the Company created by this Charter.

b. "Compact" shall mean the "Nation-State Gaming Compact Between The Seneca Nation of Indians And The State Of New York."

c. "Company" shall mean the Seneca Gaming Corporation, created by this Charter.

d. "Councillors" shall mean the duly elected Councillors of the Nation.

e. "Council" shall mean the legislative elected body of the Nation.

f. "Felony" shall mean only those offenses set forth under the Indian Major Crimes Act (18 U.S.C. § 1153).

g. "Gaming" shall mean to deal, operate, carry on, conduct, maintain or expose for

play any gaming as contemplated in the Seneca Nation of Indians Class III Gaming Ordinance of 2002 or the Indian Gaming Regulatory Act.

h. "Management Contract" shall mean any contract, subcontract or collateral agreement between the Company and a contractor or a contractor and a subcontractor if such contract or agreement provides for the management of all or a part of a Nation Gaming Facility.

i. "Nation" shall mean the Seneca Nation of Indians, a sovereign nation.

j. "Nation Entity" shall mean any entity created or owned by the Nation for economic or governmental purposes and any entity which is controlled by the Council. An entity shall be deemed controlled by the Council if a majority of persons serving on the body which governs the entity are chosen by or are required to be Councillors.

k. "Nation Gaming Facility" shall mean any existing and future establishment of the Nation (i) upon which Gaming takes place, (ii) which is authorized and licensed under applicable law, and (iii) which the Council designates for ownership, lease, development, construction, operation or management by the Company, including without limitation any Class III Gaming facilities established in accordance with the Compact.

l. "Obligations" shall mean any notes, bonds, interim certificates, debentures or other evidences of indebtedness issued by the Company under this Charter.

m. "Obligee" shall mean any holder of an Obligation, and any agent or trustee for any holder of any Obligation.

Exhibit "Q" Attached to Exhibit "A".

5. **Assets of Company**

The Company shall have only those assets of the Nation formally assigned or leased to it by the Council or by a Nation Entity, together with whatever assets it acquires by other means as provided in this Charter. No activity of the Company nor any indebtedness incurred by it shall encumber, implicate or in any way involve assets of the Nation or another Nation Entity not assigned or leased in writing to the Company.

6. **Perpetual Succession**

The Company shall have perpetual succession in its corporate name, provided, that the Council shall review the Company's operations at least every ten (10) years to assess whether the Company continues to serve the interests of the Nation and its people.

7. **Ability to Sue and Be Sued**

a. The Council hereby gives its consent to allowing the Company, by resolution duly adopted by the Board of Directors, to sue and to be sued in its corporate name, upon, or to submit to arbitration or alternative dispute resolution any controversy arising under, any contract, claim or obligation arising out of its activities under this Charter, provided, that such resolution shall be subject to the approval of Council. The Council also authorizes the Company, by resolution duly adopted by the Board of Directors, to agree by contract to waive its immunity from suit, provided that such waiver shall be subject to the approval of Council. Notwithstanding the foregoing, the Nation shall not be liable for the debts or obligations of the Company and the Company shall have no power to pledge or encumber the assets of the Nation. This action does not constitute a waiver of any immunity of the Nation or a delegation to the Company of the power to make

such a waiver. The Company's ability to sue and be sued and to waive its immunity from suit shall at all times remain with the Board of Directors to be granted by duly adopted resolution subject to the approval of Council.

b. The Company, by resolution duly adopted by the Board of Directors and approved by the Council, shall have the authority to consent (i) to the exercise of jurisdiction over any suit or over the Company by the courts of any state, the federal courts, the courts of the Nation or any other Indian Nation, or the courts of any United States territory or foreign jurisdiction, and (ii) to arbitration or alternative dispute resolution. Such authority shall at all times remain with the Board of Directors to be granted by duly adopted resolution subject to the approval of Council.

c. Except as expressly provided in this section, the Nation by the adoption of this Charter and the establishment of the Company is not waiving its sovereign immunity in any respect or consenting to the jurisdiction of any court. This section shall be strictly construed with a view toward protecting Nation assets from the reach of creditors and others.

8. Powers of Company

a. It is the purpose and intent of this Charter to authorize the Company to do any and all things necessary or desirable in connection with the financing, development, construction, ownership, lease, operation, management, maintenance, and promotion of Nation Gaming Facilities, or in connection with any other authorized activities conducted by the Company, and to secure the financing and

assistance necessary for such activities.

b. Each Nation Gaming Facility shall be operated by the Company as provided in this Charter.

c. Subject to the limitations set forth in this Charter and Nation law, the Board of Directors shall manage and have complete control over the conduct of Company affairs and shall have the full power to act for and bind the Company. Such authority shall be exercised pursuant to the bylaws of the Company and, where appropriate, by duly adopted resolution.

d. Subject to the limitations set forth in this Charter and Nation law, the Company, by and through the Board of Directors acting on behalf of the Company, shall have the following powers which it may exercise consistent with the purposes for which the Company was established:

   i. to develop, construct, own, lease, mortgage, operate, manage, promote and finance Nation Gaming Facilities, including expansions and enlargements thereof, including the power to enter into leases and leasehold mortgages, provided, that prior to engaging in any of the activities authorized by this subsection that require a significant expenditure of Company resources that the Company submit a comprehensive business plan to Council for its review and approval;

   ii. if the Board of Directors determines it to be in the best interests of the Company and the Nation, to terminate the operation of any Nation Gaming Facility and to dispose of, demolish or abandon any facilities relating thereto, subject to the approval of Council;

iii. to have a corporate seal, and alter the seal, and use it by causing it or a facsimile to be affixed, impressed or reproduced in any other manner;

iv. to adopt, amend or repeal bylaws, including emergency bylaws, relating to the business of the Company, the conduct of its affairs, its rights and powers and powers of its Board of Directors and officers, subject to the review and approval of Council as provided in this Charter;

v. to elect or appoint officers, employees or other agents of the Company, prescribe their duties and fix their compensation, and indemnify members, officers, employees and agents;

vi. to enter into, make, perform and carry out, cancel and rescind contracts, agreements and understandings for any lawful purpose pertaining to its business with any Nation, federal, state or local governmental agency or with any person, partnership, limited partnership, corporation, limited liability company, Indian Nation, Nation Entity, or other entity, provided, that any such contracts, agreements or understandings with any government or governmental agency or entity shall be subject to the approval of Council;

vii. to enter into, make, perform and carry out, cancel and rescind any Management Contract, subject to the approval of Council;

viii. to lease property from the Nation, a Nation Entity or others for such periods as are authorized by law, and to hold, mortgage, manage or sublease the same; provided, however, that nothing herein shall be construed to include, and the Company shall not have, any power to grant

Exhibit "Q" Attached to Exhibit "A".

or permit or purport to grant or permit any right, lien, encumbrance or interest in or on any real property within Nation territories unless pursuant to a lease, authorized and approved by the Council;

ix. to give guarantees and incur liabilities, provided that significant guarantees or liabilities shall be subject to the approval of Council;

x. to lend money to any subsidiary corporation subject to the approval of Council, invest and reinvest funds, and take and hold the Company's real and personal property as security for the payment of funds so loaned or invested;

xi. subject to the provisions of this Charter, to obtain financing and refinancing, to borrow money at rates of interest as the Company may determine, to issue temporary or long term indebtedness and to repay the same;

xii. subject to the provisions of this Charter, to mortgage or pledge assets and receipts of the Company as security for debts;

xiii. to agree to any conditions attached to federal, state or local financial assistance;

xiv. to purchase, receive, take by grant, devise, bequest or otherwise, lease or otherwise acquire, own, hold, improve, employ, use, and otherwise enjoy all powers necessary or appropriate to deal in and with, real and personal property, or an interest in real or personal property, wherever situated; provided, that purchases of real property and significant expenditures of personal property shall be subject to the approval of Council;

Exhibit "Q" Attached to Exhibit "A".

xv. subject to the provisions of this Charter, to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, or create a security interest in any of its property or an interest in its property, wherever situated; provided, however, that nothing herein shall be construed to include, and the Company shall not have, any power to grant or permit or purport to grant or permit any right, lien, encumbrance or interest in or on any real property within the Nation unless pursuant to a lease, authorized and approved by the Council;

xvi. to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer or otherwise dispose of, pledge, use and otherwise deal in and with, bonds and other obligations, shares or other securities or interests issued by others, whether engaged in similar or different business, governmental, or other activities, including banking corporations and trust companies, subject to the approval of Council;

xvii. to employ contractors, consultants, attorneys and accountants, provided that the Company shall not engage in any efforts to politically influence any Indian nation, federal, state, or local government or their officials;

xviii. to employ, discipline and discharge employees and establish personnel policies and terms and conditions of employment;

xix. to undertake and carry out studies and analyses of existing and potential Nation Gaming Facilities;

Exhibit "Q" Attached to Exhibit "A".

xx. to establish procedures for resolving disputes between the Gaming public and the Nation Gaming Facility or any management contractor, and to establish and implement any such procedures that may be required to be established and implemented with respect to operation of the Nation Gaming Facility in accordance with the Compact or applicable law;

xxi. to purchase insurance from any stock or mutual company for any property or against any risk or hazards;

xxii. to establish and maintain such bank accounts as may be necessary or convenient;

xxiii. to participate with others in any corporation, partnership, limited partnership, limited liability company, or other association of any kind, or in any transaction, undertaking, or agreement which the Company would have power to conduct by itself, subject to the approval of Council;

xxiv. subject to the provisions of this Charter, to allow the Company to sue and be sued in its corporate name, upon any contract, claim or obligation arising out of its activities under this Charter and to agree by contract to waive its immunity from suit;

xxv. subject to the provisions of this Charter, to consent to the exercise of jurisdiction over any suit or over the Company by the courts of any state, the federal courts, the courts of the Nation or any other Indian Nation, or the courts of any United States territory or foreign jurisdiction, or to arbitration or alternative dispute resolution;

xxvi. to utilize, with the consent of the President of the Nation, the agents, employees and facilities of the Nation for in-kind services, paying the Nation mutually agreed upon share of the costs for said in-kind services;

xxvii. to act as, and to exercise all rights and perform all obligations of, the "Nation Gaming Operation" as such entity is defined in the Compact;

xxviii. to take such further specific actions as the Board of Directors may deem necessary to effectuate any or all of the purposes for which the Company is organized;

xxix. to enjoy the sovereign immunity of the Nation, to the same extent as the Nation, provided that the actions of the Company or any of its officials, employees, or duly authorized agents are authorized by the provisions of this Charter; and

xxx. upon the direction of the Council, to exercise any or all of the foregoing powers through the control, operation and management of any subsidiary company or other entity created by or under authority of the Nation for the purpose of developing, financing, operating and conducting the business of any one or more Nation Gaming Facility; provided, however, that any such subsidiary company or other entity shall be operated and managed in accordance with and in fulfillment of the purposes set forth in this Charter and any charter or other enabling authority governing such subsidiary company or other entity.

9. Management of the Company

a. There is hereby established a Board of Directors of the Company, the purpose of

which is to carry out the duties and powers of the Company as set forth in this Charter.

b. There shall be no less than four (4) nor more than seven (7) members of the Board, not less than five (5) of whom shall be enrolled Senecas. No elected official of the Nation may serve on the Board, nor any Company employee or any person with an economic interest in any of the Company's activities. Board members shall constitute "public officials" for purposes of the Nation Ethics Law.

c. The Council shall appoint Board members. The Clerk of the Nation shall give public notice of Board vacancies on or before February 1 of each year. The Clerk shall receive candidate applications and certify to the Council that all candidate qualifications set forth in subsection 9(b) have been met and that each candidate has certified that the candidate meets each of the additional criteria set forth in subsections 9(d)(i) and (d)(ii). Upon certification, the Clerk shall notify the Councillors and coordinate with the Council Administrator an interview for each eligible candidate at least seven (7) days prior to his or her scheduled appointment. Vacancies shall be filled by Council appointment following at least thirty (30) days public notice of said vacancy, unless in the event of an emergency. An appointment of a Board member shall take effect from the date and time at which the Council adopts the resolution authorizing such appointment.

d. Any Board candidate shall be eligible to serve as a member of the Board only if the following additional criteria are satisfied:

(i) is at least 21 years old,

(ii) has earned a high school diploma or equivalent,

(iii) has not been convicted of a felony,

(iv) has been certified by the Seneca Gaming Authority as having met the substantive standards necessary to obtain a license from the Authority if such candidate were a "Class III Gaming Key Employee," as that term is used in the Nation's Class III Gaming Ordinance.

The Council shall appoint at least one (1) board member who shall (i) possess a Master of Business Administration or Juris Doctorate degree, or (ii) be a Certified Public Accountant, or (iii) have at least ten (10) years experience as a senior manager or board member of a publicly held gaming corporation.

e. Board members shall serve for a term of three (3) years and until his or her successor has been appointed or until his or her earlier death, resignation, or removal. Director terms commence and expire as of the date of the annual meeting of a given year.

f. Board members have a fiduciary duty to the Company, including duties of care, loyalty and obedience. In simple terms this means that they are required to act reasonably, prudently and in the best interests of the Company, to avoid negligence or fraud, and to avoid conflicts of interest. In the event that the duties of care, loyalty and/or obedience are breached, the person breaching the duty is potentially liable to the Company for any damages caused as a result of the breach.

1. The duty of care is very broad, requiring officers and directors to exercise ordinary and reasonable care in the performance of their duties, exhibiting honesty and good faith. Officers and directors must act in a manner

which they believe to be in the best interests of the Company, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

2. The duty of loyalty encompasses a duty to avoid conflicts of interests and to provide undivided allegiance to the Company's mission. A conflict may exist when an officer or director participates in the deliberation and resolution of an issue important to the Company while the individual, at the same time, has other professional, business or volunteer responsibilities outside of the Company that could predispose or bias the individual one way or another regarding the issue. In these situations, it is typically not enough for the individual to be aware of the conflict and to attempt to act in the Company's best interests despite the conflict. Rather, for many conflicts, full disclosure to the Board and refraining from participation in the Board's deliberation and resolution of the issue (i.e., recusal) are required to remedy the conflict. For serious, visible, and continuing or pervasive conflicts, withdrawal from the officer or directorship, or from the outside conflicting responsibility, may be required. It is important to be sensitive to and avoid apparent conflicts of interest as well as actual ones.

3. The duty of obedience requires officers and directors to act in accordance with the Company's Charter, bylaws and other governing documents, as well as applicable laws and regulations.

4. Unless an officer or director has knowledge that makes reliance unwarranted, an officer or director, in performing his or her duties to the Company, may rely on (written or oral) information, opinions, reports or

statements, including financial statements and other financial data, if prepared or presented by: (i) one or more officers or employees of the Company whom the officer or director believes in good faith to be reliable and competent in the matters presented; (ii) legal counsel, public accountants, or other persons as to matters which the officer or director believes in good faith to be within the person's professional or expert competence; or (iii) in the case of reliance by directors, a committee of the board on which the director does not serve if the director believes in good faith that the committee merits confidence.

5. Directors cannot remain willfully ignorant of the affairs of the Company. A director chosen as treasurer, for example, with limited knowledge of finance cannot simply rely on the representations and reports of staff or auditors that "all is well."

g. The Council, upon the recommendation of a majority of the Board, may remove a Board member for cause. The Council, upon its own initiative, may remove a Board member for cause upon the affirmative vote of at least ten (10) Councillors.

10. Operation of Company

a. The Company shall conduct business pursuant to bylaws consistent with this Charter and adopted by the Board of Directors, subject to the approval of Council.

b. The Company may have such officers and committees as the bylaws may provide.

c. The Board of Directors shall meet as often as necessary to conduct its business, but no less frequently than monthly. An agenda for every meeting shall be prepared by the Board Chairman and posted publicly at least three (3) days prior

to the next scheduled meeting, unless in the event of an emergency. All meetings shall be held at either the Allegany or Cattaraugus Territory. Four (4) members of the Board of Directors shall be necessary to constitute a quorum for the transaction of business. An action taken or approved by at least four (4) of the Board members present at a meeting at which a quorum is present shall be necessary to constitute an official act of the Company. The Board of Directors shall keep complete and accurate records of all meetings and actions taken.

d. The Board of Directors shall keep full and accurate financial records, make periodic reports to the Council and submit a complete annual report, in written form, to the Council as required by the provisions of this Charter.

e. The Board of Directors shall hold a meeting open to the Seneca public on the fourth Saturday of January, April, July, and October every year at which the Board shall provide information on the health and well-being of the Company.

f. The members of the Board of Directors may receive a stipend for their services as provided in the bylaws, and shall be reimbursed for actual expenses incurred in the discharge of their duties, including necessary travel expenses. In no event shall compensation be based on the profitability of Gaming operations.

11. Obligations

a. The Company may obtain financing and issue Obligations from time to time subject to the approval of Council for any of its purposes and may also refinance and issue refunding obligations for the purpose of paying or retiring Obligations as it may determine, including Obligations on which the principal and interest are

payable:

i. exclusively from the income and revenues of the Nation Gaming Facility financed with the proceeds of such Obligations, or with such income and revenues together with a grant or subsidy from the federal, state or Nation government in aid of such establishment or development;

ii. exclusively from the income and revenues of certain designated Nation Gaming Facilities whether or not they were financed in whole or in part with the proceeds of such Obligations; or

iii. from its revenues generally.

b. Neither the members of the Board of Directors nor any person executing the Obligations shall be liable personally on the Obligations by reason of issuance thereof.

c. The Obligations of the Company shall not be a debt of the Nation and the Obligations shall explicitly so state on their face.

d. Obligations of the Company may be in negotiable form.

e. In connection with the issuance of Obligations and to secure the payment of such Obligations, the Company, subject to the limitations in this Charter and the requirements of the Compact, may;

i. pledge all or any part of the gross fees or revenues of the Company to which its rights then exist or may thereafter come into existence;

ii. provide for the powers and duties of Obligees and limit their liabilities; and provide the terms and conditions on which such Obligees may enforce any covenant or rights securing or relating to the Obligations;

Exhibit "Q" Attached to Exhibit "A".

iii. covenant against pledging all or any part of the fees and revenues of the Company or against mortgaging any or all of the real or personal property of the Company to which its title or right then exists or may thereafter come into existence or permitting or suffering any lien on such revenues or property;

iv. covenant with respect to limitations on the right of the Company to sell, lease or otherwise dispose of any Nation Gaming Facility or any part thereof;

v. covenant as to what other or additional debts or obligations may be incurred by it;

vi. covenant as to the Obligations to be issued and as to the issuance of such Obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof;

vii. provide for the replacement of lost, destroyed or mutilated Obligations;

viii. covenant against extending time for the payment of its Obligations or interest thereon;

ix. redeem the Obligations and covenant for their redemption and provide for the terms and conditions thereof;

x. covenant concerning any fees to be charged in the operation of a Nation Gaming Facility, the amount to be raised each year or other period of time by such fees and other revenues, and as to the use and disposition to be made thereof;

Exhibit "Q" Attached to Exhibit "A".

xi. create or authorize the creation of special funds for monies held for construction, development or operating costs, debt service, reserve or other purposes, and covenant as to the use and disposition of the monies held in such funds;

xii. prescribe the procedure, if any, by which the terms of any contract with holders of Obligations may be amended or abrogated, the proportion of outstanding Obligations the holders of which must consent thereto, and the manner in which such consent may be given;

xiii. covenant as to the use, maintenance and replacement of the real and personal property of the Company, the insurance to be carried thereon and the use and disposition of insurance proceeds;

xiv. covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation;

xv. covenant and prescribe as to events of default and terms and conditions upon which any or all of its Obligations become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;

xvi. vest in any Obligees or any proportion of them the right to enforce the payment of Obligations or any covenant securing or relating to the Obligations;

xvii. exercise all or a part or a combination of the powers granted in this section;

xviii. make covenants other than and in addition to the covenants expressly authorized in this section, of like or different character;

xix. make any covenants and do any acts and things necessary or convenient or desirable in order to secure its Obligations, or, in the absolute discretion of the Company, tending to make the Obligations more marketable although the covenants, acts or things are not enumerated in this section;

xx. pledge, mortgage or grant a security interest in all or any part of the assets of the Company; and

xxi. waive, conditionally, or unconditionally, the sovereign immunity of the Company;

provided, however, that nothing herein shall be construed to include, and the Company shall not have, any power to waive any of the privileges or immunities of the Nation, to borrow or lend money on behalf of the Nation, or to grant or permit or purport to grant or permit any right, lien, encumbrance or interest in or on any of the assets of the Nation.

12. Reports to the Council

a. The Board of Directors shall prepare and submit to the Council within thirty (30) days after the close of each quarter a quarterly report, signed by the Board Chairperson and the Chairperson of the Board Finance Committee, showing:

i. a summary of the quarter's activities;

ii. the financial condition of the Company and of each Nation Gaming Facility;

iii. any significant problems and accomplishments;

iv. plans for the following quarter; and

v. such other information as the Board of Directors or the Council deems pertinent.

b. The Board of Directors shall prepare and submit to the Council within sixty (60) days after the close of each fiscal year an annual report, signed by the Board Chairperson and the Chairperson of the Board Finance Committee, showing;

i. a summary of the fiscal year's activities;

ii. the complete financial condition of the Company and of each Nation Gaming Facility including a detailed report outlining the operations of the Company and of each Nation Gaming Facility;

iii. any significant problems and accomplishments;

iv. plans for the following fiscal year; and

v. such other information as the Board of Directors or the Council deems pertinent.

13. Finances and Accounting

a. The fiscal year of the Company shall be the fiscal year of the Nation.

b. The Board of Directors shall establish and install an accounting system (i) in conformity with accounting principles generally accepted in the Gaming industry, and (ii) necessary and advisable, in the reasonable discretion of the Board of Directors, in order to manage the assets of the Company and the Gaming assets of the Nation. Such accounting system shall insure the availability of information as

may be necessary to comply with the Compact, and with applicable Nation and federal regulatory requirements.

c. The accounts and records of the Company shall be audited at the close of each fiscal year in accordance with the provisions of the Indian Gaming Regulatory Act and the regulations of the National Indian Gaming Commission and, to the extent applicable, the Compact. Copies of such audit reports shall be furnished to the Council.

d. In its capacity as the "Nation Gaming Operation" for any Nation Gaming Facility, the Company shall establish a "System of Internal Controls" for purposes of, and as defined in, the Compact.

e. The books, records and property of the Company shall be available for inspection at all reasonable times by authorized representatives of the Nation.

14. Indemnification

a. The Company shall (i) indemnify, save and hold harmless the Nation and its agents and employees from any and all claims arising out of its activities, (ii) defend at its own cost and expense any action or proceeding commenced for the purpose of asserting any claim arising out of its activities, and (iii) reimburse any expense which may be incurred by the Nation to defend any such claim until the Company assumes such defense; provided, however, that the Nation shall have the right, but not the obligation, to participate, at the Company's expense, in any settlement, compromise or litigation thereof through counsel of its own choice and shall have the right to direct and control the negotiations, settlement and

litigation if the same shall have a direct effect upon the Nation.

b. The Company shall indemnify, save and hold harmless the Board members and officers of the Company, or any person acting at their official direction, if any one of them is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a Company Board member or officer, or person acting at their official direction, against expenses (including attorneys' fees), judgments, fines and amounts paid in connection with such action, suit or proceeding, if such person had no reasonable cause to believe that his or her conduct was unlawful or otherwise improper; provided, however, that no indemnification shall be made for which such person shall have been adjudged to be liable for willful misconduct or a violation of the criminal law in the performance of such person's duty to the Company, unless, and then only to the extent that, the court in which such action or suit is brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expense as such court shall deem proper.

15. Bond

The Board of Directors, on behalf of and in the name of the Company, shall obtain or provide for the obtaining of adequate fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

Exhibit "Q" Attached to Exhibit "A".

16. Judgment Proof Property

All property including funds acquired or held by the Company pursuant to this Charter shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the Company be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of lenders or Obligees to pursue any remedies for the enforcement of any pledge or lien given by the Company on its fees or revenues, nor to any explicit waiver of immunity specifically subjecting Company property to levy, execution or judicial process which is contained in a contract and approved by resolution of the Board of Directors as provided in this Charter.

17. Dissolution or Liquidation

a. In the event of the dissolution or final liquidation of the Company, none of the property of the Company nor any proceeds thereof shall be distributed to or divided among any of the directors or officers of the Company or inure to the benefit of any individual.

b. After all liabilities and obligations of the Company have been paid, satisfied and discharged, or adequate provision made therefor, all remaining property and assets of the Company shall be distributed to the Nation or, at the Nation's direction, to one or more organizations designated pursuant to a plan of distribution.

18. Amendment

This Charter may be amended within the first sixty (60) days if its adoption by a majority vote of the Council; provided, however, that thereafter no provision of this Charter may be amended unless the Council shall have twice approved such amendment by twelve (12) votes of the Councillors at two (2) separate sessions of the Council convened no less than one (1) week apart.

19. Severability

If any provision of this Charter is held invalid, the remainder of the provisions of this Charter shall not be affected.

20. Effective Date

This Charter shall be effective on April 23, 2009.

Exhibit "R" Attached to Exhibit "A".

FOURTH AMENDED AND RESTATED CHARTER

OF THE

SENECA NIAGARA FALLS GAMING CORPORATION

WHEREAS, Section I of the Constitution of the Seneca Nation of Indians of 1848, as amended, vests the Legislative Authority of the Seneca People in the Nation's Tribal Council; and

WHEREAS, it is declared the policy of the Nation to promote the welfare and prosperity of its members and to actively promote, attract, encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic stagnation; and

WHEREAS, the Gaming industry is vitally important to the economy of the Nation and the general welfare of its members; and

WHEREAS, the Nation by charter has created the Seneca Gaming Corporation for purposes of developing, financing, operating and conducting the business of Nation Gaming Facilities, as more fully set forth in such charter; and

WHEREAS, the charter of the Seneca Gaming Corporation grants to the Seneca Gaming Corporation the power, upon the direction of the Council and in a manner consistent with the purposes of such charter, to exercise any or all of its powers through the control, operation and management of a subsidiary company or other entity created by or under authority of the Nation for the purpose of developing, financing, operating and conducting the business of any one or more Nation Gaming Facility; and

WHEREAS, the Nation desires to establish a separate legal entity for purposes of developing, financing, operating and conducting the business of the Nation Gaming Facility to be

established on Nation territory within the exterior boundaries of Niagara County pursuant to the terms of the Nation-State Gaming Compact between the Nation and the State of New York, and further desires that such legal entity to be subject to the control, operation and management of the Seneca Gaming Corporation; and

WHEREAS, the need now arises to amend and restate the Third Amended and Restated Charter of the SENECA NIAGARA FALLS GAMING CORPORATION.

NOW, THEREFORE, the Nation's Council, pursuant to its constitutional authority, does hereby grant this Fourth Amended and Restated Charter to re-create, re-appoint and re-constitute the SENECA NIAGARA FALLS GAMING CORPORATION.

1. **Creation of Seneca Niagara Falls Gaming Corporation and Principal Place of Business**

   By this Charter, the Nation creates the Seneca Niagara Falls Gaming Corporation (the "Company"). The Company shall have its principal place of business at the William Seneca Administration Building, 1490 Route 438, Cattaraugus Reservation, Irving, New York 14081, or at such other location within the Nation's territories that the Board of Directors of the Company shall determine.

2. **Purpose**

   The Company is organized for the purpose of developing, constructing, owning, leasing, operating, managing, maintaining, promoting and financing a Nation Gaming Facility on Nation territory within the exterior boundaries of Niagara County pursuant to the terms of the Compact, and engaging in any other lawful activity, subject to any limitations

imposed by any contract, indenture or other instrument by which the Company is bound. The Nation intends that the Company shall assume all obligations, responsibilities and duties, and exercise all powers, of the Seneca Gaming Corporation to the extent applicable to the Niagara Falls Gaming Facility, subject to the control of the Seneca Gaming Corporation.

3. **Relation to Nation**

a. The Company shall constitute a governmental instrumentality of the Nation, having autonomous existence separate and distinct from the Nation.

b. For purposes of taxation, civil jurisdiction and regulatory jurisdiction, the Company shall be deemed a subordinate arm of the Nation and shall be entitled to all of the privileges and immunities of the nation.

c. The Company shall have no power to exercise any regulatory or legislative power; the Nation reserves from the Company all regulatory, legislative and other governmental power, including, but not limited to the power to grant, issue, revoke, suspend or deny licenses, conduct background investigations, and enact legislation regulating Gaming on the territories of the Nation.

4. **Definitions**

For purposes of this Charter, when capitalized, the following terms shall have the meanings respectively specified---

a. "Board of Directors" shall mean the Board of Directors of the Company created by this Charter.

b. "Compact" shall mean the "Nation-State Gaming Compact Between The Seneca Nation of Indians And The State Of New York."

c. "Company" shall mean the Seneca Niagara Falls Gaming Corporation, created by this Charter.

d. "Councillors" shall mean the duly elected Councillors of the Nation.

e. "Council" shall mean the legislative elected body of the Nation.

f. "Felony" shall mean only those offenses set forth under the Indian Major Crimes Act (18 U.S.C. § 1153).

g. "Gaming" shall mean to deal, operate, carry on, conduct, maintain or expose for play any gaming as contemplated in the Seneca Nation of Indians Class III Gaming Ordinance of 2002 or the Indian Gaming Regulatory Act.

h. "Management Contract" shall mean any contract, subcontract or collateral agreement between the Company and a contractor or a contractor and a subcontractor if such contract or agreement provides for the management of all or a part of a Nation Gaming Facility.

i. "Nation" shall mean the Seneca Nation of Indians, a sovereign nation.

j. "Nation Entity" shall mean any entity created or owned by the Nation for economic or governmental purposes and any entity which is controlled by the Council. An entity shall be deemed controlled by the Council if a majority of persons serving on the body which governs the entity are chosen by or are required to be Councillors.

k. "Nation Gaming Facility" shall mean any existing and future establishment of the Nation (i) upon which Gaming takes place, (ii) which is authorized and licensed under applicable law, and (iii) which the Council designates for ownership, lease,

development, construction, operation or management by the Company, including without limitation any Class III Gaming facilities established in accordance with the Compact.

l. "Nation Gaming Operation" shall have the meaning ascribed to such term in the Compact.

m. "Niagara Falls Gaming Facility" shall mean any Nation Gaming Facility established on Nation territory within the exterior boundaries of Niagara County pursuant and subject to the terms of the Compact.

n. "Seneca Gaming Corporation" or "SGC" shall mean the corporation chartered by the Nation on August 1, 2002, for the purpose of developing, constructing, owning, leasing, operating, managing, maintaining, promoting and financing Nation Gaming Facilities.

o. "SGC Board" shall mean the Board of Directors of the Seneca Gaming Corporation.

p. "Obligations" shall mean any notes, bonds, interim certificates, debentures or other evidences of indebtedness issued by the Company under this Charter.

q. "Obligee" shall mean any holder of an Obligation, and any agent or trustee for any holder of any Obligation.

5. **Assets of Company**

The Company shall have only those assets of the Nation formally assigned or leased to it by the Council or by a Nation Entity, together with whatever assets it acquires by other

means as provided in this Charter. No activity of the Company nor any indebtedness incurred by it shall encumber, implicate or in any way involve assets of the Nation or another Nation Entity not assigned or leased in writing to the Company.

6. **Perpetual Succession**

The Company shall have perpetual succession in its corporate name, provided, that the Council shall review the Company's operations at least every ten (10) years to assess whether the Company continues to serve the interests of the Nation and its people.

7. **Ability to Sue and Be Sued**

a. The Council hereby gives its consent to allowing the Company, by resolution duly adopted by the Board of Directors, to sue and to be sued in its corporate name, upon, or to submit to arbitration or alternative dispute resolution any controversy arising under, any contract, claim or obligation arising out of its activities under this Charter, provided, that such resolution shall be subject to Council approval. The Council also authorizes the Company, by resolution duly adopted by the Board of Directors, to agree by contract to waive its immunity from suit, provided, that such waiver shall be subject to the approval of Council. Notwithstanding the foregoing, the Nation shall not be liable for the debts or obligations of the Company, and the Company shall have no power to pledge or encumber the assets of the Nation. This action does not constitute a waiver of any immunity of the Nation or a delegation to the Company of the power to make such a waiver. The Company's ability to sue and be sued and to

waive its immunity from suit shall at all times remain with the Board of Directors to be granted by duly adopted resolution subject to the approval of Council.

b. The Company, by resolution duly adopted by the Board of Directors and approved by Council, shall have the authority to consent (i) to the exercise of jurisdiction over any suit or over the Company by the courts of any state, the federal courts, the courts of the Nation or any other Indian Nation, or the courts of any United States territory or foreign jurisdiction, and (ii) to arbitration or alternative dispute resolution. Such authority shall at all times remain with the Board of Directors to be granted by duly adopted resolution subject to the approval of Council.

c. Except as expressly provided in this section, the Nation by the adoption of this Charter and the establishment of the Company is not waiving its sovereign immunity in any respect or consenting to the jurisdiction of any court. This section shall be strictly construed with a view toward protecting Nation assets from the reach of creditors and others.

8. **Powers of Company**

a. It is the purpose and intent of this Charter to authorize the Company to do any and all things necessary or desirable in connection with the financing, development, construction, ownership, lease, operation, management, maintenance, and promotion of the Niagara Falls Gaming Facility, or in connection with any other authorized activities conducted by the Company, and to secure the financing and assistance necessary for such activities.

b. The Niagara Falls Gaming Facility shall be operated by the Company as provided in this Charter.

c. Subject to the limitations set forth in this Charter and Nation law, the Board of Directors shall manage and have complete control over the conduct of Company affairs and shall have the full power to act for and bind the Company. Such authority shall be exercised pursuant to the bylaws of the Company and, where appropriate, by duly adopted resolution.

d. Subject to the limitations set forth in this Charter and Nation law, the Company, by and through the Board of Directors acting on behalf of the Company, shall have the following powers which it may exercise consistent with the purposes for which the Company was established:

   i. to develop, construct, own, lease, mortgage, operate, manage, promote and finance the Niagara Falls Gaming Facility, including expansions and enlargements thereof, including the power to enter into leases and leasehold mortgages, provided, that prior to engaging in any of the activities authorized by this subsection that require a significant expenditure of Company resources that the Company submit a comprehensive business plan to Council for its review and approval;

   ii. if the Board of Directors determines it to be in the best interests of the Company and the Nation, to terminate the operation of the Niagara Falls Gaming Facility and to dispose of, demolish or abandon any facilities relating thereto, subject to the approval of Council;

iii. to have a corporate seal, and alter the seal, and use it by causing it or a facsimile to be affixed, impressed or reproduced in any other manner;

iv. to adopt, amend or repeal bylaws, including emergency bylaws, relating to the business of the Company, the conduct of its affairs, its rights and powers and powers of its Board of Directors and officers, subject to the review and approval of Council;

v. to elect or appoint officers, employees or other agents of the Company, prescribe their duties and fix their compensation, and indemnify members, officers, employees and agents;

vi. to enter into, make, perform and carry out, cancel and rescind contracts, agreements and understandings for any lawful purpose pertaining to its business with any Nation, federal, state or local governmental agency or with any person, partnership, limited partnership, corporation, limited liability company, Indian Nation, Nation Entity, or other entity, provided, that any such contracts, agreements or understandings with any government or governmental agency or entity shall be subject to approval of Council;

vii. to enter into, make, perform and carry out, cancel and rescind any Management Contract, subject to the approval of Council;

viii. to lease property from the Nation, a Nation Entity or others for such periods as are authorized by law, and to hold, mortgage, manage or sublease the same; provided, however, that nothing herein shall be construed to include, and the Company shall not have, any power to grant or permit or purport to grant or permit any right, lien, encumbrance or interest in or on any real

property within Nation territories unless pursuant to a lease, authorized and approved by the Council;

ix. to give guarantees and incur liabilities, provided, that significant guarantees or liabilities shall be subject to the approval of Council;

x. to lend money to any subsidiary or parent corporation subject to the approval of Council, invest and reinvest funds, and take and hold the Company's real and personal property as security for the payment of funds so loaned or invested;

xi. subject to the provisions of this Charter, to obtain financing and refinancing, to borrow money at rates of interest as the Company may determine, to issue temporary or long term indebtedness and to repay the same;

xii. subject to the provisions of this Charter, to mortgage or pledge assets and receipts of the Company as security for debts;

xiii. to agree to any conditions attached to federal, state or local financial assistance;

xiv. to purchase, receive, take by grant, devise, bequest or otherwise, lease or otherwise acquire, own, hold, improve, employ, use, and otherwise enjoy all powers necessary or appropriate to deal in and with, real and personal property, or an interest in real or personal property, wherever situated, provided, that purchases of real property and significant expenditures of personal property shall be subject to the approval of Council;

xv. subject to the provisions of this Charter, to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, or create a security

interest in any of its property or an interest in its property, wherever situated; provided, however, that nothing herein shall be construed to include, and the Company shall not have, any power to grant or permit or purport to grant or permit any right, lien, encumbrance or interest in or on any real property within the Nation unless pursuant to a lease, authorized and approved by the Council;

xvi. to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer or otherwise dispose of, pledge, use and otherwise deal in and with, bonds and other obligations, shares or other securities or interests issued by others, whether engaged in similar or different business, governmental, or other activities, including banking corporations and trust companies, subject to the approval of Council;

xvii. to employ contractors, consultants, attorneys and accountants, provided, that the Company shall not engage in any efforts to politically influence any Indian nation, federal, state, or local government of their officials;

xviii. to employ, discipline and discharge employees and establish personnel policies and terms and conditions of employment;

xix. to undertake and carry out studies and analyses of the Niagara Falls Gaming Facility;

xx. to establish procedures for resolving disputes between the Gaming public and the Niagara Falls Gaming Facility or any management contractor, and to establish and implement any such procedures that may be required to be

established and implemented with respect to operation of the Niagara Falls Gaming Facility in accordance with the Compact or applicable law;

xxi. to purchase insurance from any stock or mutual company for any property or against any risk or hazards;

xxii. to establish and maintain such bank accounts as may be necessary or convenient;

xxiii. to participate with others in any corporation, partnership, limited partnership, limited liability company, or other association of any kind, or in any transaction, undertaking, or agreement which the Company would have power to conduct by itself, subject to the approval of Council;

xxiv. subject to the provisions of this Charter, to allow the Company to sue and be sued in its corporate name, upon any contract, claim or obligation arising out of its activities under this Charter and to agree by contract to waive its immunity from suit;

xxv. subject to the provisions of this Charter, to consent to the exercise of jurisdiction over any suit or over the Company by the courts of any state, the federal courts, the courts of the Nation or any other Indian Nation, or the courts of any United States territory or foreign jurisdiction, or to arbitration or alternative dispute resolution;

xxvi. to utilize, with the consent of the President of the Nation, the agents, employees and facilities of the Nation for in-kind services, paying the Nation mutually agreed upon share of the costs for said in-kind services;

xxvii. soley with respect to the Niagara Falls Gaming Facility, to act as, and to exercise all rights and perform all obligations of, the Nation Gaming Operation;

xxviii. to take such further specific actions as the Board of Directors may deem necessary to effectuate any or all of the purposes for which the Company is organized; and

xxix. to enjoy the sovereign immunity of the Nation, to the same extent as the Nation, provided that the actions of the Company or any of its officials, employees, or duly authorized agents are authorized by the provisions of this Charter.

9. Management of the Company

a. There is hereby established a Board of Directors of the Company, the purpose of which is to carry out the duties and powers of the Company as set forth in this Charter.

b. The Board of Directors of the Company shall be comprised solely of the members of the board of directors of the Seneca Gaming Corporation.

10. Operation of Company

a. The Company shall conduct business pursuant to bylaws consistent with this Charter and adopted by the Board of Directors, subject to the approval of Council.

b. The Company may have such officers and committees as the bylaws may provide.

c. In its capacity as the Nation Gaming Operation for the Niagara Falls Gaming Facility, the Company shall establish such departments and employ such personnel, and otherwise shall operate, as required under the Compact.

d. The Board of Directors shall meet as often as necessary to conduct its business, but no less frequently than monthly. All meetings shall be held at either the Allegany or Cattaraugus Territory. Four (4)members of the Board of Directors shall be necessary to constitute a quorum for the transaction of business. An action taken or approved by at least four (4) of the Board members present at a meeting at which a quorum is present shall be necessary to constitute an official act of the Company. The Board of Directors shall keep complete and accurate records of all meetings and actions taken.

e. The Board of Directors shall keep full and accurate financial records, make periodic reports to the SGC Board and submit a complete annual report, in written form, to the SGC Board as required by the provisions of this Charter.

f. The members of the Board of Directors may receive a stipend for their services as provided in the bylaws, and shall be reimbursed for actual expenses incurred in the discharge of their duties, including necessary travel expenses. In no event shall compensation be based on the profitability of Gaming operations.

11. Obligations

a. The Company may obtain financing and issue Obligations from time to time subject to the approval of Council for any of its purposes and may also refinance and issue refunding obligations for the purpose of paying or retiring Obligations as it may determine, including Obligations on which the principal and interest are payable:

i. exclusively from the income and revenues of the Niagara Falls Gaming Facility financed with the proceeds of such Obligations, or with such income and revenues together with a grant or subsidy from the federal, state or Nation government in aid of such establishment or development; or

ii. from its revenues generally.

b. Neither the members of the Board of Directors nor any person executing the Obligations shall be liable personally on the Obligations by reason of issuance thereof.

c. The Obligations of the Company shall not be a debt of the Nation or of the Seneca Gaming Corporation or any other Nation-chartered Gaming corporation, and the Obligations shall explicitly so state on their face.

d. Obligations of the Company may be in negotiable form.

e. In connection with the issuance of Obligations and to secure the payment of such Obligations, the Company, subject to the limitations in this Charter and the requirements of the Compact, may;

i. pledge all or any part of the gross fees or revenues of the Company to which its rights then exist or may thereafter come into existence;

ii. provide for the powers and duties of Obligees and limit their liabilities; and provide the terms and conditions on which such Obligees may enforce any covenant or rights securing or relating to the Obligations;

iii. covenant against pledging all or any part of the fees and revenues of the Company or against mortgaging any or all of the real or personal property of the Company to which its title or right then exists or may thereafter come

into existence or permitting or suffering any lien on such revenues or property;

iv. covenant with respect to limitations on the right of the Company to sell, lease or otherwise dispose of the Niagara Falls Gaming Facility or any part thereof;

v. covenant as to what other or additional debts or obligations may be incurred by it;

vi. covenant as to the Obligations to be issued and as to the issuance of such Obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof;

vii. provide for the replacement of lost, destroyed or mutilated Obligations;

viii. covenant against extending time for the payment of its Obligations or interest thereon;

ix. redeem the Obligations and covenant for their redemption and provide for the terms and conditions thereof;

x. covenant concerning any fees to be charged in the operation of the Niagara Falls Gaming Facility, the amount to be raised each year or other period of time by such fees and other revenues, and as to the use and disposition to be made thereof;

xi. create or authorize the creation of special funds for monies held for construction, development or operating costs, debt service, reserve or other purposes, and covenant as to the use and disposition of the monies held in such funds;

Exhibit "R" Attached to Exhibit "A".

xii. prescribe the procedure, if any, by which the terms of any contract with holders of Obligations may be amended or abrogated, the proportion of outstanding Obligations the holders of which must consent thereto, and the manner in which such consent may be given;

xiii. covenant as to the use, maintenance and replacement of the real and personal property of the Company, the insurance to be carried thereon and the use and disposition of insurance proceeds;

xiv. covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation;

xv. covenant and prescribe as to events of default and terms and conditions upon which any or all of its Obligations become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;

xvi. vest in any Obligees or any proportion of them the right to enforce the payment of Obligations or any covenant securing or relating to the Obligations;

xvii. exercise all or a part or a combination of the powers granted in this section;

xviii. make covenants other than and in addition to the covenants expressly authorized in this section, of like or different character;

xix. make any covenants and do any acts and things necessary or convenient or desirable in order to secure its Obligations, or, in the absolute discretion of the Company, tending to make the Obligations more marketable although the covenants, acts or things are not enumerated in this section;

xx. pledge, mortgage or grant a security interest in all or any part of the assets of the Company; and

xxi. waive, conditionally, or unconditionally, the sovereign immunity of the Company;

provided, however, that nothing herein shall be construed to include, and the Company shall not have, any power to waive any of the privileges or immunities of the Nation, to borrow or lend money on behalf of the Nation, or to grant or permit or purport to grant or permit any right, lien, encumbrance or interest in or on any of the assets of the Nation.

12. **Reports to the SGC Board**

a. The Board of Directors shall prepare and submit to the SGC Board within thirty (30) days after the close of each quarter a quarterly report, signed by the Board Chairperson and the Chairperson of the Board Finance Committee, showing:

i. a summary of the quarter's activities;

ii. the financial condition of the Company and of the Niagara Falls Gaming Facility;

iii. any significant problems and accomplishments;

iv. plans for the following quarter; and

v. such other information as the Board of Directors or the SGC Board deems pertinent.

b. The Board of Directors shall prepare and submit to the SGC Board within sixty (60) days after the close of each fiscal year an annual report, signed by the Board Chairperson and the Chairperson of the Board Finance Committee, showing;

i. a summary of the fiscal year's activities;

ii. the complete financial condition of the Company and of the Niagara Falls Gaming Facility including a detailed report outlining the operations of the Company and of the Niagara Falls Gaming Facility;

iii. any significant problems and accomplishments;

iv. plans for the following fiscal year; and

v. such other information as the Board of Directors or the SGC Board deems pertinent.

13. **Finances and Accounting**

a. The fiscal year of the Company shall be the fiscal year of the Nation.

b. The Board of Directors shall establish and install an accounting system (i) in conformity with accounting principles generally accepted in the Gaming industry, and (ii) necessary and advisable, in the reasonable discretion of the Board of Directors, in order to manage the assets of the Company and the Gaming assets of the Nation. Such accounting system shall insure the availability of information as may be necessary to comply with the Compact, and with applicable Nation and federal regulatory requirements.

c. The accounts and records of the Company shall be audited at the close of each fiscal year in accordance with the provisions of the Indian Gaming Regulatory Act and the regulations of the National Indian Gaming Commission and, to the extent applicable, the Compact. Copies of such audit reports shall be furnished to the Council.

d. In its capacity as the Nation Gaming Operation for the Niagara Falls Gaming Facility, the Company shall establish a "System of Internal Controls" for purposes of, and as defined in, the Compact.

e. The books, records and property of the Company shall be available for inspection at all reasonable times by authorized representatives of the Nation.

14. Indemnification

a. The Company shall (i) indemnify, save and hold harmless the Nation and its agents and employees from any and all claims arising out of its activities, (ii) defend at its own cost and expense any action or proceeding commenced for the purpose of asserting any claim arising out of its activities, and (iii) reimburse any expense which may be incurred by the Nation to defend any such claim until the Company assumes such defense; provided, however, that the Nation shall have the right, but not the obligation, to participate, at the Company's expense, in any settlement, compromise or litigation thereof through counsel of its own choice and shall have the right to direct and control the negotiations, settlement and litigation if the same shall have a direct effect upon the Nation.

b. The Company shall indemnify, save and hold harmless the Board members and officers of the Company and of the SGC, or any person acting at their official direction, if any one of them is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a member of the SGC Board or the Company Board, or officer, or person acting at

their official direction, against expenses (including attorneys' fees), judgments, fines and amounts paid in connection with such action, suit or proceeding, if such person had no reasonable cause to believe that his or her conduct was unlawful or otherwise improper; provided, however, that no indemnification shall be made for which such person shall have been adjudged to be liable for willful misconduct or a violation of the criminal law in the performance of such person's duty to the Company, unless, and then only to the extent that, the court in which such action or suit is brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expense as such court shall deem proper.

15. Bond

The Board of Directors, on behalf of and in the name of the Company, shall obtain or provide for the obtaining of adequate fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

16. Judgment Proof Property

All property including funds acquired or held by the Company pursuant to this Charter shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the Company be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of lenders or Obligees to pursue any remedies for the enforcement of any pledge or lien given by the Company on its fees or revenues, nor to

any explicit waiver of immunity specifically subjecting Company property to levy, execution or judicial process which is contained in a contract and approved by resolution of the Board of Directors as provided in this Charter.

17. Dissolution or Liquidation

a. In the event of the dissolution or final liquidation of the Company, none of the property of the Company nor any proceeds thereof shall be distributed to or divided among any of the directors or officers of the Company or inure to the benefit of any individual.

b. After all liabilities and obligations of the Company have been paid, satisfied and discharged, or adequate provision made therefor, all remaining property and assets of the Company shall be distributed to the Nation or, at the Nation's direction, to one or more organizations designated pursuant to a plan of distribution.

18. Amendment

This Charter may be amended within the first sixty (60) days if its adoption by a majority vote of the Council; provided, however, that thereafter no provision of this Charter may be amended unless the Council shall have twice approved such amendment by twelve (12) votes of the Councillors at two (2) separate sessions of the Council convened no less than one (1) week apart.

19. Severability

If any provision of this Charter is held invalid, the remainder of the provisions of this Charter shall not be affected.

20. **Effective Date**

This Fourth Amended and Restated Charter shall be effective on April 23, 2009.

Exhibit "S" Attached to Exhibit "A".

AMENDED AND RESTATED CHARTER

OF THE

LEWISTON GOLF COURSE CORPORATION

WHEREAS, Section I of the Constitution of the Seneca Nation of Indians of 1848, as amended, vests the Legislative Authority of the Seneca People in the Nation's Council; and

WHEREAS, it is declared the policy of the Nation to promote the welfare and prosperity of its members and to actively promote, attract, encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic stagnation; and

WHEREAS, the economic success of the Nation's gaming operations is vitally important to the economy of the Nation and the general welfare of its members; and

WHEREAS, the Nation has found it to be in the best interests of the Nation and its gaming operations to develop and operate a golf course located in the Town of Lewiston, New York, including related clubhouse, retail and food and beverage operations (the "Lewiston Golf Course"); and

WHEREAS, the Nation by charter has created the Seneca Niagara Falls Gaming Corporation ("SNFGC") for purposes of developing, financing, operating and conducting the Nation's gaming operations on its Niagara Falls Territory at the Niagara Falls Gaming Facility (as defined in the SNFGC charter);

WHEREAS, the Nation desires to establish a separate legal entity, as a subsidiary of SNFGC, for the purposes of developing, financing, operating and conducting the business of the Lewiston Golf Course to be established in the Town of Lewiston, New York, as an amenity to Nation gaming facilities, including the Niagara Falls Gaming Facility, and further desires that such legal entity be subject to the ownership, control, operation and management of SNFGC, consistent with this Charter and the Charter of SNFGC; and

WHEREAS, the need now arises to amend and restate the Charter of the LEWISTON GOLF COURSE CORPORATION.

NOW, THEREFORE, the Nation's Council, pursuant to its constitutional authority, does hereby grant this Amended and Restated Charter to re-create, re-appoint and re-constitute the LEWISTON GOLF COURSE CORPORATION.

Exhibit "S" Attached to Exhibit "A".

1. **Creation of Lewiston Golf Course Corporation and Principal Place of Business**

By this Charter, the Seneca Nation of Indians creates the Lewiston Golf Course Corporation (the "Company"), a wholly-owned subsidiary corporation of the Seneca Niagara Falls Gaming Corporation ("SNFGC"). The Company shall have its principal place of business at the William Seneca Administration Building, 12837 Route 438, Cattaraugus Territory, Irving, New York 14081, or at such other location within the Nation's territories that the Board of Directors of the Company shall determine.

2. **Purpose**

The Company is organized for the purpose of developing, constructing, owning, leasing, operating, managing, maintaining promoting and financing the Lewiston Golf Course on land (currently owned by SNFGC as of the date of this Charter) in the Town of Lewiston, New York, and engaging in any other lawful activity, subject to any limitations imposed by any contract, indenture or other instrument by which the Company is bound.

3. **Relation to Nation**

a. The Company shall be indirectly owned by the Nation through the Seneca Gaming Corporation and its wholly-owned subsidiary, SNFGC, and shall constitute a governmental instrumentality of the Nation, having autonomous existence separate and distinct from the Nation

b. For purposes of taxation, civil jurisdiction and regulatory jurisdiction, the Company shall be deemed a subordinate arm of the Nation and shall be entitled to all of the privileges and immunities of the Nation.

c. The Company shall have no power to exercise any regulatory or legislative power; the Nation reserves from the Company all regulatory, legislative and other governmental power, including, but not limited to the power to grant, issue, revoke, suspend or deny licenses, conduct background investigations, and enact legislation regulating Gaming on the territories of the Nation.

4. **Definitions**

For purposes of this Charter, when capitalized, the following terms shall have the meanings respectively specified---

a. "Board of Directors" shall mean the Board of Directors of the Company created by this Charter.

b. "Company" shall mean the Lewiston Golf Course Corporation, created by this Charter.

c. "Councillors" shall mean the duly elected Councillors of the Nation.

d. "Council" shall mean the legislative elected body of the Nation.

e. "Felony" shall mean only those offenses set forth under the Indian Major Crimes Act (18 U.S.C. § 1153).

f. "Lewistown Golf Course" shall mean the golf course planned for development and operation in the Town of Lewiston, New York, including related clubhouse, retail and food and beverage operations.

g. "Management Contract" shall mean any contract, subcontract or collateral agreement between the Company and a contractor or a contractor and a subcontractor if such contract or agreement provides for the management of all or part of the Lewiston Golf Course.

h. "Nation" shall mean the Seneca Nation of Indians, a sovereign nation.

i. "Nation Entity" shall mean any entity created or owned by the Nation for economic or governmental purposes and any entity which is controlled by the Council. An entity shall be deemed controlled by the Council if a majority of persons serving on the body which governs the entity are chosen by or are required to be Councillors.

j. "Seneca Gaming Corporation" or "SGC" shall mean the corporation chartered by the Nation on August 1, 2002, for the purpose of developing, constructing, owning, leasing, operating, managing, maintaining, promoting and financing Nation Gaming Facilities (as defined in the SGC Charter).

k. "SNFGC Board" shall mean the Board of Directors of the Seneca Niagara Falls Gaming Corporation.

l. "Obligations" shall mean any notes, bonds, interim certificates, debentures or other evidences of indebtedness issued by the Company under this Charter.

m. "Obligee" shall mean any holder of an Obligation, and any agent or trustee for any holder of any Obligation.

5. **Assets of Company**

The Company shall have only those assets of the Nation formally assigned or leased to it by the Council or by a Nation Entity, including SNFGC as the owner of the Company, together with whatever assets it acquires by other means as provided in this Charter. No activity of the Company nor any indebtedness

incurred by it shall encumber, implicate or in any way involve assets of the Nation or another Nation Entity not assigned or leased in writing to the Company.

6. **Perpetual Succession**

The Company shall have perpetual succession in its corporate name, provided, that the Council shall review the Company's operations at least every ten (10) years to assess whether the Company continues to serve the interests of the Nation and its people.

7. **Ability to Sue and Be Sued**

a. The Council hereby gives its consent to allowing the Company, by resolution duly adopted by the Board of Directors, to sue and to be sued in its corporate name, upon, or to submit to arbitration or alternative dispute resolution any controversy arising under, any contract, claim or obligation arising out of its activities under this Charter, provided, that such resolution shall be subject to Council approval. The Council also authorizes the Company, by resolution duly adopted by the Board of Directors, to agree by contract to waive its immunity from suit, provided, that such waiver shall be subject to the approval of Council. Notwithstanding the foregoing, the Nation shall not be liable for the debts or obligations of the Company, and the Company shall have no power to pledge or encumber the assets of the Nation. This action does not constitute a waiver of any immunity of the Nation or a delegation to the Company of the power to make such a waiver. The Company's ability to sue and be sued and to waive its immunity from suit shall at all times remain with the Board of Directors to be granted by duly adopted resolution subject to the approval of Council.

b. The Company, by resolution duly adopted by the Board of Directors and approved by Council, shall have the authority to consent (i) to the exercise of jurisdiction over any suit or over the Company by the courts of any state, the federal courts, the courts of the Nation or any other Indian Nation, or the courts of any United States territory or foreign jurisdiction, and (ii) to arbitration or alternative dispute resolution. Such authority shall at all times remain with the Board of Directors to be granted by duly adopted resolution subject to the approval of Council.

c. Except as expressly provided in this section, the Nation by the adoption of this Charter and the establishment of the Company is not waiving its sovereign immunity in any respect or consenting to

the jurisdiction of any court. This section shall be strictly construed with a view toward protecting Nation assets from the reach of creditors and others.

8. Powers of Company

a. It is the purpose and intent of this Charter to authorize the Company to do any and all things necessary or desirable in connection with the financing, development, construction, ownership, lease, operation, management, maintenance, and promotion of the Lewiston Golf Course, or in connection with any other authorized activities conducted by the Company, and to secure the financing and assistance necessary for such activities.

b. The Lewiston Golf Course shall be operated by the Company as provided in this Charter.

c. Subject to the limitations set forth in this Charter and Nation law, the Board of Directors shall manage and have complete control over the conduct of Company affairs and shall have the full power to act for and bind the Company. Such authority shall be exercised pursuant to the bylaws of the Company and, where appropriate, by duly adopted resolution.

d. Subject to the limitations set forth in this Charter and Nation law, the Company, by and through the Board of Directors acting on behalf of the Company, shall have the following powers which it may exercise consistent with the purposes for which the Company was established:

i. to develop, construct, own, lease, mortgage, operate, manage, promote and finance the Lewiston Golf Course, including expansions and enlargements thereof, including the power to enter into leases and leasehold mortgages, provided, that prior to engaging in any of the activities authorized by this subsection that require a significant expenditure of Company resources that the Company submit a comprehensive business plan to Council for its review and approval;

ii. if the Board of Directors determines it to be in the best interests of the Company and the Nation, to terminate the operation of the Lewiston Golf Course and to dispose of, demolish or abandon any facilities relating thereto, subject to the approval of Council;

iii. to have a corporate seal, and alter the seal, and use it by causing it or a facsimile to be affixed, impressed or reproduced in any other manner;

Exhibit "S" Attached to Exhibit "A".

iv. to adopt, amend or repeal bylaws, including emergency bylaws, relating to the business of the Company, the conduct of its affairs, its rights and powers and powers of its Board of Directors and officers, subject to the review and approval of Council;

v. to elect or appoint officers, employees or other agents of the Company, prescribe their duties and fix their compensation, and indemnify members, officers, employees and agents;

vi. to enter into, make, perform and carry out, cancel and rescind contracts, agreements and understandings for any lawful purpose pertaining to its business with any Nation, federal, state or local governmental agency or with any person, partnership, limited partnership, corporation, limited liability company, Indian Nation, Nation Entity, or other entity, provided, that any such contracts, agreements or understandings with any government or governmental agency or entity shall be subject to approval of Council;

vii. to lease property from the Nation, a Nation Entity or others for such periods as are authorized by law, and to hold, mortgage, manage or sublease the same; provided, however, that nothing herein shall be construed to include, and the Company shall not have, any power to grant or permit or purport to grant or permit any right, lien, encumbrance or interest in or on any real property within Nation territories unless pursuant to a lease, authorized and approved by the Council;

viii. to give guarantees and incur liabilities, provided, that significant guarantees or liabilities shall be subject to the approval of Council;

ix. to lend money to any subsidiary or parent corporation subject to the approval of Council, invest and reinvest funds, and take and hold the Company's real and personal property as security for the payment of funds so loaned or invested;

x. subject to the provisions of this Charter, to obtain financing and refinancing, to borrow money at rates of interest as the Company may determine, to issue temporary or long term indebtedness and to repay the same;

xi. subject to the provisions of this Charter, to mortgage or pledge assets and receipts of the Company as security for debts;

xii. to agree to any conditions attached to federal, state or local financial assistance;

Exhibit "S" Attached to Exhibit "A".

xiii. to purchase, receive, take by grant, devise, bequest or otherwise, lease or otherwise acquire, own, hold, improve, employ, use, and otherwise enjoy all powers necessary or appropriate to deal in and with, real and personal property, or an interest in real or personal property, wherever situated, provided, that purchases of real property and significant expenditures of personal property shall be subject to the approval of Council;

xiv. subject to the provisions of this Charter, to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, or create a security interest in any of its property or an interest in its property, wherever situated; provided, however, that nothing herein shall be construed to include, and the Company shall not have, any power to grant or permit or purport to grant or permit any right, lien, encumbrance or interest in or on any real property within the Nation unless pursuant to a lease, authorized and approved by the Council;

xv. to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer or otherwise dispose of, pledge, use and otherwise deal in and with, bonds and other obligations, shares or other securities or interests issued by others, whether engaged in similar or different business, governmental, or other activities, including banking corporations and trust companies, subject to the approval of Council;

xvi. to employ contractors, consultants, attorneys and accountants, provided, that the Company shall not engage in any efforts to politically influence any Indian nation, federal, state, or local government of their officials;

xvii. to employ, discipline and discharge employees and establish personnel policies and terms and conditions of employment;

xviii. to undertake and carry out studies and analyses of the Lewiston Golf Course;

xix. to establish procedures for resolving disputes between the public and the Lewiston Golf Course or any management contractor, and to establish and implement any such procedures that may be required to be established and implemented with respect to operation of the Lewiston Golf Course in accordance with applicable law;

xx. to purchase insurance from any stock or mutual company for any property or against any risk or hazards;

xxi. to establish and maintain such bank accounts as may be necessary or convenient;

xxii. to participate with others in any corporation, partnership, limited partnership, limited liability company, or other association of any kind, or in any transaction, undertaking, or agreement which the Company would have power to conduct by itself, subject to the approval of Council;

xxiii. subject to the provisions of this Charter, to allow the Company to sue and be sued in its corporate name, upon any contract, claim or obligation arising out of its activities under this Charter and to agree by contract to waive its immunity from suit;

xxiv. subject to the provisions of this Charter, to consent to the exercise of jurisdiction over any suit or over the Company by the courts of any state, the federal courts, the courts of the Nation or any other Indian Nation, or the courts of any United States territory or foreign jurisdiction, or to arbitration or alternative dispute resolution;

xxv. to utilize, with the consent of the President of the Nation, the agents, employees and facilities of the Nation for in-kind services, paying the Nation mutually agreed upon share of the costs for said in-kind services;

xxvi. to declare and pay distributions in the form of cash or otherwise to SNFGC, as the Company's immediate owner;

xxvii. to enter into, make, perform and carry out, cancel and rescind any Management Contract, subject to the approval of Council;

xxviii. to take such further specific actions as the Board of Directors may deem necessary to effectuate any or all of the purposes for which the Company is organized; and

xxix. to enjoy the sovereign immunity of the Nation, to the same extent as the Nation, provided that the actions of the Company or any of its officials, employees, or duly authorized agents are authorized by the provisions of this Charter.

9. **Management of the Company**

a. There is hereby established a Board of Directors of the Company, the purpose of which is to carry out the duties and powers of the Company as set forth in this Charter.

b. The Board of Directors of the Company shall be comprised solely of the members of the board of directors of the Seneca Gaming Corporation.

10. Operation of Company

a. The Company shall conduct business pursuant to bylaws consistent with this Charter and adopted by the Board of Directors, subject to the approval of Council.

b. The Company may have such officers and committees as the bylaws may provide.

c. The Board of Directors shall meet as often as necessary to conduct its business, but no less frequently than monthly. All meetings shall be held at either the Allegany or Cattaraugus Territory. Five (5) members of the Board of Directors shall be necessary to constitute a quorum for the transaction of business. An action taken or approved by at least five (5) of the Board members present at a meeting at which a quorum is present shall be necessary to constitute an official act of the Company. The Board of Directors shall keep complete and accurate records of all meetings and actions taken.

d. The Board of Directors shall keep full and accurate financial records, make periodic reports to the SNFGC Board and submit a complete annual report, in written form, to the SNFGC Board as required by the provisions of this Charter. Copies of such reports shall be provided to the Nation's Council.

The members of the Board of Directors may receive a stipend for their services as provided in the bylaws, and shall be reimbursed for actual expenses incurred in the discharge of their duties, including necessary travel expenses. In no event shall compensation be based on the profitability of the operations of the Lewiston Golf Course.

11. Obligations

a. The Company may obtain financing and issue Obligations from time to time subject to the approval of Council for any of its purposes and may also refinance and issue refunding obligations for the purpose of paying or retiring Obligations as it may determine, including Obligations on which the principal and interest are payable:

i. exclusively from the income and revenues of the Lewiston Golf Course financed with the proceeds of such Obligations, or with such income and revenues together with a grant or

subsidy from the federal, state or Nation government in aid of such establishment or development; or

ii. from its revenues generally.

b. Neither the members of the Board of Directors nor any person executing the Obligations shall be liable personally on the Obligations by reason of issuance thereof.

c. The Obligations of the Company shall not be a debt of the Nation or of the Seneca Gaming Corporation or any other Nation-chartered Gaming corporation, and the Obligations shall explicitly so state on their face.

d. Obligations of the Company may be in negotiable form.

e. In connection with the issuance of Obligations and to secure the payment of such Obligations, the Company, subject to the limitations in this Charter and the requirements of the Compact, may;

i. pledge all or any part of the gross fees or revenues of the Company to which its rights then exist or may thereafter come into existence;

ii. provide for the powers and duties of Obligees and limit their liabilities; and provide the terms and conditions on which such Obligees may enforce any covenant or rights securing or relating to the Obligations;

iii. covenant against pledging all or any part of the fees and revenues of the Company or against mortgaging any or all of the real or personal property of the Company to which its title or right then exists or may thereafter come into existence or permitting or suffering any lien on such revenues or property;

iv. covenant with respect to limitations on the right of the Company to sell, lease orotherwise dispose of the Lewiston Golf Course or any part thereof;

v. covenant as to what other or additional debts or obligations may be incurred by it;

vi. covenant as to the Obligations to be issued and as to the issuance of such Obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof;

vii. provide for the replacement of lost, destroyed or mutilated Obligations;

viii. covenant against extending time for the payment of its Obligations or interest thereon;

Exhibit "S" Attached to Exhibit "A".

ix. redeem the Obligations and covenant for their redemption and provide for the terms and conditions thereof;

x. covenant concerning any fees to be charged in the operation of the Lewiston Golf Course, the amount to be raised each year or other period of time by such fees and other revenues, and as to the use and disposition to be made thereof;

xi. create or authorize the creation of special funds for monies held for construction, development or operating costs, debt service, reserve or other purposes, and covenant as to the use and disposition of the monies held in such funds;

xii. prescribe the procedure, if any, by which the terms of any contract with holders of Obligations may be amended or abrogated, the proportion of outstanding Obligations the holders of which must consent thereto, and the manner in which such consent may be given;

xiii. covenant as to the use, maintenance and replacement of the real and personal property of the Company, the insurance to be carried thereon and the use and disposition of insurance proceeds;

xiv. covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation;

xv. covenant and prescribe as to events of default and terms and conditions upon which any or all of its Obligations become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;

xvi. vest in any Obligees or any proportion of them the right to enforce the payment of Obligations or any covenant securing or relating to the Obligations;

xvii. exercise all or a part or a combination of the powers granted in this section;

xviii. make covenants other than and in addition to the covenants expressly authorized in this section, of like or different character;

xix. make any covenants and do any acts and things necessary or convenient or desirable in order to secure its Obligations, or, in the absolute discretion of the Company, tending to make the Obligations more marketable although the covenants, acts or things are not enumerated in this section;

xx. pledge, mortgage or grant a security interest in all or any part of the assets of the Company; and

xxi. waive, conditionally, or unconditionally, the sovereign immunity of the Company;

provided, however, that nothing herein shall be construed to include, and the Company shall not have, any power to waive any of the privileges or immunities of the Nation, to borrow or lend money on behalf of the Nation, or to grant or permit or purport to grant or permit any right, lien, encumbrance or interest in or on any of the assets of the Nation.

12. **Reports to the SNFGC Board**

a. The Board of Directors shall prepare and submit to the SNFGC Board within thirty (30) days after the close of each quarter a quarterly report, signed by the Board Chairperson and the Chairperson of the Board Finance Committee, showing:

i. a summary of the quarter's activities;

ii. the financial condition of the Company and of the Lewiston Golf Course;

iii. any significant problems and accomplishments;

iv. plans for the following quarter; and

v. such other information as the Board of Directors or the SNFGC Board deems pertinent.

b. The Board of Directors shall prepare and submit to the SNFGC Board within sixty (60) days after the close of each fiscal year an annual report, signed by the Board Chairperson and the Chairperson of the Board Finance Committee, showing;

i. a summary of the fiscal year's activities;

ii. the complete financial condition of the Company and of the Lewiston Golf Course including a detailed report outlining the operations of the Company and of the Lewiston Golf Course;

iii. any significant problems and accomplishments;

iv. plans for the following fiscal year; and

v. such other information as the Board of Directors or the SNFGC Board deems pertinent.

13. **Finances and Accounting**

a. The fiscal year of the Company shall be the fiscal year of the Nation.

b. The Board of Directors shall establish and install an accounting system (i) in conformity with generally accepted accounting principles industry, and (ii) necessary and advisable, in the reasonable discretion of the Board of Directors, in order to manage the assets of the Company.

c. The accounts and records of the Company shall be audited at the close of each fiscal year and a copy of the audit report shall be furnished to the SNFGC Board and the Nation's Executives and Councillors within 60 days of completion.

d. The books, records and property of the Company shall be available for inspection at all reasonable times by authorized representatives of the Nation.

14. **Indemnification**

a. The Company shall (i) indemnify, save and hold harmless the Nation and its agents and employees from any and all claims arising out of its activities, (ii) defend at its own cost and expense any action or proceeding commenced for the purpose of asserting any claim arising out of its activities, and (iii) reimburse any expense which may be incurred by the Nation to defend any such claim until the Company assumes such defense; provided, however, that the Nation shall have the right, but not the obligation, to participate, at the Company's expense, in any settlement, compromise or litigation thereof through counsel of its own choice and shall have the right to direct and control the negotiations, settlement and litigation if the same shall have a direct effect upon the Nation.

b. The Company shall indemnify, save and hold harmless the Board members and officers of the Company, or any person acting at their official direction, if any one of them is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a member of the Company Board, or officer, or person acting at their official direction, against expenses (including attorneys' fees), judgments, fines and amounts paid in connection with such action, suit or proceeding, if such person had no reasonable cause to believe that his or her conduct was unlawful or otherwise improper; provided, however, that no indemnification shall be made for which such person shall have been adjudged to be liable for willful misconduct or a violation of the criminal law in the performance of such person's duty to the Company, unless, and then only to the extent that, the court in which such action or suit is brought shall determine upon application that, despite the adjudication of liability but

in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expense as such court shall deem proper.

15. **Bond**

The Board of Directors, on behalf of and in the name of the Company, shall obtain or provide for the obtaining of adequate fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

16. **Judgment Proof Property**

All property including funds acquired or held by the Company pursuant to this Charter shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the Company be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of lenders or Obligees to pursue any remedies for the enforcement of any pledge or lien given by the Company on its fees or revenues, nor to any explicit waiver of immunity specifically subjecting Company property to levy, execution or judicial process which is contained in a contract and approved by resolution of the Board of Directors as provided in this Charter.

17. **Dissolution or Liquidation**

a. In the event of the dissolution or final liquidation of the Company, none of the property of the Company nor any proceeds thereof shall be distributed to or divided among any of the directors or officers of the Company or inure to the benefit of any individual.

b. After all liabilities and obligations of the Company have been paid, satisfied and discharged, or adequate provision made therefor, all remaining property and assets of the Company shall be distributed to SNFGC or, at the Nation's direction, to one or more organizations designated pursuant to a plan of distribution, provided that, as a matter of the laws of the Nation, should any liquidation proceeds be received by the Nation from the Company, such liquidation proceeds shall be held in trust for the benefit of SNFGC and shall not be subject to the creditors of the Nation.

18. **Amendment**

This Charter may be amended within the first sixty (60) days after its adoption by a majority vote of the Council; provided, however, that thereafter no provision of this Charter may be amended unless the Council shall have twice approved such amendment by twelve (12) votes of the Councillors at two (2)

separate sessions of the Council convened no less than one (1) week apart.

19. **Severability**

If any provision of this Charter is held invalid, the remainder of the provisions of this Charter shall not be affected.

20. **Effective Date**

This Amended and Restated Charter shall be effective on April 23, 2009.

Exhibit "T" Attached to Exhibit "A".

SENECA NATION OF INDIANS

ETHICS LAW

As amended: September 27, 2007
March 31, 2009

Exhibit "T" Attached to Exhibit "A".

ETHICS LAW

ARTICLE I. GENERALLY

Section 1.1. Purpose.

Public officials are expected to conduct the official business of the Nation with pride and dignity. They must exercise wisdom and sound judgment at all times in order to avoid abuse of office, power and people.

This law is intended to eliminate the possibility that Nation public officials may engage in dishonest, immoral and disrespectful conduct in the course of their public duties. Defining appropriate standards and setting forth an effective enforcement mechanism is critical to maintaining the highest standards of ethical and moral conduct. This will ensure that public officials do not reflect adversely on the Nation and its members or otherwise undermine public confidence in the Nation government.

Accordingly, this law is enacted to set forth (i) the standards of ethical conduct required of all individuals in the public sector of the Seneca Nation of Indians, and (ii) the mechanism to enforce such standards of conduct.

Section 1.2. Definitions.

For purposes of this law, the term

(a) "Ambassadorial function" shall mean the participation of a Nation public official at an occasion sponsored by a Nation gaming enterprise in which the visible presence and support of a Nation public official is necessary to promote the success of the enterprise and the identity of the enterprise as being Nation-owned;

(b) "Business" includes any profit or non-profit enterprise, organization, trade, occupation or profession, including any business, trust, holding company, corporation, partnership, joint venture, sole proprietorship, consultant or other self-employed enterprise;

(c) "Clerk" shall mean the Clerk of the Nation established under Section VI of the Constitution;

(d) "Board" shall mean the Ethics Board, as defined in Article III of this law

(e) "Confidential information" shall mean information which by law or custom is not available to the general public;

(f) "Constitution" shall mean the Constitution of the Nation of 1848, as amended;

Exhibit "T" Attached to Exhibit "A".

(g) "Council" shall mean the Legislative branch of the Nation established under Section I of the Constitution;

(h) "Executives" shall mean the President, Treasurer, and Clerk collectively;

(i) "Family" shall mean only (i) husband/wife (including common law relationships), (ii) child/grandchild, (iii) mother/father, (iv) brother/sister, (v) aunt/uncle, (vi) first cousin, (vii) niece/nephew, (viii) grandparent, (ix) mother-/father-in-law, or (x) brother-/sister-in-law;

(j) "Gaming enterprise" shall mean the Class III gaming facilities operated by the Seneca Gaming Corporation and its subsidiaries and the Class II gaming operations of Seneca Gaming and Entertainment;

(k) "Gift" includes any gratuity, special discount, favor, hospitality, payment, loan, subscription, economic opportunity, advance, deposit of money, services, or other benefit received without equivalent consideration and not extended or provided to members of the public at large;

(l) "Interest" shall mean a pecuniary or material benefit accruing to an individual, or where the context requires, the Nation;

(m) "Member" shall mean an individual who is an enrolled member of the Seneca Nation;

(n) "Nation" shall mean the Seneca Nation of Indians, a sovereign nation;

(o) "Person" shall mean either a member or any other individual, also, "People";

(p) "President" shall mean the President of the Seneca Nation established under Section III of the Constitution;

(q) "Public Official" shall mean any person (i) elected to Nation office or (ii) appointed to a Nation office, committee, board, commission or task force, including public benefit corporations by the Council, the President, the Treasurer or the Clerk or; (iii) Employees of the Nation and employees of public benefit corporations established by Nation law.

Section 1.3. Separability.

If any provision of this law or its application to any person or circumstances is held invalid, the remainder of the provisions of this law or the application of the provision to other persons or circumstances shall not be affected.

Section 1.4. Codification.

Exhibit "T" Attached to Exhibit "A".

The provisions of this law may be codified so as to facilitate accessibility.

Section 1.5. Effective Date.

The effective date of this law shall be October 11, 1997.

ARTICLE II. CODE OF ETHICS

Section 2.1. Accountability.

Each committee of the Nation government and each public benefit corporation created by Nation law is responsible for preparing written minutes for each meeting of the committee or corporation. The minutes shall summarize the activity at the meeting and list the names of the persons participating. All minutes shall be filed in the Clerks' office and made available to Nation members.

Section 2.2. Conflicts of Interests.

(a) A public official shall not:

(i) have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in conflict with proper discharge of his/her duties in the interest of the Nation; or

(ii) participate in his/her official capacity in any matter in which his/her family or business associates have an interest.

(b) A public official and his/her family may receive benefits from the Nation on the same basis as other Nation members, provided, that the public official does not interfere with or use their authority to influence the delivery of such benefits or give preferential treatment.

(c) Except as set forth in this law, public officials are free to engage in lawful economic transactions and employment to the same extent as Members generally.

(d) No public official shall, except in the discharge of their official duties, represent any party before any court, governmental forum or proceeding in a matter in which the Nation is a party or has an interest.

Section 2.3 Appearance of Impropriety

(a) A public official shall avoid any action which may result in or create the appearance of:

(i) using Nation office to satisfy a personal interest;

(ii) giving preferential treatment to any person or group;

(iii) impeding governmental efficiency or administration;

(iv) losing complete independence or impartiality;

(v) binding the Nation to a course of conduct in the absence of official authority;

(vi) adversely affecting confidence in the integrity of the Nation;

(b) A public official may not receive any salary or anything of monetary value from any private source:

(i) in payment for their services to the Nation; or

(ii) that is reasonably intended to influence the performance of his/her official duties.

Section 2.4 Use of Confidential Information

A public official shall not use or disclose confidential information gained in the course of, or by reason of, his/her official position or use such information to further a personal or economic interest.

Section 2.5. Unauthorized Compensation or Benefits.

A public official shall not accept or receive any benefit, income, favor or other form of compensation for performing the official duties of his/her office if such duties were not actually performed, or for which the official is not otherwise properly entitled to receive.

Section 2.6. Unauthorized Use of Nation Property, Funds or Staff

(a) A public official shall not use any Nation property or funds for other than authorized and approved official purposes. Such persons shall protect and conserve all property and funds which are so entrusted, assigned or issued to them.

(b) A public official shall not:

(i) employ with Nation funds any unauthorized individuals who do not perform duties commensurate with such compensation; or

(ii) utilize employees or independent contractors for other than the official purposes for which they are employed or otherwise retained.

Exhibit "T" Attached to Exhibit "A".

Section 2.7 Solicitations and Gifts

(a) A public official shall not solicit or accept any gift in excess of seventy-five dollars ($ 75.00) in value from any person, group or organization who:

(i) is seeking to obtain or maintain contractual or other business or financial relationships with the Nation; or

(ii) has interests that may be substantially affected by the performance or non-performance of the public official's duty.

(b) A public official may:

(i) If in the course of diplomatic relations with other Indian Nations or Tribes, receive gifts not exceeding two hundred dollars ($ 200.00) in value, provided, that such gifts shall be reported and gifts in excess of such value be given to the Nation;

(ii) Receive nonpecuniary gifts or awards within the acceptable traditions and customs of the Nation, provided, that any gift received by virtue of being a public official shall be given to the Nation;

(iii) Receive gifts from, and obviously motivated by, family or social relationships;

(iv) Accept food and refreshments of a nominal value in the ordinary course of any occasion in which a public official may be in attendance;

(v) accept loans to finance proper and usual activities on the same basis as Members generally;

(vi) receive political contributions in accordance with applicable election laws and customs, provided, that such gift or loan is actually used in the recipient's political campaign, and further provided, that no promise or commitment regarding the exercise of official duties is made in return for such contribution.

Section 2.8 Personal Use of Official Position

(a) A public official shall not use his/her official position to coerce, threaten or intimidate a person or group to satisfy a personal, family or business interest.

(b) A public official shall not use his/her official position to conduct personal business.

Section 2.8A Relations with Gaming Enterprises

(a) The Nation has established gaming enterprises as a means of promoting economic self-sufficiency and improving the well-being of all the Nation's citizens. Public officials do not, by virtue of their office, gain special privileges with respect to the property of the gaming enterprises. In addition to the specific provisions of this Section, the principles of general applicability described in this Law shall apply to dealings between public officials and the gaming enterprises.

(b) Public officials may not solicit or accept, for themselves, their family members or business associates, any gratuitous goods or services or other gift from a gaming enterprise, except as follows:

(i) Unsolicited gifts of $75.00 or less:

(ii) Free attendance at the gaming enterprises' promotional events and celebrations where entertainment, food or beverages are provided, if such attendance is also open to:

(1) the general public

(2) all citizens of the Nation; or

(3) any other group that is not limited to employees of the gaming enterprise or the Nation's public officials and their family members.

(iii) Where the receipt of such goods or services promotes an ambassadorial function.

Section 2.9. Sexual Harassment.

Express or implied sexual harassment of employees by public officials or fellow employee shall be strictly prohibited.

Section 2.10 Official Travel.

Public officials shall comply with the following when traveling on official Nation business:

(a) No public official shall use or possess illegal substances, or consume alcoholic beverages to the extent of impairment or which would otherwise cause embarrassment to the Nation;

(b) No public official shall fail to satisfy any obligation relating to the official Nation business which is the purpose of the trip;

(c) A public official shall not accept any travel, subsistence or payment or other expenses from any other person or group if he/she is on official Nation business and is already receiving travel expenses, pay or per diem from the Nation;

(d) A public official shall refund all salary, overpayment travel expense, and advances when not expended for the purposes issued;

(e) A public official, including the President, shall make a written report of his/her official travel activities and file said report with the Clerk, who shall make said report available for Inspection to the Seneca public;

(f) Public officials shall comply with all other provisions of this law while on official travel.

Section 2.11 Personal Conduct

A public official shall:

(a) Not engage in alcohol abuse or the unlawful use of drugs;

(b) Not engage in family abuse or family neglect;

(c) Not be involved in criminal activity;

(d) Be fully responsible for their credit and financial standing;

(e) Be courteous, honest, truthful and treat all people with understanding, kindness and compassion.

ARTICLE III. THE ETHICS BOARD.

Section 3.1 Establishment.

There is hereby established an Ethics Board, which shall be an independent board.

Section 3.2. Membership.

(a) The Board shall be comprised of the President, the Treasurer, the Clerk, the Council Chair, the Council Vice-Chair, and a Councillor appointed by the Council. In the event of a complaint filed against a Board member or members, the Councillor or Councillors with the longest tenure in office shall serve in his or her place for purposes of hearing the complaint.

(b) Board Members shall serve until the expiration of their term of office.

Exhibit "T" Attached to Exhibit "A".

Section 3.3 Officers

(a) The Board of Ethics shall have a Chair, a Vice-Chair, a Secretary and such other officers that it may establish from time to time.

(b) The Chair shall be selected annually by the Board members and shall hold office until his/her successor has been duly selected. The Vice-Chair shall be selected annually by the Board members and shall hold office until his/her successor has been duly selected, provided, that the Chair and Vice-Chair shall not be from the same Reservation. The secretary shall be selected annually by the Board members and shall hold office until his/her successor has been duly selected.

Section 3.4 Officers; Duties

(a) The Chair shall (i) preside at all meetings and hearings of the Board, (ii) communicate with any outside parties on behalf of the Board, (iii) in general, supervise all the business and affairs of the Board, (iv) perform such other duties as may be prescribed by the Board or by law.

(b) The Vice-Chair shall perform the duties of the Chair, in his/her absence, and shall otherwise perform such duties as may be prescribed by the Chair or by the Board.

(c) The Secretary shall (i) keep the minutes of all meetings and hearings of the Board, (ii) see that all notices are duly given, (iii) be custodian of the records of the Board, and (iv) in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the Chair or the Board.

Section 3.5 Meetings

(a) Four (4) Board members shall be necessary in order to constitute a quorum for the conduct of meetings and hearings, if less than quorum is present, a majority of those present may adjourn the meeting.

(b) All meetings and hearings of the Board of Ethics shall be conducted in public forum and open to Seneca members only, provided, that the Board may meet in closed executive session to review investigatory reports and other privileged and confidential Information.

(c) Meetings may be called either by the Chair or by written notice of any three Board members having been submitted to the other Board members noting the date, time and location of the meeting.

Section 3.6 Bylaws

The Board shall have the authority to adopt bylaws not inconsistent with this law or the Nation's Constitution.

Exhibit "T" Attached to Exhibit "A".

Section 3.7 Purpose.

The purpose of the Board of Ethics shall be to:

(a) Hear all complaints arising under this law;

(b) Formulate rules and regulations implementing provisions of this law; and

(c) Formulate and develop legal policy and propose laws for consideration by the Council.

Section 3.8 Power

The Board of Ethics shall have such power to:

(a) Hear all complaints that may be filed pursuant to the provisions of this law;

(b) Provide written advisory opinions to guide the conduct and address specific questions when requested by public officials, provided, that:

(i) All opinions shall be maintained on record with the Board of Ethics;

(ii) All opinions shall be precedent with regard to matters related to specific requests until amended or revoked by the Board.

(c) Issue rules and regulations implementing provisions of this law;

(d) To administer oaths and issue administrative subpoenas to compel attendance and testimony of witnesses, or to produce any documents relevant to the matter before the Board;

(e) Conduct administrative hearings to determine violations or non-compliance with this law; and

(f) Impose sanctions for violation(s) of this law.

Section 3.9 Funding

The Board of Ethics shall be funded at a level sufficient to perform its obligations under this law.

ARTICLE IV. ENFORCEMENT PROCEDURE

Section 4.1 Disclosure and Abstention

Exhibit "T" Attached to Exhibit "A".

(a) If a public official is required to take official action on a matter in which he/she has a conflict of interest, he/she should consider eliminating the interest which causes the potential conflict.

(b) If it is not feasible to eliminate the interest, the public official shall:

(i) prepare and sign a written statement describing the matter requiring action and the nature of the potential conflicts as soon the public official is aware of the conflict and deliver such statement to the recording officer for inclusion in the record in which the Official serves, and

(ii) abstain from voting, sponsoring, influencing or in any manner attempting to influence any vote, official decision or determination which would favor or advance his/her personal interests, unless such person's vote, position, recommendation or participation is contrary to their personal interest.

(c) The abstention by any public official from, voting shall not affect the presence or such person or purposes of establishing a quorum.

Section 4.2. Filing of a complaint; Generally.

(a) A complaint alleging a violation of this law may be flied with the Secretary of the Board of Ethics.

(b) A public official shall have the duty to file a complaint against another public official if a violation of this law occurs in his/her presence.

Section 4.3 Filing of a complaint by a Nation Member.

(a) Any Member of the Nation or non-member Nation employee may present a complaint alleging a violation of this law by a public official.

(b) A complaint must be in writing, signed and delivered to the Secretary of the Board of Ethics. A complaint may be filed by more than one Member or non-member Nation employee.

(c) The Secretary of the Board receiving a complaint from a Member, shall direct that the matter be brought to the Board for investigation and action.

Section 4.4. Statute of Limitations.

No complaint shall be considered by the Board if more than four (4) years has passed since the cause of action has accrued, provided, that no cause of action may arise out of conduct occurring prior to the date of enactment of this law.

Section 4.5. Authorization of Investigation.

Exhibit "T" Attached to Exhibit "A".

Upon receiving a complaint the Board shall investigate the allegations therein.

Section 4.6. Investigation; Dismissal.

(a) Upon its own motion, the Board may dismiss any complaint which it determines;

(i) contains facts insufficient to constitute a violation of this law;

(ii) contains Insufficient evidence to support the allegations; or

(iii) lacks personal and subject matter jurisdiction to hear.

(b) The Board shall immediately notify the defendant and the Clerks' office that the complaint has been dismissed.

Section 4.7. Institution of Charges; Notice.

(a) If it deems the evidence sufficient to warrant further review, the Board shall formally charge the public official named in the complaint.

(b) If the charge is made, the Board shall provide immediate notice to the public official and the Clerk of the Nation.

Section 4.8. Hearing Procedure.

(a) A public official charged by the Board shall be given an opportunity to present evidence and testimony in his/her defense.

(b) The Board shall conduct a hearing on each formal charge. Hearings shall be scheduled by the Board no sooner than 10 calendar days and no later than 20 calendar days from the date of the formal charge, as provided for in section 4.7.

(c) At the hearing, the complainant shall make a preliminary statement followed by a preliminary statement by the defendant public official.

(d) Upon hearing the preliminary statements, the Board shall attempt to remedy the alleged violation through informal peacemaking. If the Board is successful in obtaining the agreement of the complainant and the defendant regarding any violation of this law and sanctions, the agreement shall be written and ordered as a decision of the Board.

(e) If the Board fails to remedy the alleged violation through informal peacemaking, the Board shall proceed to conduct an adversarial hearing, render a decision and, if warranted, impose a sanction.

(f) For purposes of rendering a decision, all of the Board members participating, must agree. The standard of review shall be by a preponderance of the evidence.

(g) Ex parte communications by the Board are prohibited.

Section 4.9. Failure to Appear.

Failure of the defendant to appear before the Board shall be deemed a waiver of his/her rights to a hearing.

Section 4.10 Failure to Testify.

Failure of a witness to testify shall result in sanction by the Board.

Section 4.11. Public Official Indemnification and Legal Counsel.

The Nation shall not indemnify, nor provide legal counsel for, any public official alleged to have violated a provision of this law.

Section 4.12 Decision.

(a) The Board shall render a written decision within five (5) days after a hearing is completed.

(b) Upon rendering its decision, the Board shall immediately notify the defendant, the complainant and the Clerk's office.

Section 4.13. Retaliation.

Retaliation against any party or witness to a complaint is prohibited.

Section 4.14. False Accusations.

In the event that the Board determines that a false complaint has been filed for purposes of harassment and ridicule of a public official, then the Board shall order that said complaint shall be barred from filing any complaints for a period that will determined by the Board.

Section 4.15 Appeals.

The Nation's courts shall have jurisdiction to review a final determination by the Board to impose a sanction or penalty under this law, provided that an action to obtain such review is initiated within 10 days from the final determination of the Board. Appeals to the Courts shall be limited to question of law and shall be governed by the provision of the Seneca Nation Civil Procedure Rules (CPR), Article 22.

Section 4.16 Rules of Evidence.

The Board may rely upon any evidence it deems relevant, assigning weight to such evidence based upon the degree of reliability.

Section 4.17. Board Conflict of Interest.

No Board member shall hear matters before the Board which involves family or other personal interest.

Section 4.18 Rules of Procedure.

The Board shall have the power to develop and adopt Rules of Procedure to govern the conduct of hearings where not in conflict with this Law. Such rules of Procedure shall be adopted prior to the conduct of any hearing

ARTICLE V. SANCTIONS AND PENALTIES

Section 5.1 Sanctions.

Upon finding that there has been a violation of any provision of Article II of this Law by a public official, the Board shall impose any or all of the following penalties or sanctions:

(a) Private reprimand. Issuance of a private reprimand;

(b) Public reprimand. Issuance of a written public reprimand, which shall be entered into the Nation's records and, if applicable, upon the permanent record of the public office or entity of which such person is a member or employee;

(c) Suspension with loss of pay, Minor Violation. Suspension without pay or other benefits for not more than thirty (30) days;

(d) Suspension with loss of pay, Major Violation. Suspension without pay or benefits for not less than thirty (30) days nor for more than one (1) year,

(e) Restitution. Imposition of restitution.

(f) Fines. Imposition of civil damages in an amount not exceeding three (3) times the amount or value of the benefit or benefits so obtained;

(g) Removal from public office and ineligibility for holding public office or Nation employment for a period not to exceed five (5) years; provided that the removal power shall not apply to those elected officials of the Nation who can only be removed by impeachment. Minor Violation. Removal from office and a ban from elected/appointed public office for a period of not less than one (1) year;

Exhibit "T" Attached to Exhibit "A".

Section 5.2. Construction.

Nothing in Section 5.1. of this law shall be construed as rendering a finding of a violation of this law as a criminal conviction.

Section 5.3 Recovery of Fines.

Any civil penalties imposed thereunder shall be collected in any manner authorized for recovery of debts or obligations owed to the Nation and shall be paid into the General Fund of the Nation.

Exhibit "U" Attached to Exhibit "A".

Seneca Nation of Indians

President - Barry E. Snyder, Sr.
Clerk - Lenith Waterman

12837 ROUTE 438
IRVING, NEW YORK 14081

Tel. (716) 532-4900
FAX (716) 532-6272

Treasurer - Jacqueline Bowen

P.O. BOX 231
SALAMANCA, NEW YORK 14779

Tel. (716) 945-1790
FAX (716) 945-1565

AT THE SPECIAL SESSION OF COUNCIL OF THE SENECA NATION OF INDIANS HELD ON APRIL 23, 2009 AT THE WILLIAM SENECA BUILDING ON THE CATTARAUGUS TERRITORY IRVING, NEW YORK, 14081.

CN: S-04-23-09-02

EXECUTIVES PRESENT:

PRESIDENT - BARRY E. SNYDER, SR.
CLERK - LENITH K. WATERMAN

APPROVING AMENDMENTS TO SGC CHARTERS (SECOND OF TWO) / APPROVAL

MOTION: by Donald John, seconded by Michael Williams that the Nation's Council approves the following resolution, as presented;

WHEREAS, the Council has issued charters of incorporation to each of the Seneca Gaming Corporation, the Seneca Niagara Falls Gaming Corporation, the Seneca Territory Gaming Corporation, the Seneca Erie Gaming Corporation, the Seneca Massachusetts Gaming Corporation and the Lewiston Golf Course Corporation (collectively, the "Companies"); and

WHEREAS, the Council has decided that the Charters should include more detailed language concerning the requirements for serving as a member of the Board of each of the Companies; and

WHEREAS, the Council has decided that the Seneca Massachusetts Gaming Corporation is no longer needed; and

WHEREAS, the Boards for each of the Companies are not of identical composition and the terms of the members are not coterminous; and

WHEREAS, the Council has decided to amend the Charters of each of the Companies to ensure that the Boards of each have identical composition with coterminous terms;

NOW, THEREFORE, BE IT

Exhibit "U" Attached to Exhibit "A".

RESOLVED, that the Council hereby makes the following amendments to the Charter of the Seneca Gaming Corporation:

1. Deletes the first and second sentence of subsection 9(b) and replaces it with the following: "There shall be no less than four (4) nor more than seven (7) members of the Board, not less than five (5) of whom shall be enrolled Senecas. No elected official of the Nation may serve on the Board, nor any Company employee or any person with an economic interest in any of the Company's activities."

2. Deletes the first and second sentences of subsection 9(c) and replaces it with the following: "The Council shall appoint Board members. The Clerk of the Nation shall give public notice of Board vacancies on or before February 1 of each year. The Clerk shall receive candidate applications and certify to the Council that all candidate qualifications set forth in subsection 9(b) have been met and that each candidate has certified that the candidate meets each of the additional criteria set forth in subsection 9(d)(i) and (d)(ii). Upon certification, the Clerk shall notify the Councillors and coordinate with the Council Administrator an interview for each eligible candidate at least seven (7) days prior to his or her scheduled appointment. Vacancies shall be filled by Council appointment following at least thirty (30) days public notice of said vacancy, unless in the event of an emergency."

4. Deletes subsection 9(d) and replaces it with the following: "Any Board candidate shall be eligible to serve as a member of the Board only if the following additional criteria are satisfied: (i) is at least twenty-one years old, (ii) has earned a high school diploma or equivalent, (iii) has not been convicted of a Felony, and (iv) has been certified by the Seneca Gaming Authority as having met the substantive standards necessary to obtain a license from the Authority if such candidate were a "Class III Gaming Key Employee," as that term is used in the Nation's Class III Gaming Ordinance. The Council shall appoint at least one (1) board member who shall (i) possess a Master of Business Administration or Juris Doctorate degree, or (ii) be a Certified Public Accountant, or (iii) have at least ten (10) years experience as a senior manager or board member of a publicly held gaming corporation."

5. Deletes existing subsection 9(e) and replaces it with the following: "Board members shall serve for a term of three (3) years and until his or her successor has been appointed or until his or her earlier death, resignation, or removal. Director terms commence and expire as of the date of the annual meeting of a given year."

6. Redesignates existing subsection 9(f) as 9(g) and adds a new subsection 9(f) that provides as follows:

"f. Board members have a fiduciary duty to the Company, including duties of care, loyalty and obedience. In simple terms, this means that they are required to act reasonably, prudently and in the best interests of the Company, to avoid negligence or

Exhibit "U" Attached to Exhibit "A".

fraud, and to avoid conflicts of interest. In the event that the duties of care, loyalty and/or obedience are breached, the person breaching the duty is potentially liable to the Company for any damages caused as a result of the breach.

"1. The duty of care is very broad, requiring officers and directors to exercise ordinary and reasonable care in the performance of their duties, exhibiting honesty and good faith. Officers and directors must act in a manner which they believe to be in the best interests of the Company, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

"2. The duty of loyalty encompasses a duty to avoid conflicts of interest and to provide undivided allegiance to the Company's mission. A conflict may exist when an officer or director participates in the deliberation and resolution of an issue important to the Company while the individual, at the same time, has other professional, business or volunteer responsibilities outside of the Company that could predispose or bias the individual one way or another regarding the issue. In these situations, it is typically not enough for the individual to be aware of the conflict and to attempt to act in the Company's best interests despite the conflict. Rather, for many conflicts, full disclosure to the Board and refraining from participation in the Board's deliberation and resolution of the issue (i.e., recusal) are required to remedy the conflict. For serious, visible, continuing or pervasive conflicts, withdrawal from the officer or directorship, or from the outside conflicting responsibility, may be required. It is important to be sensitive to and avoid apparent conflicts of interest as well as actual ones.

"3. The duty of obedience requires officers and directors to act in accordance with the Company's Charter, bylaws and other governing documents, as well as applicable laws and regulations.

"4. Unless an officer or director has knowledge that makes reliance unwarranted, an officer or director, in performing his or her duties to the Company, may rely on (written or oral) information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by: (i) one or more officers or employees of the Company whom the officer or director believes in good faith to be reliable and competent in the matters presented; (ii) legal counsel, public accountants, or other persons as to matters which the officer or director believes in good faith to be within the person's professional or expert competence; or (iii) in the case of reliance by directors, a committee of the board on which the director does not serve if the director believes in good faith that the committee merits confidence.

Exhibit "U" Attached to Exhibit "A".

"5. Directors cannot remain willfully ignorant of the affairs of the Company. A director chosen as treasurer, for example, with limited knowledge of finance, cannot simply rely on the representations and reports of staff or auditors that "all is well."

7. Adds after the first sentence in subsection 10(c) the following: "An agenda for every meeting shall be prepared by the Board Chairman and posted publicly at least three (3) days prior to the next scheduled meeting, unless in the event of an emergency."

8. Redesignates subsection 10(e) as 10(f) and adds a new subsection 10(e) that provides as follows: "The Board of Directors shall hold a meeting open to the Seneca public on the fourth Saturday of January, April, July, and October every year at which the Board shall provide information on the health and well-being of the Company."

RESOLVED, that the Seneca Massachusetts Gaming Corporation is hereby dissolved and its Charter withdrawn, and any assets contained therein to be transferred to the SGC; and

RESOLVED, that the Council hereby amends Section 9 of each Charter of the Seneca Niagara Falls Gaming Corporation, the Seneca Territory Gaming Corporation, the Seneca Erie Gaming Corporation, and the Lewiston Golf Course Corporation to read in its entirety as follows:

a. There is hereby established a Board of Directors of the Company, the purpose of which is to carry out the duties and powers of the Company as set forth in this Charter.

b. The Board of Directors of the Company shall be comprised solely of the members of the board of directors of the Seneca Gaming Corporation.

and further

RESOLVED, any provision of the By-Laws for boards of directors of any of the Companies that it inconsistent with these Charter amendments is of no force and effect, and the Council hereby directs the Board of each of the Companies to develop and adopt appropriate By-Laws amendments consistent with these Charter amendments, to be presented to the Council for approval as required under their respective Charters and By-Laws, and *provided*, that the By-laws for the Companies shall be amended to reflect that the Boards shall consist of two (2) Term A directors, two (2) Term B directors, and three (3) Term C directors, and *further provided*, that the By-laws for the Companies shall be amended to set the Companies' annual meeting date for the first meeting following the end of the second quarter of the fiscal year".

ROLL CALL: 15-YES, 1-ABSENT MOTION CARRIED

Exhibit "U" Attached to Exhibit "A".

APPROVING AMENDMENTS TO SGC CHARTERS (SECOND OF TWO) / APPROVAL
SPECIAL SESSION OF COUNCIL
APRIL 23, 2009
PAGE 5

CERTIFICATION

I hereby certify the foregoing extract is a true and correct copy from the minutes of the Special Session of Council of the Seneca Nation of Indians held on April 23, 2009, on the Cattaraugus Territory, original of which is on file in the Clerk's Office of the Seneca Nation of Indians.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal to be affixed at the William Seneca Building, on the Cattaraugus Territory, on the 24th day of April 2009.

ATTEST:

{S E A L}

Lenith K. Waterman

LENITH K. WATERMAN, CLERK
SENECA NATION OF INDIANS

Exhibit "U" Attached to Exhibit "A".

Seneca Nation of Indians

President - Barry E. Snyder, Sr.
Clerk - Lenith Waterman

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IRVING, NEW YORK 14081

Tel. (716) 532-4900
FAX (716) 532-6272

Treasurer - Jacqueline Bowen

P.O. BOX 231
SALAMANCA, NEW YORK 14779

Tel. (716) 945-1790
FAX (716) 945-1565

AT THE REGULAR SESSION OF COUNCIL OF THE SENECA NATION OF INDIANS HELD ON APRIL 11, 2009 AT THE WILLIAM SENECA BUILDING ON THE CATTARAUGUS TERRITORY IRVING, NEW YORK, 14081.

CN: R-04-11-09-23

EXECUTIVES PRESENT:

PRESIDENT - BARRY E. SNYDER, SR.
CLERK - LENITH K. WATERMAN
TREASURER- JACQUELINE L. BOWEN

APPROVING AMENDMENTS TO SGC CHARTERS (FIRST OF TWO) / APPROVAL

MOTION: by J. Conrad Seneca, seconded by Donald John that the Nation's Council approves the following resolution, as presented;

WHEREAS, the Council has issued charters of incorporation to each of the Seneca Gaming Corporation, the Seneca Niagara Falls Gaming Corporation, the Seneca Territory Gaming Corporation, the Seneca Erie Gaming Corporation, the Seneca Massachusetts Gaming Corporation and the Lewiston Golf Course Corporation (collectively, the "Companies"); and

WHEREAS, the Council has decided that the Charters should include more detailed language concerning the requirements for serving as a member of the Board of each of the Companies; and

WHEREAS, the Council has decided that the Seneca Massachusetts Gaming Corporation is no longer needed; and

WHEREAS, the Boards for each of the Companies are not of identical composition and the terms of the members are not coterminous; and

WHEREAS, the Council has decided to amend the Charters of each of the Companies to ensure that the Boards of each have identical composition with coterminous terms;

NOW, THEREFORE, BE IT

Exhibit "U" Attached to Exhibit "A".

RESOLVED, that the Council hereby makes the following amendments to the Charter of the Seneca Gaming Corporation:

1. Deletes the first and second sentence of subsection 9(b) and replaces it with the following: "There shall be no less than four (4) nor more than seven (7) members of the Board, not less than five (5) of whom shall be enrolled Senecas. No elected official of the Nation may serve on the Board, nor any Company employee or any person with an economic interest in any of the Company's activities."

2. Deletes the first and second sentences of subsection 9(c) and replaces it with the following: "The Council shall appoint Board members. The Clerk of the Nation shall give public notice of Board vacancies on or before February 1 of each year. The Clerk shall receive candidate applications and certify to the Council that all candidate qualifications set forth in subsection 9(b) have been met and that each candidate has certified that the candidate meets each of the additional criteria set forth in subsection 9(d)(i) and (d)(ii). Upon certification, the Clerk shall notify the Councillors and coordinate with the Council Administrator an interview for each eligible candidate at least seven (7) days prior to his or her scheduled appointment. Vacancies shall be filled by Council appointment following at least thirty (30) days public notice of said vacancy, unless in the event of an emergency."

4. Deletes subsection 9(d) and replaces it with the following: "Any Board candidate shall be eligible to serve as a member of the Board only if the following additional criteria are satisfied: (i) is at least twenty-one years old, (ii) has earned a high school diploma or equivalent, (iii) has not been convicted of a Felony, and (iv) has been certified by the Seneca Gaming Authority as having met the substantive standards necessary to obtain a license from the Authority if such candidate were a "Class III Gaming Key Employee," as that term is used in the Nation's Class III Gaming Ordinance. The Council shall appoint at least one (1) board member who shall (i) possess a Master of Business Administration or Juris Doctorate degree, or (ii) be a Certified Public Accountant, or (iii) have at least ten (10) years experience as a senior manager or board member of a publicly held gaming corporation."

5. Deletes existing subsection 9(e) and replaces it with the following: "Board members shall serve for a term of three (3) years and until his or her successor has been appointed or until his or her earlier death, resignation, or removal. Director terms commence and expire as of the date of the annual meeting of a given year."

6. Redesignates existing subsection 9(f) as 9(g) and adds a new subsection 9(f) that provides as follows:

"f. Board members have a fiduciary duty to the Company, including duties of care, loyalty and obedience. In simple terms, this means that they are required to act

Exhibit "U" Attached to Exhibit "A".

reasonably, prudently and in the best interests of the Company, to avoid negligence or fraud, and to avoid conflicts of interest. In the event that the duties of care, loyalty and/or obedience are breached, the person breaching the duty is potentially liable to the Company for any damages caused as a result of the breach.

"1. The duty of care is very broad, requiring officers and directors to exercise ordinary and reasonable care in the performance of their duties, exhibiting honesty and good faith. Officers and directors must act in a manner which they believe to be in the best interests of the Company, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

"2. The duty of loyalty encompasses a duty to avoid conflicts of interest and to provide undivided allegiance to the Company's mission. A conflict may exist when an officer or director participates in the deliberation and resolution of an issue important to the Company while the individual, at the same time, has other professional, business or volunteer responsibilities outside of the Company that could predispose or bias the individual one way or another regarding the issue. In these situations, it is typically not enough for the individual to be aware of the conflict and to attempt to act in the Company's best interests despite the conflict. Rather, for many conflicts, full disclosure to the Board and refraining from participation in the Board's deliberation and resolution of the issue (i.e., recusal) are required to remedy the conflict. For serious, visible, continuing or pervasive conflicts, withdrawal from the officer or directorship, or from the outside conflicting responsibility, may be required. It is important to be sensitive to and avoid apparent conflicts of interest as well as actual ones.

"3. The duty of obedience requires officers and directors to act in accordance with the Company's Charter, bylaws and other governing documents, as well as applicable laws and regulations.

"4. Unless an officer or director has knowledge that makes reliance unwarranted, an officer or director, in performing his or her duties to the Company, may rely on (written or oral) information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by: (i) one or more officers or employees of the Company whom the officer or director believes in good faith to be reliable and competent in the matters presented; (ii) legal counsel, public accountants, or other persons as to matters which the officer or director believes in good faith to be within the person's professional or expert competence; or (iii) in the case of reliance by directors, a committee of the board on which the director does not serve if the director believes in good faith that the committee merits confidence.

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"5. Directors cannot remain willfully ignorant of the affairs of the Company. A director chosen as treasurer, for example, with limited knowledge of finance, cannot simply rely on the representations and reports of staff or auditors that "all is well."

7. Adds after the first sentence in subsection 10(c) the following: "An agenda for every meeting shall be prepared by the Board Chairman and posted publicly at least three (3) days prior to the next scheduled meeting, unless in the event of an emergency."

8. Redesignates subsection 10(e) as 10(f) and adds a new subsection 10(e) that provides as follows: "The Board of Directors shall hold a meeting open to the Seneca public on the fourth Saturday of January, April, July, and October every year at which the Board shall provide information on the health and well-being of the Company."

RESOLVED, that the Seneca Massachusetts Gaming Corporation is hereby dissolved and its Charter withdrawn, and any assets contained therein to be transferred to the SGC; and

RESOLVED, that the Council hereby amends Section 9 of each Charter of the Seneca Niagara Falls Gaming Corporation, the Seneca Territory Gaming Corporation, the Seneca Erie Gaming Corporation, and the Lewiston Golf Course Corporation to read in its entirety as follows:

a. There is hereby established a Board of Directors of the Company, the purpose of which is to carry out the duties and powers of the Company as set forth in this Charter.

b. The Board of Directors of the Company shall be comprised solely of the members of the board of directors of the Seneca Gaming Corporation.

and further

RESOLVED, any provision of the By-Laws for boards of directors of any of the Companies that it inconsistent with these Charter amendments is of no force and effect, and the Council hereby directs the Board of each of the Companies to develop and adopt appropriate By-Laws amendments consistent with these Charter amendments, to be presented to the Council for approval as required under their respective Charters and By-Laws, and *provided*, that the By-laws for the Companies shall be amended to reflect that the Boards shall consist of two (2) Term A directors, two (2) Term B directors, and three (3) Term C directors, and *further provided*, that the By-laws for the Companies shall be amended to set the Companies' annual meeting date for the first meeting following the end of the second quarter of the fiscal year".

ROLL CALL: 15-YES, 1-NO MOTION CARRIED

Exhibit "U" Attached to Exhibit "A".

CERTIFICATION

I hereby certify the foregoing extract is a true and correct copy from the minutes of the Regular Session of Council of the Seneca Nation of Indians held on April 11, 2009, on the Cattaraugus Territory, original of which is on file in the Clerk's Office of the Seneca Nation of Indians.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal to be affixed at the William Seneca Building, on the Cattaraugus Territory, on the 15th day of April 2009.

ATTEST:

Lenith K. Waterman

{S E A L}

LENITH K. WATERMAN, CLERK
SENECA NATION OF INDIANS

Exhibit "U" Attached to Exhibit "A".

Seneca Nation of Indians

President - Barry E. Snyder, Sr.
Clerk - Lenith Waterman

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AT THE SPECIAL SESSION OF COUNCIL OF THE SENECA NATION OF INDIANS HELD ON APRIL 23, 2009 AT THE WILLIAM SENECA BUILDING ON THE CATTARAUGUS TERRITORY IRVING, NEW YORK, 14081.

CN: S-04-23-09-02

EXECUTIVES PRESENT: PRESIDENT - BARRY E. SNYDER, SR.
CLERK - LENITH K. WATERMAN

APPROVING AMENDMENTS TO SGC CHARTERS (SECOND OF TWO) / APPROVAL

MOTION: by Donald John, seconded by Michael Williams that the Nation's Council approves the following resolution, as presented;

WHEREAS, the Council has issued charters of incorporation to each of the Seneca Gaming Corporation, the Seneca Niagara Falls Gaming Corporation, the Seneca Territory Gaming Corporation, the Seneca Erie Gaming Corporation, the Seneca Massachusetts Gaming Corporation and the Lewiston Golf Course Corporation (collectively, the "Companies"); and

WHEREAS, the Council has decided that the Charters should include more detailed language concerning the requirements for serving as a member of the Board of each of the Companies; and

WHEREAS, the Council has decided that the Seneca Massachusetts Gaming Corporation is no longer needed; and

WHEREAS, the Boards for each of the Companies are not of identical composition and the terms of the members are not coterminous; and

WHEREAS, the Council has decided to amend the Charters of each of the Companies to ensure that the Boards of each have identical composition with coterminous terms;

NOW, THEREFORE, BE IT

Exhibit "U" Attached to Exhibit "A".

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2. Deletes the first and second sentences of subsection 9(c) and replaces it with the following: "The Council shall appoint Board members. The Clerk of the Nation shall give public notice of Board vacancies on or before February 1 of each year. The Clerk shall receive candidate applications and certify to the Council that all candidate qualifications set forth in subsection 9(b) have been met and that each candidate has certified that the candidate meets each of the additional criteria set forth in subsection 9(d)(i) and (d)(ii). Upon certification, the Clerk shall notify the Councillors and coordinate with the Council Administrator an interview for each eligible candidate at least seven (7) days prior to his or her scheduled appointment. Vacancies shall be filled by Council appointment following at least thirty (30) days public notice of said vacancy, unless in the event of an emergency."

4. Deletes subsection 9(d) and replaces it with the following: "Any Board candidate shall be eligible to serve as a member of the Board only if the following additional criteria are satisfied: (i) is at least twenty-one years old, (ii) has earned a high school diploma or equivalent, (iii) has not been convicted of a Felony, and (iv) has been certified by the Seneca Gaming Authority as having met the substantive standards necessary to obtain a license from the Authority if such candidate were a "Class III Gaming Key Employee," as that term is used in the Nation's Class III Gaming Ordinance. The Council shall appoint at least one (1) board member who shall (i) possess a Master of Business Administration or Juris Doctorate degree, or (ii) be a Certified Public Accountant, or (iii) have at least ten (10) years experience as a senior manager or board member of a publicly held gaming corporation."

5. Deletes existing subsection 9(e) and replaces it with the following: "Board members shall serve for a term of three (3) years and until his or her successor has been appointed or until his or her earlier death, resignation, or removal. Director terms commence and expire as of the date of the annual meeting of a given year."

6. Redesignates existing subsection 9(f) as 9(g) and adds a new subsection 9(f) that provides as follows:

"f. Board members have a fiduciary duty to the Company, including duties of care, loyalty and obedience. In simple terms, this means that they are required to act reasonably, prudently and in the best interests of the Company, to avoid negligence or

Exhibit "U" Attached to Exhibit "A".

fraud, and to avoid conflicts of interest. In the event that the duties of care, loyalty and/or obedience are breached, the person breaching the duty is potentially liable to the Company for any damages caused as a result of the breach.

"1. The duty of care is very broad, requiring officers and directors to exercise ordinary and reasonable care in the performance of their duties, exhibiting honesty and good faith. Officers and directors must act in a manner which they believe to be in the best interests of the Company, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

"2. The duty of loyalty encompasses a duty to avoid conflicts of interest and to provide undivided allegiance to the Company's mission. A conflict may exist when an officer or director participates in the deliberation and resolution of an issue important to the Company while the individual, at the same time, has other professional, business or volunteer responsibilities outside of the Company that could predispose or bias the individual one way or another regarding the issue. In these situations, it is typically not enough for the individual to be aware of the conflict and to attempt to act in the Company's best interests despite the conflict. Rather, for many conflicts, full disclosure to the Board and refraining from participation in the Board's deliberation and resolution of the issue (i.e., recusal) are required to remedy the conflict. For serious, visible, continuing or pervasive conflicts, withdrawal from the officer or directorship, or from the outside conflicting responsibility, may be required. It is important to be sensitive to and avoid apparent conflicts of interest as well as actual ones.

"3. The duty of obedience requires officers and directors to act in accordance with the Company's Charter, bylaws and other governing documents, as well as applicable laws and regulations.

"4. Unless an officer or director has knowledge that makes reliance unwarranted, an officer or director, in performing his or her duties to the Company, may rely on (written or oral) information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by: (i) one or more officers or employees of the Company whom the officer or director believes in good faith to be reliable and competent in the matters presented; (ii) legal counsel, public accountants, or other persons as to matters which the officer or director believes in good faith to be within the person's professional or expert competence; or (iii) in the case of reliance by directors, a committee of the board on which the director does not serve if the director believes in good faith that the committee merits confidence.

Exhibit "U" Attached to Exhibit "A".

"5. Directors cannot remain willfully ignorant of the affairs of the Company. A director chosen as treasurer, for example, with limited knowledge of finance, cannot simply rely on the representations and reports of staff or auditors that "all is well."

7. Adds after the first sentence in subsection 10(c) the following: "An agenda for every meeting shall be prepared by the Board Chairman and posted publicly at least three (3) days prior to the next scheduled meeting, unless in the event of an emergency."

8. Redesignates subsection 10(e) as 10(f) and adds a new subsection 10(e) that provides as follows: "The Board of Directors shall hold a meeting open to the Seneca public on the fourth Saturday of January, April, July, and October every year at which the Board shall provide information on the health and well-being of the Company."

RESOLVED, that the Seneca Massachusetts Gaming Corporation is hereby dissolved and its Charter withdrawn, and any assets contained therein to be transferred to the SGC; and

RESOLVED, that the Council hereby amends Section 9 of each Charter of the Seneca Niagara Falls Gaming Corporation, the Seneca Territory Gaming Corporation, the Seneca Erie Gaming Corporation, and the Lewiston Golf Course Corporation to read in its entirety as follows:

a. There is hereby established a Board of Directors of the Company, the purpose of which is to carry out the duties and powers of the Company as set forth in this Charter.

b. The Board of Directors of the Company shall be comprised solely of the members of the board of directors of the Seneca Gaming Corporation.

and further

RESOLVED, any provision of the By-Laws for boards of directors of any of the Companies that it inconsistent with these Charter amendments is of no force and effect, and the Council hereby directs the Board of each of the Companies to develop and adopt appropriate By-Laws amendments consistent with these Charter amendments, to be presented to the Council for approval as required under their respective Charters and By-Laws, and *provided*, that the By-laws for the Companies shall be amended to reflect that the Boards shall consist of two (2) Term A directors, two (2) Term B directors, and three (3) Term C directors, and *further provided*, that the By-laws for the Companies shall be amended to set the Companies' annual meeting date for the first meeting following the end of the second quarter of the fiscal year".

ROLL CALL: 15-YES, 1-ABSENT MOTION CARRIED

Exhibit "U" Attached to Exhibit "A".

APPROVING AMENDMENTS TO SGC CHARTERS (SECOND OF TWO) / APPROVAL
SPECIAL SESSION OF COUNCIL
APRIL 23, 2009
PAGE 5

CERTIFICATION

I hereby certify the foregoing extract is a true and correct copy from the minutes of the Special Session of Council of the Seneca Nation of Indians held on April 23, 2009, on the Cattaraugus Territory, original of which is on file in the Clerk's Office of the Seneca Nation of Indians.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the seal to be affixed at the William Seneca Building, on the Cattaraugus Territory, on the 24th day of April 2009.

ATTEST:

{S E A L}

LENITH K. WATERMAN, CLERK
SENECA NATION OF INDIANS

Exhibit "V" Attached to Exhibit "A".

January 20, 2009

The Honorable Barry E. Snyder, Sr., President
Seneca Nation of Indians
12837 Route 438
Irving, NY 14081
Fax: (716) 532-6272

Re: Seneca Nation of Indians' Class III Gaming Ordinance

Dear President Snyder:

Before me for review pursuant to the Indian Gaming Regulatory Act (IGRA) is the Seneca Nation of Indians' (Nation) Class III Gaming Ordinance as amended (ordinance), adopted by the Nation pursuant to Resolution number CN: S-07-16-08-02. 25 U.S.C. § 2710(e). The Nation submitted the ordinance to the National Indian Gaming Commission (NIGC) on October 22, 2008. Aside from a few minor changes, the newly submitted ordinance is identical to the Nation's previously approved ordinance, which I approved on July 2, 2007. Similar to the previous ordinance, the new ordinance is site-specific and includes a legal description of the Nation's Buffalo parcel in its Indian lands definition. For the reasons set forth herein, the Nation's ordinance is hereby approved.

The Nation's new ordinance was submitted to me for my review and approval as a consequence of the decision in *Citizens Against Casino Gambling v. Hogen.* 2008 U.S. Dist. LEXIS 52395, 210 (W.D.N.Y. 2008) (*CACGEC II*), in which the United States District Court for the Western District of New York vacated my July 2, 2007 ordinance approval. In vacating my approval, the court found that the Buffalo Parcel constitutes after-acquired restricted fee lands subject to the general prohibition against gaming, 25 U.S.C. § 2719, and that the parcel fails to satisfy the settlement of a land claim exception to the general prohibition. Therefore, the court concluded that the Buffalo Parcel is ineligible for gaming. *Id.*

The July 8, 2008 *CACGEC II* decision places me in a difficult position. Since the July 2, 2007 approval, the NIGC's analyses regarding Indian lands generally and lands held in restricted status in particular has undergone significant review, rethinking, and revisions. As explained in more detail below, the agency has concluded that its former understanding of restricted lands in the context of IGRA requires modification. Such a change of course leads me to review this new ordinance and the agency's Indian lands analysis afresh.

I wish to emphasize in so doing that I am mindful and respectful of the court's opinion and the proceedings before the Court. The Court found that my "conclusion that Congress intended the section 2719 prohibition to apply to *all* after-acquired land is a permissible construction of the statute." *CACGEC II* at 103. The district court did not address the U.S. Department of the Interior's recent regulatory interpretation of the scope of section 2719 of the IGRA. In light of such interpretation, I must exercise my statutory obligations consistent with the best reading of the law.

Background

As you are aware, the Nation's gaming ordinances, and my approval of those ordinances, have been the subject of much controversy, as well as two lawsuits. The first ordinance to be challenged, the "Class III Gaming Ordinance of 2002 as Amended," was submitted by the Nation on November 25, 2002. The 2002 Ordinance's definition of *Nation lands* was consistent with that of IGRA and was not specific as to which lands the Nation planned to game upon. *Seneca Nation of Indians Class III Gaming Ordinance of 2002 as Amended*, § 4-1(u). I approved the 2002 Ordinance on November 26, 2002. My approval letter to the Nation advised that "the gaming ordinance is approved for gaming only on Indian lands, as defined in the IGRA, over which the Nation has jurisdiction." Letter from Phil Hogen, NIGC, to Cyrus Schindler, Seneca Nation of Indians at 1 (November 26, 2002).

In October 2005, the Nation purchased approximately nine acres of land in Buffalo, New York, with funds obtained pursuant to the Seneca Nation Settlement Act of 1990 (SNSA), Pub. L. No. 101-503; 25 U.S.C. § 1774 et seq. Pursuant to the SNSA, the Nation notified the Secretary of the Interior (Secretary) of its purchase and its intent to hold the land in restricted fee. The Secretary did not object, and the land acquired restricted fee status in December 2005. The Nation announced its plans to build a gaming facility on the land shortly thereafter.

On January 3, 2006, the Citizens Against Casino Gambling in Erie County (CACGEC) and various members of the Buffalo and New York State community filed suit in the U.S. District Court for the Western District of New York against the NIGC Chairman, the NIGC, the Secretary, and the U.S. Department of the Interior claiming, in part, that my approval of the Nation's 2002 ordinance was arbitrary and capricious. The court held that because Nation's compact with New York, which specifies the locations where the tribe can game, was submitted with the ordinance, I should have made a land

determination for the as yet unselected site in Buffalo before approving the ordinance. On January 12, 2007, the court vacated my approval of the 2002 ordinance and remanded it to me with instructions that I determine whether the Buffalo Parcel is *Indian lands* within the meaning of IGRA. *Citizens Against Casino Gambling in Erie Country v.* Kempthorne, 471 F. Supp. 2d 295, 329 (W.D.N.Y. 2007) *(CACGEC I)*.

Before I could act in accordance with the court's January 12, 2007 decision, the Nation amended the 2002 Ordinance on June 9, 2007, and submitted the amendment to me for review on June 15, 2007. The amended ordinance included a definition of *Nation Lands* that included a legal description of the Nation's gaming parcel in Buffalo, New York. Specifically, the new definition read:

> "Nation Lands" shall have the meaning found in 25 U.S.C. § 2703(4), and shall also include the Buffalo Parcel, which is the real property in Erie County held by the Seneca Nation of Indians and subject to restrictions by the United States against the alienation pursuant to Seneca Nation Land Claim Settlement Act, which is described as follows:
>
> > The northern parcel (+/- 4.5 acres) is bounded to the North by Perry Street, to the East by Marvin Street, to the South by the former Fulton Street, and to the West by Michigan Street.
> >
> > The southern parcel (+/- 4.5 acres) is bounded to the North by the former Fulton Street, to the East by Marvin Street, to the South by South Park Street, and to the west by Michigan Street.

Seneca Nation Class III Gaming Ordinance of 2007, § 4-1(u).

I approved the amended ordinance on July 2, 2007. As part of the approval, I found that the Buffalo Parcel described in the definition of Nation lands was eligible for gaming because it met the definition of *Indian lands* for purposes of IGRA, was acquired pursuant to a settlement of a land claim, and was therefore excepted from the prohibition against gaming on lands taken into trust after October 17, 1988. Letter from Philip Hogen, NIGC, to Maurice John, Seneca Nation of Indians at 1 (July 2, 2007).

My July 2, 2007 approval discussed IGRA's general prohibition against gaming on lands acquired into trust after October 17, 1988. 25 U.S.C. § 2719. I explained that the agency interpreted section 2719 to "include land held by an Indian tribe in restricted fee" in spite of the fact that the explicit language of that section refers only to trust land. *Id.* at 2. In support of the interpretation, I relied on and deferred to the Secretary's previous determination that Congress did not intend to limit the restriction against gaming on after acquired land, or its exceptions, to only trust acquisitions. *Id.*, *citing*, Letter from Gale Norton, DOI, to Cyrus Schindler, Seneca Nation of Indians at 7 (Nov. 12, 2002) ("I believe that lands held in restricted fee pursuant to an Act of Congress... must be subject to the requirements of section 20 of IGRA.").

After determining that the Buffalo Parcel qualified as Indian lands and that the general prohibition against gaming on after-acquired lands applied to land held in restricted status, I found that the Buffalo Parcel satisfied the "settlement of a land claim" exception. In doing so, I deferred to the earlier letter of the Secretary stating that land taken into restricted fee in Buffalo, New York, pursuant to the SNSA would meet the settlement of a land claim exception. *Id.* at 4-5, *citing* Letter from Gale Norton, DOI, to Cyrus Schindler, Seneca Nation of Indians at 7 (Nov. 12, 2002). Based on that analysis, I approved the Nation's 2007 amended ordinance.

Upon approval, CACGEC, with various community members and local government officials, filed a second lawsuit against the NIGC Chairman, the NIGC, the Secretary, and the DOI. The Plaintiffs once again argued that my decision to approve the Nation's 2007 amended ordinance was arbitrary and capricious. On July 8, 2008, the United States District Court for the Western District of New York vacated my approval of the amended ordinance. *CACGEC II* at 210. The Court held that my determination that the Nation's restricted fee lands constitute Indian lands for purposes of IGRA was correct. *Id.* at 169. Further, the Court held my "conclusion that Congress intended the section 20 [25 U.S.C. § 2719] prohibition to apply to *all* after-acquired land is a permissible construction of the statute." *Id.* at 103. The Court also ruled, however, that the SNSA did not settle a land claim and, therefore, land purchased with SNSA funds did not meet the land claim settlement exception to the general prohibition against gaming on land acquired after October 17, 1988. *Id.* at 202-203. As a result, the court held that the Nation's Buffalo Parcel is ineligible for gaming under IGRA and vacated the July 2, 2007 ordinance approval. *Id.* at 210.

On May 20, 2008, after the NIGC's July 2, 2007 ordinance approval and before the Court's July 8, 2008 order vacating the approval, the U.S. Department of the Interior (DOI) published initial regulations implementing 25 U.S.C. § 2719 (regulations). 73 F.R. 29354 (May 20, 2008). In the preamble to the regulations, DOI explains that the prohibition against gaming on after-acquired land does not apply to lands held by a tribe pursuant to a restriction against alienation. 73 F.R. at 29355, 29376-77. Specifically, in the preamble, DOI stated that "[t]he omission of restricted fee from section 2719(a) is considered purposeful, because Congress referred to restricted fee lands elsewhere in IGRA, including at sections 2719 (a)(2)(A)(ii) and 2703(4)(B)." 73 F.R. 29355. [1] The regulations became effective on August 25, 2008.

On July 22, 2008, subsequent to the publication of the initial regulations, the United States moved the district court to remand my July 2007 ordinance approval to allow me to consider the application of the regulations to the ordinance. In its motion, the United States informed the court that the Nation had submitted a new ordinance on July 16, 2008, which I would have to consider in light of the initial regulations if the remand was not granted. The district court denied the motion, holding in part that even in the absence of a remand, the NIGC will have the opportunity to review the new

[1] DOI further discusses the reasons for this interpretation in a memorandum to the Secretary from the Solicitor. *See* January 18, 2008, Memorandum from David Bernhardt, Solicitor to Dirk Kempthorne, Secretary of the Interior, regarding Applicability of 25 U.S.C. § 2719 to Restricted fee lands.

regulations as part of the July 16, 2008 ordinance review and approval or disapproval. *See Citizens Against Casino Gambling v. Hogen*, 2008 U.S. Dist. LEXIS 67743, 33 (W.D.N.Y. August 26, 2008). The Nation subsequently withdrew the July 16, 2008 ordinance from my review, but submitted the present ordinance, which is identical to its immediate predecessor.

Given DOI's issuance of new regulations that are now in effect, its articulation regarding section 2719's inapplicability to restricted fee land, and the NIGC's intent to follow the regulations, including the interpretation that excludes restricted lands from the general prohibition of gaming on after acquired lands, I will proceed to review the new ordinance before me.

Like its predecessor, the October 22, 2008 ordinance is site specific and includes a legal definition of the Buffalo Parcel. *Ordinance* at § 4.1(u). The Ordinance also now defines *Settlement Act lands* as, "the real property that is held by the Nation in restricted fee status and subject to restrictions by the United States against alienation pursuant to the Seneca Nation Land Claims Settlement Act." *Id.* at § 4.1(bb).

Based on recent changes in the interpretation of 25 U.S.C. § 2719, I approve the 2008 ordinance, as amended.

The Law

Review by a court of an agency interpretation is a two step analysis. *Chevron v. Natural Resources Defense Council*, 467 U.S. 837, 842 (1984) ("[w]hen a court reviews an agency's construction of the statute which it administers, it is confronted with two questions."). In *Chevron's* first step, the court must answer, "whether Congress has directly spoken to the precise question at issue." *Id.* If the language of the statute is clear, the court and the agency must give effect to "the unambiguously expressed intent of Congress." *Id.* If, however, the statute is "silent or ambiguous," the court must invoke the second step of the *Chevron* analysis and determine whether the agency's interpretation is "based on a reasonable construction of the statute." *Id.* at 842-843. "In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Id.* at 844.

An agency with authority to interpret a statute has the authority to change its interpretation, and a reinterpretation of a statute is "entitled to no less deference...simply because it has changed over time. On the contrary, the agency, to engage in informed rule making, must consider varying interpretations and the wisdom of its policy on an on-going basis." *National Home Equity Mort. Ass'n v. Office of Thrift*, 373 F.3d 1355, 1360 (D.C. Cir. 2004) (quoting *Chevron*, 467 U.S. at 863-864). When an agency changes its interpretation, though, it "must provide a reasoned analysis for its change in course." *Id.* (quoting *Motor Vehicle Mfrs. Ass'n of U.S. Inc. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 57 (1983)).

Exhibit "V" Attached to Exhibit "A".

At issue in this decision is the Nation's 2008 site-specific gaming ordinance. For me to approve the ordinance, the parcel at issue must constitute Indian lands for purposes of IGRA and the prohibition against gaming on after acquired lands, section 2719 of IGRA, must not apply.

IGRA permits gaming only on Indian lands, 25 U.S.C. §§ 2710(b)(1), (2); 2710(d)(1), (2), which it defines as:

> (A) all lands within the limits of any Indian reservation; and
>
> (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

25 U.S.C. § 2703(4). The NIGC's implementing regulations clarify the meaning of *Indian lands* as follows:

> Indian lands means:
>
> (a) Land within the limits of an Indian reservation; or
>
> (b) Land over which an Indian tribe exercises governmental power and that is either –
>
> (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or
>
> (2) Held by an Indian tribe or individual subject to restriction by the United States against alienation.

25 C.F.R. § 502.12.

The DOI regulation governing the acquisition of land by the United States in trust for Indians and Indian tribes defines *[t]rust land or land in trust status* as, "land the title to which is held in trust by the United States for individual Indian or a tribe" 25 C.F.R. § 151.2(d). The regulation also defines *[r]estricted land or land in restricted status* as "land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary . . ." 25 C.F.R. § 151.2(e).

If the land meets IGRA's definition of Indian lands, the next question is whether section 2719 applies. Section 2719 states that "gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988" unless certain exceptions apply. 25 U.S.C. § 2719.

As explained above, DOI issued initial regulations interpreting section 2719 on May 20, 2008. Those regulations went into effect on August 25, 2008. In the preamble to the regulations, DOI indicated its view of section 2719, explaining:

> The omission of restricted fee from section 2719(a) is considered purposeful, because Congress referred to restricted fee lands elsewhere in IGRA, including at sections 2719 (a)(2)(A)(ii) and 2703(4)(B).

73 F.R. 29355. The NIGC concurs in DOI's interpretation of section 2719 and it is applied in this instance.

The Buffalo Parcel Is Restricted Fee Land

As noted above, the Nation's 2008 site-specific ordinance includes in its definition of Indian lands a description of the Buffalo Parcel. As explained in my approval of the 2007 ordinance, the Buffalo Parcel qualifies as restricted fee lands.

The restricted fee status of the Buffalo Parcel is the result of the SNSA. It settled disputes over certain leases between the Seneca Nation, the village of Salamanca, New York, and the United States, 25 U.S.C. § 1774(b), and appropriated $60,000,000 to the Nation. 25 U.S.C. § 1774d. In return, the Nation settled takings and other claims against the United States and agreed to offer new leases to the lessees. The SNSA allows the Nation to use settlement funds to acquire "land within the aboriginal area in New York or situated within or near proximity to former reservation lands." 25 U.S.C. § 1774f(c). The SNSA then provides that land so acquired will be held in restricted fee.[2]

Here, DOI certified that according to the provisions of the SNSA, the Buffalo Parcel became restricted fee land by operation of law on December 2, 2005. Because DOI is the agency charged with administering the SNSA, *see Passamaquoddy Tribe v. Maine*, 75 F.3d 784, 794 (D.Me. 1996), the NIGC defers to its determination that the land acquisition met the requirements of the SNSA to be taken into restricted fee. In addition to DOI's certification, the U.S. District Court for the Western District of New York held that: "[t]he land in the City of Buffalo at issue in this case was purchased by the SNI in 2005 and is held in 'restricted fee'— *i.e.*, it is subject to restriction by the United States against alienation." *CACGEC I* at 304; *CACGEC II* at 91 ("The Buffalo Parcel's status as restricted fee land is not in dispute.").

As restricted fee land, the Buffalo Parcel is held by the Nation subject to restriction by the United States against alienation and, therefore, conforms to the first requirement of IGRA's *Indian Lands* definition. See 25 U.S.C. § 2703(4)(B).

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[2] *See* 25 U.S.C. § 1774f(c) ("Unless the Secretary determines within 30 days after the comment period that such lands should not be subject to the provisions of section 2116 of the Revised Statutes (*25 U.S.C. § 177*), such lands shall be subject to the provisions of that Act [section] and shall be held in restricted fee status by the Seneca Nation.")

Exhibit "V" Attached to Exhibit "A".

Jurisdiction and the Exercise of Governmental Power

The Nation also exercises governmental power over the Buffalo Parcel. This conclusion, however, is not as straightforward as simply noting that the Nation holds the land subject to restriction by the United States against alienation. In order to exercise governmental power over its land, the Nation must first have jurisdiction to do so. *See, e.g., Rhode Island v. Narragansett Indian Tribe*, 19 F. 3d 685, 701-703 (1st Cir. 1994), *cert. denied*, 513 U.S. 919 (1994), *superseded by statute on other grounds*; *Narragansett Indian Tribe v. National Indian Gaming Commission*, 158 F.3d 1335 (D.C. Cir. 1998) (in addition to having jurisdiction, a tribe must exercise governmental power in order to trigger [IGRA]); *State ex. rel. Graves v. United States*, 86 F. Supp 2d 1094 (D. Kan. 2000), *aff'd and remanded, Kansas v. United States*, 249 F. 3d 1213 (10th Cir. 2001); *Miami Tribe of Oklahoma v. United States*, 5 F. Supp. 2d 1213, 1217-18 (D. Kan. 1998) (a tribe must have jurisdiction in order to be able to exercise governmental power); *Miami Tribe of Oklahoma v. United States*, 927 F. Supp. 1419, 1423 (D. Kan. 1996) (a tribe must first have jurisdiction in order to exercise governmental power for purposes of 25 U.S.C. § 2703(4)).

1. Jurisdiction

The presumption of jurisdiction exists for any federally recognized tribe acting within the limits of Indian country. *See South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329 (1998). This jurisdiction, an inherent sovereign power, can only be modified by a clear and explicit expression of Congress. *See Yankton Sioux Tribe*, 522 U.S. at 341; *see also Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 140 (1982).

Over time, the term Indian country has referred to lands upon which the federal government and the Indian tribe share primary jurisdiction. *See CACGEC II*, at 93, citing *Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 529 (1998). The term Indian country is defined by 18 U.S.C. § 1151 as follows:

> (a) All lands within the limits of an Indian reservation under the jurisdiction of the United State Government, notwithstanding the issuance of any patent, including rights of way running through the reservation,
>
> (b) All dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territories thereof, and within or without the limits of a state, and
>
> (c) All Indian allotments, the Indian titles to which have not been extinguished including rights of way running through the same.

Although section 1151 defines Indian country for purposes of criminal jurisdiction, the definition has expanded to include civil jurisdiction, thus becoming the accepted general definition of Indian country. *DeCoteau v. District County Court for the*

Tenth Judicial District, 420 U.S. 425, fn. 2 (1975); *CACGEC II* at 95. In its review of 18 U.S.C. § 1151, the U.S. Supreme Court found that the statute contains two criteria that are necessary for land to constitute Indian country: (1) lands set aside for Indians and (2) federal superintendence of those lands. *See Venetie*, 522 U.S. at 527; *CACGEC II* at 95.

Although for many the term "Indian country" may be perceived as synonymous with the reservation system, this perception is erroneous because the term is not so limited. Reservation status is not necessary for a finding of Indian country. *See Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 511 (1991) ("No precedent of this Court has ever drawn the distinction between tribal trust land and reservation that Oklahoma urges."). In *United States v. Roberts,* 185 F.3d 1125 (10th Cir. 1999), the Tenth Circuit found that "[o]fficial designation of reservation status is not necessary for the property to be treated as Indian Country under 18 U.S.C. § 1151," rather, "it is enough that the property has been validly set aside for the use of the Indians, under federal superintendence." *Id.* at 1133, n.4. Thus, as long as the land in question is validly set apart for the use of the Indians and is under federal superintendence, that land can be considered "Indian Country." *Roberts*, 185 F.3d at 1131, n.4. *See also CACGEC II*, at 126-127, 139-141 & 147. Accordingly, lands held in trust or pursuant to the United States' restriction against alienation, allotments, and reservations may all be considered Indian country. *See United States v. Sandoval*, 231 U.S. 28 (1913) (restricted fee land as Indian Country); *United States v. Pelican*, 232 U.S. 442 (1914) (allotment as Indian Country); *United States v. McGowan*, 302 U.S. 535 (1938) (trust land as Indian Country).

In the matter at hand, once the Secretary of the U.S. Department of the Interior allowed the Buffalo Parcel to pass into restricted fee pursuant to the SNSA, the land became Indian country within the meaning of 18 U.S.C. § 1151. The site was "validly set apart for the use of the Indians as such, under the superintendence of the Government." *Potawatomi*, 498 U.S. at 511. The federal set-aside requirement is met by the SNSA's requirement that land enter restricted fee unless the Secretary decides that the Non-intercourse Act should not apply to the land. Here, the Secretary made no such determination and the Nation's land in Buffalo was set aside by the federal government for the Nation's use. Because the SNSA subjects the land to the Non-intercourse Act, it also meets the government supervision requirement. In its *Venetie* decision, the U.S. Supreme Court discussed the holding of *United States v. Sandoval*, 231 U.S. 28 (1913), noting that although the Pueblo Indians' land was owned in fee simple, Congress had enacted legislation with respect to the land 'in the exercise of the government's guardianship over the [Indian] tribes and their affairs,' including [the Non-Intercourse Act]. *Venetie*, at 528 and n.4. This, according to the Supreme Court, met the superintendence requirement.

Additionally, in *CACGEC II*, the district court found: "[T]hat Congress in enacting the SNSA, unambiguously intended that land purchased with SNSA funds and made subject to the Nonintercourse Act be set apart for the SNI's use and placed under federal superintendence. In short, such land is Indian country over which the federal government and the SNI exercise primary jurisdiction." *CACGEC II* at 97. Further, the Court held that "[t]he NIGC Chairman's determination - that the Buffalo Parcel,

purchased with SNSA funds and held in restricted fee status, is Indian country over which the SNI has jurisdiction – is entirely consistent with and gives effect to Congress's expressed intent" and, thus, is in accordance with the law. *Id.* at 98.

Accordingly, the Nation possesses jurisdiction to exercise governmental authority over the Buffalo Parcel.

2. Exercise of Governmental Authority

In order for the Buffalo Parcel to qualify as Indian lands under IGRA, the Nation must also exercise present-day, governmental authority over the land. IGRA does not specify how a tribe exercises governmental authority, though there are many possible ways in many possible circumstances. For this reason, the NIGC has not formulated a uniform definition of "exercise of governmental power" but rather decides that question in each case based upon all the circumstances. *National Indian Gaming Commission: Definitions Under the Indian Gaming Regulatory Act,* 57 Fed. Reg. 12382, 12388 (1992).

The courts have provided useful guidance on the question of "exercise of governmental powers." For example, governmental power involves "the presence of concrete manifestations of ... authority." *Narragansett Indian Tribe*, 19 F.3d at 703. Examples of the presence of concrete manifestations of governmental authority include the establishment of a housing authority, administration of health care programs, job training, public safety, conservation, and other governmental programs. *Id.*

Since acquiring the land in 2005, the Nation's Marshal's Office patrols and polices the Buffalo Parcel. The Nation has fenced the site to restrict access and posted signs indicating that site is subject to the Nation's jurisdiction. The Nation has also enacted several ordinances and resolutions applying its laws to the Parcel. In addition to current exercises of governmental power, by operating and regulating gaming, which is a governmental function under IGRA, the Nation exercises governmental authority over the land. Because the land described in the 2008 ordinance is held in restricted fee and the Nation exercises governmental authority over it, the land meets IGRA's *Indian Lands* definition. *See* 25 U.S.C. § 2703(4).

Section 2719 Prohibition

The determination of whether the Buffalo Parcel constitutes Indian lands, however, is not the end of the inquiry. Section 2719 of IGRA generally prohibits gaming on lands acquired in trust after October 17, 1988, unless certain exceptions apply. Because the Nation's Buffalo Parcel was purchased in 2005, I must examine whether section 2719 prohibits the Nation from gaming on the parcel.

I. NIGC's authority to reinterpret Section 2719

The first issue I must decide is whether the NIGC is bound by the agency's previous interpretation of section 2719, my application of that interpretation to the

Nation's 2007 ordinance, and the district court's well-reasoned ratification of that interpretation. Ultimately, I have concluded that the agency is not so bound.

As explained above, new DOI initial regulations became effective on August 25, 2008. The preamble of the regulations articulates DOI's view that section 2719's general prohibition only applies to trust land. As quoted above, the preamble states: "The omission of restricted fee from section 2719(a) is considered purposeful, because Congress referred to restricted fee lands elsewhere in IGRA, including at sections 2719 (a)(2)(A)(ii) and 2703(4)(B)." 73 F.R. 29355.

Moreover, the NIGC will follow the regulations and concurs in this interpretation, as it adheres to the explicit language of the statute. Congress has clearly spoken to the issue of section 2719's application to lands held by a tribe subject to restriction by the United States against alienation. Section 2719 states as follows:

> Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless . . . [certain exceptions are met.]

25 U.S.C. § 2719.

In reviewing the language of section 2719, it only references trust land acquired after October 17, 1988. It says nothing of land held by a tribe subject to restriction by the United States against alienation. As such, Congress made its intent clear and the issue can be resolved at step one of *Chevron*.

Even if the language is ambiguous, though, DOI and NIGC's interpretation is entitled to deference. The NIGC and DOI are each charged with specific duties under IGRA. When two or more agencies administer a statute and work together on its interpretation, the interpretation of each agency is granted *Chevron* deference. *Individual References Servs. Group, Inc. v. Federal Trade Commission*, 145 F. Supp. 2d 6, 23-24 (D. D.C. 2001).

As explained above, the Supreme Court, in *Chevron,* established a two-step process for determining whether an agency's interpretation is entitled to deference. *Chevron* at 842-843. At step one, the court looks to whether Congress has clearly spoken on the issue. *Id.* at 842. If it hasn't, and the statute is silent or ambiguous, the court must invoke step two of the *Chevron* analysis and determine whether the agency's interpretation is based on a permissible construction of the statute. *Id.* at 843. When an agency charged with administering a statute interprets an ambiguity in the statute or fills a gap where Congress has been silent, the agency's interpretation is controlling unless it is arbitrary, capricious, or contrary to the statute. *Id.* at 844.

Although the language of section 2719 is clear, the recent holding in *CACGEC II* indicates that the section may be open to interpretation. The district court ruled that

"Chairman Hogen's conclusion that Congress intended the section 20 prohibition to apply to *all* after-acquired land is a permissible construction of the statute." *CACGEC II* at 177-178. However, even if I was to agree with the court that section 2719's language is not clear as to the application of the general prohibition, the new interpretation is superior and entitled to deference under step two of *Chevron*.

II. Former Interpretation and Basis for Reviewing Prior Interpretation of Section 2719.

As noted above, on May 20, 2008, DOI published initial regulations, which the NIGC intends to follow, implementing section 2719 of IGRA that became effective on August 25, 2008. *Gaming on Trust Lands Acquired After October 17, 1988*, 73 Fed. Reg. 29354 (May 20, 2008); *Gaming on Trust Lands Acquired After October 17, 1988; Correction*, 73 Fed. Reg. 35579-35580. The regulations articulate the standards that DOI will follow in interpreting various exceptions to the gaming prohibitions contained in section 2719 of IGRA. 73 Fed. Reg. 29355. In particular, under the initial regulations, DOI interprets section 2719 to apply only to trust lands and establishes criteria necessary for meeting the "settlement of a land claim" exception. 73 Fed. Reg. 29355, 29376-77. Thus, DOI interprets the general prohibition as not encompassing lands held by a tribe subject to restriction by the United States against alienation.

Previously, DOI and the NIGC applied the section 2719 prohibition to restricted lands because the agencies believed that doing otherwise would create a loophole allowing tribes to game on lands not intended by Congress. The NIGC and DOI reasoned that Congress intended to restrict gaming opportunities upon all Indian lands acquired after the date of the statute's enactment unless one of the section 2719 exceptions applied. Letter from Philip N. Hogen, NIGC, to Maurice A. John, Seneca Nation of Indians at 4 (July 2, 2007); Letter from Secretary Gale Norton, DOI, to Cyrus Schindler, Seneca Nation of Indians at 7 (Nov. 12, 2002). Although section 2719 explicitly applies only to trust land acquired after October 19, 1988, and does not reference restricted land in its prohibition, DOI and the NIGC believed that a literal reading of section 2719 would conflict with Congress's intent in drafting the prohibition. *See United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 242 (1989) ("Where the literal interpretation of a statute will produce a result demonstrably at odds with the intent of the drafters...the intention of the drafters, rather than the strict language controls."). This concern was also addressed by the District Court in *CACGEC II*, in which it applied similar reasoning and held the application of section 2719 to the Nation's restricted fee land in Buffalo was a permissible interpretation of IGRA. *CACGEC II* at 177-178. We are satisfied that the new interpretation of section 2719 does not threaten to undermine IGRA or conflict with Congressional intent.

First, this position on section 2719's applicability to restricted land has a very limited effect because it presently only affects one tribe, the Seneca Nation. "Because Congress has plenary power over Indian affairs, *see* U.S. Const. Art. I, § 8, cl. 3, some explicit action by Congress (or the Executive, acting under delegated authority) must be taken to create or to recognize Indian country." *Alaska v. Native Village of Venetie*, 522

U.S. 520, 530, fn. 6 (1997). Unlike with trust land, Congress has not delegated general authority to the Executive to place land in restricted status. *See* 25 U.S.C. § 465. Therefore, the Secretary cannot allow land to go into restricted status unless authorized to do so by Congress. We know of only one Act that expressly permits the Secretary to create restricted fee land for a tribe, which is the SNSA. 25 U.S.C. § 1774 et seq. The Act authorizes the Nation to purchase land with funds appropriated under the SNSA. Unless the Secretary determines the land should not be subject to the restrictions of the Non-Intercourse Act, 25 U.S.C. § 177, it shall be held by the Nation in restricted fee. 25 U.S.C § 1774f(c). Because the SNSA is the only Act permitting the Secretary to accept land into restricted status for a tribe, the new interpretation has a very limited effect.

Second, the NIGC has revisited its concern that a tribe may argue that off-reservation property purchased in fee on the open market is restricted Indian land due to the application of the Non-intercourse Act or a tribal charter and, therefore, eligible for gaming. We are now satisfied that the prior interpretation failed to recognize that the Non-intercourse Act does not apply to off-reservation fee lands when such lands are not Indian country. Even if it did, such lands would likely fail to meet the requirements necessary to meet IGRA's definition of Indian lands.

The Department of the Interior has recently taken the position that the Non-intercourse Act does not apply to off reservation fee land purchased by a tribe in fee simple.[3] This position is similar to that advanced by the United States in its amicus brief for the case *Leech Lake Band of Chippewa Indians v. Cass County, Minnesota*, 108 F.3d 820 (8th Cir. 1997). In *Cass County*, the Leech Lake Band of Chippewa Indians claimed that land the Band had purchased within the bounds of its reservation was not subject to taxation by the county. In its amicus brief to the 8th Circuit Court of Appeals, the United States argued that the Non-intercourse Act applies to "all reservation lands held by a tribe, including land recently acquired in fee." *Cass County*, 1997 U.S. Briefs 174, 14-15. In doing so, the United States suggested that off-reservation lands are not protected under the Non-intercourse Act and expanded on this premise by stating: "[T]his case is concerned only with tribally owned lands on a reservation, where the Act serves to protect the tribal land base." *Id.* at 27, n. 13. The qualifying language in the brief, "on a reservation, where the Act serves to protect the tribal land base," signifies that the litigating position of the United States is that the Non-intercourse Act's Federal protections against alienation do not extend to off-reservation lands owned by a tribe in fee unless some extenuating circumstances exist.

In its *Cass County* brief, the United States discussed the fact that the 1834 Act enacting the Non-Intercourse Act was intended to apply to "Indian Country," as defined

[3] *See* January 18, 2009, M-30723 regarding Applicability of 25 U.S.C. § 2719 to Restricted fee lands; *see also* Letter of December 19, 2008 from George Skibine, Acting Deputy Assistant Secretary-Policy and Economic Development, to Carl Edwards, President of the Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin. Lac du Flambeau requested confirmation from DOI that it may convey a specific parcel of land purchased by the Tribe in fee simple and located off-reservation. DOI instructed the Tribe that Federal restrictions against alienation did not attach to the parcel when the Tribe purchased it and the Non-intercourse Act does not apply to the parcel.

in section 1 of the Act. *Id.* citing *Wilson v. Omaha Indian Tribe*, 442 U.S. 653, 667-668 (1979) (quoting H.R. Rep. No. 474, 23rd Cong., 1st Sess. 10 (1834)). The definition of "Indian Country" in section 1 of the 1834 Act was omitted from the Revised Statutes and "therefore repealed, and the scope of the term was left to judicial decisions until Congress enacted the current definition of Indian country in 18 U.S.C. § 1151." *Id.* (citing *Wilson*, 442 U.S. at 668 (citing Rev. Stat. § 5596 (1874 ed.)). Section 1151's definition includes all lands within the boundaries of a reservation, dependent Indian communities, and all allotments to which the Indian titles have not been extinguished. *See Solem v. Bartlett* 465 U.S. 463, 468 (1984). Thus, if off-reservation fee land purchased by a tribe does not otherwise meet one of the above categories of Indian country, the Non-intercourse Act does not apply, and there is no restriction against alienation on the land.

The determination that the Non-intercourse Act does not apply to off reservation fee land acquired by a tribe outside of Indian country is in keeping with the district court's finding in *CACGEC II*. *See CACGEC II* at 135-136.

However, even if off-reservation fee land possesses a restriction against alienation by operation of the Non-intercourse Act or a tribal charter, IGRA itself will likely prevent tribes from gaming on that land because to qualify as *Indian lands*, the tribe must exercise governmental power over the restricted land. In order to exercise governmental power, the tribe must have jurisdiction over the land. Tribes have jurisdiction over *Indian country*, which requires that the land in question be set aside by the federal government and be subject to federal superintendence.

In most cases, it is unlikely that a tribe can show jurisdiction to exercise governmental power over off-reservation land it buys in fee on the open market. Tribes have jurisdiction within Indian country, *see South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329 (1998), but off-reservation fee land acquired on the open market generally will not qualify as Indian country. The definition of Indian country includes reservation land, dependent Indian communities, and Indian allotments. *See* 18 U.S.C. § 1151. This definition reflects the two criteria the Supreme Court has held necessary for a finding that lands constitute Indian country: lands set aside for Indians and federal superintendence of those lands. *Venetie*, 522 U.S. at 527; *see also CACGEC II* at 126-127, 139-141 & 147. Because restricted land may be interpreted as neither reservation nor Indian allotment land,[4] it is Indian country only if it is a dependent Indian community. *See CACGEC II* at 126; cf *Oklahoma Tax Comm'n v. Sac & Fox Nation*, 508 U.S. 114, 128 (1993); *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe*, 498 U.S. 505, 511 (1991)(rejecting distinction between tribal trust land and reservation). Like all parts of the Indian country definition, dependent Indian community requires federal set-aside and federal superintendence. *Venetie* at 530; *CACGEC II* at 126-141. To meet the federal set-aside requirement, the Federal Government must take some action setting apart the land for the use of the Indians as such. *Id.* at fn. 5, quoting *United States v. McGowan*, 302

[4] *See* 25 C.F.R. § 151.2 ("Restricted land or land in restricted status means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary").

U.S. 535, 539 (1938) ("The Reno Colony has been validly set apart for the use of the Indians. It is under the superintendence of the Government. The Government retains title to the lands which it permits the Indians to occupy"). The federal set-aside requirement also "reflects the fact that because Congress has plenary power over Indian affairs, *see* U.S. Const., Art. 1, § 8, cl. 3, some explicit action by Congress (or the executive, acting under delegated authority) must be taken to create or to recognize Indian country." *Venetie*, 522 U.S. at 955, fn. 6.

The 10th Circuit in *Buzzard v. Oklahoma Tax Commission*, 992 F.2d 1073 (10th Cir. 1993), expounded on the federal set-aside and federal superintendence requirements. In *Buzzard*, the United Keetoowah Band of Cherokee Indians in Oklahoma (UKB) asserted that land it purchased in fee should be considered Indian country because both its tribal charter and the Non-intercourse Act require it to obtain the approval of the federal government before disposing of the land. *Id.* at 1075. While the 10th Circuit found that the Band must obtain the Secretary's approval before alienating the land, it did not reach the question of whether the restriction against alienation was the result of the Band's charter or the Non-intercourse Act. The court did make clear, though, that the restriction against alienation alone did not create Indian country. *Id.* at 1076. The Court found that although the United Keetoowah Band must obtain the Secretary's approval before alienating the land, the Band had the right to obtain that land unilaterally and no action had been taken by the Federal Government indicating that it set aside the land for the Band's use. *Id.* at 1076. The 10th Circuit reasoned "[a] restriction against alienation requiring government approval may show a desire to protect the UKB from unfair dispositions of its land...but it does not of itself indicate that the federal government intended the land to be set aside for the UKB's use." *Id.* (citation omitted). The 10th Circuit, in analyzing the federal superintendence requirement, ruled:

> The federal government has not retained title to this land or indicated that it is prepared to exert jurisdiction over the land. At most it has agreed to approve transactions disposing the land. But the ability to veto a sale does not require the sort of active involvement that can be described as superintendence of the land.

Id.

The District Court in *CACGEC II* also looked to *Buzzard* to support its holding that the Nation's Buffalo parcel met the first requirement, federal set aside, for a dependent Indian community. The Court noted that *Buzzard* did not reach the question of the applicability of the Non-intercourse Act to the United Keetoowah Band's fee land, but settled the matter on the grounds that there was no federal set-aside, and thus no dependent Indian community. *CACGEC II* at 132-135.

Accordingly, even if the Non-intercourse Act applies to off reservation land unilaterally purchased by a tribe, a tribe could not demonstrate federal set-aside or superintendence for such merely through a automatically applied restriction against alienation. Therefore, there will be no sudden dramatic increase in gaming eligible land if

section 2719 applies only to trust land and Congress's intent in drafting section 2719 may be implemented without taking an overly-restrictive view of the provision.

III. New Interpretation

Based on the above analysis, the NIGC concurs with DOI's determination that section 2719 does not apply to restricted land. The explicit language of IGRA itself supports this new reading. The language of IGRA is plain and both the NIGC and DOI agree that Congress has clearly spoken on the issue of whether section 2719 applies to restricted land. As such, the issue should be settled at step one of the *Chevron* analysis. However, even if section 2719 is ambiguous, this new interpretation is entitled to deference under step two of *Chevron*.

1. Chevron Step One

The new interpretation of section 2719 adheres to the explicit language of the statute. Congress clearly spoke on the issue of whether section 2719 applies to restricted land. Where the language of a statute is plain, the "cardinal canon" of construction commands a court or agency to "presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-254 (1992). This plain meaning canon has been applied to section 2719 in the past. *See, Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the U.S. Attorney for the Western District of Michigan*, 369 F.3d 960, 965 (6th Cir. 2004), ("The IGRA does not define the words "restored" and "restoration" in the "restoration of lands" exception set forth at § 2719(b)(1)(B)(iii). Therefore, this Court must give the words 'their ordinary, contemporary, common meaning, absent an indication Congress intended them to bear some different import.'"); *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt*, 116 F. Supp.2d 155, 162 (D.D.C. 2000) (Applying plain meaning to section 2719's restored lands exception.). Here, Congress said in IGRA that gaming is prohibited on "lands acquired by the Secretary in trust" after October 17, 1988. We must presume that by specifying lands acquired "in trust," it meant lands acquired "in trust" and nothing more.[5]

Further, "where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken." *Wilkie v. Robbins*, 127 S. Ct. 2588, 2605 (2007) *quoting Morissette v. United*

[5] DOI and NIGC believe this is not one of those "rare" circumstances "where application of the statute as written will produce a result demonstrably at odds with its drafters' intentions." Demarest v. Manspeaker, 498 U.S. 184. 190 (1991); Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571 (1982). In reviewing a statute for the purpose of developing regulations, an agency will, just as a court must "start, as always, with the language of a statute," *Williams v. Taylor*, 529 U.S. 420, 431 (2000). Congress's intent is best evidenced by the statutory language that it chooses. *United States v. Monsanto*, 491 U.S. 600, 610 (1989). When the statutory text is clear, legislative history is irrelevant. *See, e.g., United States v. Gonzales*, 520 U.S. 1, 6 (1997) ("Given the straightforward statutory command, there is no reason to resort to legislative history").

States, 342 U.S. 246, 263 (1952). Section 2719 prohibits gaming on "lands acquired by the Secretary in trust." 25 U.S.C. § 2719. In this regard, the term, "in trust" is a term of art that has a specific meaning within the realm of federal Indian law. The DOI regulations governing the acquisition of land by the United States in trust for Indians and Indian tribes defines *[t]rust land or land in trust status* as, "land the title to which is held in trust by the United States for individual Indian or a tribe" 25 C.F.R. § 151.2(d). The regulation also defines *[r]estricted land or land in restricted status* as "land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary . . ." 25 C.F.R. § 151.2(e). The regulation went into effect on October 20, 1980, prior to the passage of IGRA. *See* 45 F.R. 62034. As such, when Congress used the term "lands acquired by the Secretary in trust" it understood the meaning of the term and adopted *trust* as the term has always been used in Indian law.

Several laws enacted by Congress demonstrate that not only are trust and restricted lands different, but that Congress generally understands this difference and uses the terms accordingly. *See, e.g.* 25 U.S.C. § 465 ("The Secretary of the Interior is authorized, in his discretion, to acquire...any interest in lands...including trust or otherwise restricted allotments..."); 25 U.S.C. § 81 (defines "Indian lands" as land "held by the United States in trust for an Indian tribe or lands the title to which is held by an Indian tribe subject to a restriction by the United States against alienation."); 25 U.S.C. § 406 (pertaining to the sale of timber on "land in which there are trust or restricted Indian interests"); 25 U.S.C. § 407(d) (authorizing the Secretary of Interior to "charge purchasers of timber on Indian lands that are held by the United States in trust, or that are subject to restrictions against alienation or encumbrance imposed by the United States, for special services."); 25 U.S.C. § 463e ("This section shall apply to tribal, trust, or otherwise restricted Indian allotments..."). Given Congress's history of enacting legislation pertaining to trust and restricted land, it is evident that Congress in this context understood that the two types of Indian lands are not the same and intended to use the term "in trust" accordingly.

Moreover, the section 2719 prohibition explicitly does not extend to restricted land, as evidenced by Congress's separate use of the terms "trust" and "restricted status" or "land . . . subject to the restriction by the United States against alienation" elsewhere in IGRA. *Compare* 25 U.S.C. § 2719 with 25 U.S.C. §§ 2703(4)(B) and 2719(a)(2)(A)(ii). Where "Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983). The general prohibition found in section 2719 does not include restricted land, but other sections of IGRA do. For example, Congress referred to both categories of land elsewhere in section 2719 itself by providing that the general prohibition does not apply to Oklahoma lands belonging to an Indian tribe that had no reservation on October 17, 1988 and the land is "contiguous to other land held in trust or restricted status by the United States..." 25 U.S.C. § 2719(a)(2)(A)(ii). IGRA's definition of Indian lands also provides for lands held by the Secretary in trust for a tribe and lands held by the tribe "subject to restriction by the

United States against alienation." 25 U.S.C. § 2703(4)(B). Consequently, the use of the term *restricted* in some provisions of IGRA and not in others evinces Congressional intent to exclude it from the general prohibition.

Based on the above analysis, the NIGC finds that the plain language of section 2719 compels the agency to change its reading of the section's applicability to restricted land. The plain meaning of the statute establishes that the prohibition against gaming on after acquired lands does not apply to restricted land.

2. Chevron Step Two

Upon further review, I conclude that to the extent the language is ambiguous, the new interpretation is superior and entitled to deference under step two of *Chevron*. The rules of statutory interpretation, as well as the Indian canon of construction, lead to the conclusion that Congress did not intend the section 2719 prohibition to apply to restricted land.

Exceptions to a statute's general policy are "sensibly read narrowly in order to preserve the primary operation of the [policy]." *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731-32 (1995). The purpose of IGRA is to "promote tribal economic development, self sufficiency, and strong tribal governments through gaming." 25 U.S.C. § 2702(1). An exception to that policy must be construed narrowly. In, *Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the U.S. Attorney for the Western District of Michigan*, 369 F.3d 960 (6th Cir. 2004), the Sixth Circuit held:

> Although § 2719 creates a presumptive bar against casino style gaming on Indian lands acquired after the enactment of IGRA, that bar should be construed narrowly (and the exceptions to the bar broadly) in order to be consistent with the purpose of the IGRA, which is to encourage gaming.

Id. at 971. *cf. City of Roseville v. Norton*, 358 U.S. App. D.C. 282, 348 F.3d 1020, 1030-32 (D.C. Cir. 2003) (holding that the "restoration of lands" exception should be interpreted broadly because the IGRA's exceptions "embody policies counseling for a broader reading" due to the statute's general purpose of promoting tribal economic development and self-sufficiency; also applying the Indian canon of statutory construction to resolve any ambiguities in favor of a broad reading of the "restoration of lands" exception). Therefore, as section 2719 is an exception to IGRA's stated policy, it must be interpreted narrowly. A narrow interpretation leads to the conclusion that the use of the term "lands acquired in trust by the Secretary" cannot be read to incorporate other types of land, such as land held by a tribe subject to a restriction by the United States against alienation. To do so would injure the primary operation of IGRA's policy to promote tribal gaming.

Not only should any exceptions to IGRA's general policy be read narrowly, but any ambiguous provision "must be interpreted...to carry out the statute's objectives." *In re Joint Eastern & Southern Dist. Asbestos Litigation*, 1990 U.S. Dist. LEXIS 10891

(S.D.N.Y. 1990). As discussed above, IGRA's purpose or objective is to "promote tribal economic development, self sufficiency, and strong tribal governments through gaming." 25 U.S.C. § 2702(1). If section 2719 is ambiguous, it must be interpreted to carry out that objective. The new interpretation of section 2719 frees restricted land from section 2719's prohibition, thus promoting, rather than inhibiting, IGRA's objective to encourage tribal economic development, self sufficiency, and strong government through gaming.

Further, the Indian canon of construction reinforces the above interpretation. The canon requires that ambiguities in statutes passed for the benefit of Indians be interpreted liberally in favor of Indian tribes. *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759,766 (1985); *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 89 (1918). IGRA was enacted for the benefit of Indians and Indian tribes. The Act's purpose is, in part, "to promote tribal economic development, self-sufficiency, and strong tribal governments" and "to ensure that the Indian tribe is the primary beneficiary of the gaming operation." 25 U.S.C. §§ 2702(2) and (3). *See also City of Roseville v. Norton*, 348 F.3d 1020, 1032 (D.C. Cir. 2003) ("IGRA is designed to promote the economic viability of Indian Tribes...the Indian canon requires the court to resolve any doubt in favor of the tribe"); *Artichoke Joe's Cal. Grand Casino v. Norton*, 353 F.3d 712, 730 (9th Cir. 2004) ("IGRA is undoubtedly a statute passed for the benefit of Indian tribes. IGRA's declaration of policy...firmly places the statute in the category of legislation to which the *Blackfeet* presumption applies); *AT&T Corp. v. Coeur D'Alene Tribe*, 295 F.3d 899, 918 (9th Cir. 2002) ("because [IGRA] was enacted to benefit Indian tribes, the IGRA must be construed liberally in favor of the Native Americans.") As such, a liberal interpretation of section 2719 in favor of the applicable gaming tribes is appropriate in this instance. An interpretation of section 2719 limiting its application to the type of land specified in the Act is clearly more favorable to Indian tribes than our previous interpretation, which expanded the prohibition's application. The new interpretation creates more opportunity for Indian tribes to pursue gaming by loosening, if only very little, the restriction against gaming on after acquired property.

In *CACGEC II*, the district court expresses concern that interpreting section 2719 to apply exclusively to trust land would contradict Congress's intent in drafting the statute. *CACGEC II* at 175, citing, *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 242 (1989) ("Where the literal interpretation of a statute will produce a result demonstrably at odds with the intent of the drafters...the intention of the drafters, rather than the strict language controls."). The Court asserts:

> Courts "assume that Congress is aware of existing law when it passes legislation." *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 *(1990)*. As the [Indian Reorganization Act's] trust provision was the only legally recognized manner in which new land could be acquired for Indians when the IGRA was enacted, the *section 20* prohibition was all-inclusive on its face... Given the existing state of the law and Congress's careful construction, the Court finds that Congress intended to prohibit gaming on *all* after-acquired land, unless one of the *section 20* exceptions applies.

Id. As discussed above, however, this interpretation does not conflict with Congress's intent. Congress is the only entity with the authority to create restricted fee land. Unlike with trust land, it has not generally delegated its authority to create restricted land to the Secretary. Therefore, only Congress, or the Secretary acting pursuant to explicit authorization from Congress, can create restricted fee Indian land. As Congress was the only entity that could create restricted fee land, there was no need for it to include it in the section 2719 prohibition. Therefore, this interpretation does not contradict Congress's intent. Going forward, if and when Congress enacts a law which allows a tribe to have restricted fee land, it intends for such land to be eligible for gaming under IGRA unless Congress explicitly provides to the contrary.

The NIGC and DOI believe that section 2719's language is clear and limits the general prohibition to after acquired trust land. However, even if, as the *CACGEC II* court held, the provision is open to interpretation, the new reading of section 2719 is superior. It comports with the plain language of IGRA, resolves any ambiguity in favor of the tribes, as required by the Indian canon of construction, and promotes IGRA's underlying policies and objectives. Regardless of whether section 2719's application to restricted land is analyzed at step one of *Chevron* or step two, the new interpretation of IGRA is correct. Section 2719 does not apply to restricted land.

Settlement of a Land Claim

I have also reviewed the ordinance under the settlement of a land claim exception. I realize that to do so is unorthodox. Typically, if I have one basis for approval, I do not look to others. Furthermore, the district court in *CACGEC II* has already decided the inapplicability of the settlement of a land claim exception for the Buffalo site. *See CACGEC II*, at 201-202. The NIGC is bound by that decision unless it is overturned on appeal.

I review this ordinance, therefore, for two reasons. First, this review was conducted pursuant to the new DOI regulations, which are now in effect and which the NIGC intends to follow. These new regulations provide a reasonable interpretation of the settlement of a land claim exception. Second, I conclude that deciding both alternatives for approving the ordinance saves NIGC resources. Every decision I have made on the ordinances to date has been the subject of litigation. I expect that today's decision will also be challenged. I also expect that if a challenge to the restricted fee interpretation is successful, the Nation will once again submit a site specific ordinance claiming that it is able to game on the Buffalo Site in accordance with 25 C.F.R. § 292.5.

While I believe that the Seneca Nation's restricted fee lands do not fall within the provisions of section 2719, had Congress determined that restricted fee lands should be subject to the same prohibitions set forth in section 2719 for lands acquired in trust, the Buffalo acquisition would fall within section 2719's "settlement of a land claim" exception to the section 2719 prohibition.

DOI has taken the position that the SNSA meets section 2719's settlement of a land claim exception pursuant to the new regulations. As DOI is the agency tasked with administering the SNSA, *see Passamaquoddy Tribe v. Maine*, 75 F.3d 784, 794 (D.Me. 1996), the NIGC agrees with its analysis that the SNSA meets the settlement of a land claim exception under the new regulation, as conveyed to the NIGC. January 18, 2009 Letter from David Bernhardt, Solicitor, DOI, to Penny Coleman, Acting General Counsel, NIGC.

In addition, I also note that although the district court, in *CACGEC II*, decided that the SNSA did not settle a claim against the United States, the initial regulations make no such requirement. The regulation provides that the "settlement of a land claim" exception applies if the land at issue is:

> [a]cquired under a settlement of a land claim that resolves or extinguishes with finality the tribe's land claim in whole or in part, thereby resulting in the alienation or loss of some or all of the lands claimed by the tribe, in legislation enacted by Congress.

25 C.F.R. § 292.5(a). The regulation defines "land claim" as:

> any claim by a tribe concerning the impairment of title or other real property interest or loss of possession that:
> (1) Arises under the United States Constitution, Federal common law, Federal statute or treaty;
> (2) Is in conflict with the right, or title or other property interest claimed by an individual or entity (private, public, or governmental); and
> (3) Either accrued on or before October 17, 1988, or involves lands held in trust or restricted fee for the tribe prior to October 17, 1988.

25 C.F.R. § 292.2.

As the initial DOI regulations make clear, a settlement of a land claim for purposes of the exception can be any claim by a tribe regardless of who the claim is against, providing it otherwise meets the requirements of section 292.2 and 292.5(a). As such, the SNSA would meet the requirements of section 2719's settlement of a land claim exception under the new regulations.

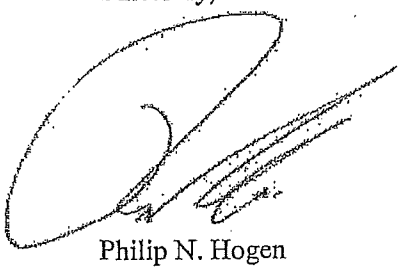
Conclusion

For the reasons set forth above, 25 U.S.C. § 2719's general prohibition against gaming on after-acquired lands does not apply to restricted land. As such, gaming on the Nation's Buffalo Parcel, located on restricted fee land over which the Nation has jurisdiction and exercises governmental power, is not precluded by IGRA. The Nation's 2008 Class III Gaming Ordinance, as amended is hereby approved.

Exhibit "V" Attached to Exhibit "A".

If you have any questions, please feel free to contact me.

Sincerely,



Philip N. Hogen
Chairman

Exhibit "B" Annexed to Affirmation of Pitman.

SENECA NATION OF INDIANS CLASS III GAMING ORDINANCE

GENERAL PROVISIONS

SECTION 1 - SHORT TITLE

This Law may be cited as the "Seneca Nation of Indians Class III Gaming Ordinance".

SECTION 2 - DECLARATION OF TRIBAL POLICY

§2-1 It is the policy of the Seneca Nation of Indians, hereinafter referred to as "Nation":

(a) That the Nation shall have the sole proprietary interest in and responsibility for the conduct of any Nation Gaming Operation;

(b) That all gaming operations on Nation Lands shall be conducted by the Nation, through employees of the Nation or its Management Contractors only;

(c) That it is the objective of this Law to provide revenue to promote (i) Nation economic development and self-sufficiency and (ii) the health, education, and welfare of Nation members; and

(d) That the gaming activities provided for by this Law on lands of the Nation shall be conducted in conformance with the requirements of this Law, the Nation-State Gaming Compact Between the Seneca Nation of Indians and the State of New York, the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701, et seq., and National Indian Gaming Commission regulations.

SECTION 3 – FINDINGS

§3-1 The Tribal Council finds that —

(a) Class III gaming may be conducted on lands of the Nation by reason of the fact that the Nation and the State of New York have entered into a gaming compact pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701, et seq.

SECTION 4 – DEFINITIONS

§4-1 For the purpose of this Law, the following definitions shall apply:

(a) "Act" shall mean the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701, et seq.

(b) "Appendix" shall mean an appendix to the Compact. "Appendices" shall mean more than one Appendix.

Exhibit "B" Annexed to Affirmation of Pitman.

(c) "Applicant" shall mean any person who completes an application with the Nation for a gaming license.

(d) "Chairman" shall mean the Chairman of the National Indian Gaming Commission or his or her designee.

(e) "Cheating" shall mean operating or playing in a game in a manner in violation of the written or commonly understood rules of the game, with the intent to create for himself/herself or someone in privity with him/her an advantage over and above the chance of the game.

(f) "Class III Gaming" shall have the meaning found in 25 U.S.C. § 2703(8).

(g) "Class III Gaming Key Employee" shall mean those employees designated in the gaming operations pursuant to 25 C.F.R. § 502.14, and as defined in Section 1(f) of the Compact.

(h) "Class III Gaming Primary Management Official" shall mean those employees designated in the gaming operations pursuant to 25 C.F.R. § 502.19.

(i) "Class III Gaming Service Enterprise" means an entity or individual, other than a Class III Gaming Employee, that provides Class III Gaming services, Class III Gaming supplies or Class III Gaming equipment to a Nation Gaming Operation.

(j) "Collateral Agreement" shall mean any contract, whether or not in writing, that is related, either directly or indirectly, to a Management Contract, or to any rights, duties, or obligations created between the Nation (or any of its members, entities, or organizations) and a Management Contractor or subcontractor (or any person or entity related to a Management Contractor or subcontractor).

(k) "Council" shall mean the Tribal Council as described in Section I of the Constitution of the Seneca Nation of Indians.

(l) "Gaming Facility" means those portions of a structure in which the Nation conducts Class III Gaming pursuant to this Compact. For purposes of this definition, a Gaming Facility shall be deemed to include only those areas of a structure that the Nation uses for Class III Gaming operations. Notwithstanding the foregoing, no areas of a structure exclusively used for Class I or Class II gaming or for non-gaming activities shall be considered part of a Gaming Facility.

(m) "Gaming License" shall mean the permit granted by the Nation to an applicant for employment with a gaming operation.

(n) "Gross Gaming Revenues" shall mean the total amount of money wagered less amounts paid out to winners or for prizes.

Exhibit "B" Annexed to Affirmation of Pitman.

(o) "In privity with" shall mean one who acts jointly with another or as an accessory before the fact to an act committed by the other or as a co-conspirator with the other.

(p) "Management Contract" shall mean any contract, subcontract, or Collateral Agreement between the Nation and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation.

(q) "Management Contractor" shall mean the person or entity holding a contract entered into pursuant to 25 U.S.C. § 2711.

(r) "Minor" shall mean a person less than eighteen (18) years of age.

(s) "Nation" means the Seneca Nation of Indians.

(t) "Nation Gaming Operation" shall mean the enterprise, business or entity operated or authorized by the Nation to operate or conduct any form of Class III gaming on Nation Lands pursuant to the Compact; provided, however, that the Compact shall apply to operations of such enterprise, business or activity only to the extent that such operations are directly related to Class III Gaming undertaken by the Nation pursuant to the Compact.

(u) "Nation Lands" shall have the meaning found in 25 U.S.C. § 2703(4), including Settlement Act Lands, such as the Buffalo Parcel, which is the real property in Erie County held by the Seneca Nation of Indians in restricted fee status and subject to restrictions by the United States against alienation pursuant to Seneca Nation Land Claims Settlement Act, which is described as follows:

> The northern parcel (+/- 4.5 acres) is bounded to the North by Perry Street, to the East by Marvin Street, to the South by the former Fulton Street, and to the West by Michigan Street.
>
> The southern parcel (+/- 4.5 acres) is bounded to the North by the former Fulton Street, to the East by Marvin Street, to the South by South Park Street, and to the West by Michigan Street.

(v) "Net revenues" shall have the meaning as set forth in 25 C.F.R. § 502.16.

(w) "NIGC" shall mean the National Indian Gaming Commission established pursuant to the Act.

(x) "Person" shall mean any individual, firm, partnership, corporation, company, or association.

(y) "Person having management responsibility for a Management Contract" shall mean the person designated in the Management Contract as having management responsibility for the gaining operation, or a portion thereof.

(z) "Secretary" means the Secretary of the Interior.

(aa) "Seneca Gaming Authority" or "SGA" shall mean the entity established by the Nation responsible for regulating Class III Gaming undertaken by the Nation pursuant to the Compact.

(bb) "Settlement Act Lands" shall mean the real property that is held by the Nation in restricted fee status and subject to restrictions by the United States against alienation pursuant to the Seneca Nation Land Claims Settlement Act.

(cc) "State Gaming Officials" or "SGO" means the officials designated by the State to fulfill the State's responsibility to ensure Nation Gaming Operation and SGA compliance with the terms of the Compact.

SECTION 5 - SENECA GAMING AUTHORITY

§5-1 The Council of the Nation establishes the Seneca Gaming Authority (SGA) for the purpose of regulating Class III gaming conducted on Nation Lands.

(a) The SGA is recognized as a governmental arm of the Nation and shall perform an essential governmental function which is hereby designated to the SGA by the Nation Council. Commissioners and employees of the SGA shall be recognized as performing said essential governmental functions on behalf of the Nation.

(b) The SGA shall be comprised of five (5) commissioners to be selected by the Council.

(c) A vote of at least three commissioners shall constitute a valid vote (quorum) by the SGA.

(d) The commissioners shall have a staggered term of employment with three (3) of the commissioners having an initial term of four (4) years and two (2) of the commissioners having a term of two (2) years. Compensation for the commissioners shall be established by the Council. Removal of a commissioner shall be for cause which shall be defined by resolution of the Council.

(e) The commissioners shall have the experience in the gaming industry and the education that will enable them to immediately regulate the Nation's gaming enterprises.

(f) The funds for the operation of the SGA shall be appropriated from the general fund of the Nation.

(g) The SGA shall be the exclusive regulatory body for the Nation Gaming Operations' activities and operations conducted in a Gaming Facility pursuant to the

Compact. The SGA shall have unrestricted access to all aspects of the Nation Gaming Operations.

§5-2 The SGA shall have responsibility for the on-site regulation of Class III Gaming undertaken by the Nation pursuant to the Compact. The purpose of the SGA is regulatory, not managerial. The SGA will conduct oversight to ensure compliance with the Nation laws, the Compact and its Appendices, the Act, NIGC regulations, and, if applicable, State laws and regulations. The SGA will serve as the licensing authority for individuals employed in the Nation Gaming Operation and will administer an effective program for background investigations as part of the licensing process, consistent with the Compact and its Appendices. The SGA will also have a role in monitoring compliance with the internal control standards for the Nation Gaming Operation and in tracking revenues. In order to carry out its regulatory duties, the SGA shall have unrestricted access to all areas of the Nation Gaming Operation and to all records. The SGA shall have clear authority to take enforcement actions, including suspension or revocation of an individual gaming license, when appropriate.

§5-3 The Nation recognizes the importance of an independent SGA in maintaining a well-regulated gaming operation. The SGA shall be and act independently and autonomously from the Nation Council in all matters within its purview. No prior or subsequent review by the Nation Council of any actions of the SGA shall be required or permitted except as otherwise explicitly provided in this Law. To avoid potential conflicts of interest between the operation and regulation of the Gaming Facility, the Nation hereby finds that, at a minimum:

(a) No member of the Nation Council may serve on the SGA;

(b) No member directly related to or living with any Nation Council member may serve on the SGA;

(c) SGA commissioners are prohibited from gambling in Nation Gaming Operations; and

(d) SGA commissioners are prohibited from accepting complimentary items from the Nation Gaming Operations.

§5-4 SGA positions shall be filled by appointment by the Nation Council. Nominees for positions on the SGA must satisfy the suitability standards set forth for Class III Gaming Employees. Such background investigation shall be performed under the direction of the Nation Council or designated official, and as consistent with the Compact and its Appendices.

§5-5 The SGA shall have the power and responsibility to:

(a) administer the provisions of this Law;

(b) conduct or cause background investigations to be conducted on all employees of the Nation Gaming Operation;

(c) issue and renew gaming licenses as provided in this Law and consistent with the Compact and its Appendices, and in any regulation which may be promulgated by the SGA;

(d) obtain and process fingerprints, or designate a law enforcement agency to obtain and process fingerprints;

(e) revoke, suspend, or condition a gaming license or deny an application for a license for violation of applicable law or Law regulating gaming, or conviction of any offense involving a gaming-related crime or moral turpitude;

(f) collect fees and interest as provided for in this Law;

(g) assess and collect penalties provided for in this Law;

(h) adjust the respective amounts of the annual license fees, provided that such fees shall not be increased retroactively;

(i) audit or cause to be audited expenditures, receipts, and reports of a licensee responsible for managing a Nation Gaming Operation;

(j) review, on demand, such books and records and inspect the premises and operations of licensees as it deems necessary for the enforcement of this Law;

(k) draw up such forms as it deems necessary;

(l) ensure compliance with the Compact and its Appendices, and all Nation, State, and Federal laws, rules and regulations regarding Indian gaming;

(m) investigate any suspicion of wrongdoing associated with any gaming activities;

(n) comply with any and all reporting requirements under Nation law, the Act, the Compact and its Appendices, NIGC regulations, and any other applicable law;

(o) promulgate and issue rules and regulations regarding the conduct of Class III gaming, including compliance with the Compact and its Appendices, Nation law, the Act, and NIGC regulations.

(p) promulgate and issue regulations on the levying of any fees and/or taxes associated with gaming license applications;

(q) promulgate and issue regulations on the levying of fines and/or suspension or revocation of gaming licenses for violations of this Law, the Compact and its Appendices, or any other Tribal, State, or NIGC regulations;

(r) to approve Nation Gaming Operation policies and procedures so as to ensure compliance with this Law, the Compact and its Appendices, the Act, NIGC regulations, or any other applicable law;

(s) institute such legal proceedings in the name of the Nation in a court of competent jurisdiction as it deems necessary for the enforcement of this Law;

(t) conduct hearings provided for in this Law;

(u) deposit all fees, penalties, and interest collected under authority of this Law into an account to the credit of the Nation;

(v) maintain a correct and full accounting of all fees, penalties, and interest received under authority of this Law, and provide a monthly record of that accounting;

(w) perform such other duties the SGA deems necessary to properly and fully perform its duties and responsibilities under this Law, the Compact and its Appendices, the Act, NIGC regulations, and any other applicable law; and

(x) administer, enforce, and interpret the provisions of the Seneca Nation of Indians Class II Gaming Law of 1994 and any amendments thereto or replacements thereof.

§5-6 The SGA shall ensure that all records and information obtained as a result of an employee background investigation shall remain confidential and shall not be disclosed to persons who are not directly involved in the licensing process. Under no circumstances shall information obtained during the course of an employee background investigation be disclosed to members of management, human resource personnel or others employed by the Nation Gaming Operation. This Section does not apply to requests for such information or records from any Tribal, Federal or state law enforcement or regulatory agency, or for the use of such information or records by the SGA and staff in the performance of their official duties.

§5-7 The following persons are not eligible to serve on the SGA: Nation Council members, while serving as such; employees of the Nation Gaming Operation, while serving as such; gaming contractors (including any principal of a management or other contracting company); persons directly related to any of the above; persons ineligible to be employees; persons convicted of a felony of embezzlement, of theft, or of any other money-related crime or honesty-related crime (such as fraud). The Nation Council shall require a criminal history check with appropriate law enforcement agencies and shall review this criminal history report and make an appropriate suitability determination before appointing an individual to a position on the SGA.

§5-8 The independence of the SGA is essential to a well-regulated gaming operation. For that reason, SGA commissioners may only be removed from office by the Nation Council prior to the expiration of their respective terms for neglect of duty, misconduct, malfeasance, or other acts that would render a member of the SGA unqualified for his/her position. Any allegations of neglect of duty, misconduct, malfeasance, or other acts that would render him or her unqualified for his/her position must be substantiated by a preponderance of the evidence. SGA

commissioners will be given an opportunity to provide evidence rebutting the grounds for their proposed removal before the removal is considered. A vote of the Nation Council on the validity of the removal shall be final and not subject to further appeal. A wrongful removal shall entitle the affected SGA commissioner to compensation for expenses incurred in an appeal and any pay withheld.

§5-9 A vote of at least 3 members of the SGA shall constitute a valid vote (quorum) by the SGA.

§5-10 SGA commissioners shall be compensated at a level determined by the Nation Council. This compensation shall be included in the Nation Gaming Operation's annual estimated budget, and shall be approved by the Nation Council.

SECTION 6 - GAMES AUTHORIZED

§6-1 The Nation shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation.

§6-2 The Nation shall conduct only those Class III games specifically listed in Appendix A of the Compact, in accordance with the specifications set forth in Appendices A and B.

SECTION 7 - GAMING LICENSES REQUIRED

§7-1 A separate gaming license is required for:

(a) each person having a Management Contract;

(b) each Class III Gaming Key Employee, Class III Gaming Primary Management Official, Class III Gaming Employee, and Non-Class III Gaming Employee of the Nation's Gaming Operation (collectively referred to as "employees");

(c) each Class III Gaming Service Enterprise, each Non-Class III Gaming Enterprise, and each Nation Gaming Operation on Nation Lands at which Class III gaming is conducted.

SECTION 8 - APPLICATION FOR GAMING LICENSES

§8-1 Each person having a Management Contract, each Class III Gaming Key Employee and Class III Gaming Primary Management Official whether employed by the Management Contractor or directly by the Nation, and all other employees shall complete an application for an initial gaming license or renewal of an existing gaming license for each Gaming Facility on an application form prescribed by the SGA. The application shall set forth:

(a) the name under which the applicant transacts or intends to transact business on Nation Lands; and

(b) the location of the Gaming Facility for which the gaming license is sought; and

(c) the application shall be signed by the applicant if a natural person, or, in the case of an association or partnership, by a member or partner thereof, or in the case of a corporation, by executive officer thereof, or by some other person specifically authorized by the corporation to sign the application, in which case written evidence of the signatory's authority shall be attached. The applicant shall provide evidence of authority of the signatory or any other representative to act for and bind the applicant. If any change is made in that authority, the SGA shall be immediately informed in writing and, until that information is filed with the SGA, any action of the representative shall be presumed to be that of the applicant.

§8-2 Each application shall be accompanied by payment of the appropriate annual license fee, and an appropriate fee to cover the cost of the background investigation conducted pursuant to Section 11 below.

§8-3 The Management Contractor shall file along with the application an organizational chart of its management organization and job descriptions of the employees of the Nation Gaming Operation. The chart shall identify which employees are or will be the Class III Gaming Primary Management Officials and the Class III Gaming Key Employees of the Nation Gaming Operation.

§8-4 An application for a gaming license shall include:

(a) a description of the place, facility, or location on Nation Lands where the applicant will operate a gaming operation or provide Class III Gaming related service, Class III Gaming related supplies or Class III Gaming related equipment to the Nation Gaming Operation, or where the applicant will be employed.

(b) the following privacy notice prescribed by 25 C.F.R. § 556.2:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. § 2701, et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by NIGC members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by the Nation or the NIGC in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a Nation or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in the Nation's being unable to hire you in a employee position. The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

Exhibit "B" Annexed to Affirmation of Pitman.

(c) the following notice regarding false statements are prescribed by 25 C.F.R. § 556.3:

> "A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment (U.S. Code, Title 18, Section 1001)."

(d) the following background investigation information from each employee and each Class III Gaming Key Employee and Class III Gaming Primary Management Official:

(1) full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

(2) currently and for the previous ten (10) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;

(3) the names and current addresses of at least five (5) personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (d)(2) of this Section;

(4) current business and residence telephone numbers;

(5) a description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

(6) a description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(7) the name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(8) for each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;

(9) for each misdemeanor conviction or on-going misdemeanor prosecution (excluding minor traffic violations), within ten (10) years of the date of the application, the name and address of the court involved and the date and disposition;

(10) for each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to paragraph (d)(8) or (d)(9) of

this Section, the criminal charge, the name and address of the court involved, and the date and disposition;

(11) the name and address of any licensing or regulatory agency with which the applicant has filed an application for an occupational license or permit, whether or not such license or permit was granted;

(12) a current photograph;

(13) a complete history of the applicant's educational background, including the names of any colleges, universities, trade or vocational schools, and high schools attended;

(14) fingerprints of the applicant to be taken by the Seneca Nation department of law enforcement a state or federal law enforcement agency, for a criminal history check. A criminal history check will include a check of criminal history records information maintained by the Federal Bureau of Investigation pursuant to 25 C.F.R. § 522.2(h);

(15) a statement authorizing law enforcement agencies and prior employers to release information and respond to questions relating to the applicant's records.

(16) all applicants are required to submit to a drug screening test and, if employed, random screening tests thereafter;

(17) any other information that is required by the Compact or its Appendices; and

(18) any other information the SGA deems relevant.

§8-5 Each applicant for a gaming license who has or will have a contract with the Nation to manage a Nation Gaming Operation shall state whether or not he/she already has a Management Contract to operate any Indian or non-Indian gaming operation and, if so, a description of the location of each such operation.

§8-6 A Management Contractor's application shall include information required by 25 U.S.C. § 2710(d) and 25 C.F.R. § 537.1.

§8-7 Existing employee shall be notified in writing that they shall either:

(a) complete a new application form that contains the Privacy Act notice described in Section 8-4(b) above; or

(b) sign a statement that contains the Privacy Act notice described in Section 8-4 (b) above and consent to the routine uses described in that notice.

§8-8 When a Class III Gaming Key Employee or Class III Gaming Primary Management Official begins work at a Nation Gaming Operation the SGA shall forward a copy of the person's completed application for a gaming license to the NIGC.

SECTION 9 - QUALIFICATIONS FOR GAMING LICENSES

§9-1 The SGA may issue or renew a gaming license to an applicant who submits a proper and completed application and pays the appropriate annual license fee consistent with the Compact and its Appendices.

§9-2 Subject to the requirement of payment of annual license fees and the requirements contained in the Compact and its Appendices, each gaming license shall be valid for two (2) years from the date of issuance, provided that, in the discretion of the SGA, a gaming license may be granted for a term to run concurrently with the term of a Management Contract.

§9-3 A gaming license may not be assigned or transferred and is valid only for use by the person in whose name it is issued and at the Nation Gaming Operation for which it is issued. A gaming license shall be conspicuously displayed at all times at the Nation Gaming Operation for which issued.

§9-4 Final decisions as to whether a gaming license shall be issued, suspended, or revoked shall be made in accordance with Appendices C, D, and E.

SECTION 10 - GAMING LICENSE FEES

§10-1 The annual fee for each gaming license issued pursuant to this Law shall be set by regulations promulgated by the SGA. In setting the license fee the SGA shall take into consideration the following items:

(1) cost of the background investigation;

(2) administrative cost to the SGA; and

(3) the applicant's status as Management Contractor, Class III Gaming Primary Management Official, Class III Gaming Key Employee or employee;

§10-2 The SGA may waive the annual fee on a case-by-case basis.

SECTION 11 - BACKGROUND INVESTIGATIONS

§11-1 As provided in Appendix C, the SGA shall conduct, or cause to be conducted, a background investigation of each applicant for a position which is designated as a Class III Gaming Key Employee or Class III Gaming Primary Management Official sufficient to make a qualification determination under Section 9 above and paragraph 6 of Appendix C. This shall include verification of information submitted by the applicant. The background investigation will also document all potential problem areas noted, and any disqualifying information. In

conducting the investigation, the SGA shall keep confidential the identity of each person interviewed in the course of the investigation.

§11-2 The procedures set forth in Appendix C regarding background investigations are made applicable here by reference.

§11-3 The SGA shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a Class III Gaming Key Employee or Class III Gaming Primary Management Official for employment in a Nation Gaming Operation. If the SGA determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a Nation Gaming Operation shall not employ that person in a Class III Gaming Key Employee or Class III Gaming Primary Management Official position.

§11-4 Investigative Reports.

(a) The SGA shall prepare or cause to be prepared, and forward to the NIGC an investigative report summarizing each background investigation of a Class III Gaming Key Employee or Class III Gaming Primary Management Official that the Nation intends to employ.

(b) The SGA shall forward an investigative report to the NIGC within sixty (60) days after a Class III Gaming Key Employee or Class III Gaming Primary Management Official begins work or within sixty (60) days of the approval of this Law by the NIGC.

(c) Each investigative report shall include the following:

(1) the steps taken in conducting the background investigation;

(2) the results obtained;

(3) the conclusions reached; and

(4) the basis for those conclusions.

(d) The SGA shall submit to the NIGC, along with the investigative report, a summary of the SGA's qualification determination made under Section 9 above and paragraph 6 of Appendix C.

(e) if a gaming license is not issued to an applicant, the SGA:

(1) shall notify the NIGC; and

(2) may forward copies of its qualification determination and investigative report (if any) to the NIGC for inclusion in the Indian Gaming Individuals Records System.

(f) With respect to Class III Gaming Key Employees and Class III Gaming Primary Management Officials, the SGA shall retain applications for gaming licenses and reports (if any) of background investigations for inspection by the Chairman or his or her designees for no less than three (3) years from the date of termination of employment.

(g) A Nation Gaming Operation shall not employ as a Class III Gaming Key Employee or Class III Gaming Primary Management Official a person who does not have a gaming license ninety (90) days after a license application has been submitted.

§11-5 Granting a Gaming License

(a) If, within a thirty (30) day period after the NIGC notifies the SGA that it has no objection to the issuance of a gaming license pursuant to a license application filed by a Class III Gaming Key Employee or a Class III Gaming Primary Management Official for whom the SGA has provided an application and investigative report to the NIGC, the SGA may issue a license to such applicant.

(b) If, within the thirty (30) day period described in Subsection (a) above, the NIGC provides the SGA with a statement itemizing objections to the issuance of a gaming license to a Class III Gaming Key Employee or to a Class III Gaming Primary Management Official application, the SGA shall reconsider the application, taking into account the objections itemized by the NIGC. The SGA shall make the final decision whether to issue a gaming license to such applicant, consistent with the Compact and its Appendices.

§11-6 Gaming License Suspension

If, after the issuance of a gaming license, the SGA receives from the NIGC reliable information indicating that a Class III Gaming Key Employee or a Class III Gaming Primary Management Official is not eligible for employment under Section 9 of this Law, the Nation shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

SECTION 12 - USE OF NET REVENUES

§12-1 Net revenues from gaming permitted under this Law shall only be expended for one or more of the following purposes:

(a) to fund the Nation's government operations or programs;

(b) to provide for the general welfare of the Nation and its members;

(c) to promote economic development;

(d) to donate to charitable organizations; or

(e) to support operations of local governmental agencies.

§12-2 If the Council elects to make per capita payments to tribal members, it shall authorize such payments only upon approval of a plan submitted to the Secretary pursuant to 25 U.S.C. § 2710(b)(3).

SECTION 13 - RECORDS AND REPORTS

§13-1 A Nation Gaming Operation shall keep permanent books of account or records, including inventory records of gaming supplies, sufficient to establish the amount of gross and net income, deductions and expenses, receipts and disbursements, and other information required in any financial statement, report, or other accounting prepared pursuant to the Compact and its Appendices, the Act and NIGC regulations.

§13-2 No later than the thirtieth (30th) day of each month, each gaming operator shall provide, in a report form prescribed by the SGA, a statement of gross revenues, assemble gross revenue and net revenues received or collected at each Nation Gaming Operation during the immediate preceding month.

§13-3 The Nation Gaming Operation shall maintain, in a climate controlled place secure from theft, loss, or destruction, adequate records of its business and accounting operations. The Nation Gaming Operation shall make the records available to the SGA, the SGO, and NIGC officials upon request. The Nation Gaming Operation shall retain the records for not less than seven (7) years. The records shall include, but not be limited to, the records identified in Appendix B.

§13-4 The Nation Gaming Operations shall also comply with the relevant provision of the Compact and its Appendices relating to reports and records.

SECTION 14 - ANNUAL AUDIT

§14-1 The SGA shall cause to be conducted, at least annually, an independent audit of the books and records of each Nation Gaming Operation.

(a) Audit Standards. The Nation shall engage an independent certified public accountant, licensed in New York to provide an annual audit of the financial statements of each gaming operation on Nation Lands. Such financial statements shall be prepared in accordance with generally accepted accounting principles and the audit(s) shall be conducted in accordance with generally accepted auditing standards. Audit(s) of the gaming operation required under this Section may be conducted in conjunction with any other independent audit of the Nation, provided that the requirements set forth in NIGC regulations are met.

(c) Copies of Audit Reports. The Nation shall submit to the SGA and the NIGC a copy of the audit report(s) and management letter(s) setting forth the results of each annual audit within one hundred twenty (120) days after the end of each fiscal year of the gaming operation(s) resulting from the audit(s) conducted pursuant to Subsection (a) above.

(c) Relationship of Audited Financial Statements to Fee Assessment Reports. The Nation shall reconcile its quarterly fee assessment reports, submitted under 25 C.F.R. Part 514, with its audited financial statements and make available such reconciliation upon request by the NIGC's authorized representative.

§14-2 All gaming related contracts that result in purchases of supplies, services, or concessions for more than Twenty Five Thousand ($25,000) Dollars in any year (except contracts for professional legal or accounting services) shall be specifically included within the scope of the audit conducted pursuant to this Section.

SECTION 15 - GROSS GAMING REVENUES

§15-1 The Gross Gaming Revenues derived from gaming operations are Nation funds and are to be expended as authorized by the Nation.

SECTION 16 - VIOLATIONS

§16-1 No person shall operate or conduct any gaming activity in a gaming operation within the exterior boundaries of Nation Lands without a gaming license issued by the SGA as required by this Law or the Compact and its Appendices.

§16-2 No person shall knowingly submit false or misleading information to the NIGC, the Nation or the SGA in response to any provision of the Act, NIGC regulations, or a Nation Law or resolution that the Chairman has approved under parts 522 or 523 in Title 25 C.F.R.

§16-3 (a) No Management Contractor shall fail to account fully for all moneys received or collected in connection with gaming activities or to file any report required by the Management Contract.

(b) A gaming operation shall allow an authorized representative of the NIGC or an authorized SGA official to enter or inspect a gaming operation pursuant to 25 C.F.R. §§ 571.5 or 571.6, or of Nation Law or resolution approved by the Chairman under parts 522 or 523 in Title 25 C.F.R.

§16-4 No person under the age of eighteen (18) years shall be employed by a gaming operation or shall otherwise be permitted to participate in any gaming activities.

§16-5 No person shall engage in cheating (as that term is defined in §4-1(e) of this Law) in any gaming activity or engage in any fraudulent conduct affecting either the Nation or a customer of a gaming operation.

§16-6 No person, including security department personnel, shall possess, or be permitted to possess any firearm within any Gaming Facility without the prior express written consent of both the Nation Law Enforcement Agency and the State, except for duly authorized personnel of each. The SGA shall post in a conspicuous location at every entrance to each Gaming Facility, a sign stating: "No person shall possess any firearm within this Gaming Facility."

§16-7 Any person who is in privity with a person who violates this Law shall be deemed to be in violation of this Law to the same extent as the violator, and shall be treated accordingly.

§16-8 No person, whether playing in or conducting any gaming activity authorized under this Law, shall:

(a) use bogus or counterfeit cards, or substitute or use any game cards that have been tampered with;

(b) employ or have on one's person any cheating device to facilitate cheating in any gaming activity; or

(c) knowingly cause, aid, abet, or conspire with another person or cause any person to violate any provision of this Law or any rule adopted under this Law.

§16-9 The Nation shall construct, maintain and operate a Gaming Facility in a manner that adequately protects the environment and the public health and safety.

SECTION 17 - NOTICE OF VIOLATION

§17-1 The SGA may issue a notice of violation to any person for violation of any provision of this Law.

§17-2 A notice of violation shall contain:

(a) a citation to the Law provision that has been or is being violated;

(b) a description of the circumstances surrounding the violation, set forth in common and concise language;

(c) measures required to correct the violation;

(d) a statement that the violation must be corrected within five (5) calendar days from the date the notice was issued;

(e) a statement of the alleged violator's rights of appeal; and

(f) the amount of civil fines that the alleged violator must pay pursuant to Section 19, below.

SECTION 18 - VIOLATION PENALTIES

§18-1 In issuing a notice of violation under Section 17 of this Law, the SGA may:

(a) impose a civil fine not to exceed Five Hundred ($500) Dollars for each violation and, if such violation is a continuing one, for each day, that the violation occurs; and/or

(b) impose a penalty of One Hundred ($100) Dollars per day for failure to submit to the Commission any report required under this Law when it is due, and One Thousand ($1,000) Dollars per day for failure to file any such report after three-day notice and demand.

§18-2 How assessments are made.

The SGA shall review each notice of violation to determine whether a civil fine will be assessed, the amount of the fine, and in the case of a continuing violation, whether such daily violation will be deemed a separate violation for purposes of the total civil fine assessed.

§18-3 Procedure for assessment of a civil fine:

(a) within five (5) calendar days after service of a notice of violation, the alleged violator shall submit written information about the violation and any corrective measures undertaken to the SGA. The SGA shall consider any information so submitted in determining the facts surrounding the violation and the amount of the civil fine;

(b) the SGA shall serve a copy of the proposed assessment on the alleged violator within ten (10) calendar days after the notice of violation was issued, when practicable; and

(c) the SGA may review and reassess any civil fine if necessary to consider facts that were not reasonably available on the date of issuance of the proposed assessment.

§18-4 Final assessment:

(a) if the alleged violator fails to request a hearing as provided in Section 20 of this Law, the proposed civil fine assessment shall become a final order of the SGA.

(b) civil fines assessed under this Section shall be paid by the person assessed and shall not be treated as an operating expense of the gaming operation; and

(c) the SGA shall transfer civil fines paid under this Law to a SGA account.

Exhibit "B" Annexed to Affirmation of Pitman.

SECTION 19 - ENFORCEMENT

§19-1 The SGA shall take any one or a combination of the following actions with respect to any person who violates any provision of this Law:

(a) suspend or revoke any gaming license issued by the SGA; or

(b) bring an action in a court of competent jurisdiction for imposition of one or more of the following sanctions:

(1) seizure of any gaming apparatus, proceeds, or other property of a licensee connected with the gaming activities engaged in by the licensee;

(2) collection of any unpaid fees, interest, penalties, and of any civil fines unpaid after thirty (30) calendar days; or

(3) execution on any nonexempt property of a violator located within the exterior boundaries of Nation Lands.

§19-2 Civil actions may be brought by the SGA pursuant to this Law in any Court of competent jurisdiction to enforce the imposition of any and all sanctions provided for under this Law.

§19-3 Before taking any action authorized in §17 and §18 of this Law, the SGA shall use its best efforts to notify the alleged violator, in person or by letter delivered to his/her last known address, of the charges against him/her, and allow the alleged violator an opportunity for a prompt hearing. If the alleged violator fails to respond, or cannot be found, the SGA may proceed with a hearing notwithstanding, and take such action as it deems appropriate. Said notice of the alleged violation shall be served at least three (3) business days prior to the hearing.

§19-4 Every person who applies for a gaming license and accepts such license thereby acknowledges the civil enforcement jurisdiction and authority of the SGA under this Law to order an execution on his/her nonexempt property, the suspension or termination of his/her further conduct of gaming activities and the seizure of his/her gaming equipment or proceeds or other property, upon a proper finding of the SGA or the court that the person has violated a provision of this Law, despite lack of actual notice, provided that the SGA has used its best efforts to notify the person, in person or by letter delivered to his/her last known address.

SECTION 20 - HEARINGS AND APPEALS

§20-1 This Section provides procedures for appeals to the SGA regarding:

(a) violation; and

(b) civil fines assessed by the Commission in this Law; and

(c) the denial or revocation of gaming licenses;

(d) the Commission shall promulgate regulations regarding procedures.

§20-2. The SGA shall hold a hearing on the denial or proposed revocation of a gaming license held by an employee after it has suspended such license pursuant to this Law, the Compact and its Appendices, and 25 C.F.R. § 558.5. The Licensee shall be notified by the SGA of the time and place for hearing. After the hearing, the SGA shall decide to issue, revoke, or reinstate the gaming license. The SGA shall notify the NIGC of its decision and provide all other notices required by the Compact and its Appendices.

§20-3 Any person aggrieved by a decision made or action taken by the SGA pursuant to this section may petition the SGA for review. Such petition shall specifically set forth the reasons for aggrievement and be filed with the SGA no later than thirty (30) business days after the SGA's decision or action. The SGA shall set the matter for hearing no later than thirty (30) business days and no sooner than three (3) business days after receipt of the petition, and may, upon establishing that it has jurisdiction, affirm, modify, reverse and/or vacate the SGA order.

SECTION 21 - SERVICE

§21-1 The Council hereby designates the President of the Nation as agent for service of process of any official determination, order, or notice of violation.

SECTION 22 - RESOLUTION OF DISPUTES BETWEEN THE GAMING PUBLIC AND THE NATION OR THE MANAGEMENT CONTRACTOR

§22-1 The resolution of claims involving disputes relating to a patron's entitlement to a game prize are to be governed by the procedures set forth in Appendix J.

§22-2 The resolution of claims involving demands or liability for bodily injury and property damages arising out of or relating to the operation of the Gaming Facilities, are to be governed by the procedures set forth in Appendix H.

SECTION 23 - APPLICABLE LAW

§-23-1 All controversies involving contracts relating to gaming entered into under the authority of the Council or business arm thereof on Nation Lands shall be resolved, as appropriate, in accordance with:

(a) the choice of law provision contained in the contract or agreement;

(b) the Indian Gaming Regulatory Act;

(c) NIGC regulations; and/or

(d) Seneca laws and customs within the judicial system of the Seneca Nation.

SECTION 24 - SEVERABILITY PROVISION

§24-1 If any provision of this Law or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of Law which can be given effect without the invalid provisions or application, and, to this end, the provisions of this Law are severable.

SECTION 25 - EFFECTIVE DATE/REPEAL

§51-1 This Law shall be effective immediately upon approval by the Chairman of the NIGC.

SECTION 26 - MANAGEMENT CONTRACTOR/CONTRACT PROVISIONS

§26-1 Any or all references or procedures applicable to Management Contractors or contracts becomes effective upon adoption by Council of any Management Contract.

SECTION 27 - MINIMUM INTERNAL CONTROL STANDARDS

§27-1 The Nation acknowledges its obligation to adopt and implement Minimum Internal Control Standards (MICS) for the operation of its gaming operation no less stringent than those found in the regulations of the NIGC at 25 C.F.R. Part 542. The Nation's MICS shall be set out in separate regulations to be promulgated by the SGA.

SECTION 28 - PROHIBITION AGAINST INDIVIDUALLY OWNED CLASS III GAMING

§28-1 No license shall be issued by the SGA for individually owned Class III Gaming operations.

SECTION 29 - CONFLICT OF LAWS

§29-1 Where this Law conflicts with the Compact and its Appendices, the Compact and the Appendices shall prevail provided that they are no less stringent than the Act, NIGC regulations and this Law.

Exhibit "C" Annexed to Affirmation of Pitman.

CONSTITUTION
OF THE
SENECA NATION OF INDIANS OF 1848, AS AMENDED

[effective November 9, 1993]

Made and adopted in convention assembled, duly called and organized in accordance with the provisions of the Constitution of the said Nation, convened at the Council House at Cold Spring on the Allegany Reservation; and also at the Council House on the Cattaraugus Reservation, on the 15th day of November, 1898.

We the people of the Seneca Nation of Indians, residing on the Cattaraugus, Allegany and Oil Spring Reservations, in the State of New York, grateful to Almighty God for our national preservation, growth and prosperity, for the freedom and manifold blessings heretofore by us enjoyed honoring the traditions of our Nation, trusting in the present, with confidence in the future advancement and better condition of our race and desiring greater enlightenment in order to perpetuate our national relations to provide for ourselves greater safeguards to pursuit of life, liberty and happiness, and to bring ourselves, as a Nation, to as high a plane intellectually, socially, and morally as possible, do make, adopt and establish the following resolution:

SECTION I.

Our government shall have a legislative, executive and judiciary department.

The legislative power shall be vested in a Council of sixteen members, who shall be known and called the Councillors of the Seneca Nation of Indians, eight Councillors elected to the Council shall be from the Cattaraugus Reservation, and eight Councillors elected to the Council shall be from the Allegany Reservation. Councillors shall be elected for four-year terms, except for the November, 1978 election. The staggered terms will be determined by the four Councillors having obtained the highest number of votes from the Allegany and Cattaraugus Reservations. The four Councillors, per reservation, with the least number of majority votes shall serve a two year term. No person shall be eligible for the office of Councillor unless he is an enrolled member of the Nation, has attained age twenty-one (21), and has resided on the Reservation he represents for at least one (1) year prior to the date on which he takes office.

The first election under this Constitution will be held on the first Tuesday of November, 1899, and thereafter on the first Tuesday of November every second year. The vote of the Nation shall be by single ballot containing the names of all party candidates and independent candidates, and shall be cast by the individual voter, out of presence of others, and be cast by him, without inspection by the Board of Inspectors. That on Election Day the polls shall be open at 9:00 a.m. and close at 7:00 p.m.

Exhibit "C" Annexed to Affirmation of Pitman.

On or before the 15th day preceding the biennial election, all candidates shall file with the Clerk of the Nation their name and office, and no further candidate shall be allowed to file for office after the 15th day preceding the biennial election, except in case of death, substitution will be permitted on party tickets so filed.

This single ballot shall be printed at the expense of the Nation, and by the Clerk distributed to the Board of Electors twenty-four (24) hours before the date of the election.

SECTION II.

Ten of said Councillors when assembled in session regularly organized shall constitute a quorum for the transaction of business.

In all appropriations of public money an affirmative vote of at least ten of the whole number elected shall be necessary. It shall not be lawful for the Council to make appropriations of public money in any one year exceeding the sum of the aggregate revenue of that year; but the Council shall make appropriation of public money to carry on the government in extraordinary cases for the welfare of the Nation.

In case of vacancy in the office of the president, the Council shall choose from their number a president, who shall hold office until his successor shall be duly elected and shall have qualified.

In case of absence of the president, the Council shall choose from their number a presiding officer pro tempore.

The council shall have the power of impeachment, by vote of the majority of all the members elected.

The court for the trial of an impeachment shall be composed of the president and the Council or a majority of them in all cases except in that of the trial of the president; in that case, the court for the trial of impeachment shall be composed of at least a majority of the Council and of the surrogates of the Nation.

SECTION III.

The executive power shall be vested in a president whose duty it shall be at all times to preside over the deliberations of the Council having a casting vote therein.

Exhibit "C" Annexed to Affirmation of Pitman.

The president shall from time to time give to the Council information of the state of the Nation and recommend to their consideration such measures as he shall judge necessary and expedient, not inconsistent with the true spirit and intent of the laws of the Seneca Nation.

It shall be his duty to see that the laws applicable to the Nation are faithfully executed.

He shall have power to fill all vacancies by appointment that shall occur either by death, resignation or impeachment of any of the officers of the Nation.

Such appointees shall hold office until their successors are elected and duly qualified.

The president shall have the power of veto. Every resolution or other measure, passed by the Council carrying with it any appropriation out of the funds of the Nation, before it becomes operative shall be presented to the president for his approval or objections; if he approves, he shall sign it; but if not, he shall return it to the Council with his objections in writing.

The objections shall be entered at large on the minutes of the Clerk; after which the same may become operative and binding on the Nation only by a second passage of the same by not less than twelve votes of the Council.

In all such cases, the name of each member voting shall be entered in the journal of the proceedings of the Council.

SECTION IV.

The judicial power shall be vested in a Court of Appeals, a Peacemakers Court and a Surrogates Court. There shall be one Court of Appeals. There shall be two Peacemakers Courts and two Surrogates Courts, one each to be established upon the Cattaraugus Reservation and one each to be established upon the Allegany Reservation.

The Court of Appeals shall be comprised of six judges, any three of whom shall hear each appeal. The judges of the Court of Appeals shall be trained in the law. The Peacemakers Court shall be comprised of three judges each, any two of whom shall have the power to hold Court and discharge all the duties of the Peacemakers Court. The Surrogates Court shall be comprised of one judge each.

Exhibit "C" Annexed to Affirmation of Pitman.

The judges of the Court of Appeals shall be elected from the residents of the Allegany, Cattaraugus and Oil Springs Reservations, with three of the judges elected from the residents of the Cattaraugus Reservation and three of the judges elected from the residents of the Allegany and Oil Springs Reservations. The judges of each of the Peacemakers and Surrogates Courts on the Cattaraugus Reservation shall be elected from the residents of the Cattaraugus Reservation and the judges of each of the Peacemakers and Surrogates Courts on the Allegany Reservation shall be elected from the residents of the Allegany and Oil Springs Reservations. The election of judges shall be on the first Tuesday of November. Beginning in 1993, judges shall not be elected in the same year that other Nation officials are elected. Judges elected in November, 1992 shall serve in office until their successors are duly elected in November, 1993, provided that judges of the Court of Appeals shall first be elected in November, 1993.

The term of office of the judges of the Court of Appeals shall be four years. At the first election of judges of the Court of Appeals, three positions on the Court of Appeals initially shall be for a term of two years and three positions initially shall be for a term of four years. The term of each position shall be determined by lot prior to the election, provided that at least one judge from each Reservation shall serve a two year term. All subsequently elected judges of the Court of Appeals shall be elected for a term of four years.

The term of office of the Peacemakers and Surrogates shall be four years, provided that, at the next judicial election following the approval of this amendment, except if judicial elections are moved to an off-year, one Peacemaker from each Peacemakers Court shall be elected for a term of two years, with the remaining two Peacemakers from each court and all subsequently elected Peacemakers elected for a term of four years.

The judicial power shall extend to all cases arising under this Constitution, the customs or laws of the Nation, and to any case in which the Nation, a member of the Nation or any person or corporate entity residing on, organized on, or doing business on any of the Reservations shall be a party.

The forms of process and proceedings in all Courts shall be such as is prescribed by law.

All determinations and decisions of the Peacemakers and Surrogates Courts shall be subject to appeal to the Court of Appeals. All cases of appeal shall be decided by the Court of Appeals upon the evidence taken in the Peacemakers and Surrogates Courts. In every case on appeal, it shall be the duty of the judge

Exhibit "C" Annexed to Affirmation of Pitman.

or judges before whom the case was heard to certify the evidence and record in the case to the Court of Appeals. The Court of Appeals shall then decide the case upon the certified evidence and record. Upon the hearing of the appeal, a party shall have the right to be heard and to appear in person or by counsel and argue the merits of the case at his own expense.

All determinations of the Court of Appeals shall be subject to appeal to the Council upon the granting of a writ of permission by a vote of not less than seven Councillors. Such appeal, if granted, shall be heard by at least a quorum of the Council. In the event that no appeal is made to the Council, the decision of the Court of Appeals is final, and no other court or subsequently elected Council shall have the right to re-open, re-hear, reverse or affirm the decision of the Court of Appeals. All cases of appeal shall be decided by the Council upon the evidence taken in the Peacemakers or Surrogates Courts. In every case on appeal, it shall be the duty of the judges before whom the case was heard to certify the record in the case to the Council. The Council shall then decide the case upon the certified evidence and record. Upon the hearing of an appeal, a party in interest shall have the right to be heard and to appear in person or by counsel and argue the merits of the case at his own expense.

On such matters of appeal from the Court of Appeals, the decision of the Council shall be final, and no subsequent elected Council shall have the right to re-open, re-hear, reverse or affirm the decision of a previous Council.

In every action in any Court, such action shall be brought in the name of the real party in interest.

Nothing herein shall be construed as affecting the right of any Council to repeal or modify existing laws and regulations passed and approved by a previous Council.

SECTION V.

The power of making treaties shall be vested in the Council, subject to the approval of at least three-fourths of the legal voters and the consent of three-fourths of the mothers of the Nation.

SECTION VI.

There shall be a clerk and a treasurer of the Nation. The rights, duties and liabilities of such shall be as defined by law.

Exhibit "C" Annexed to Affirmation of Pitman.

SECTION VII.

There shall be two marshals for the Nation; one shall reside on the Cattaraugus and one on the Allegany Reservation. The rights, duties, and liabilities of each shall be as defined by law.

SECTION VIII.

The Council may provide for the election of Highway Commissioners, Overseers of the Poor, Assessors and Policeman for each of the said Reservations; their duties to be defined by law.

SECTION IX.

All officers of the Nation named in this Constitution, except for certain officers otherwise provided for herein, shall be elected biennially for the term of two years.

All officers of the Nation named in this Constitution may be impeached or removed for such cause as is recognized by law, in such manner and form as is prescribed by this Constitution.

SECTION X.

Every member of the Seneca Nation of Indians of the age of twenty-one years and upwards, who shall not have been convicted of a felony, shall be competent to vote at all elections and meetings of the electors of the Nation and shall be eligible to any office in the gift of the people of the Nation. No person shall be eligible for the office of president unless he is an enrolled member of the Nation, has attained the age of thirty (30) years, has resided on the Reservation he represents for at least one (1) year.

SECTION XI.

The compensation of all officers of the Nation named in this Constitution shall be such as prescribed by law and the salaries shall not be increased or diminished during their term of office.

Exhibit "C" Annexed to Affirmation of Pitman.

SECTION XII.

The Council of the Nation shall meet, in general session to conduct the business of the Nation, on the second Saturday of each month in the year; provided, however that if the second Saturday of any month is a legal holiday or if the Council so votes at its next preceding session, the Council shall meet on the third Saturday of the month.

The president shall have the power to convene the Council in extra session as often as the interests of the Nation in his judgment requires.

SECTION XIII.

The Council shall have the power to make laws not inconsistent with this Constitution.

SECTION XIV.

The laws and regulations heretofore made and adopted by the Council and not inconsistent with this Constitution shall continue in full force and effect as heretofore until repealed or amended, to the extent and in the manner, as the Council shall deem lawful and proper.

SECTION XV.

The present officers of the Nation shall hold their offices respectively until the first Tuesday of November, 1899, until others are elected in their places in accordance with the terms of this Constitution, unless removed for cause.

SECTION XVI.

It shall be lawful for the Council in their discretion, by at least a quorum vote to appoint a committee of three for revision of the Constitution. The duty of the committee shall be on ten days notice of their appointment, to prepare amendments or alterations of the Constitution as amended to the Council.

Exhibit "C" Annexed to Affirmation of Pitman.

It shall be the duty of the Council to submit the same to the electors of the Nation for their approval or objection, to be determined by a majority vote of the qualified electors at a meeting called for that purpose on the Cattaraugus and Allegany Reservation, respectively.

In case the proposed amendments of the committee are rejected, no action shall be taken by the Council or the electors relative to amending this constitution within one year from the date of said meeting and rejection.

CERTIFICATION

I hereby certify that, based upon my review of the known records of the Seneca Nation of Indians, the foregoing Constitution of the Seneca Nation of Indians of 1848, as amended, is true and correct.

Dated: November 9, 1993

Robert B. Porter
Attorney General of the
Seneca Nation of Indians

Affidavit of Gregory P. Photiadis In Opposition to Motion to Dismiss, Dated April 27, 2011.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.

Plaintiff,

vs.

LEWISTON GOLF COURSE CORPORATION et al.

Defendants.

AFFIDAVIT

Index No.: 141212

Assigned Justice: Hon. Ralph A. Boniello, III

STATE OF NEW YORK)

COUNTY OF ERIE) ss.:

GREGORY P. PHOTIADIS, deposes and says under penalty of perjury:

1. I am an attorney at law duly admitted to practice in the State of New York and a partner with the firm of Duke, Holzman, Photiadis & Gresens LLP, attorneys for plaintiff Sue/Perior Concrete & Paving, Inc. ("Sue/Perior"). I am fully familiar with the facts and circumstances set forth in this affidavit.

2. I submit this affidavit in opposition to the motion to dismiss Sue/Perior's First Amended Verified Complaint brought by defendants Seneca Gaming Corporation ("SGC"), Seneca Niagara Falls Gaming Corporation ("SNFGC") (the "Gaming Defendants"), Lewiston Golf Course Corporation ("LGCC") (the Gaming Defendants and LGCC are sometimes collectively referred to as the "Corporate Defendants") and Niagara County Industrial Development Agency's ("NCIDA"), Jeffrey L. Gill, Mark I. Halftown, Gloria Heron, Maurice John, Sr., Michael L. John, Karen Karsten, Ina Locke, Robert Mele, Richard K. Nephew, Maribel Printup, Cochise N. Redeye, Gary Sanden, Kevin W. Seneca, Barry E. Snyder, Sr., and Steve Tome (collectively the "Individual Defendants"), and for such other and further relief as the Court deems just and proper.

3. The purpose of this affidavit is to provide the Court with various documents and background relative to the opposition of the Defendants' motion to dismiss. Defendants' motion should be denied in all respects for the reasons set forth in Sue/Perior's accompanying Memoranda of Law.

A. The Golf Course Property.

4. LGCC acquired the Golf Course Property on or about July 20, 2007 in fee from the Seneca Niagara Falls Gaming Corporation ("SNFGC") with the intent to construct and operate an 18-hole golf course thereon. A copy of the deed from SNFGC to LGCC is attached as **Exhibit A.**

5. On or about February 13, 2006, SNFGC had purchased the property in fee from the private party Old Creek Development, LLC. A copy of the deed from Old Creek Development, LLC to SNFGC is attached as **Exhibit B.**

6. Upon information and belief, the Golf Course Property was never part of an Indian reservation.

7. Representatives of the Nation and spokesperson for the Department of the Interior's Bureau for Indian Affairs have publicly conceded that the Golf Course Property is not sovereign land. Such statements are reflected in various newspaper articles, including AllBusiness and the Niagara Gazette, copies of which are annexed as **Exhibit C.**

8. In connection with its plans to construct improvements upon the Golf Course Property, on or about October 1, 2007, the NCIDA and LGCC entered into an Agent Agreement which contemplated the negotiation and execution of a Payment-In-Lieu-of-Tax Agreement ("PILOT Agreement"), Lease and Leaseback of the Golf Course Property. A copy of the Agency

Agreement is attached as **Exhibit D.**

9. On November 1, 2007, the NCIDA entered into the PILOT Agreement with LGCC. A copy of the PILOT Agreement is attached as **Exhibit E.**

10. The PILOT Agreement provides for LGCC to make payments in lieu of ad valorem taxes as set forth therein -- a fraction of the taxes normally assessed -- which includes tax benefits for "(i) the 2009/2010 School tax year through the 2013/2014 School tax year, and (ii) the 2009 County and Town tax year through the 2014 County and Town tax year." Id.

11. Also on November 1, 2007, the NCIDA and LGCC entered into a Lease Agreement (LGCC to NCIDA) and a Leaseback Agreement (NCIDA to LGCC) in connection with the PILOT Agreement. A copy of the Lease and Leaseback Agreements are attached as **Exhibits F** and **G**, respectively.

12. The corresponding Memorandum of Lease and Memorandum of Leaseback were recorded at the Niagara County Clerk's Office on November 27, 2007. Copies of the respective memoranda are attached as **Exhibits H** and **I**, respectively.

13. On or about August 9, 2007, Sue/Perior and Golf, jointly and severally entered into a contract with the LGCC for construction of the Project for the adjusted amount of $12,700,000.00 (the "Project Contract"). A copy of the Project Contract is annexed hereto as **Exhibit J.**

B. Nation's Law.

14. On August 10, 2004, the Seneca Nation of Indian's ("Nation") Court of Appeals issued bench rulings and order in the case of *Henry Lloyd Jacobs, Maxine Dowler, Robert W. Jones and Senecas for Justice and Preservation v. Michael "Mickey" Brown and Seneca Niagara*

Falls Gaming Corporation (SNFGC), TRO #1129-03-1 (hereinafter "*Jacobs*"), holding that the creation and continued existence of the gaming corporations, including the Corporate Defendants here, was unconstitutional and a nullity and that the gaming corporations are not entitled to the protection of sovereign immunity. A copy of this Bench Ruling and Order is annexed hereto as **Exhibit K.**

15. A copy of the subsequent Order entered by the Nation's Supreme Appellate Court in *Jacobs* on August 17, 2004 is annexed hereto as **Exhibit L.**

16. A copy of the Nation's Court of Appeals Decision entered September 16, 2004 in *Jacobs* is annexed hereto as **Exhibit M.**

17. A copy of the Constitution of the Seneca Nation of Indians of 1848, as Amended is annexed hereto as **Exhibit N** and is available at www.sni.org/node/14.

18. Based on the holdings of the Nation's own highest independent court, the Gaming Defendants here are not protected by sovereign immunity and this Court thus has subject matter jurisdiction over this action as to the Gaming Defendants..

19. In addition, and even in the event this Court finds that the Gaming Corporations are protected by sovereign immunity, this Court should nevertheless deny LGCC's motion to dismiss the lien foreclosure cause of action because this Court has in rem jurisdiction over the Golf Course Property which is not sovereign land.

20. As detailed in Sue/Perior's corresponding Memoranda of Law, Sue/Perior respectfully requests that this Court deny Defendants' motion to dismiss in its entirety.

Affidavit of Gregory P. Photiadis In Opposition to Motion to Dismiss, Dated April 27, 2011.

Gregory P. Photiadis

Sworn to before me this
27th day of April, 2011.

Notary Public

MARY CORDARO
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 12/27/13

Exhibit "A" Annexed to Affidavit of Photiadis.

BOOK 3406 PAGE 0530

DO NOT DETACH - THIS IS PAGE 1 OF RECORDED DOCUMENT

NIAGARA COUNTY CLERK RECORDING PAGE

OFFICE OF THE CLERK COUNTY OF NIAGARA
WAYNE F. JAGOW, COUNTY CLERK
County Courthouse, 175 Hawley Street, P.O. Box 461, Lockport, NY 14095
Phone (716) 439-7027 Fax (716) 439-7066

INSTRUMENT DATE 07/20/07

DOCUMENT TYPE Deed
OTD (12)

Parties: (Print Names In Full)
1st Part Seneca NF Gaming Corp
2nd Part Lewiston Golf Course Corp
Town/City Lewiston

Return To:
Anthony D. Mancinelli, Esq
Harter, Secrest + Emery
12 Fountain Plaza #400
Buffalo, NY 14202

THIS SPACE RESERVED FOR COUNTY CLERK

MORTGAGE#

MORTGAGE AMOUNT
$

( )One\two family ( )Other

[ ] Check if to be apportioned

DOCUMENT # 1006169
BOOK 3406 PAGE 530
NUMBER OF PAGES 12 DEEDS
RECORDED 07/20/2007 04:07:21 P.M.
RECEIPT # 18702 DOCUMENT TOTAL: $236.50
PAID - COUNTY CLERK
WAYNE F. JAGOW

RECORDING TAX RECEIPT

BASIC $
ADDITIONAL $
SPECIAL $
TOTAL $

State of New York} ss
County of Niagara}
I do hereby certify that I have
Received on the within Mortgage, being
the amount of the Recording Tax
Imposed thereon & paid at recording.

#6926
REAL ESTATE TRANSFER TAX
$ 0
7.20.2007
NIAGARA COUNTY

Dated , 20

Mortgage Tax Clerk of Niagara County

This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York
DO NOT DETACH

Exhibit "A" Annexed to Affidavit of Photiadis.

BOOK 3406 PAGE 0531

WARRANTY DEED

THIS INDENTURE is made this 20th day of July, 2007 between SENECA NIAGARA FALLS GAMING CORPORATION, A WHOLLY OWNED ENTITY OF THE SENECA NATION OF INDIANS, located at 310 Fourth Street, Niagara Falls, NY , ("Grantor") and LEWISTON GOLF COURSE CORPORATION, A WHOLLY OWNED ENTITY OF THE SENECA NATION OF INDIANS, located at 310 Fourth Street, Niagara Fall, NY ("Grantee").

WITNESSETH, that the Grantor, in consideration of One and 00/100 Dollar ($1.00) paid by the Grantee, hereby grants and releases unto the Grantee, the distributees, successors and assigns of the Grantee forever,

SEE ATTACHED SCHEDULE A

THIS CONVEYANCE is made and accepted subject to covenants, easements and restrictions of record, if any, affecting the above-described premises.

BEING AND HEREBY intending to describe the same premises conveyed to Grantor by Old Creek Development, LLC by deed dated February 13, 2006 and recorded on February 15, 2006 in the Niagara County Clerk's Office in Liber 3349 of Deeds at Page 296.

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the Grantee, the heirs or successors and assigns of the Grantee, forever. AND the Grantor covenants as follows:

1. The Grantee shall quietly enjoy the said premises;

2. The Grantor will forever warrant the title to said premises;

THIS DEED is subject to the trust provisions of Section 13 of the Lien Law. The words "Grantor" and "Grantee" shall be construed to read in the plural whenever the sense of this deed so requires.

Exhibit "A" Annexed to Affidavit of Photiadis.

BOOK 3408 PAGE 0032

IN WITNESS WHEREOF, the Grantor has executed this Deed the day and year first above written.

Seneca Niagara Falls Gaming Corporation, a wholly owned entity of The Seneca Nation of Indians

BY: _____

NAME: Brian Hansberry

TITLE: President and CEO

STATE OF NEW YORK)
COUNTY OF) ss

On this 20 day of July, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Brian Hansberry, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

MICHELE F. MITCHELL
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02MI6112490
QUALIFIED IN FRANKLIN COUNTY
COMMISSION EXPIRES JULY 6, 20__

_____
Notary Public

Exhibit "A" Annexed to Affidavit of Photiadis.

BOOK 3406 PAGE 0033

SCHEDULE A

PARCEL A, B AND C

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of lot 43, township 14, range 9 of the Holland Land Company Survey bounded and described as follows:

Beginning at a point in the centerline of Blairville-Creek Road, also known as Creek Road, a distance of 225.0 feet north of the southeast corner of lot 43.

Thence, S 89° 25' 40" W along the north line of lands conveyed to Marlene Burns by deed recorded in the Niagara County Clerk's Office in Liber 1952 at Page 135, a distance of 355.14 feet to the northwest corner of said Burns lands;

Thence, S 00° 10' 35" W along the west line of said Burns land, a distance of 228.86 feet to the southwest corner of said Burns land in the south line of lot 43;

Thence, S 88° 48' 26" W along the south line of lot 43, a distance of 256.36 feet to the northwest corner of land conveyed to Robert and Deborah Kenney by deed recorded in the Niagara County Clerk's Office in Liber 2107 at page 315;

Thence, N 87° 37' 11" W continuing along the south line of lot 43, a distance of 650.10 feet to the northeast corner of subdivision lot 257 of Lewistowne Park, Phase 9;

Thence, N 89° 12' 48" W continuing along the south line of lot 43 a distance of 1187.85 feet to the southwest corner of lot 43 being in the east line of lands appropriated for the Niagara Parkway, Section 4 (Robert Moses State Parkway);

Thence, northerly along the east line of lands appropriated for the Niagara Parkway, Section 4 of the following three (3) courses and distances;

(1) N 08° 18' 24" E, a distance of 800.98 feet to a point;
(2) N 06° 22' 35" E, a distance of 2670.71 feet to a point;
(3) N 00° 22' 47" W, a distance of 433.59 feet to the southwest corner of lands appropriated for Blairville Creek Road, State Highway 9322, Niagara County, Map 186 Parcel 130 filed in the Niagara County Clerk's Office in Liber 1428 at Page 923;

Thence, S 89° 47' 37" E along the south line of the last described parcel, a distance of 1066.38 feet to an angle point in said south line;

Thence, S 00° 26' 05" W parallel with the centerline of Blairville-Creek Road, a distance of 900.77 feet to a point;

Exhibit "A" Annexed to Affidavit of Photiadis.

Thence, S 26° 23' 35" W a distance of 137.07 feet to a point;

Thence, S 89° 46' 51" W a distance of 72.28 feet to a point;

Thence, S 00° 26' 05" W, parallel with the centerline of Blairville-Creek Road, a distance of 650.04 feet to a point;

Thence, N 89° 46' 51" E a distance of 125.62 feet to a point;

Thence, S 00° 26' 05" W parallel with the centerline of Blairville-Creek Road, a distance of 222.13 feet to a point;

Thence, N 89° 46' 51" E a distance of 1008.22 feet to a point in the centerline of Blairville-Creek Road;

Thence, S 00° 26' 05" W along the centerline of said road a distance of 182.06 feet to the northeast corner of lands conveyed to Norton and Rose Douglas by deed recorded in Liber 2302 at Page 61;

Thence, S 89° 46' 50" W along the north line of said Douglas lands, a distance of 355.00 feet to the northwest corner of said lands;

Thence, S 00° 26' 05" W along the west line of said Douglas lands and said line extended, a distance of 467.00 feet to the southwest corner of lands conveyed to Marc and Carla Eagler by deed recorded in Liber 2971 at Page 245;

Thence, N 89° 46' 50" E along the south line of said Eagler lands, a distance of 355.00 feet to a point in the centerline of said Blairville Creek Road;

Thence, S 00° 26' 05" W along the centerline of said road, a distance of 66.00 feet to the northeast corner of lands conveyed to Charles and Eleanor Zelinski by deed recorded in Liber 1225 at page 443;

Thence, S 89° 46' 50" W along the north line of said Zelinski lands, a distance of 355.00 feet to the northwest corner of said lands;

Thence, S 00° 26' 05" W along the west line of said Zelinski lands and said line extended, a distance of 500.24 feet to the southwest corner of lands conveyed to John and Patricia Bartko by deed recorded in Liber 2156 at Page 171;

Thence, N 89° 25' 40" E along the south line of said Bartko lands, a distance of 355.03 feet to a point in the centerline of Blairville-Creek Road;

Thence, S 00° 26' 05" W along the centerline of said road, a distance of 66.00 feet to the northeast corner of lands conveyed to Walter and Patricia Yacus by deed recorded in Liber 2056 at page 172;

Exhibit "A" Annexed to Affidavit of Photiadis.

BOOK 2406 PAGE 0535

Thence, S 89° 25' 40" W along the north line of said Yacus lands, a distance of 355.00 feet to the northwest corner of said lands;

Thence, S 00° 26' 05" W along the west line of said Yacus lands and said line extended, a distance of 445.41 feet to the southwest corner of lands conveyed to Robert Wojtowicz by deed recorded in Liber 3288 at page 822;

Thence, N 89° 25' 40" E along the south line of said Wojtowicz lands, a distance of 355.00 feet to a point in the centerline of Blairville-Creek Road;

Thence, S 00° 26' 05" W along the centerline of said road a distance of 66.00 feet to the point or place of beginning, containing 140.22 acres, more or less.

Excepting and reserving from the above described parcel the following parcels of land appropriated by the New York Department of Public Works:

Map 103, Parcel 111 filed in the Niagara County Clerk's Office in Liber 1437 at page 527 (0.03 acres).

Map 108, Parcel 116 filed in the Niagara County Clerk's Office in Liber 1437 at page 546 (0.03 acres).

Map 114, Parcel 122 filed in the Niagara County Clerk's Office in Liber 1439 at page 19 (0.03 acres).

Map 114, Parcel 123 filed in the Niagara County Clerk's Office in Liber 1439 at page 19 (0.02 acres).

Part of Map 120, Parcel 129 filed in the Niagara County Clerk's Office in Liber 1432 at page 449 (0.08 acres).

The above described parcel containing 140.03 acres more or less.

PARCEL D1

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of lot 42, township 14, range 9 of the Holland Land Company Survey bounded and described as follows:

Beginning at a point in the westerly line of Blairville Creek Road (110.0 Feet Wide) at a distance of 260.00 feet south of the point of intersection of the said line with the north line of Lot 42;

Thence S 00° 03' 39" W along said west bounds of Blairville Creek Road, a distance of 75.02 feet to a point in the north line of lands conveyed to Mathew and Kathleen Wrobel by deed recorded in the Niagara County Clerk's Office in Liber 1621 at page 976;

Exhibit "A" Annexed to Affidavit of Photiadis.

Thence S 88° 48' 30" W along the north line of said Wrobel lands, a distance of 556.83 feet to the northwest corner of said lands;

Thence, S 00° 02' 15" W along the west line of said Wrobel lands and said line extended, a distance of 478.40 feet to the southwest corner of lands conveyed to Angelo J. Farbo by deed recorded in the Niagara County Clerk's Office in Liber 2598 at page 171;

Thence, S 00° 26' 14" W along the west line of lands conveyed to Anthony and Chris Iannucci by deed recorded in the Niagara County Clerk's Office in Liber 3156 at page 170 and said line extended, a distance of 405.31 feet to a point at the northwesterly corner of sub-lot 1703 on Ridge View Village Part IV;

Thence, S 00° 36' 57" W along the westerly line of said sub-lot, a distance of 47.58 feet to an angle point in said sub-lot;

Thence, S 62° 35' 27" W, along a northerly line of sub-lot 1704 of the aforementioned Ridge View Village Part IV, a distance of 100.00 feet to a point at the northwesterly corner of said sub-lot.

Thence S 47° 36' 13" W, a distance of 8.27 feet to a point at the northeasterly corner of sub-lot 80 of Lewistowne Park, Phase 3;

Thence, S 49° 32' 31" W, along the northerly line of sub-lots 80 and 81 of said Lewistowne Park, Phase 3, a distance of 126.42 feet to a point at the northwesterly corner of said sub-lot 81;

Thence N 87° 02' 41" W, along the northerly line of sub-lot 82 of said Lewistowne Park, Phase 3, a distance of 109.76 feet to the point of intersection with the easterly right-of-way line of Curtis Court North(66 feet wide);

Thence, northeasterly, along said easterly right-of-way line, along a curve to the right, having a radius of 300.00 feet, through a central angle of 10°-46'-652", an arc length of 56.45 feet to the southwest corner of sub-lot 107 of Lewistowne Park, Phase 4;

Thence, S 76° 15' 49" E, along said southerly line of sub-lot 107, a distance of 115.00 feet to the southeast corner of said sub-lot.

Thence the following sixteen (16) courses and distances along the rear lines of sub-lots 107-121 of said Lewistowne Park,
Phase 4:

(1) N 43° 53' 40" E, a distance of 117.25 feet to a point;
(2) N 14° 07' 45" W, a distance of 98.21 feet to a point;
(3) N 02° 49' 28" W, a distance of 91.84 feet to a point;
(4) N 09° 27' 13" W, a distance of 91.84 feet to a point;
(5) N 02° 10' 35" E, a distance of 99.74 feet to a point;
(6) N 07° 15' 15" E, a distance of 105.00 feet to a point;

Exhibit "A" Annexed to Affidavit of Photiadis.

BOOK 3406 PAGE 0537

(7) N 33° 00' 02" W, a distance of 150.00 feet to a point;
(8) N 72° 40' 34" W, a distance of 175.00 feet to a point;
(9) S 59° 48' 15" W, a distance of 185.00 feet to a point;
(10) S 11° 04' 03" W, a distance of 195.00 feet to a point;
(11) S 17° 59' 30" E, a distance of 122.96 feet to a point;
(12) S 20° 32' 34" E, a distance of 69.59 feet to a point;
(13) S 06° 34' 46" E, a distance of 69.59 feet to a point;
(14) S 00° 11' 17" W, a distance of 69.59 feet to a point;
(15) S 10° 28' 50" W, a distance of 90.00 feet to a point;
(16) S 82° 23' 12" E, a distance of 160.00 feet to a point of intersection with the westerly right-of-way line of Curtis Court North;

Thence southwesterly, along said westerly right-of-way line, along a curve to the left, having a radius of 366.00 feet, through a central angle of 05-° 54'-04", an arc length of 37.70 feet to the northeast corner of sub-lot 83 of the aforementioned Lewistowne Park, Phase 3;

Thence the following three (3) courses and distances along the rear lines of sub-lot 83-87 of the aforementioned Lewistowne Park, Phase 3:

(1) N 84° 25' 49" W, a distance of 92.09 feet to a point;
(2) N 76° 10' 02" W, a distance of 168.20 feet to a point;
(3) N 48° 52' 06" W, a distance of 74.61 feet to a point at the southeasterly corner of sub-lot 122 of Lewistowne Park, Phase 4;

Thence the following nine (9) courses and distances along the rear line of sub-lots 122-130 of Lewistowne Park, Phase 4:

(1) N 17° 06' 54" W, a distance of 75.00 feet to a point;
(2) N 29° 09' 19" W, a distance of 71.40 feet to a point;
(3) N 27° 25' 36" W, a distance of 85.00 feet to a point;
(4) N 25° 15' 56" E, a distance of 19.87 feet to a point;
(5) N 29° 06' 08" E, a distance of 85.00 feet to a point;
(6) N 28° 43' 16" E, a distance of 101.35 feet to a point;
(7) N 40° 43' 31" E, a distance of 111.58 feet to a point;
(8) N 06° 20' 26" E, a distance of 130.00 feet to a point;
(9) N 33° 39' 40" W, a distance of 175.00 feet to a point at the northwesterly corner of sub-lot 130 of Lewistowne Park, Phase 4.

Thence, N 03° 57' 24" E in part along the east line of sub-lots 258 and 257 of Lewistowne Park, Phase 9, a distance of 554.29 feet to a point of intersection with the north line of lot 42 at the northeast corner of said sub-lot 257;

Thence, S 87° 37' 11" E along the north line of lot 42 a distance of 650.10 feet to the northwest corner of lands conveyed to Robert A. and Deborah Kenney by deed recorded in the Niagara County Clerk's Office in Liber 2107 at page 315, said point being a distance of 612.21 feet west from the centerline of Blairville-Creek Road;

Exhibit "A" Annexed to Affidavit of Photiadis.

BOOK 3406 PAGE 0538

Thence, S 00° 01' 09" E along the west line of said Kenney lands and said line extended, a distance of 260.00 feet to the southwest corner of lands conveyed to Shannon L. Ligammari by deed recorded in the Niagara County Clerk's Office in Liber 3150 at page 60;

Thence, N 88° 48' 23" E, along the south line of said Ligammari lands, a distance of 556.83 feet to the point or place of beginning, containing 15.83 acres, more or less.

PARCEL D2

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of Lot 42, Township 14, Range 9 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at the southeast corner of Subdivision Lot 164 as shown on a map of Lewistowne Park, Phase 5, filed in Book 51 of Microfilmed Maps at Page 5101-5102;

Thence N 15° 51' 56" E along the easterly line of Subdivision Lot 164, a distance of 150.00 feet to the northeast corner thereof;

Thence N 73° 29' 50" W along the northerly line of Subdivision Lot 164, a distance of 87.89 feet to the northwest corner thereof, said point being the southeast corner of Subdivision Lot 226 as shown on a map of Lewistowne Park, Phase 8, filed in Book 57 of Microfilmed Maps at Pages 5713-5714;

Thence N 18° 08' 40" E along the easterly line of Subdivision Lot 226, a distance of 79.28 feet to the southeast corner of Subdivision Lot 225 as shown on a map of Lewistowne Park, Phase 8, filed in Book 57 of Microfilmed Maps at Page 5713-5714;

Thence N 8° 17' 39" E along the easterly lines of Subdivision Lots 225, 224 and 223 as shown on a map of Lewistowne Park, Phase 8, filed in Book 57 of Microfilmed Maps at Pages 5713-5714, a distance of 270.00 feet to the southeast corner of Subdivision Lot 263 as shown on a map of Lewistowne Park, Phase 9 filed in Book 59 of Microfilmed Maps at page 5900-5901;

Thence N 8° 17' 38" E along the easterly line of Subdivision Lot 263, a distance of 80.55 feet to the southwest corner of Subdivision lot 261 as shown on a map of Lewistowne Park, Phase 9;

Thence, S 71° 10' 46" E along the southerly line of Subdivision Lots 261 and 260 a distance of 223.36 feet to the southwest corner of Subdivision Lot 259 as shown on a map of Lewistowne Park, Phase 9;

Thence, N 70° 10' 48" E along the southeasterly line of Subdivision Lot 259, a distance of 228.03 feet to the southeast corner of Subdivision Lot 259, said corner being located on the westerly line of a parcel of land conveyed to the Town of Lewiston by Deed recorded in Liber 2529 at Page 219;

Exhibit "A" Annexed to Affidavit of Photiadis.

Thence, S 3° 57' 24" W along the westerly line of said parcel conveyed to the Town of Lewiston, a distance of 166.98 feet to the northeast corner of Subdivison Lot 131 as shown on a map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at Page 4925-4926;

Thence, N 83° 48' 14" W along the northerly line of Subdivision Lot 131, a distance of 202.46 feet to the northerly corner of Subdivision Lot 132 as shown on a map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at pages 4925-4926;

Thence, S 45° 43' 01" W along the northwesterly line of Subdivision Lot 132, a distance of 180.11 feet to northwesterly corner of Subdivision Lot 133 as shown on a map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at pages 4925-4926;

Thence S 12° 31' 57" W along the westerly line of Subdivision Lot 133, a distance of 80.00 feet to the northwest corner of Subdivision Lot 134 as shown on a map of Lewistowne Park, Phase 4, file in Book 50 of Microfilmed Maps at Page 4925-4926;

Thence, S 16° 48' 20" W along the westerly line of Subdivision Lot 134, a distance of 70.00 feet to the northwest corner of Subdivision Lot 135 as shown on map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at Pages 4925-4926;

Thence, S 21° 07' 46" W along the westerly line of Subdivision Lot 135, a distance of 70.00 feet to the northwest corner of Subdivision of Lot 136 as shown on a map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at Page 4925-4926;

Thence S 16° 03; 16" W along the westerly line of Subdivision Lot 136, a distance of 128.12 feet to the southwesterly corner thereof, said point being on the northerly line of Raymond Drive;

Thence northwesterly along the northerly line of Raymond Drive along a curve to the left having a radius of 461.0 feet an arc length of 19.40 feet to the place of beginning. Containing 2.14 acres more or less.

PARCEL E

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of lot 44, township 14, range 9 of the Holland Land Company Survey bounded and described as follows:

Beginning at a point in the centerline of Pletcher Road, being also the north line of lot 44, at the northwest corner of lands conveyed to Eugene and Maureen Polin by deed recorded in the Niagara County Clerk's Office in Liber 1478 at page 377, said point being 1229.70 feet west from the intersection of said centerline with the centerline of Blairville Creek Road;

Thence, S 01° 28' 55"E along the west line of said Polin lands a distance of 853.60 feet to the southwest corner of said lands;

Exhibit "A" Annexed to Affidavit of Photiadis.

BOOK 3406 PAGE 0540

Thence, S 89° 35' 08"E along the south line of said Polin lands a distance of 200.00 feet to a point in the west line of lands conveyed to Donald and Yvonne Stephenson by deed recorded in the Niagara County Clerk's Office in Liber 3322 at page 656;

Thence, S 00° 23' 18" W along the west line of said Stephenson lands and said line extended, a distance of 2916.67 feet to the northwest corner of lands conveyed to Fred and Geraldine Vanoni by deed recorded in the Niagara County Clerk's Office in Liber 1495 at page 205;

Thence, S 00° 22' 01"W along the west line of said Vanoni lands and said line extended, a distance of 231.17 feet to the southeast corner of lands conveyed to Pletcher Associates by deed recorded in the Niagara County Clerk's Office in Liber 1613 at page 894, being also in the south line of lot 44;

Thence, N 89° 39' 17"W along the south line of lot 44, a distance of 1058.60 feet to a point in the east line of lands appropriated for the Niagara Parkway, Section 4 (Robert Moses Parkway);

Thence, northerly, along the east line of lands appropriated for the Niagara Parkway, Section 4, the following three (3) courses and distances:

(1) N 00° 22' 47"W a distance of 608.91 feet to a point;
(2) N 08° 07' 23"W a distance of 1594.88 feet to a point;
(3) N 12° 43' 39"W a distance of 803.98 feet to the southerly corner of lands acquired by the Niagara Frontier State Park Commission by deed recorded in the Niagara County Clerk's Office in Liber 1363 at page 171;

Thence, N 29° 19' 14"E along the boundary of the last described parcel a distance of 413.00 feet to an angle point in said boundary;

Thence, N 01° 42' 24"W continuing along the boundary of the last above described parcel, a distance of 624.90 feet to a point;

Thence, easterly along the arc of a circular curve to the left with a radius of 1180 feet an arc length of 132.04 feet to a point in the south bounds of Pletcher Road (66.0 feet wide);

Thence, N 89° 35' 08"W along the south bounds of Pletcher Road a distance of 664.30 feet to a point in the west line of lot 44;

Thence, N 22° 53' 39"W along the west line of lot 44 a distance of 35.91 feet to a point in the centerline of Pletcher Road being the northwest corner of lot 44;

Thence, S 89° 35' 08"E along the centerline of Pletcher Road a distance of 677.42 feet to the northwest corner of lands conveyed to Joseph and Ingeborg Praus by deed recorded in the Niagara County Clerk's Office in Liber 1411 at page 109;

Exhibit "A" Annexed to Affidavit of Photiadis.

BOOK 3406 PAGE 0541

Thence, S 01° 28' 55" E along the west line of said Praus land and said line extended, a distance of 853.60 feet to the southwest corner of lands conveyed to Marc and Cheryl Brunett by deed recorded in the Niagara County Clerk's Office in Liber 1719 at page 80;

Thence, S 89° 35' 08"E along the south line of said Brunett lands and said line extended, a distance of 884.00 feet to the southeast corner of lands conveyed to Marc and Cheryl Brunett by deed recorded in the Niagara County Clerk's Office in Liber 2520 at page 285;

Thence, N 01° 28' 55"W along the east line of said Brunett lands, a distance of 853.60 feet to the northeast corner of said lands in the centerline of Pletcher Road;

Thence, S 89° 35' 08"E along the centerline of Pletcher Road, a distance of 66.00 feet to the point or place of beginning containing 93.18 acres, more or less.

Exhibit "B" Annexed to Affidavit of Photiadis.

DO NOT DETACH THIS IS PAGE 1 OF RECORDED DOCUMENT

LIBER 3349 PAGE 296

OFFICE OF THE CLERK COUNTY OF NIAGARA

WAYNE F. JAGOW, COUNTY CLERK

INS. #_____

County Courthouse, 175 Hawley Street, P.O. Box 461, Lockport, NY 14095
Phone (716) 439-7027 Fax (716) 439-7066

NIAGARA COUNTY CLERK RECORDING PAGE

Bargain and OD

INSTRUMENT DATE 2/13/06 TYPE Sale Deed NUMBER OF PAGES 10

RETURN TO: Aiken Gump Stmauss Hauer & Feld LLP
590 Madison Ave., 20th Floor
New York, NY 10022-2524
ATTN: Gregory Seitz, Esq.

Parties: (Print Names In Full)
1st Part Old Creek Development, LLC
2nd Part Seneca Niagara Falls Gaming Corporation

Town/City Lewiston

4435
REAL ESTATE TRANSFER TAX
$ 800.00
2/15/06
NIAGARA COUNTY

SPACE BELOW RESERVED FOR COUNTY CLERK'S USE ONLY.

MORTGAGE AMOUNT

$_____

(___)One\two family (___)Other

[ ] Check if to be apportioned

MORTGAGE#_____

DOCUMENT # 1001406
BOOK 3349 PAGE 296 DEEDS
NUMBER OF PAGES 7
RECORDED 02/15/2006 04:33:44 P.M.
RECEIPT # 4043 DOCUMENT TOTAL: $8,621.00
PAID - COUNTY CLERK
WAYNE F. JAGOW

RECORDING TAX RECEIPT

BASIC $_____
ADDITIONAL $_____
SPECIAL $_____
TOTAL $_____

State of New York) ss
County of Niagara)
I do hereby certify that I have Received on the within Mortgage, being the amount of the Recording Tax Imposed thereon & paid at recording.

Recorded on the _____ day of _____
199_____ at _____ o'clock _____M
in Liber _____ of _____
on page _____ and examined.

Dated_____, 199_____

Mortgage Tax Clerk of Niagara County

Niagara County Clerk

This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York
DO NOT DETACH

Exhibit "B" Annexed to Affidavit of Photiadis.

LIBER 3349 PAGE 297

BARGAIN AND SALE DEED

THIS INDENTURE dated as of FEBRUARY 13, 2006 by OLD CREEK DEVELOPMENT, LLC, having a principal place of business at 920 Center Street, Lewiston, New York 14092, ("Grantor"), to SENECA NIAGARA FALLS GAMING CORPORATION, a wholly owned entity of The Seneca Nation of Indians, located at 310 Fourth Street, Niagara Falls, New York, ("Grantee").

WITNESSETH, that Grantor in consideration of the sum of TWO MILLION ONE HUNDRED THOUSAND AND 00/100 DOLLARS ($2,100,000.00) and other good and valuable consideration paid by Grantee, the receipt and sufficiency of which is hereby acknowledged by Grantor, does hereby grant and release and assign forever unto Grantee, and the heirs, successors and assigns of Grantee, those certain plots, pieces or parcels of land situate lying and being in the Town of Lewiston, County of Niagara and State of New York, as more particularly bounded and described in **Schedule A** attached hereto and made a part hereof (the "Land").

TOGETHER with all right, title and interest of Grantor in and to any and all buildings and improvements located on the Land (the "Improvements");

TOGETHER with all right, title and interest, if any, of Grantor in and to any easements, rights of way, privileges, benefits, appurtenances, hereditiments, strips, gaps and gores, and any and all other rights, if any, thereon or in any way pertaining thereto, including, without limitation, any land lying in the bed of any streets and roads abutting the above-described property to the center lines thereof (the foregoing rights, together with the Land and the Improvements being hereinafter referred to, collectively, as the "Premises");

TO HAVE AND TO HOLD the Premises herein granted, or mentioned and intended so to be, unto Grantee, and the heirs, successors and assigns of Grantee, forever.

AND Grantor, in compliance with Section 13 of the Lien Law, covenants that Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of improvements and will apply the same first to the payment of the cost of improvements before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, Grantor has duly executed this deed the day and year first above written.

GRANTOR:

OLD CREEK DEVELOPMENT, LLC

BY: _____
Name: Michael J. Dowd
Title: Managing Member

STATE OF NEW YORK)
)
COUNTY OF NIAGARA)

On the 13th day of February, in the year 2006, before me, the undersigned, a Notary Public in and for said state, personally appeared Michael J. Dowd, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Natalie M. Sansivero
Notary Public

NATALIE M. SANSIVERO
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires December 29, 2007

Exhibit "B" Annexed to Affidavit of Photiadis.

LIBER 3349 PAGE 298

SCHEDULE "A"

Parcel A, B, and C

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of lot 43, township 14, range 9 of the Holland Land Company Survey bounded and described as follows:

Beginning at a point in the centerline of Blairville - Creek Road, also known as Creek Road, a distance of 225.0 feet north of the southeast corner of lot 43.

Thence, S89° 25' 40"W along the north line of lands conveyed to Marlene Burns by deed recorded in the Niagara County Clerks Office in Liber 1952 at Page 135, a distance of 355.14 feet to the northwest corner of said Burns lands;

Thence, S00° 10' 35"W along the west line of said Burns land, a distance of 228.86 feet to the southwest corner of said Burns land in the south line of lot 43;

Thence, S88° 48' 26"W along the south line of lot 43, a distance of 256.36 feet to the northwest corner of land conveyed to Robert and Deborah Kenney by deed recorded in the Niagara County Clerks Office in Liber 2107 at Page 315;

Thence, N87° 37' 11"W continuing along the south line of lot 43, a distance of 650.10 feet to the northeast corner of subdivision lot 257 of Lewistowne Park, Phase 9;

Thence, N89° 12' 48"W continuing along the south line of lot 43 a distance of 1187.85 feet to the southwest corner of lot 43 being in the east line of lands appropriated for the Niagara Parkway, Section 4 (Robert Moses State Parkway);

Thence, northerly along the east line of lands appropriated for the Niagara Parkway, Section 4 the following three (3) courses and distances;

(1) N08° 18' 24"E, a distance of 800.98 feet to a point;

(2) N06° 22' 35"E, a distance of 2670.71 feet to a point;

(3) N00° 22' 47"W, a distance of 433.59 feet to the southwest corner of lands appropriated for Blairville Creek Road, State Highway 9322, Niagara County, Map 186 Parcel 130 filed in the Niagara County Clerks Office in Liber 1428 at Page 923;

Thence, S89° 47' 37"E along the south line of the last described parcel, a distance of 1066.38 feet to an angle point in said south line;

Thence, S00° 26' 05"W parallel with the centerline of Blairville - Creek Road, a distance of 900.77 feet to a point;

Thence, S26° 23' 35"W a distance of 137.07 feet to a point;

Thence, S89° 46' 51"W a distance of 72.28 feet to a point;

Thence, S00° 26' 05"W, parallel with the centerline of Blairville - Creek Road, a distance of 650.04 feet to a point;

Thence, N89° 46' 51"E a distance of 125.62 feet to a point;

Thence, S00° 26' 05"W parallel with the centerline of Blairville - Creek Road, a distance of 222.13 feet to a point;

Thence, N89° 46' 51"E a distance of 1008.22 feet to a point in the centerline of Blairville - Creek Road;

Thence, S00° 26' 05"W along the centerline of said road a distance of 182.06 feet to the northeast corner of lands conveyed to Norton and Rose Douglas by deed recorded in Liber 2302 at Page 61;

Thence, S89° 46' 50"W along the north line of said Douglas lands, a distance of 355.00 feet to the northwest corner of said lands;

Thence, S00° 26' 05"W along the west line of said Douglas lands and said line extended, a distance of 467.00 feet to the southwest corner of lands conveyed to Marc and Carla Eagler by deed recorded in Liber 2971 at Page 245;

Thence, N89° 46' 50"E along the south line of said Eagler lands, a distance of 355.00 feet to a point in the centerline of said Blairville Creek Road;

Thence, S00° 26' 05"W along the centerline of said road, a distance of 66.00 feet to the northeast corner of lands conveyed to Charles and Eleanor Zelinski by deed recorded in Liber 1225 at page 443;

Thence, S89° 46' 50"W along the north line of said Zelinski lands, a distance of 355.00 feet to the northwest corner of said lands;

Thence, S00° 26' 05"W along the west line of said Zelinski lands and said line extended, a distance of 500.24 feet to the southwest corner of lands conveyed to John and Patricia Bartko by deed recorded in Liber 2156 at Page 171;

Thence, N89° 25' 40"E along the south line of said Bartko lands, a distance of 355.03 feet to a point in the centerline of Blairville - Creek Road;

Thence, S00° 26' 05"W along the centerline of said road, a distance of 66.00 feet to the northeast corner of lands conveyed to Walter and Patricia Yacus by deed recorded in Liber 2056 at page 172;

Thence, S89° 25' 40"W along the north line of said Yacus lands, a distance of 355.00 feet to the northwest corner of said lands;

Exhibit "B" Annexed to Affidavit of Photiadis.

Thence, S00° 26' 05"W along the west line of said Yacus lands and said line extended, a distance of 445.41 feet to the southwest corner of lands conveyed to Robert Wojtowicz by deed recorded in Liber 3288 at page 822;

Thence, N89° 25' 40"E along the south line of said Wojtowicz lands, a distance of 355.00 feet to a point in the centerline of Blairville - Creek Road;

Thence, S00° 26' 05"W along the centerline of said road a distance of 66.00 feet to the point or place of beginning, containing 140.22 acres, more or less.

Excepting and reserving from the above described parcel the following parcels of land appropriated by the New York State Department of Public Works:

Map 103, Parcel 111 filed in the Niagara County Clerks Office in liber 1437 at page 527 (0.03 acres).

Map 108, Parcel 116 filed in the Niagara County Clerks Office in liber 1437 at page 546 (0.03 acres).

Map 114, Parcel 122 filed in the Niagara County Clerks Office in liber 1439 at page 19 (0.03 acres).

Map 114, Parcel 123 filed in the Niagara County Clerks Office in liber 1439 at page 19 (0.02 acres).

Part of Map 120, Parcel 129 filed in the Niagara County Clerks Office in liber 1432 at page 449 (0.08 acres).

The above described parcel containing 140.03 acres more or less.

Parcel - D 1

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of lot 42, township 14, range 9 of the Holland Land Company Survey bounded and described as follows:

Beginning at a point in the westerly line of Blairville Creek Road (110.0 Feet Wide) at a distance of 260.00 feet south of the point of intersection of the said line with the north line of Lot 42:

Thence, S00° 03' 39"W along said west bounds of Blairville Creek Road, a distance of 75.02 feet to a point in the north line of lands conveyed to Mathew and Kathleen Wrobel by deed recorded in the Niagara County Clerks Office in liber 1621 at page 976;

Thence, S88° 48' 30"W along the north line of said Wrobel lands, a distance of 556.83 feet to the north west corner of said lands;

Thence, S00° 02' 15"W along the west line of said Wrobel lands and said line extended, a distance of 478.40 feet to the southwest corner of lands conveyed to Angelo J. Farbo by deed recorded in the Niagara County Clerks Office in liber 2598 at page 171;

Thence, S00° 26' 14"W along the west line of lands conveyed to Anthony and Chris Iannucci by deed recorded in the Niagara County Clerk's Office in liber 3156 at page 170 and said line extended, a distance of 405.31 feet to a point at the northwesterly corner of sub-lot 1703 on Ridge View Village Part IV;

Thence, S00° 36' 57"W along the westerly line of said sub-lot, a distance of 47.58 feet to an angle point in said sub-lot;

Thence, S62° 35' 27"W, along a northerly line of sub-lot 1704 of the aforementioned Ridge View Village Part IV, a distance of 100.00 feet to a point at the northwesterly corner of said sub-lot.

Thence, S47° 36' 13"W, a distance of 8.27 feet to a point at the northeasterly corner of sub-lot 80 of Lewistowne Park, Phase 3;

Thence, S49° 32' 31"W, along the northerly line of sub-lots 80 and 81 of said Lewistowne Park, Phase 3, a distance of 126.42 feet to a point at the northwesterly corner of said sub-lot 81;

Thence, N87° 02' 41"W, along the northerly line of sub-lot 82 of said Lewistowne Park, Phase 3, a distance of 109.76 feet to the point of intersection with the easterly right-of-way line of Curtis Court North (66 feet wide);

Thence, northeasterly, along said easterly right-of-way line, along a curve to the right, having a radius of 300.00 feet, through a central angle of 10°-46'-52", an arc length of 56.45 feet to the southwest corner of sub-lot 107 of Lewistowne Park, Phase 4;

Thence, S76° 15' 49"E, along said southerly line of sub-lot 107, a distance of 115.00 feet to the southeast corner of said sub-lot.

Thence the following sixteen (16) courses and distances along the rear lines of sub-lots 107-121 of said Lewistowne Park, Phase 4:

(1) N43° 53' 40"E, a distance of 117.25 feet to a point;
(2) N14° 07' 45"W, a distance of 98.21 feet to a point;
(3) N02° 49' 28"W, a distance of 91.84 feet to a point;
(4) N09° 27' 13" W, a distance of 91.84 feet to a point;
(5) N02° 10' 35"E, a distance of 99.74 feet to a point;

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(6) N07° 15' 15" E, a distance of 105.00 feet to a point;
(7) N33° 00' 02"W, a distance of 150.00 feet to a point;
(8) N72° 40' 34"W, a distance of 175.00 feet to a point;
(9) S59° 48' 15"W, a distance of 185.00 feet to a point;
(10) S11° 04' 03"W, a distance of 195.00 feet to a point;
(11) S17° 59' 30"E, a distance of 122.96 feet to a point;
(12) S20° 32° 34"E, a distance of 69.59 feet to a point;
(13) S06° 34' 46"E, a distance of 69.59 feet to a point;
(14) S00° 11' 17"W, a distance of 69.59 feet to a point;
(15) S10° 28' 50"W, a distance of 90.00 feet to a point;
(16) S82° 23' 12"E, a distance of 160.00 feet to a point of intersection with the westerly right-of-way line of Curtis Court North;

Thence southwesterly, along said westerly right-of-way line, along a curve to the left, having a radius of 366.00 feet, through a central angle of 05-°54'-04", an arc length of 37.70 feet to the northeast corner of sub-lot 83 of the aforementioned Lewistowne Park, Phase 3;

Thence, the following three (3) courses and distances along the rear lines of sub-lots 83-87 of the aforementioned Lewistowne Park, Phase 3:
(1) N84° 25' 49"W, a distance of 92.09 feet to a point;
(2) N76° 10' 02"W, a distance of 168.20 feet to a point;
(3) N48° 52' 06"W, a distance of 74.61 feet to a point at the southeasterly corner of sub-lot 122 of Lewistowne Park, Phase 4;

Thence the following nine (9) courses and distances along the rear lines of sub-lots 122-130 of Lewistowne Park, Phase 4:
(1) N17° 06' 54" W, a distance of 75.00 feet to a point;
(2) N29° 09' 19"W, a distance of 71.40 feet to a point;
(3) N27° 25' 36"W, a distance of 85.00 feet to a point;
(4) N25° 15' 56"E, a distance of 19.87 feet to a point;
(5) N29° 06' 08"E, a distance of 85.00 feet to a point;
(6) N28° 43' 16"E, a distance of 101.35 feet to a point;
(7) N40° 43' 31"E, a distance of 111.58 feet to a point;
(8) N06° 20' 26"E, a distance of 130.00 feet to a point;
(9) N33° 39' 40"W, a distance of 175.00 feet to a point at the northwesterly corner of sub-lot 130 of Lewistowne Park, Phase 4.

Thence, N03° 57' 24"E in part along the east line of sub-lots 258 and 257 of Lewistowne Park, Phase 9, a distance of 554.29 feet to a point of intersection with the north line of lot 42 at the northeast corner of said sub-lot 257;

Thence S87° 37' 11"E along the north line of lot 42 a distance of 650.10 feet to the northwest corner of lands conveyed to Robert A. and Deborah Kenney by deed recorded in the Niagara County Clerk's Office in Liber 2107 at page 315, said point being a distance of 612.21 feet west from the centerline of Blairville - Creek Road;

Thence, S00° 01' 09" E along the west line of said Kenney lands and said line extended, a distance of 260.00 feet to the southwest corner of lands conveyed to Shannon L. Ligammari by deed recorded in the Niagara County Clerks Office in liber 3150 at page 60;

Thence, N88° 48' 23"E, along the south line of said Ligammari lands, a distance of 556.83 feet to the point or place of beginning, containing 15.83 acres, more or less.

PARCEL D 2

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of Lot 42, Township 14, Range 9 of the Holland Land Companys Survey, bounded and described as follows:
BEGINNING at the southeast corner of Subdivision Lot 164 as shown on a map of Lewistowne Park Phase 5, filed in Book 51 of Microfilmed Maps at Pages 5101-5102;
Thence N15°51'56"E along the easterly line of Subdivision Lot 164, a distance of 150.00 feet to the northeast corner thereof;
Thence N73°29'50"W along the northerly line of Subdivision Lot 164, a distance of 87.89 feet to the northwest corner thereof, said point being the southeast corner of Subdivision Lot 226 as shown on a map of Lewistowne Park Phase 8, filed in Book 57 of Microfilmed Maps at Pages 5713-5714;
Thence N18°08'40"E along the easterly line of Subdivision Lot 226, a distance of 79.28 feet to the southeast corner of Subdivision Lot 225 as shown on a map of Lewistowne Park Phase 8, filed in Book 57 of Microfilmed Maps at Pages 5713-5714;
Thence N8°17'39"E along the easterly lines of Subdivision Lots 225, 224 and 223 as shown on a map of Lewistowne Park Phase 8, filed in Book 57 of Microfilmed Maps at Pages 5713-5714, a distance of 270.00 feet to the southeast corner of Subdivision Lot

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263 as shown on a map of Lewistowne Park Phase 9 Filed in Book 59 of Microfilmed Maps at pages 5900-5901;
Thence N8°17'38"E along the easterly line of Subdivision Lot 263, a distance of 80.55 feet to the southwest corner of Subdivision lot 261 as shown on a map of Lewistowne Park Phase 9;
Thence S71°10'46"E along the southerly lines of Subdivision Lots 261 and 260 a distance of 223.36 feet to the southwest corner of Subdivision Lot 259 as shown on a map of Lewistowne Park Phase 9;
Thence N70°10'48"E along the southeasterly line of Subdivision Lot 259, a distance of 228.03 feet to the southeast corner of Subdivision Lot 259, said corner being located on the westerly line of a parcel of land conveyed to the Town of Lewiston by Deed recorded in Liber 2529 at Page 219;
Thence S3°57'24"W along the westerly line of said parcel conveyed to the Town of Lewiston, a distance of 166.98 feet to the northeast corner of Subdivision Lot 131 as shown on a map of Lewistowne Park Phase 4, filed in Book 50 of Microfilmed Maps at Pages 4925-4926;
Thence N83°48'14"W along the northerly line of Subdivision Lot 131, a distance of 202.46 feet to the northerly corner of Subdivision Lot 132 as shown on a map of Lewistowne Park Phase 4, filed in Book 50 of Microfilmed Maps at pages 4925-4926;
Thence S45°43'01"W along the northwesterly line of Subdivision Lot 132, a distance of 180.11 feet to northwesterly corner of Subdivision Lot 133 as shown on a map of Lewistowne Park Phase 4, filed in Book 50 of Microfilmed Maps at pages 4925-4926;
Thence S12°31'57"W along the westerly line of Subdivision Lot 133, a distance of 80.00 feet to the northwest corner of Subdivision Lot 134 as shown on a map of Lewistowne Park Phase 4, filed in Book 50 of Microfilmed Maps at Pages 4925-4926;
Thence S16°48'20"W along the westerly line of Subdivision Lot 134 , a distance of 70.00 feet to the northwest corner of Subdivision Lot 135 as shown on map of Lewistowne Park Phase 4, filed in Book 50 of Microfilmed Maps at Pages 4925-4926;
Thence S21°07'46"W along the westerly line of Subdivision Lot 135, a distance of 70.00 feet to the northwest corner of Subdivision of Lot 136 as shown on map of Lewistowne Park Phase 4, filed in Book 50 of Microfilmed Maps at Pages 4925-4926;
Thence S16°03'16"W along the westerly line of Subdivision Lot 136, a distance of 128.12 feet to the southwesterly corner thereof, said point being on the northerly line of Raymond Drive;
Thence northwesterly along the northerly line of Raymond Drive along a curve to the left having a radius of 461.0 feet an arc length of 19.40 feet to the place of beginning.
Containing 2.14 acres more or less.

PARCEL E

ALL THAT TRACT AND PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of lot 44, township 14, range 9 of the Holland Land Company Survey bounded and described as follows:

Beginning at a point in the centerline of Pletcher Road, being also the north line of lot 44, at the northwest corner of lands conveyed to Eugene and Maureen Polin by deed recorded in the Niagara County Clerks Office in liber 1478 at page 377, said point being 1229.70 feet west from the intersection of said centerline with the centerline of Blairville Creek Road;

Thence, S01° 28' 55"E along the west line of said Polin lands a distance of 853.60 feet to the southwest corner of said lands;

Thence, S89° 35' 08"E along the south line of said Polin lands a distance of 200.00 feet to a point in the west line of lands conveyed to Donald and Yvonne Stephenson by deed recorded in the Niagara County Clerks Office in liber 3322 at page 656;

Thence, S00° 23' 18"W along the west line of said Stephenson lands and said line extended, a distance of 2916.67 feet to the northwest corner of lands conveyed to Fred and Geraldine Vanoni by deed recorded in the Niagara County Clerks Office in Liber 1495 at page 205;

Thence, S00° 22' 01"W along the west line of said Vanoni lands and said line extended, a distance of 231.17 feet to the southeast corner of lands conveyed to Pletcher Associates by deed recorded in the Niagara County Clerks Office in Liber 1613 at page 894, being also in the south line of lot 44;

Thence, N89° 39' 17"W along the south line of lot 44, a distance of 1058.60 feet to a point in the east line of lands appropriated for the Niagara Parkway, Section 4 (Robert Moses Parkway);

Thence, northerly, along the east line of lands appropriated for the Niagara Parkway, Section 4, the following three (3) courses and distances:

(1) N00° 22' 47"W a distance of 608.91 feet to a point;

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(2) N08° 07' 23"W a distance of 1594.88 feet to a point;
(3) N12° 43' 39"W a distance of 803.98 feet to the southerly corner of lands acquired by the Niagara Frontier State Park Commission by deed recorded in the Niagara County Clerks Office in Liber 1363 at page 171;

Thence, N29° 19' 14"E along the boundary of the last described parcel a distance of 413.00 feet to an angle point in said boundary;

Thence, N01° 42' 24"W continuing along the boundary of the last above described parcel, a distance of 624.90 feet to a point;

Thence, easterly, along the arc of a circular curve to the left with a radius of 1180 feet an arc length of 132.04 feet to a point in the south bounds of Pletcher Road (66.0 feet wide);

Thence, N89° 35' 08"W along the south bounds of Pletcher Road a distance of 664.30 feet to a point in the west line of lot 44.

Thence, N22° 53' 39"W along the west line of lot 44 a distance of 35.91 feet to a point in the centerline of Pletcher Road being the northwest corner of lot 44;

Thence, S89° 35' 08"E along the centerline of Pletcher Road a distance of 677.42 feet to the northwest corner of lands conveyed to Joseph and Ingeborg Praus by deed recorded in the Niagara County Clerks Office in liber 1411 at page 109;

Thence, S01° 28' 55"E along the west line of said Praus land and said line extended, a distance of 853.60 feet to the southwest corner of lands conveyed to Marc and Cheryl Brunett by deed recorded in the Niagara County Clerks Office in liber 1719 at page 80;

Thence, S89° 35' 08"E along the south line of said Brunett lands and said line extended, a distance of 884.00 feet to the southeast corner of lands conveyed to Marc and Cheryl Brunett by deed recorded in the Niagara County Clerks Office in liber 2520 at page 285;

Thence, N01° 28' 55"W along the east line of said Brunett lands, a distance of 853.60 feet to the northeast corner of said lands in the centerline of Pletcher Road;

Thence S89°35' 08"E along the centerline of Pletcher Road, a distance of 66.00 feet to the point or place of beginning containing 93.18 acres, more or less.

Exhibit "C" Annexed to Affidavit of Photiadis.

Print Page

AllBusiness

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Also ran in Niagara Gazette

HICKORY STICK: Seneca golf course hiring questioned

Aug. 11--A local labor leader who serves on the board at the Niagara County Industrial Development Agency has some questions about the use of Native American laborers in the construction of the Hickory Stick Golf Course in Lewiston.

Local Laborer's 91 Business Manager and NCIDA Board member Robert Connolly said he intends to ask the agency's legal counsel for an explanation on the Seneca Nation's Tribal Employment Rights Ordinance, or TERO, and how it relates to the golf course project.

Established in 1993 by the Seneca Nation, TERO allows for Native preference to be used in the hiring of workers on Sovereign Native land. The tribe has the right to enact a Native preference law based on its right to self-govern on registered Indian lands and reservations.

Connolly said many contractors have been required to involve Native workers during the golf course construction project and he wants to know if the practice is appropriate considering the property in question has received tax breaks from the county's IDA.

"The TERO issue is something that I would like to talk at length about at Thursday's meeting," Connolly said.

The IDA Board recently approved a year-long extension on the tax rider the LGCC has receiving. The rider allowed the LGCC to be exempt of sales tax when purchasing equipment and materials used to build the 250-acre course.

One contractor, Sue-Perior Concrete and Paving of West Seneca, has raised similar questions about TERO enforcement at the site. Sue-Perior, which has performed work on the construction site since 2007, is currently involved in a legal dispute over money it says it is owed by the Lewiston Golf Course Corp., which oversaw the development of the golf course as a subsidiary of the Seneca Gaming Corp.

Sue-Perior's Director Dave Pfeiffer said at least nine of his employees were forced off the job in favor of native workers.

"These guys have families to support, and they just come out here and say you and you go home, that's not right," he said. Pfeiffer believes the LGCC overstepped its bounds by inappropriately enforcing TERO in a project where it is not allowed.

"Where is the Federal Government?" Pfeiffer added. "Where is the Department of Labor? This is taxpayers' money and nobody wants to come to the plate."

Seneca Nation TERO official Rick Bennett declined comment and referred all questions to Deputy Counsel for the Seneca Nation of Indians, Chris Karns.

Seneca Nation President Barry E. Snyder Sr. later released the following statement: "TERO provides for Indian preference in employment. This ordinance has been in place for a number of years and is in accordance with the Civil Rights Act of 1964 authorizing businesses and enterprises on or near Indian reservations to give preferential treatment to Indians. To further this position, in 1988 the Chairman for the U.S. Equal Employment Opportunity Commission (EEOC) issued a policy statement on Indian preference under Title VII of the Civil Rights Act. The author of the policy statement is current U.S. Supreme Court Justice Clarence Thomas. I don't think there should be any question with respect to the legality of our Nation's TERO position on Seneca employment."

Former Congressman John LaFalce, now a lawyer at the Amherst firm of Hogan Willig, disagrees.

"The premise of Native preference on land that is not considered sovereign is comparable to a contractor coming here from Switzerland and disregarding every state or federal employment law established and following the laws that they would follow on sovereign Swiss territory," LaFalce said.

LaFalce, who is a member of Citizen's for a Better Buffalo, an anti-casino organization who has battled the construction of the Seneca Buffalo Creek Casino, said he does not believe TERO should apply in this instance.

"While TERO may have been proven in a native Tribal court, never has it been proven in a federal or state court in the United States," he added.

A spokesperson for the Department of the Interior's Bureau for Indian Affairs said the land in question is not sovereign land.

"In order for a territory to be considered sovereign, they must be registered with us, in our computers and the lands that are in question are not, meaning that they are private or public lands, and not-native," the representative said.

IDA attorney Mark Gabriele said he would look into the issue if it is brought up at this week's NCIDA meeting. According to Gabriele, if there are any violations of the rider, the IDA would be forced to place the LGCC on 30 days notice to fix the problem or jeopardize its tax breaks.

"I would ask for the opinion of the Bureau for Indian affairs to find out the status of that land," Gabriele said.

The IDA's regular board meeting begins at 9 a.m. Thursday at the Niagara County Center for Economic Development offices, Vantage Center, 6311 Inducon Corporate Drive, Suite One, Sanborn.

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Exhibit "C" Annexed to Affidavit of Photiadis.

NIAGARA GAZETTE

June 28, 2010

Senecas unveil Hickory Stick golf course

By Nick Mattera
Niagara Gazette

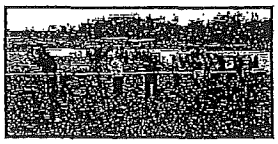
LEWISTON — Following more than three years of construction and a number of public setbacks, Seneca Nation officials joined representatives from the Seneca Gaming Corp. to celebrate the official opening of its first off-territory endeavor.

The 253-acre, $25 million Seneca Hickory Stick Golf Course situated along Creek, Pletcher and Raymond roads in the Town of Lewiston is set to open to the general public Friday.

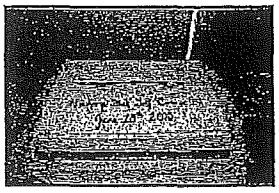
Seneca Officials spoke to the more than 100 community and Seneca leaders in attendance at Monday's grand opening ceremony. They expect the course to not only have a significant economic impact to the Seneca Nation, but the Niagara region as well.

"We've got Lewiston as a partner and the Niagara region as a partner here with this course, it's going to be a win-win all the way around," said Kevin W. Seneca, chairman of the Seneca Gaming Corp. "This course will attract visitors from all over New York state and Southern Ontario and have a tremendous positive economic impact to this area."

Seneca Nation President Barry E.



James Neiss/staff photographerLewiston, NY - Dignitaries participate in the ceremonial first drive, to officially open the Seneca Hickory Stick Golf Course on Monday.



James Neiss/staff photographerLewiston, NY - Monday was opening day at the Seneca Hickory Stick Golf Course.



James Neiss/staff photographerLewiston, NY - Seneca Nation of Indians President Barry E. Snyder Sr. announced the opening of the Seneca Hickory Stick Golf Course on Monday.



James Neiss/staff photographerLewiston, NY - Golf partners Peter Capitano of Labor Local 210, left, and Jim Willis of Iron Workers Local #6, center, are greeted by Chairman of the Seneca Gaming Corporation Kevin Seneca as the two head out for a round of golf on opening day at the Seneca Hickory Stick Golf Course.

James Neiss/staff photographerLewiston, NY - The Indigenous Peoples Dancers Native

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American Dance Troop performed during the opening ceremonies for the Seneca Hickory Stick Golf Course on Monday.

Snyder called Monday's groundbreaking a step toward financial sovereignty for the Seneca Nation.

"The influence of the Seneca Nation of Indians can be seen throughout Western New York, far beyond the borders of our current territories," Snyder said. "Our businesses employ thousands of people from across the region and we do business with many local companies. Our casinos and resorts attract millions of visitors every year. Today, we celebrate the next step in our nation's journey and look forward to a long and successful endeavor here in Lewiston."

The construction of the course has been riddled with controversy. In January, disbarred Lewiston Attorney Timothy Toohey pleaded guilty to embezzling $202,000 and filing a false tax return from a 2006 land deal at the Hickory Stick property.

Last month, the Seneca Gaming Corp. filed a civil lawsuit in State Supreme Court against former vice-chairman Bergel Mitchell III, Town of Lewiston Attorney's Michael Dowd and Mark Gabriele and three others for their connection in skimming more than $800,000 off the top of the same land deal.

In February, a West Seneca-based Sue-Perior Concrete and Paving — the contractor on the project — filed a judgment with the Niagara County clerk claiming it is owed more than $4.1 million for work and materials.

Snyder would not comment on either issue.

Instead, he focused on the opening of the course calling it a landmark day for the Seneca Nation, one that may lead to more off-territory endeavors for the Seneca Nation.

"This is proving that we can do things not only on our territories, but off our territories and we are more than happy to be in conjunction with the Town of Lewiston," Snyder said following Monday's ceremony. "We are looking all over (for business opportunities), we have a very progressive entity called Seneca Holdings which is looking for developments off-territory. We are continuously looking for opportunities, we are going to move around ... We are looking to maximize our revenues."

Town of Lewiston Supervisor Steven Reiter said he is proud of the collaboration between the Seneca Nation and the town and believes the golf course project will have a significant economic impact on the local community.

"This is another great day for Lewiston," Reiter said. "This golf course could mean big things for us it should bring thousands of people to Lewiston each month and we can hopefully find a way to reap the economic rewards."

Reiter said Hickory Stick makes Lewiston more of a destination, giving visitors just one more option when coming to the region.

Snyder said he is optimistic about the partnership as well and is thankful for the support of town officials — support he said is lacking in Niagara Falls.

Snyder admitted business has been slow at the Seneca Niagara Casino and Hotel — which he said could not be attributed to the Seneca Nation.

"It's unbelievable that Niagara Falls is one of the wonders of the world and we don't seem to get much play in Niagara Falls for whatever reason, I don't want to throw stones at anybody, but the Seneca Nation can't do it all," Snyder said. "(The City of Niagara Falls) needs to bring some people in, they need to bring some visitors in and have them stay for a while and have things available for them."

HICKORY STICK GOLF COURSE

- Par-72 course designed by world-renowned golf course architect Robert Trent Jones
- Features five par three's and four par five's including a mammoth 630-yard 11th hole
- Cost will be $70 per player and includes golf cart, greens fees and practice facility usage. Lewiston residents will receive a 10 percent discount.
- Each hole features five sets of tee boxes, allowing the course distance to vary from 7,026 yards to 5,395 yards
- Course highlights the natural elements of the surrounding woodlands. Hickory Stick Golf Course features seven ponds, large greens, Scottish style bunkers and is named after a rare shellbark hickory tree.

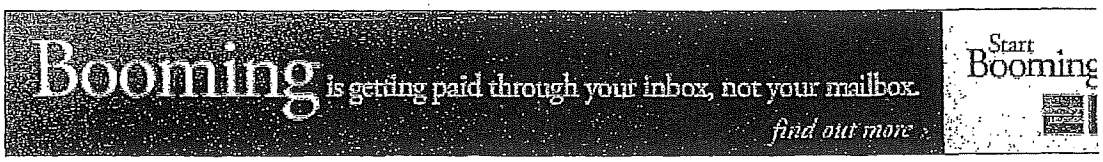


Exhibit "D" Annexed to Affidavit of Photiadis.

AGENT AGREEMENT

THIS AGENT AGREEMENT, made as of the 1st day of October, 2007, by and between the **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its offices at 6311 Inducon Corporate Drive, Suite One, Niagara Falls, New York 14132-9099 (the "Agency") and **LEWISTON GOLF COURSE CORPORATION**, a corporation duly organized under the laws of the Seneca Nation of Indians, and authorized to conduct business in the State of New York, having offices at 310 Fourth Street, Niagara Falls, New York 14303 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 569 of the Laws of 1972 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has requested the Agency's assistance with a certain project (the "Project") consisting of: (A) the acquisition or retention by the Agency of fee title to or a leasehold interest in an approximately 250-acre parcel of vacant land located at Pletcher Road and Robert Moses Parkway in the Town of Lewiston, Niagara County, New York (the "Land"); (B) the construction on the Land of an 18-hole championship golf course together with a driving range, club house and pro ship (the "Improvements"); and (C) the acquisition of and installation in and around the Improvements by the Company of certain machinery, equipment and items of personal property including, but not limited to, sprinkler/drainage systems, golf carts, landscaping vehicles/equipment, kitchen and retail equipment (the "Equipment" and, collectively with the Land and the Improvements, the "Facility").

WHEREAS, by Resolution dated May 23, 2007 (the "Resolution"), the Agency authorized the Company to act as its agent for the purposes of acquiring, constructing and equipping the Facility subject to the Company entering into this Agent Agreement.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Scope of Agency. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition, construction and equipping of the Facility. The right of the Company to act as agent of the Agency shall expire on **April 30, 2009**, unless extended as contemplated by the Resolution.

2. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Agency to proceed with the Facility:

Exhibit "D" Annexed to Affidavit of Photiadis.

(a) The Company is a corporation duly organized and validly existing under the laws of the Seneca Nation of Indians and authorized to conduct its business in the State of New York (the "State"), has the authority to enter into this Agent Agreement and has duly authorized the execution and delivery of this Agent Agreement.

(b) Neither the execution and delivery of this Agent Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agent Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (c).

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill it obligations under this Agent Agreement.

(e) The Company covenants that the Facility will comply in all material respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) no asbestos will be incorporated into or disposed of on the Facility, (iv) no underground storage tanks will be located on the Facility, and (v) no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company, upon receiving any information or notice contrary to the representations contained in this Section, shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents, representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations in any material respect, contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility after prior written notice thereof to the Company, including the anticipated cost, the Company agrees to pay the reasonable expenses of same to the

Agency upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

3. Hold Harmless Provision. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, officers, members employees, agents (except the Company), representatives, successors and assigns harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or breach by the Company of this Agent Agreement or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, constructing, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

4. Insurance Required. Effective as of the date hereof and until the earlier of the termination of the Leaseback Agreement (as defined herein) or the date the Agency consents in writing to a termination, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) (i) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company or (ii) as an alternative to the above requirements (including the requirement of periodic appraisal), the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than **$1,000,000** per accident or occurrence on account of personal injury, including death resulting therefrom, and **$1,000,000** per accident or occurrence on account of damage to the property of others,

excluding liability imposed upon the Company by any applicable workers' compensation law; and a blanket excess liability policy in the amount not less than **$5,000,000**, protecting the Company against any loss or liability or damage for personal injury or property damage.

5. Additional Provisions Respecting Insurance. (a) All insurance required by Section 4(a) hereof shall name the Agency as a named insured and all other insurance required by Section 4 shall name the Agency as an additional insured. At the Company's election, exercised from time to time, the Company may self-insure with respect to the insurance required by Sections 4(a), 4(b) and 4(c). Except to the extent the Company elects from time to time to self-insure, as provided in the preceding sentence, all insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) at least thirty (30) days prior written notice of the cancellation thereof to the Company and the Agency.

(b) All such policies of insurance, or a certificate or certificates of the insurers that such insurance is in force and effect, shall be deposited with the Agency on the date hereof. Prior to expiration of any such policy, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agent Agreement.

6. This Agent Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

7. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: Niagara County Industrial Development Agency
6311 Inducon Drive, Suite One
Sanborn, New York 14132-9099
Attn: Samuel M. Ferraro, Executive Director

With a Copy to: Harris Beach PLLC
800 Main Street - 4th Floor
Niagara Falls, New York 14302
Attn: Mark J. Gabriele, Esq

To the Company: Lewiston Golf Course Corporation
310 Fourth Street
Niagara Falls, New York 14303
Attention: Rajat R. Shah, Senior Vice President

Exhibit "D" Annexed to Affidavit of Photiadis.

With a Copy to: Harter Secrest & Emery LLP
Twelve Fountain Plaza
Suite 400
Buffalo, New York 14202
Attention: Anthony D. Mancinelli, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8. This Agent Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Niagara County, New York.

9. The parties are contemplating that, after any applicable public hearings, the Agency will negotiate and enter into a lease agreement ("Lease Agreement"), leaseback agreement (the "Leaseback Agreement") and payment-in-lieu-of-tax agreement ("PILOT Agreement") with the Company. The Company agrees not to take title to any real property as agent for the Agency until the Lease Agreement, Leaseback Agreement and PILOT Agreement have been executed and delivered. At any time prior to the execution of the Lease Agreement, Leaseback Agreement and PILOT Agreement, the Agency can transfer title to the Company to all assets acquired by the Company as agent for the Agency. Additionally, at any time prior to execution of the Lease Agreement, Leaseback Agreement and PILOT Agreement, the Company can demand that the Agency transfer title to the Company with respect to all assets acquired by the Company as agent for the Agency, provided all amounts owed the Agency have been paid current.

10. By executing this Agent Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (1) legal services, including but not limited to those provided by the Agency's general counsel or bond/transaction counsel, and (2) other consultants retained by the Agency in connection with the Project; with all such charges to be paid by the Company at the closing or, if the closing does not occur, within ten (10) business days of receipt of the Agency's invoices therefore. The Company is entitled to receive a written estimate of fees and costs of the Agency's bond/transaction counsel.

The Company further covenants and agrees that the Company is liable for payment to the Agency of all charges referred to above, as well as all other actual costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of any of (1) the applicant's withdrawal, abandonment, cancellation or failure to pursue the Project; (2) the inability of the Agency or the Company to procure the services of one or more financial institutions to provide financing for the Project; or (3) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

Exhibit "D" Annexed to Affidavit of Photiadis.

[Signature Page to Agent Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agent Agreement as of the day and year first above written.

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Name: Henry M. Sloma
Its: Chairperson

LEWISTON GOLF COURSE CORPORATION

By: _____
Name: Patrick H. Fox
Title: CFO
For CEO

Exhibit "E" Annexed to Affidavit of Photiadis.

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, made as of the 1st day of November, 2007 (the "PILOT Agreement"), is by and between the NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its offices at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York 14132 (the "Agency"), and LEWISTON GOLF COURSE CORPORATION, a corporation duly organized and validly existing under the laws of the Seneca Nation of Indians and authorized to conduct its business under the laws of the State of New York, with offices at 310 Fourth Street, Niagara Falls, New York 14303 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 569 of the Laws of 1972 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York (the "State"); and

WHEREAS, the Company has requested the Agency's assistance with a certain project (the "Project") consisting of: (A) the acquisition or retention by the Agency of fee title to or a leasehold interest in an approximately 250-acre parcel of vacant land located at Pletcher Road and Robert Moses Parkway in the Town of Lewiston, Niagara County, New York (the "Land"); (B) the construction on the Land of an 18-hole championship golf course together with a driving range, club house and pro shop (the "Improvements"); and (C) the acquisition of and installation in and around the Improvements by the Company of certain machinery, equipment and items of personal property including, but not limited to, sprinkler/drainage systems, golf carts, landscaping vehicles/equipment, kitchen and retail equipment (the "Equipment" and, collectively with the Land and the Improvements, the "Facility"); (B) the granting of certain other "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales taxes, real estate transfer taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, in order to induce the Company to acquire, construct and equip the Facility, the Agency is willing to take a leasehold interest in the land, improvements and personal property constituting the Facility and lease said land, improvements and personal property back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement, dated as of November 1, 2007 (the "Leaseback Agreement"); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

Exhibit "E" Annexed to Affidavit of Photiadis.

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments-in-lieu-of-taxes by the Company to the Agency for the benefit of Niagara County (the "County"), the Town of Lewiston (the "Town"), and the Lewiston-Porter Central School District (the "School District" and, collectively with the County and the Town, the "Affected Tax Jurisdictions").

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

Section I – Payment-in-lieu-of Ad Valorem Taxes:

Section 1.1 A. Subject to the completion and filing by the taxable status date, March 1, 2008 (the "Taxable Status Date"), of New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes commencing with the 2009/2010 School tax year and the 2010 Town and County tax year. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the Town, County and School. The Company shall provide to the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Lease Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B. Payee. As long as the Agency has fee title to or leasehold or other interest in the Facility, the Company agrees to pay annually to the Affected Tax Jurisdictions as a payment-in-lieu-of-taxes, on or before October 1 of each calendar year for School taxes and on or before March 1 of each calendar year for County and Town taxes (collectively, the "Payment Date"), commencing on October 1, 2009 and March 1, 2010, respectively, an amount equal to the PILOT Payment, as described on Schedule A attached hereto.

Exhibit "E" Annexed to Affidavit of Photiadis.

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

1.2 Allocation. To the extent the Agency receives any PILOT payment, the Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County, Town and special district purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT payment due date. For school district purposes, the tax rates used to determine the PILOT payment shall be the rate relating to the school year which includes the PILOT payment due date.

1.4 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility constructed or added in any manner after the date of this PILOT Agreement, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total PILOT Payment. The Agency shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased PILOT payment until a different Total PILOT Payment shall be established. If a lesser Total Annual Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding PILOT payment(s).

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the 2009/2010 School tax year through the 2013/2014 School tax year, and (ii) the 2009 County and Town tax year through the 2014 County and Town tax year. This PILOT Agreement shall expire on December 31, 2014; *provided, however*, the Company shall pay the 2014/2015 School tax bill and the 2015 County and Town tax bills on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this PILOT Agreement executed by both parties after any applicable public hearings. The Company agrees

that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the New York Real Property Tax Law ("RPTL"). It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

Section II - Special Assessments and Service Charges.

2.1 As described in Schedule A attached hereto, special assessments and service charges against the real property will be deducted from the percentage of Normal Tax with respect to determining the PILOT payment.

Section III - Transfer of Facility.

3.1 In the event that the Facility is transferred from the Agency to the Company (the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section I herein, or this PILOT Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

Section IV - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this PILOT Agreement, as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company, (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Exhibit "E" Annexed to Affidavit of Photiadis.

Section V - Changes in Law.

5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Section VI - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section I hereof within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Lease Agreement after any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section I hereof are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section I hereof, if said payment is not received by the Delinquency Date defined in Section 6.1 hereof, Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

6.3 Upon the occurrence of an Event of Default hereunder, the liability of the Company hereunder shall be all amounts due pursuant to Section I hereof through, but not including, the date on which the Facility is no longer exempt from Real Estate Taxes together will all other amounts due pursuant to Section 6.2 hereof.

6.4 Subject to the rights of the mortgagees set forth in Section VIII below, whenever any Event of Default under Section 6.1 hereof shall have occurred and be continuing with respect to this PILOT Agreement, the remedies of the Agency shall be limited to the rights hereunder and under the Leaseback Agreement, subject to the rights of any lenders to cure any such Event of Default as set forth in Section VIII hereof.

Section VII - Assignment.

7.1 No portion of any interest in this PILOT Agreement may be assigned by the Company, except as provided in the Leaseback Agreement, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed.

Section VIII – Rights of Lenders.

8.1 For the purposes of this PILOT Agreement, the terms "mortgage" or "mortgages" shall include any mortgage, leasehold mortgage, purchase money mortgage or other security instrument or instruments secured by the Facility and used in the jurisdiction in which the Facility is located, such as, without limitation, mortgages, deeds of trust, financing statements, assignments of leases, rents and/or profits, security agreements and other documentation which a lender may require, and the terms "holder of a mortgage" and "mortgagee" or "lender" shall mean the secured party under any of the foregoing instruments. ANY MORTGAGE SHALL BE A LIMITED, NON-RECOURSE OBLIGATION OF THE AGENCY AND SHALL IN NO EVENT REQUIRE THE PAYMENT BY THE AGENCY TO ANY PARTY OF ANY AMOUNT INCLUDING, BUT NOT LIMITED TO, PRINCIPAL, INTEREST OR ANY OTHER AMOUNT SECURED BY ANY SUCH MORTGAGE.

8.2 So long as a mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by a lender to the Agency, the following provisions shall, subject to and unless otherwise prohibited by all applicable law including, but not limited to, the Act, apply (in respect of such mortgage and of any other mortgages which also comply with the above):

(a) There shall be no renewal, cancellation, surrender, acceptance of surrender, amendment or modification of this PILOT Agreement by joint action of the Agency and the Company alone, without, in each case, the prior consent in writing of the lender, nor shall any merger result from the acquisition by, or devolution upon, any one entity of any fee and/or leasehold estates in the Facility.

(b) The Agency shall, at no cost to the Agency and at the sole cost of the Company, upon receipt of any notice or other communication, whether of default or any other matter, simultaneously serve a copy of such notice upon the lender, and no such notice or other communication to the Company shall be deemed received unless a copy is so served upon the lender in the manner provided in this PILOT Agreement for the giving of notice.

(c) Notwithstanding anything to the contrary herein, if the Agency serves a notice of default upon the Company, it shall, at no cost to the Agency and at the sole cost of the

Company, also serve a copy of such notice upon the lender at the address set forth in Section 9.2 hereof.

(d) In the event of any default by the Company under this PILOT Agreement, the lender shall have fifteen (15) days for a monetary default and thirty (30) days in the case of any other default, after notice to the lender of such default (which notice shall be given in the manner set forth in Section 9.2 below), to cure or to cause to be cured the default complained of and the Agency shall accept such performance by or at the instigation of the lender as if same had been done by the Company. Each notice of default given by the Agency will state the amounts of any payments herein provided that are then claimed to be in default.

(e) If, before the expiration of lender's cure period as provided in paragraph (d) above, the lender shall have notified the Agency in writing of its agreement to pay or cause to be paid, within fifteen (15) days after the expiration of mortgagor's cure period, all payments in this PILOT Agreement provided for and then in default, and/or in the case of non-monetary defaults, shall have agreed within forty-five (45) days to commence or caused to be commenced the cure of such non-monetary defaults, if any are then in default (other than defaults which by their nature cannot be cured), and shall prosecute or cause the prosecution of same to completion with reasonable diligence (collectively, the "extended cure period"), then the Agency shall not exercise any of its rights and remedies hereunder until expiration of the extended cure period.

(f) The Company (and not the Agency) shall give the lender notice of any arbitration or other proceeding or dispute by or between the parties hereto, and shall have the right to intervene therein and be made a party to any such arbitration or other proceeding.

(g) The Company shall cause the name of the lender to be added to the loss payable endorsement of any and all fire and other casualty insurance policies to be carried by the Company on behalf of the Agency in respect of the Facility, and all such policies shall state that the insurance proceeds are to be paid as provided in the mortgage (this subsection (g) shall in no way be construed to require the Agency to obtain, bear the cost of or maintain any insurance with respect to the Facility and shall have no affect on the requirements of Sections 3.4 and 3.5 of the Leaseback Agreement). If more than one mortgagee is named as an insured, the insurance proceeds will be paid in orders to the mortgagee(s) whose mortgage has priority to lien among those so named.

(h) Any award or payment in condemnation or eminent domain in respect of the Facility shall be paid by the Company to the lender to be applied in the manner specified in the mortgage. If more than one mortgage is in effect, the funds shall be paid to the mortgagee whose mortgage is prior in lien among those in effect.

(i) No fire or casualty loss claims shall be settled and no agreement will be made in respect of any award or payment in condemnation or eminent domain except in accordance with the terms of the mortgage.

(j) Except where the lender has succeeded to the interest of the Company in the Facility or assumed the right to cure as provided in this Section VIII, no liability for any payments to be made pursuant to this PILOT Agreement or the performance of any of the

Company's covenants and agreements under this PILOT Agreement shall attach to or be imposed upon the lender, and if the lender or its nominee or designee succeeds to the interest of the Company in the Facility, all of the obligations and liabilities of the lender or its nominee or designee shall be limited to such entity's interest in the Facility and as otherwise imposed by this PILOT Agreement and shall cease and terminate upon assignment of this PILOT Agreement (any such further assignment to be approved by the Agency).

(k) Notwithstanding any provision of this PILOT Agreement, the Lease Agreement or the Leaseback Agreement to the contrary, foreclosure of a mortgage or any sale of the Company's interest in this PILOT Agreement and/or the Facility in connection with a foreclosure, whether by judicial proceedings, or any conveyance of the Company's interest in this PILOT Agreement and/or the Facility to the lender or its nominee or designee by virtue of or in lieu of foreclosure or other appropriate proceedings, or any conveyance of the Company's interest in this PILOT Agreement and/or the Facility by the lender or its nominee or designee, shall not require the consent or approval of the Agency and shall not be a default or Event of Default hereunder.

Section IX - Miscellaneous.

9.1 This PILOT Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which together shall constitute a single instrument.

9.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: Niagara County Industrial Development Agency
6311 Inducon Corporate Drive, Suite One
Sanborn, New York 14132-9099
Attn: Executive Director

With Copy To: Harris Beach PLLC
800 Main Street, 4th Floor
Niagara Falls, New York 14302
Attention: Mark J. Gabriele, Esq.

To the Company: Lewiston Golf Course Corporation
310 Fourth Street
Niagara Falls, New York 14303
Attn: E. Brian Hansberry, President & CEO

With Copy To: Harter Secrest & Emery LLP
Twelve Fountain Plaza, Suite 400
Buffalo, New York 14202
Attention: Anthony D. Mancinelli, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

9.3 This PILOT Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Niagara County, New York.

9.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither member of the Agency nor any person executing this PILOT Agreement on its behalf shall be liable personally under this PILOT Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officers, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this PILOT Agreement.

9.5 The parties hereto recognize that the purpose of the Project is to create or retain permanent private sector jobs in Niagara County, New York. Accordingly, the parties hereto have agreed that the existence of this PILOT Agreement shall bear a direct relationship to the success or lack of success of the Project in achieving this goal. Therefore, by each January 1 during the term of this PILOT Agreement, the Company shall file with the Agency an affidavit indicating the average number of full time equivalent employees (1820 hours equaling one full time equivalent employee) employed at the Facility.

[Remainder of Page Intentionally Left Blank]

Exhibit "E" Annexed to Affidavit of Photiadis.

[Signature Page to PILOT Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this PILOT Agreement as of the day and year first above written.

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Name: Henry M. Sloma
Title: Chairperson

LEWISTON GOLF COURSE CORPORATION

By: _____
Name: E. Brian Hansberry
Title: President & CEO

Exhibit "E" Annexed to Affidavit of Photiadis.

SCHEDULE A

to Payment-in-Lieu-of-Tax Agreement by and between
Niagara County Industrial Development Agency
and
Lewiston Golf Course Corporation

PILOT Year	School Tax Year	County and Town Tax Year	Percentage of Normal Tax
Year 1	2009/10	2010	15 %
Year 2	2010/11	2011	30 %
Year 3	2011/12	2012	45 %
Year 4	2012/13	2013	60 %
Year 5	2013/14	2014	75 %
Year	2014/15	2015	100%

The payments in lieu of taxes to be paid by the Company to the Affected Tax Jurisdiction pursuant to the terms of this Payment-in-Lieu-of-Tax Agreement shall be computed separately for each Affected Tax Jurisdiction as follows:

1. First, determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Affected Tax Jurisdiction if the Land was owned by the Company and not the Agency by multiplying the (a) Assessed Value of the Land as determined by the appropriate Assessor by (b) the tax rate or rates of such Affected Tax Jurisdiction that would be applicable to the Land if the Land was owned by the Company and not the Agency.

2. In each tax year during the term of this PILOT Agreement, commencing on the first tax year following the date on which the Land shall be assessed as exempt on the assessment roll of any Affected Tax Jurisdiction, the amount payable by the Company to the Affected Tax Jurisdiction as a payment in lieu of property tax with respect to the Land shall be an amount equal to 100% of the Normal Tax due each Affected Tax Jurisdiction with respect to the Land for such tax year.

3. Next, determine the Normal Tax which would be payable to each Affected Tax Jurisdiction if the Facility and any portion of the Equipment assessable as real property were owned by the Company and not the Agency by multiplying the (a) Assessed Value of the Facility and such assessable Equipment as determined by the appropriate Assessor by (b) the tax rate or rates of such Affected Tax Jurisdiction that would be applicable to the Facility and such assessable Equipment if the Facility and such assessable Equipment was owned by the Company and not the Agency.

Exhibit "E" Annexed to Affidavit of Photiadis.

4. In each tax year during the term of this PILOT Agreement, commencing on the first tax year following the date on which the Facility and such assessable Equipment shall be assessed as exempt on the assessment roll of any Affected Tax Jurisdiction, the amount payable by the Company to the Affected Tax Jurisdiction as a payment in lieu of property tax with respect to the Facility and such assessable Equipment shall be an amount equal to the applicable percentage of the Normal Tax due each Affected Tax Jurisdiction with respect to the Facility and such assessable Equipment for such tax year, as shown in the table, above, LESS the special assessments and service charges against the real property.

5. The Total PILOT Payment to be made by the Company to the Affected Tax Jurisdictions shall equal the sum of Number (2) and Number (4), above, for each tax year during the term of this PILOT Agreement.

Exhibit "F" Annexed to Affidavit of Photiadis.

Closing Item No. 9

LEWISTON GOLF COURSE CORPORATION

TO

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

LEASE AGREEMENT

(Company to Agency)

Relating to the Premises located at
Pletcher Road and Robert Moses Parkway in the
Town of Lewiston, Niagara County, New York

Tax Map Number

87.00-1-11.1

Dated as of November 1, 2007

Exhibit "F" Annexed to Affidavit of Photiadis.

LEASE AGREEMENT
(Company to Agency)

THIS LEASE AGREEMENT, dated as of the 1st day of November, 2007 (the "Lease Agreement"), is by and between **LEWISTON GOLF COURSE CORPORATION**, a corporation duly organized and validly existing under the laws of the Seneca Nation of Indians and authorized to conduct its business in the State of New York, with offices at 310 Fourth Street, Niagara Falls, New York 14303 (the "Company") and **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York 14132-9099 (the "Agency").

WITNESSETH:

The Company desires to rent to the Agency the real property, including any buildings, structures or improvements thereon, described in **Exhibit A** attached hereto (the "Leased Premises") pursuant to the terms contained herein (the "Lease Agreement"), during the term of that certain lease agreement between the Agency and the Company dated the date hereof (the "Leaseback Agreement").

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Granting Clause. The Company hereby leases to the Agency the Leased Premises, upon the terms and conditions of this Lease Agreement.

2. Warranty of Title. The Company warrants that it has good and marketable title to Leased Premises and forever warrants the title to the Leased Premises.

3. Term. The term of this Lease Agreement shall be coterminous with the term of the Leaseback Agreement (the "Lease Term").

4. Rent. The Agency agrees that it will pay to the Company, for the use of the Leased Premises, rent of One Dollar ($1.00) per annum.

5. Taxes. Subject to the provisions of that certain Payment-In-Lieu-Of-Tax Agreement, dated of even date herewith (the "PILOT Agreement"), the Company agrees to pay all taxes to be assessed on, or charges or expenses incurred with respect to, the Leased Premises during the Lease Term.

6. Maintenance and Insurance of Premises. The Company shall maintain and insure the Leased Premises. The Agency shall not be required to maintain the Leased Premises or incur any costs with respect to the Leased Premises. All insurance or condemnation proceeds shall be distributed and governed by the Leaseback Agreement.

Exhibit "F" Annexed to Affidavit of Photiadis.

7. Lease Expiration. The parties agree that at the expiration of the Lease Term the Agency will surrender the Leased Premises to the Company in the then condition of the Premises.

8. Hold Harmless. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, officers, members, agents (other than the Company) and employees, and their respective successors or personal representatives, harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Leased Premises or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Leased Premises or as a result of a breach by the Company of its representations or agreements contained herein or in the Leaseback Agreement, or (ii) liability arising from or expense incurred by the Agency's financing, constructing, equipping, owning and leasing of the Leased Premises, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents (other than the Company) or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability; except, however, that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the indemnified party to the extent that such an indemnity would be prohibited by law.

9. Subordination of Lease Agreement to Mortgage(s). The Agency agrees that this Lease Agreement shall be subordinate to mortgage liens granted by the Company and the Agency in favor of any lender (the "Mortgagee") executed and delivered herewith and all further mortgage liens hereafter placed on the Leased Premises with the consent of the Agency and the Mortgagee, but that under no circumstances shall the Agency be required to mortgage, grant a security interest in, or assign its rights to receive the rentals described in Section 2.6 of the Leaseback Agreement, or its rights to be indemnified under Sections 1.2(d), 1.2(g), 2.1, 3.1(a) and 5.2 thereof.

10. Non-Merger. So long as any leasehold or sub-leasehold mortgage is in existence, unless all mortgagees shall otherwise expressly consent in writing, fee title to the Facility and the leasehold estate of the Agency therein created by this Lease Agreement shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Company or by Agency or by a third party, by purchase or otherwise.

11. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

Exhibit "F" Annexed to Affidavit of Photiadis.

To the Agency:	Niagara County Industrial Development Agency 6311 Inducon Corporate Drive Suite One Sanborn, New York 14132-9099 Attn: Executive Director
With Copy To:	Harris Beach PLLC 800 Main Street, 4th Floor Niagara Falls, New York 14302 Attention: Mark J. Gabriele, Esq.
To the Company:	Lewiston Golf Course Corporation 310 Fourth Street Niagara Falls, New York 14303 Attn: E. Brian Hansberry, President & CEO
With a Copy To:	Harter Secrest & Emery LLP Twelve Fountain Plaza, Suite 400 Buffalo, New York 14202 Attn: Anthony D. Mancinelli, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

12. No Recourse; Special Obligation.

(a) The obligations and agreements of the Agency contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (except the Company) or employee of the Agency in his/her individual capacity, and the members, officers, agents (except the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(b) The obligations and agreements of the Agency contained hereby shall not constitute or give rise to an obligation of the State of New York or Niagara County, New York, and neither the State of New York nor Niagara County, New York shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall place, in an account with the Agency, an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Agency and its members, officers, agents (except the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

[Remainder of Page Intentionally Left Blank]

Exhibit "F" Annexed to Affidavit of Photiadis.

[Signature Page to Lease Agreement]

IN WITNESS WHEREOF, the Company and the Agency have caused this Lease Agreement to be executed in their respective names, all as of the date first above written.

LEWISTON GOLF COURSE CORPORATION

By: _____
Name: E. Brian Hansberry
Title: President & CEO

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Name: Henry M. Sloma
Title: Chairperson

Exhibit "F" Annexed to Affidavit of Photiadis.

STATE OF NEW YORK)
)ss:
COUNTY OF NIAGARA)

On the 8 day of November in the year 2007 before me, the undersigned, personally appeared **E. Brian Hansberry**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

MARK J. GABRIELE
No. 4948558
Notary Public, State of New York
My Commission Expires 03/20/20 11

STATE OF NEW YORK)
)ss:
COUNTY OF NIAGARA)

On the 8 day of November in the year 2007 before me, the undersigned, personally appeared **Henry M. Sloma**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

MARK J. GABRIELE
No. 4948558
Notary Public, State of New York
My Commission Expires 03/20/20 11

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Exhibit "F" Annexed to Affidavit of Photiadis.

EXHIBIT A

Legal Description of Leased Premises

Exhibit "F" Annexed to Affidavit of Photiadis.

PARCEL A, B AND C

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of lot 43, township 14, range 9 of the Holland Land Company Survey bounded and described as follows:

Beginning at a point in the centerline of Blairville-Creek Road, also known as Creek Road, a distance of 225.0 feet north of the southeast corner of lot 43.

Thence, S 89° 25' 40" W along the north line of lands conveyed to Marlene Burns by deed recorded in the Niagara County Clerk's Office in Liber 1952 at Page 135, a distance of 355.14 feet to the northwest corner of said Burns lands;

Thence, S 00° 10' 35" W along the west line of said Burns land, a distance of 228.86 feet to the southwest corner of said Burns land in the south line of lot 43;

Thence, S 88° 48' 26" W along the south line of lot 43, a distance of 256.36 feet to the northwest corner of land conveyed to Robert and Deborah Kenney by deed recorded in the Niagara County Clerk's Office in Liber 2107 at page 315;

Thence, N 87° 37' 11" W continuing along the south line of lot 43, a distance of 650.10 feet to the northeast corner of subdivision lot 257 of Lewistowne Park, Phase 9;

Thence, N 89° 12' 48" W continuing along the south line of lot 43 a distance of 1187.85 feet to the southwest corner of lot 43 being in the east line of lands appropriated for the Niagara Parkway, Section 4 (Robert Moses State Parkway);

Thence, northerly along the east line of lands appropriated for the Niagara Parkway, Section 4 of the following three (3) courses and distances;

(1) N 08° 18' 24" E, a distance of 800.98 feet to a point;
(2) N 06° 22' 35" E, a distance of 2670.71 feet to a point;
(3) N 00° 22' 47" W, a distance of 433.59 feet to the southwest corner of lands appropriated for Blairville Creek Road, State Highway 9322, Niagara County, Map 186 Parcel 130 filed in the Niagara County Clerk's Office in Liber 1428 at Page 923;

Thence, S 89° 47' 37" E along the south line of the last described parcel, a distance of 1066.38 feet to an angle point in said south line;

Thence, S 00° 26' 05" W parallel with the centerline of Blairville-Creek Road, a distance of 900.77 feet to a point;

Exhibit "F" Annexed to Affidavit of Photiadis.

Thence, S 26° 23' 35" W a distance of 137.07 feet to a point;

Thence, S 89° 46' 51" W a distance of 72.28 feet to a point;

Thence, S 00° 26' 05" W, parallel with the centerline of Blairville-Creek Road, a distance of 656.04 feet to a point;

Thence, N 89° 46' 51" E a distance of 125.62 feet to a point;

Thence, S 00° 26' 05" W parallel with the centerline of Blairville-Creek Road, a distance of 222.13 feet to a point;

Thence, N 89° 46' 51" E a distance of 1008.22 feet to a point in the centerline of Blairville-Creek Road;

Thence, S 00° 26' 05" W along the centerline of said road a distance of 182.06 feet to the northeast corner of lands conveyed to Norton and Rose Douglas by deed recorded in Liber 2302 at Page 61;

Thence, S 89° 46' 50" W along the north line of said Douglas lands, a distance of 355.00 feet to the northwest corner of said lands;

Thence, S 00° 26' 05" W along the west line of said Douglas lands and said line extended, a distance of 467.00 feet to the southwest corner of lands conveyed to Marc and Carla Eagler by deed recorded in Liber 2971 at Page 245;

Thence, N 89° 46' 50" E along the south line of said Eagler lands, a distance of 355.00 feet to a point in the centerline of said Blairville Creek Road;

Thence, S 00° 26' 05" W along the centerline of said road, a distance of 66.00 feet to the northeast corner of lands conveyed to Charles and Eleanor Zelinski by deed recorded in Liber 1225 at page 443;

Thence, S 89° 46' 50" W along the north line of said Zelinski lands, a distance of 355.00 feet to the northwest corner of said lands;

Thence, S 00° 26' 05" W along the west line of said Zelinski lands and said line extended, a distance of 500.24 feet to the southwest corner of lands conveyed to John and Patricia Bartko by deed recorded in Liber 2156 at Page 171;

Thence, N 89° 25' 40" E along the south line of said Bartko lands, a distance of 355.03 feet to a point in the centerline of Blairville-Creek Road;

Thence, S 00° 26' 05" W along the centerline of said road, a distance of 66.00 feet to the northeast corner of lands conveyed to Walter and Patricia Yacus by deed recorded in Liber 2056 at page 172;

Exhibit "F" Annexed to Affidavit of Photiadis.

Thence, S 89° 25' 40" W along the north line of said Yacus lands, a distance of 355.00 feet to the northwest corner of said lands;

Thence, S 00° 26' 05" W along the west line of said Yacus lands and said line extended, a distance of 445.41 feet to the southwest corner of lands conveyed to Robert Wojtowicz by deed recorded in Liber 3288 at page 822;

Thence, N 89° 25' 40" E along the south line of said Wojtowicz lands, a distance of 355.00 feet to a point in the centerline of Blairville-Creek Road;

Thence, S 00° 26' 05" W along the centerline of said road a distance of 66.00 feet to the point or place of beginning, containing 140.22 acres, more or less.

Excepting and reserving from the above described parcel the following parcels of land appropriated by the New York Department of Public Works:

Map 103, Parcel 111 filed in the Niagara County Clerk's Office in Liber 1437 at page 527 (0.03 acres).

Map 108, Parcel 116 filed in the Niagara County Clerk's Office in Liber 1437 at page 546 (0.03 acres).

Map 114, Parcel 122 filed in the Niagara County Clerk's Office in Liber 1439 at page 19 (0.03 acres).

Map 114, Parcel 123 filed in the Niagara County Clerk's Office in Liber 1439 at page 19 (0.02 acres).

Part of Map 120, Parcel 129 filed in the Niagara County Clerk's Office in Liber 1432 at page 449 (0.08 acres).

The above described parcel containing 140.03 acres more or less.

PARCEL D1

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of lot 42, township 14, range 9 of the Holland Land Company Survey bounded and described as follows:

Beginning at a point in the westerly line of Blairville Creek Road (110.0 Feet Wide) at a distance of 260.00 feet south of the point of intersection of the said line with the north line of Lot 42;

Thence S 00° 03' 39" W along said west bounds of Blairville Creek Road, a distance of 75.02 feet to a point in the north line of lands conveyed to Mathew and Kathleen Wrobel by deed recorded in the Niagara County Clerk's Office in Liber 1621 at page 976;

Exhibit "F" Annexed to Affidavit of Photiadis.

Thence S 88° 48' 30" W along the north line of said Wrobel lands, a distance of 556.83 feet to the northwest corner of said lands;

Thence, S 00° 02' 15" W along the west line of said Wrobel lands and said line extended, a distance of 478.40 feet to the southwest corner of lands conveyed to Angelo J. Farbo by deed recorded in the Niagara County Clerk's Office in Liber 2598 at page 171;

Thence, S 00° 26' 14" W along the west line of lands conveyed to Anthony and Chris Iannucci by deed recorded in the Niagara County Clerk's Office in Liber 3156 at page 170 and said line extended, a distance of 405.31 feet to a point at the northwesterly corner of sub-lot 1703 on Ridge View Village Part IV;

Thence, S 00° 36' 57" W along the westerly line of said sub-lot, a distance of 47.58 feet to an angle point in said sub-lot;

Thence, S 62° 35' 27" W, along a northerly line of sub-lot 1704 of the aforementioned Ridge View Village Part IV, a distance of 100.00 feet to a point at the northwesterly corner of said sub-lot.

Thence S 47° 36' 13" W, a distance of 8.27 feet to a point at the northeasterly corner of sub-lot 80 of Lewistowne Park, Phase 3;

Thence, S 49° 32' 31" W, along the northerly line of sub-lots 80 and 81 of said Lewistowne Park, Phase 3, a distance of 126.42 feet to a point at the northwesterly corner of said sub-lot 81;

Thence N 87° 02' 41" W, along the northerly line of sub-lot 82 of said Lewistowne Park, Phase 3, a distance of 109.76 feet to the point of intersection with the easterly right-of-way line of Curtis Court North(66 feet wide);

Thence, northeasterly, along said easterly right-of-way line, along a curve to the right, having a radius of 300.00 feet, through a central angle of 10°-46'-652", an arc length of 56.45 feet to the southwest corner of sub-lot 107 of Lewistowne Park, Phase 4;

Thence, S 76° 15' 49" E, along said southerly line of sub-lot 107, a distance of 115.00 feet to the southeast corner of said sub-lot.

Thence the following sixteen (16) courses and distances along the rear lines of sub-lots 107-121 of said Lewistowne Park,
Phase 4:

(1) N 43° 53' 40" E, a distance of 117.25 feet to a point;
(2) N 14° 07' 45" W, a distance of 98.21 feet to a point;
(3) N 02° 49' 28" W, a distance of 91.84 feet to a point;
(4) N 09° 27' 13" W, a distance of 91.84 feet to a point;
(5) N 02° 10' 35" E, a distance of 99.74 feet to a point;
(6) N 07° 15' 15" E, a distance of 105.00 feet to a point;

Exhibit "F" Annexed to Affidavit of Photiadis.

(7) N 33° 00' 02" W, a distance of 150.00 feet to a point;
(8) N 72° 40' 34" W, a distance of 175.00 feet to a point;
(9) S 59° 48' 15" W, a distance of 185.00 feet to a point;
(10) S 11° 04' 03" W, a distance of 195.00 feet to a point;
(11) S 17° 59' 30" E, a distance of 122.96 feet to a point;
(12) S 20° 32' 34" E, a distance of 69.59 feet to a point;
(13) S 06° 34' 46" E, a distance of 69.59 feet to a point;
(14) S 00° 11' 17" W, a distance of 69.59 feet to a point;
(15) S 10° 28' 50" W, a distance of 90.00 feet to a point;
(16) S 82° 23' 12" E, a distance of 160.00 feet to a point of intersection with the westerly right-of-way line of Curtis Court North;

Thence southwesterly, along said westerly right-of-way line, along a curve to the left, having a radius of 366.00 feet, through a central angle of 05-° 54'-04", an arc length of 37.70 feet to the northeast corner of sub-lot 83 of the aforementioned Lewistowne Park, Phase 3;

Thence the following three (3) courses and distances along the rear lines of sub-lot 83-87 of the aforementioned Lewistowne Park, Phase 3:

(1) N 84° 25' 49" W, a distance of 92.09 feet to a point;
(2) N 76° 10' 02" W, a distance of 168.20 feet to a point;
(3) N 48° 52' 06" W, a distance of 74.61 feet to a point at the southeasterly corner of sub-lot 122 of Lewistowne Park, Phase 4;

Thence the following nine (9) courses and distances along the rear line of sub-lots 122-130 of Lewistowne Park, Phase 4:

(1) N 17° 06' 54" W, a distance of 75.00 feet to a point;
(2) N 29° 09' 19" W, a distance of 71.40 feet to a point;
(3) N 27° 25' 36" W, a distance of 85.00 feet to a point;
(4) N 25° 15' 56" E, a distance of 19.87 feet to a point;
(5) N 29° 06' 08" E, a distance of 85.00 feet to a point;
(6) N 28° 43' 16" E, a distance of 101.35 feet to a point;
(7) N 40° 43' 31" E, a distance of 111.58 feet to a point;
(8) N 06° 20' 26" E, a distance of 130.00 feet to a point;
(9) N 33° 39' 40" W, a distance of 175.00 feet to a point at the northwesterly corner of sub-lot 130 of Lewistowne Park, Phase 4.

Thence, N 03° 57' 24" E in part along the east line of sub-lots 258 and 257 of Lewistowne Park, Phase 9, a distance of 554.29 feet to a point of intersection with the north line of lot 42 at the northeast corner of said sub-lot 257;

Thence, S 87° 37' 11" E along the north line of lot 42 a distance of 650.10 feet to the northwest corner of lands conveyed to Robert A. and Deborah Kenney by deed recorded in the Niagara County Clerk's Office in Liber 2107 at page 315, said point being a distance of 612.21 feet west from the centerline of Blairville-Creek Road;

Exhibit "F" Annexed to Affidavit of Photiadis.

Thence, S 00° 01' 09" E along the west line of said Kenney lands and said line extended, a distance of 260.00 feet to the southwest corner of lands conveyed to Shannon L. Ligammari by deed recorded in the Niagara County Clerk's Office in Liber 3150 at page 60;

Thence, N 88° 48' 23" E, along the south line of said Ligammari lands, a distance of 556.83 feet to the point or place of beginning, containing 15.83 acres, more or less.

PARCEL D2

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of Lot 42, Township 14, Range 9 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at the southeast corner of Subdivision Lot 164 as shown on a map of Lewistowne Park, Phase 5, filed in Book 51 of Microfilmed Maps at Page 5101-5102;

Thence N 15° 51' 56" E along the easterly line of Subdivision Lot 164, a distance of 150.00 feet to the northeast corner thereof;

Thence N 73° 29' 50" W along the northerly line of Subdivision Lot 164, a distance of 87.89 feet to the northwest corner thereof, said point being the southeast corner of Subdivision Lot 226 as shown on a map of Lewistowne Park, Phase 8, filed in Book 57 of Microfilmed Maps at Pages 5713-5714;

Thence N 18° 08' 40" E along the easterly line of Subdivision Lot 226, a distance of 79.28 feet to the southeast corner of Subdivision Lot 225 as shown on a map of Lewistowne Park, Phase 8, filed in Book 57 of Microfilmed Maps at Page 5713-5714;

Thence N 8° 17' 39" E along the easterly lines of Subdivision Lots 225, 224 and 223 as shown on a map of Lewistowne Park, Phase 8, filed in Book 57 of Microfilmed Maps at Pages 5713-5714, a distance of 270.00 feet to the southeast corner of Subdivision Lot 263 as shown on a map of Lewistowne Park, Phase 9 filed in Book 59 of Microfilmed Maps at page 5900-5901;

Thence N 8° 17' 38" E along the easterly line of Subdivision Lot 263, a distance of 80.55 feet to the southwest corner of Subdivision lot 261 as shown on a map of Lewistowne Park, Phase 9;

Thence, S 71° 10' 46" E along the southerly line of Subdivision Lots 261 and 260 a distance of 223.36 feet to the southwest corner of Subdivision Lot 259 as shown on a map of Lewistowne Park, Phase 9;

Thence, N 70° 10' 48" E along the southeasterly line of Subdivision Lot 259, a distance of 228.03 feet to the southeast corner of Subdivision Lot 259, said corner being located on the westerly line of a parcel of land conveyed to the Town of Lewiston by Deed recorded in Liber 2529 at Page 219;

Exhibit "F" Annexed to Affidavit of Photiadis.

Thence, S 3° 57' 24" W along the westerly line of said parcel conveyed to the Town of Lewiston, a distance of 166.98 feet to the northeast corner of Subdivison Lot 131 as shown on a map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at Page 4925-4926;

Thence, N 83° 48' 14" W along the northerly line of Subdivision Lot 131, a distance of 202.46 feet to the northerly corner of Subdivision Lot 132 as shown on a map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at pages 4925-4926;

Thence, S 45° 43' 01" W along the northwesterly line of Subdivision Lot 132, a distance of 180.11 feet to northwesterly corner of Subdivision Lot 133 as shown on a map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at pages 4925-4926;

Thence S 12° 31' 57" W along the westerly line of Subdivision Lot 133, a distance of 80.00 feet to the northwest corner of Subdivision Lot 134 as shown on a map of Lewistowne Park, Phase 4, file in Book 50 of Microfilmed Maps at Page 4925-4926;

Thence, S 16° 48' 20" W along the westerly line of Subdivision Lot 134, a distance of 70.00 feet to the northwest corner of Subdivision Lot 135 as shown on map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at Pages 4925-4926;

Thence, S 21° 07' 46" W along the westerly line of Subdivision Lot 135, a distance of 70.00 feet to the northwest corner of Subdivision of Lot 136 as shown on a map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at Page 4925-4926;

Thence S 16° 03; 16" W along the westerly line of Subdivision Lot 136, a distance of 128.12 feet to the southwesterly corner thereof, said point being on the northerly line of Raymond Drive;

Thence northwesterly along the northerly line of Raymond Drive along a curve to the left having a radius of 461.0 feet an arc length of 19.40 feet to the place of beginning. Containing 2.14 acres more or less.

PARCEL E

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of lot 44, township 14, range 9 of the Holland Land Company Survey bounded and described as follows:

Beginning at a point in the centerline of Pletcher Road, being also the north line of lot 44, at the northwest corner of lands conveyed to Eugene and Maureen Polin by deed recorded in the Niagara County Clerk's Office in Liber 1478 at page 377, said point being 1229.70 feet west from the intersection of said centerline with the centerline of Blairville Creek Road;

Thence, S 01° 28' 55"E along the west line of said Polin lands a distance of 853.60 feet to the southwest corner of said lands;

Exhibit "F" Annexed to Affidavit of Photiadis.

BOOK 3421 PAGE 0405

Thence, S 89° 35' 08"E along the south line of said Polin lands a distance of 200.00 feet to a point in the west line of lands conveyed to Donald and Yvonne Stephenson by deed recorded in the Niagara County Clerk's Office in Liber 3322 at page 656;

Thence, S 00° 23' 18" W along the west line of said Stephenson lands and said line extended, a distance of 2916.67 feet to the northwest corner of lands conveyed to Fred and Geraldine Vanoni by deed recorded in the Niagara County Clerk's Office in Liber 1495 at page 205;

Thence, S 00° 22' 01"W along the west line of said Vanoni lands and said line extended, a distance of 231.17 feet to the southeast corner of lands conveyed to Pletcher Associates by deed recorded in the Niagara County Clerk's Office in Liber 1613 at page 894, being also in the south line of lot 44;

Thence, N 89° 39' 17"W along the south line of lot 44, a distance of 1058.60 feet to a point in the east line of lands appropriated for the Niagara Parkway, Section 4 (Robert Moses Parkway);

Thence, northerly, along the east line of lands appropriated for the Niagara Parkway, Section 4, the following three (3) courses and distances:

(1) N 00° 22' 47"W a distance of 608.91 feet to a point;
(2) N 08° 07' 23"W a distance of 1594.88 feet to a point;
(3) N 12° 43' 39"W a distance of 803.98 feet to the southerly corner of lands acquired by the Niagara Frontier State Park Commission by deed recorded in the Niagara County Clerk's Office in Liber 1363 at page 171;

Thence, N 29° 19' 14"E along the boundary of the last described parcel a distance of 413.00 feet to an angle point in said boundary;

Thence, N 01° 42' 24"W continuing along the boundary of the last above described parcel, a distance of 624.90 feet to a point;

Thence, easterly along the arc of a circular curve to the left with a radius of 1180 feet an arc length of 132.04 feet to a point in the south bounds of Pletcher Road (66.0 feet wide);

Thence, N 89° 35' 08"W along the south bounds of Pletcher Road a distance of 664.30 feet to a point in the west line of lot 44;

Thence, N 22° 53' 39"W along the west line of lot 44 a distance of 35.91 feet to a point in the centerline of Pletcher Road being the northwest corner of lot 44;

Thence, S 89° 35' 08"E along the centerline of Pletcher Road a distance of 677.42 feet to the northwest corner of lands conveyed to Joseph and Ingeborg Praus by deed recorded in the Niagara County Clerk's Office in Liber 1411 at page 109;

Exhibit "F" Annexed to Affidavit of Photiadis.

BOOK 3427 PAGE 0407

Thence, S 01° 28' 55" E along the west line of said Praus land and said line extended, a distance of 853.60 feet to the southwest corner of lands conveyed to Marc and Cheryl Brunett by deed recorded in the Niagara County Clerk's Office in Liber 1719 at page 80;

Thence, S 89° 35' 08"E along the south line of said Brunett lands and said line extended, a distance of 884.00 feet to the southeast corner of lands conveyed to Marc and Cheryl Brunett by deed recorded in the Niagara County Clerk's Office in Liber 2520 at page 285;

Thence, N 01° 28' 55"W along the east line of said Brunett lands, a distance of 853.60 feet to the northeast corner of said lands in the centerline of Pletcher Road;

Thence, S 89° 35' 08"E along the centerline of Pletcher Road, a distance of 66.00 feet to the point or place of beginning containing 93.18 acres, more or less.

Exhibit "F" Annexed to Affidavit of Photiadis.

Ann Lunday

From: Liz Kraengel
Sent: Wednesday, April 13, 2011 10:05 AM
To: Ann Lunday
Subject: FW: MOT re Lockport
Attachments: Elizabeth A Kraengel2.vcf

FYI

Elizabeth A. Kraengel
Duke, Holzman, Photiadis & Gresens LLP
Attorney

(716) 855-1111 Work
ekraengel@dhpglaw.com
1800 Main Place Tower, 350 Main St.
Buffalo, NY 14202
www.dhpglaw.com

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From: Kim Roth [mailto:kroth7@verizon.net]
Sent: Wednesday, April 13, 2011 10:06 AM
To: Liz Kraengel
Subject: RE: MOT re Lockport

I will be in the area Thursday or Friday. I will arrange for pick up then.
Thanks

I had explained to Jill that the one box did contain another project when I dropped them off.

From: Liz Kraengel [mailto:ekraengel@dhpglaw.com]
Sent: Tuesday, April 12, 2011 1:09 PM
To: Kim Roth
Cc: Ann Lunday
Subject: MOT re Lockport

Dear Kim,

I reviewed the two boxes of documents you delivered to our office regarding this matter. There are a good number of docs in one box that do not concern the Lockport project (but relate to a BMHA and apparently a Hamburg project).

My paralegal, Ann, is copied on this email. She will be boxing up those documents for pickup at your convenience. If you prefer to have them picked up by courier, please let her know and she can arrange for same.

Thanks.

Liz

Exhibit "F" Annexed to Affidavit of Photiadis.

Elizabeth A. Kraengel
Duke, Holzman, Photiadis & Gresens LLP
Attorney

(716) 855-1111 Work
ekraengel@dhpglaw.com
1800 Main Place Tower, 350 Main St.
Buffalo, NY 14202
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Ann Lunday

From: Liz Kraengel
Sent: Wednesday, April 13, 2011 10:07 AM
To: 'Kim Roth'
Cc: Ann Lunday
Subject: RE: MOT re Lockport
Attachments: Elizabeth A Kraengel2.vcf

Thanks Kim. (Jill did mention that to me – we are just tight on space over here and since the other attorney is going to be reviewing the documents at our office I wanted to make sure we were providing only what is relevant to this case).

Elizabeth A. Kraengel
Duke, Holzman, Photiadis & Gresens LLP
Attorney

(716) 855-1111 Work
ekraengel@dhpglaw.com
1800 Main Place Tower, 350 Main St.
Buffalo, NY 14202
www.dhpglaw.com

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To: Kim Roth
Cc: Ann Lunday
Subject: MOT re Lockport

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Thanks.

Exhibit "F" Annexed to Affidavit of Photiadis.

Liz

Elizabeth A. Kraengel
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Attorney

(716) 855-1111 Work
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Exhibit "G" Annexed to Affidavit of Photiadis.

Closing Item No. 11

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

TO

LEWISTON GOLF COURSE CORPORATION

LEASEBACK AGREEMENT

Relating to the Premises located at
Pletcher Road and Robert Moses Parkway in the
Town of Lewiston, Niagara County, New York

Tax Map Numbers:

87.00-1-11.1

Dated as of November 1, 2007

Exhibit "G" Annexed to Affidavit of Photiadis.

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Exhibit "G" Annexed to Affidavit of Photiadis.

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Exhibit "G" Annexed to Affidavit of Photiadis.

LEASEBACK AGREEMENT

THIS **LEASEBACK AGREEMENT**, dated as of the 1st day of November, 2007 (the "Leaseback Agreement"), is by and between the **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York, with offices at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York 14132-9099 (the "Agency"), and **LEWISTON GOLF COURSE CORPORATION**, a corporation duly organized and validly existing under the laws of the Seneca Nation of Indians and authorized to conduct its business in the State of New York, with offices at 310 Fourth Street, Niagara Falls, New York 14303 (the "Company").

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the "State"); and

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable; and

WHEREAS, pursuant to and in connection with the provisions of the Enabling Act, Chapter 569 of the Laws of 1972 of the State (hereinafter collectively, the "Act") created the Agency which is empowered under the Act to undertake the leasing of the facility described below; and

WHEREAS, the Company has requested the Agency's assistance with a certain project (the "Project") consisting of: (A) the acquisition or retention by the Agency of fee title to or a leasehold interest in an approximately 250-acre parcel of vacant land located at Pletcher Road and Robert Moses Parkway in the Town of Lewiston, Niagara County, New York (the "Land"); (B) the construction on the Land of an 18-hole championship golf course together with a driving range, club house and pro shop (the "Improvements"); and (C) the acquisition of and installation in and around the Improvements by the Company of certain machinery, equipment and items of personal property including, but not limited to, sprinkler/drainage systems, golf carts, landscaping vehicles/equipment, kitchen and retail equipment (the "Equipment" and, collectively with the Land and the Improvements, the "Facility"); (B) the granting of certain other "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing,

including potential exemptions from sales taxes, real estate transfer taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to take (or retain) title to or a leasehold interest in the land, improvements and personal property constituting the Facility and lease said land, improvements and personal property back to the Company pursuant to the terms and conditions contained herein; and

WHEREAS, the Agency has determined that providing the Facility will accomplish, in part, its public purposes; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to acquire, construct and equip the Facility in accordance with the Plans and Specifications presented to the Agency (the "Project"); and

WHEREAS, the Agency proposes to lease the Facility to the Company, and the Company desires to rent the Facility from the Agency, upon the terms and conditions hereinafter set forth in this Leaseback Agreement.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby formally covenant, agree and bind themselves as follows.

ARTICLE I

REPRESENTATIONS AND COVENANTS

Section 1.1 Representations and Covenants of the Agency.

The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established under the provisions of the Act and has the power to enter into the transaction contemplated by this Leaseback Agreement and to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Facility, the Agency has the authority to take the actions contemplated herein under the Act.

(b) The Agency has been duly authorized to execute and deliver this Leaseback Agreement.

(c) The Agency will take title to or a leasehold interest in the Facility, lease the Facility to the Company pursuant to this Leaseback Agreement and designate the Company as its agent for purposes of the Project, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and the County of Niagara and improving their standard of living.

(d) Neither the execution and delivery of this Leaseback Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Leaseback Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Agency under the terms of any such instrument or agreement.

(e) The Agency has been induced to enter into this Leaseback Agreement by the undertaking of the Company to acquire, construct, equip, repair and maintain the Facility and related jobs in the County of Niagara, New York.

Section 1.2 Representations and Covenants of the Company.

The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a corporation duly organized and validly existing under the laws of the Seneca Nation of Indians and is authorized to conduct it business in the State of New York, has the authority to enter into this Leaseback Agreement and has duly authorized the execution and delivery of this Leaseback Agreement.

(b) Neither the execution and delivery of this Leaseback Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Leaseback Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The providing of the Facility by the Agency and the leasing thereof by the Agency to the Company will not result in the removal of an industrial or manufacturing plant, facility or other commercial activity of the Company from one area of the State to another area of the State nor result in the abandonment of one or more commercial or manufacturing plants or facilities of the Company located within the State; and the Agency has found that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

(d) The Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d). The Company shall operate the Facility in accordance with this Leaseback Agreement and as a qualified "project" under the Act.

(e) The Company has caused to be transferred to the Agency a leasehold interest in all those properties and assets contemplated by this Leaseback Agreement and all documents related hereto.

(f) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill it obligations under this Leaseback Agreement.

(g) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with applicable environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company, upon receiving any information or notice contrary to the representations contained in this Section, shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (other than the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. The Company hereby agrees that at all times during which it is operating the Project, and whether or not this Leaseback Agreement is in effect, to comply with, and ensure compliance by its subtenants or sublessees with, the provisions of the Environmental Compliance and Indemnification Agreement, dated on or about the date hereof (the "Environmental Compliance Agreement").

(h) The Company has provided to the Agency a certificate or certificates of insurance containing all of the insurance provision requirements included under Sections 3.4 and 3.5 hereof. If the insurance is canceled for any reason whatsoever, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to any mortgagee, loss payee or additional insured until at least thirty (30) days after receipt by such party of written notice by the insurer of such cancellation, lapse, expiration, reduction or change.

(i) The Company represents, warrants and covenants that, unless otherwise approved by the Agency in compliance with the Act, facilities or properties that are primarily used for making retail sales to customers who personally visit such facilities constitute less than one-third (⅓) of the total Project costs. For purposes of this section, "retail sales" means: (a) sales by registered vendors under Article 28 of the Tax Law of the State of New York primarily engaged

in the retail sale of tangible personal property, as defined in Section 1101(b)(4)(i) of the Tax Law of the State of New York; or (b) sales of a service to said customers.

Section 1.3. Public Authorities Law Representations.

The parties hereto hereby acknowledge that the Facility and the interest therein conveyed to the Agency under the Lease Agreement, dated as of the date hereof, by and between the Company and the Agency (the "Lease Agreement") and conveyed by the Agency back to the Company pursuant to the terms of this Leaseback Agreement are not "property" as defined in Title 5-A of the Public Authorities Law of the State because the Facility and the leasehold interests therein are securing the Company's obligations to the Agency under the PILOT Agreement, the Environmental Compliance Agreement and this Leaseback Agreement, including (i) the Company's obligation to acquire, construct, equip and maintain the Facility on behalf of the Agency and (ii) the performance by the Company of the Unassigned Rights.

ARTICLE II

FACILITY SITE, DEMISING CLAUSES AND RENTAL PROVISIONS

Section 2.1 Agreement to Convey to Agency.

The Company has conveyed to the Agency a leasehold interest in real property, including any buildings, structures or improvements thereon, described in **Exhibit A** attached hereto and the Company has or will convey all of the interest in the equipment described in **Exhibit B** attached hereto (the "Equipment"). The Company agrees that the Agency's interest in the Facility resulting from said conveyances will be sufficient for the purposes intended by this Leaseback Agreement and agrees that it will defend, indemnify and hold the Agency harmless from any expense or liability arising out of a defect in title or a lien adversely affecting the Facility and will pay all reasonable expenses incurred by the Agency in defending any action respecting title to or a lien affecting the Facility.

Section 2.2 Construction and Equipping of the Facility.

(a) The Agency hereby confirms its appointment of the Company as the true and lawful agent of the Agency to undertake the Project. Such appointment was made by the Agency pursuant to a resolution duly adopted by the Agency on May 23, 2007 (the "Authorizing Resolution").

(b) The Company, as agent for the Agency, will undertake the Project. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Authorizing Resolution to acts reasonably related to the acquisition, construction and equipping of the Facility. The right of the Company to act as agent of the Agency shall expire on the earlier of (a) the completion of the Project, or (b) **April 30, 2009**; *provided, however*, that, the Agency may extend the Company's agent appointment at its discretion upon the written request of the Company if such activities and improvements are not completed by such time, and further provided that the Agency shall not unreasonably withhold its consent to the extension of such appointment.

(c) The Company hereby agrees to pay the Agency administrative fee, the fees of local counsel to Agency and/or the fees of transaction counsel, and any and all fees, costs and expenses incurred in the acquisition, construction and equipping of the Facility, including recording fees and taxes and any other fees or expenses due hereunder.

(d) The Company, as agent for the Agency, will undertake the Project. The Company hereby covenants and agrees to annually file with the State Department of Taxation and Finance the statement required by General Municipal Law Section 874(8) concerning the value of sales tax exemptions claimed.

Section 2.3 Demise of Facility.

The Agency hereby demises and leases the Facility to the Company and the Company hereby rents and leases the Facility from the Agency upon the terms and conditions of this Leaseback Agreement.

Section 2.4 Remedies to be Pursued Against Contractors and Subcontractors and their Sureties.

In the event of a default by any contractor or any other person or subcontractor under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor or manufacturer or supplier or other person so in default and against such surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, manufacturer, supplier or surety or other person which the Company deems reasonably necessary, and in such events the Agency, at the Company's expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency (including but not limited to reasonable attorney's fees) in any such action or proceeding.

Section 2.5 Duration of Lease Term; Quiet Enjoyment.

(a) The Agency shall deliver to the Company sole and exclusive possession of the Facility (subject to the provisions of Sections 5.3 and 7.1 hereof) and the leasehold estate created hereby shall commence on the date hereof.

(b) The leasehold estate created hereby shall, without any further action of the parties hereto, terminate at 11:59 P.M. on **December 31, 2014**, or on such earlier date as may be permitted by Section 8.1 hereof.

(c) The period commencing on the date described in Section 2.5(a) herein through the date described in Section 2.5(b) herein shall be herein defined as the Lease Term.

(d) The Agency shall, subject to the provisions of Sections 5.3 and 7.1 hereof neither take nor suffer nor permit any action, other than pursuant to Articles VII or VIII of this

Leaseback Agreement, to prevent the Company during the term of this Leaseback Agreement from having quiet and peaceable possession and enjoyment of the Facility and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

(e) The Company hereby irrevocably appoints and designates the Agency as its attorney-in-fact for the purpose of executing and delivering and recording any necessary terminations of lease together with any documents required in connection therewith and to take such other and further actions in accordance with this Leaseback Agreement as shall be reasonably necessary to terminate the Agency's leasehold interest in the Project upon the expiration or termination hereof. Notwithstanding any such expiration or termination of this Leaseback Agreement, the Company's obligations under Sections 3.3 and 5.2 hereof and under the Environmental Compliance Agreement shall continue notwithstanding any such termination or expiration.

Section 2.6 Rents and Other Consideration.

The rental obligations during the Lease Term are hereby reserved and the Company shall pay rent for the Facility as follows:

(a) Upon execution of this Leaseback Agreement, One Dollar ($1.00) for the period commencing on the date hereof and ending on December 31, 2007, and on January 1 of each calendar year thereafter an amount equal to One Dollar ($1.00) annually.

(b) In addition to the payments of rent pursuant to Section 2.6(a) hereof, throughout the term of this Leaseback Agreement, the Company shall pay to the Agency as additional rent, within thirty (30) days of the receipt of demand therefor, an amount equal to the sum of the expenses of the Agency and the members thereof incurred (i) for the reason of the Agency's ownership, or leasing of the Facility and (ii) in connection with the carrying out of the Agency's duties and obligations under this Leaseback Agreement.

(c) The Company agrees to make the above mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public or private debts. In the event the Company shall fail to timely make any payment required in this Section 2.6 the Company shall pay the same together with interest from the date said payment is due at the rate of twelve percent (12%) per annum.

Section 2.7 Obligations of Company Hereunder Unconditional.

The obligations of the Company to make the payments required in Section 2.6 hereof and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Company and shall be absolute and unconditional irrespective of any defense or any rights of set-off, recoupment or counterclaim it may otherwise have against the Agency. The Company agrees it will not (i) suspend, discontinue or abate any payment required by Section 2.6 hereof, or (ii) fail to observe any of its other covenants or agreements in this Leaseback Agreement, or (iii) except as provided in Section 8.1 hereof, terminate this Leaseback Agreement for any cause whatsoever including, without limiting the

generality of the foregoing, failure to complete the Facility, any defect in the title, design, operation, merchantability, fitness or condition of the Facility or in the suitability of the Facility for the Company's purposes and needs, failure of consideration, destruction of or damage to the Facility, commercial frustration of purpose, or the taking by condemnation of title to or the use of all or any part the Facility, any change in the tax or other laws of the United States of America or administrative rulings of or administrative actions by the State or any political subdivision of either, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Leaseback Agreement, or otherwise. Subject to the foregoing provisions, nothing contained in this Section 2.7 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Leaseback Agreement or to affect the right of the Company to seek reimbursement, and in the event the Agency should fail to perform any such agreement, the Company may institute such separate action against the Agency as the Company may deem necessary to compel performance or recover damages for nonperformance, and the Agency covenants that it will not, subject to the provisions of Section 5.2, take, suffer or permit any action which will adversely affect, or create any defect in its title to the Facility or which will otherwise adversely affect the rights of estates of the Company hereunder, except upon written consent of the Company. None of the foregoing shall relieve the Company of its obligations under Section 5.2 hereof.

ARTICLE III

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 3.1 Maintenance and Modifications of Facility By Company.

(a) The Company agrees that during the term of this Leaseback Agreement it or its operator will: (i) keep the Facility in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); (iii) operate the Facility in a sound and prudent manner; (iv) operate the Facility such that it continues to qualify as a "project" under the Act and pursuant to the terms contained herein; and (v) indemnify and hold the Agency harmless from any liability or expenses from the failure by the Company to comply with (i), (ii), (iii) or (iv) above.

(b) The Company, at its own expense, from time to time may make any structural addition, modifications or improvements to the Facility or any addition, modifications or improvements to the Facility or any part thereof which it may deem desirable for its business purposes and uses. All such structural additions, modifications or improvements so made by the Company shall become a part of the Facility; provided, however, the Company shall not be qualified for a sales and use tax exemption when making said additions, modifications or improvements except to the extent (i) the Company is acting as agent for the Agency under an Agent Agreement between the Agency and the Company which contemplates said additions, modifications or improvements or (ii) as otherwise provided by law.

Section 3.2 Installation of Additional Equipment.

The Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility. The Company from time to time may remove or permit the removal of such machinery, equipment or other personal property.

Section 3.3 Taxes, Assessments and Utility Charges.

(a) The Company agrees to pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or other property installed or brought by the Company therein or thereon, including without limiting the generality of the foregoing any taxes levied upon or with respect to the income or revenues of the Agency from the Facility, (ii) all payments under a certain payment-in-lieu-of-tax agreement, dated as of the date hereof by and between the Agency and the Company (the "PILOT Agreement"); (iii) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Facility, and (iv) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Leaseback Agreement to pay only such installments as are required to be paid during the term of this Leaseback Agreement.

(b) The Company, at its own expense and in its own name and on behalf or in the name and on behalf of the Agency but with notice to the Agency, may in good faith contest any such taxes, assessments and other charges. In the event of any such contest, the Company may, with prior written notice to the Agency, permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Agency reasonably requests payment prior to settlement.

Section 3.4 Insurance Required.

At all times throughout the term of the Leaseback Agreement, including without limitation during any period of construction of the Facility, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company; or as an alternative to the foregoing the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well, provided a periodic appraisal is performed and provided to the Agency.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 5.2 hereof) and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than **$1,000,000** per accident or occurrence on account of personal injury, including death resulting therefrom, and **$1,000,000** per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workmen's compensation law; and a blanket excess liability policy in the amount not less than **$5,000,000**, protecting the Company against any loss or liability or damage for personal injury or property damage.

Section 3.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 3.4(a) hereof shall name the Agency as a named insured and all other insurance required by Section 3.4 above shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) at least thirty (30) days' written notice of the cancellation thereof to the Company and the Agency.

(b) All such certificates of insurance of the insurers that such insurance is in force and effect, shall be deposited with the Agency on or before the commencement of the term of this Leaseback Agreement. Prior to expiration of the policy evidenced by said certificates, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Leaseback Agreement.

(c) Within one hundred twenty (120) days after the end of each of its fiscal years, the Company shall file with the Agency a certificate of the Company to the effect that the insurance it maintains with respect to the Project complies with the provisions of this Article III and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect.

Section 3.6 Application of Net Proceeds of Insurance.

The net proceeds of the insurance carried pursuant to the provisions of Section 3.4 hereof shall be applied as follows:

(i) the net proceeds of the insurance required by Section 3.4(a) hereof shall be applied as provided in Section 4.1 hereof, and

(ii) the net proceeds of the insurance required by Section 3.4(b) and (c) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 3.7 Right of Agency to Pay Taxes, Insurance Premiums and Other Charges.

If the Company fails (i) to pay any tax, assessment or other governmental charge required to be paid by Section 3.3 hereof or (ii) to maintain any insurance required to be maintained by Section 3.4 hereof, the Agency may pay such tax, assessment or other governmental charge or the premium for such insurance. The Company shall reimburse the Agency for any amount so paid together with interest thereon from the date of payment at twelve percent (12%) per annum.

ARTICLE IV

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 4.1 Damage or Destruction.

(a) If the Facility shall be damaged or destroyed (in whole or in part) at any time during the term of this Leaseback Agreement:

(i) the Agency shall have no obligation to replace, repair, rebuild or restore the Facility;

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Leaseback Agreement; and

(iii) except as otherwise provided in subsection (b) of this Section 4.1, the Company shall, from the net proceeds of the insurance, promptly replace, repair, rebuild or restore the Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company.

All such replacements, repairs, rebuilding or restoration made pursuant to this Section 4.1, whether or not requiring the expenditure of the Company's own money, shall automatically become a part of the Facility as if the same were specifically described herein.

(b) The Company (i) shall not be obligated to replace, repair, rebuild or restore the Facility; and (ii) shall be entitled to the net proceeds of the insurance, less obligations required by and not yet paid under this Leaseback Agreement; and (iii) shall not apply said net proceeds of the insurance as provided in subsection (a) of this Section 4.1; if the Company shall exercise its option to terminate this Leaseback Agreement pursuant to Section 8.1 hereof.

(c) The Company may adjust all claims under any policies of insurance required by Section 3.4(a) hereof.

Exhibit "G" Annexed to Affidavit of Photiadis.

Section 4.2 Condemnation.

(a) If at any time during the term of this Leaseback Agreement the whole or any part of title to, or the use of, the Facility shall be taken by condemnation, the Agency shall have no obligation to restore or replace the Facility and there shall be no abatement or reduction in the amounts payable by the Company under this Leaseback Agreement. The Agency shall not have any interest whatsoever in any condemnation award, and the Company shall have the exclusive right to same.

Except as otherwise provided in subsection (b) of this Section 4.2, the Company shall promptly:

(i) restore the Facility (excluding any land taken by condemnation) to substantially the same condition and value as an operating entity as existed prior to such condemnation, or

(ii) acquire, by construction or otherwise, facilities of substantially the same nature and value as an operating entity as the Facility subject to Agency consent.

The Facility, as so restored, or the substitute facility, whether or not requiring the expenditure of the Company's own moneys, shall automatically become part of the Facility as if the same were specifically described herein.

(b) The Company shall not be obligated to restore the Facility or acquire a substitute facility, and the net proceeds of any condemnation award shall not be applied as provided in Section 4.2(a), if the Company shall exercise its option to terminate this Leaseback Agreement pursuant to Section 8.1 hereof.

(c) The Agency shall cooperate fully with the Company in the handling and conduct of any condemnation proceeding with respect to the Facility. In no event shall the Agency voluntarily settle, or consent to the settlement of, any condemnation proceeding with respect to the Facility without the written consent of the Company.

Section 4.3 Condemnation of Company-Owned Property.

The Company shall be entitled to the proceeds of any condemnation award or portion thereof made for damage to or taking of any property which, at the time of such damage or taking, is not part of the Facility.

ARTICLE V

SPECIAL COVENANTS

Section 5.1 No Warranty of Condition or Suitability by the Agency.

THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF

THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 5.2 Hold Harmless Provisions.

The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, officers, members, directors and employees, and their respective successors, assigns or personal representatives, harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility, or (ii) liability arising from or expense incurred by the Agency's financing, acquisition, construction, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents (except the Company) or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability; except, however, that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the indemnified party to the extent that such an indemnity would be prohibited by law.

Section 5.3 Right to Inspect the Facility.

The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable notice to inspect the Facility. The Agency shall honor and comply with any restricted access policy of the Company relating to the Facility.

Section 5.4 Agreement to Provide Information.

The Company agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified, without delay, such information concerning the Company, the Company's employment history and statistics related thereto, the Facility and other topics necessary to enable the Agency to make any report required by law or governmental regulation or as otherwise reasonably requested by the Agency.

Section 5.5 Books of Record and Account; Financial Statements.

The Company at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company relating to the Facility.

Section 5.6 Compliance With Orders, Ordinances, Etc.

(a) The Company agrees that it will, throughout the term of this Leaseback Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses,

authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.6, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to in such subsection (a). In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom. The Company will endeavor to give notice of the foregoing to the Agency but failure to do so shall not be a breach of this Leaseback Agreement.

Section 5.7 Discharge of Liens and Encumbrances.

(a) The Company shall not permit or create or suffer to be permitted or created any lien upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof except any liens existing on the date hereof. This provision shall not prohibit the Approved Liens as they are defined in Section 6.1(a) below.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.7, the Company may in good faith contest any such lien. In such event, the Company, with prior written notice to the Agency, may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company to promptly secure payment of all such unpaid items by filing the requisite bond, in form and substance satisfactory to the Agency, thereby causing a lien to be removed.

Section 5.8 Depreciation Deductions and Investment Tax Credit.

The parties agree that the Company shall be entitled to all depreciation deductions with respect to any depreciable property in the Facility pursuant to Section 167 of the Internal Revenue Code and to any investment credit pursuant to Section 38 of the Internal Revenue Code with respect to any portion of the Facility which constitutes "Section 38 Property."

ARTICLE VI

RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING; MORTGAGE AND PLEDGE OF INTERESTS

Section 6.1 Restriction on Sale of Facility; Release of Certain Land.

(a) Except as otherwise specifically provided in this Article VI and except for the granting of a mortgage interest and security interests to lenders designated by the Company (the "Lender") under a mortgage, security agreement and/or assignment of leases and rents in a form acceptable to the Agency, Lender and the Company, for purposes of financing the construction and improvement of the Facility along with all modifications, substitutions and/or restatements thereof with the Lender or its successors and/or assigns (the "Approved Liens") the Agency shall

not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof or any of its rights under this Leaseback Agreement, without the prior written consent of the Company. Under no circumstances shall the Agency be required to mortgage, grant a security interest in or assign its rights to receive the rentals described in Section 2.6 hereof or its rights to be indemnified under Sections 1.2(d), 1.2(g), 2.1, 3.1(a) and 5.2 herein or (i) the right of the Agency on its own behalf to receive all opinions of counsel, reports, financial information, certificates, insurance policies or binders or certificates, or other notices or communications required to be delivered to the Agency hereunder or otherwise reasonably requested by the Agency; (ii) the right of the Agency to grant or withhold any consents or approvals required of the Agency hereunder; (iii) the right of the Agency in its own behalf to enforce the obligation of the Company to complete the Project and to confirm the qualification of the Project as a "project" under the Act (iv) the right of the Agency to amend with the Company this Leaseback Agreement, and the right of the Agency to exercise its rights and remedies hereunder or under the Environmental Compliance Agreement; (v) the right of the Agency in its own behalf to declare and Event of Default under Section 7.1 hereof; and (vi) the right of the Agency as to any of the foregoing, exercisable with respect to any sublessees or subtenants (collectively, the "Unassigned Rights").

Section 6.2 Removal of Equipment.

(a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where the Company determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item of Equipment from the Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part.

(b) The Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Equipment. The Company shall pay any costs (including reasonable attorneys' fees) incurred in transferring title to and releasing any item of Equipment removed pursuant to this Section 6.2.

(c) The removal of any item of Equipment pursuant to this Section 6.2 shall not entitle the Company to any abatement of or diminution of the rents payable under Section 2.6 hereof.

Section 6.3 Assignment and Subleasing.

(a) This Leaseback Agreement may not be assigned in whole or in part except to a Related Person of the Company (as such term is defined in subparagraph (C) of paragraph three of subsection (b) of Section four hundred sixty-five of the Internal Revenue Code of 1986, as amended, hereinafter "Related Person"), and the Facility may not be subleased, in whole or in part, by the Company except to a Related Person of the Company without the prior written consent of the Agency. A transfer in excess of 50% of the equity voting interests of the Company, other than to a Related Person of the Company, shall be deemed an assignment and require the prior written consent of the Agency. Any assignment or sublease shall be on the following conditions, as of the time of each assignment or sublease:

(i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder;

(ii) the assignee or sublessee shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;

(iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease and the instrument of assumption;

(iv) the Facility shall continue to constitute a "project" as such quoted term is defined in the Act; and

(v) if the Agency shall so request, as of the purported effective date of any assignment or sublease pursuant to subsection (a) of this Section 6.3, the Company, at its sole cost, shall furnish the Agency with an opinion, in form and substance satisfactory to the Agency as to items (i), (ii) and (iv) above.

(b) Notwithstanding anything in Section 6.3(a) above to the contrary, and provided the existing subleases as identified in **Exhibit C** attached hereto, do not in any way impose upon or in any way affect the Unassigned Rights and provided the Unassigned Rights remain superior to the existing subleases as identified in said **Exhibit C**, the prior written consent of the Agency will not be required for the existing subleases as identified in said **Exhibit C**.

(c) Any such assignment or sublease is subject to the review and approval by the Agency and its counsel (at no cost to the Agency; any such cost to be paid by the Company, including attorneys' fees), and shall contain such terms and conditions as reasonably required by the Agency and its counsel.

ARTICLE VII

DEFAULT

Section 7.1 Events of Default Defined.

(a) Each of the following shall be an "Event of Default" under this Lease Agreement:

(i) If the Company fails to pay the amounts required to be paid pursuant to Section 2.6 of this Leaseback Agreement and such failure shall have continued for a period of ten (10) days after the Agency gives written notice of such failure to the Company; or

(ii) If there is any purposeful, willful and knowing breach or failure by the Company to observe or perform any covenant, condition or agreement required by this Leaseback Agreement to be observed or performed and such purposeful, willful and knowing breach or failure shall have continued for a period of thirty (30) days after the Agency gives written notice to the Company, specifying the breach or failure and stating that it be remedied, or in the case of any such default which can be cured with due

diligence but not within such thirty (30) day period, the Company's failure to proceed promptly to cure such breach or default and thereafter prosecute the curing of such breach or default with due diligence; or

(iii) If any representation or warranty of the Company contained in this Leaseback Agreement is incorrect in any material respect; or

(iv) If there is a default under the PILOT Agreement, which default continues beyond the applicable grace or cure period.

(b) Notwithstanding the provisions of 7.1(a) above, if by reason of force majeure either party hereto shall be unable in whole or in part to carry out its obligations under this Leaseback Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Leaseback Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (b) shall not be deemed an Event of Default under this Section 7.1. Notwithstanding anything to the contrary in this subsection (b), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to make the payments required by Sections 2.6 and 3.3 hereof, to obtain and continue in full force and effect the insurance required by Section 3.4 hereof, and to provide the indemnity required by Section 5.2 hereof and to comply with the terms of Sections 5.2, 5.3, 5.6, 5.7, and 7.1(a)(1) hereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lock-outs and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 7.2 Remedies on Default.

Whenever any Event of Default shall have occurred and be continuing, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps;

(1) Declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (i) all unpaid installments of rent payable pursuant to Section 2.6(a) hereof; and (ii) all other payments due under this Leaseback Agreement.

(2) Take any other action as it shall deem necessary to cure any such Event of Default, provided that the taking of any such action shall not be deemed to constitute a waiver of such Event of Default.

(3) Take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements or covenants of the Company under this Leaseback Agreement.

(4) Terminate this Leaseback Agreement and terminate the Agency's leasehold interest.

Section 7.3 Remedies Cumulative.

No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Leaseback Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 7.4 Agreement to Pay Attorneys' Fees and Expenses.

In the event the Company should default under any of the provisions of this Leaseback Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency, the reasonable fees of such attorneys and such other expenses so incurred.

Section 7.5 No Additional Waiver Implied by One Waiver.

In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE VIII

EARLY TERMINATION OF LEASEBACK AGREEMENT; OBLIGATIONS OF COMPANY

Section 8.1 Early Termination of Leaseback Agreement.

(a) The Company shall have the option at any time to terminate this Leaseback Agreement upon filing with the Agency a certificate signed by an authorized representative of the Company stating the Company's intention to do so pursuant to this Section 8.1 and upon compliance with the requirements set forth in Section 8.2 hereof.

(b) The Agency shall have the option at any time to terminate this Leaseback Agreement and to demand immediate payment in full of the rental reserved and unpaid as described in Section 2.6 hereof upon written notice to the Company of the occurrence of an Event of Default hereunder.

Section 8.2 Obligation to Purchase Facility.

Upon termination of the term of this Leaseback Agreement in accordance with Sections 2.5, 7.2 or 8.1 hereof, the Company shall purchase the Facility from the Agency (or if the Agency's interest is a leasehold interest, the Agency shall surrender its leasehold interest) for One Dollar ($1.00) plus all rental reserved and unpaid as described in Section 2.6 hereof (the "Purchase Payment"). The Company shall exercise its obligation to purchase or option to have the Agency's leasehold interest terminated by giving written notice to the Agency and paying said Purchase Payment to the Agency.

Section 8.3 Conveyance on Purchase.

At the termination of the Company's leasehold interest in the Facility pursuant to Section 8.2 hereof, the Agency shall, upon receipt of the Purchase Payment, deliver to the Company all necessary documents to reflect either (i) a transfer by quitclaim deed of a fee interest (if the Agency holds a fee interest); or (ii) termination of the Agency's leasehold interest (a form of said termination of lease agreement is attached hereto as **Exhibit D**).

Section 8.4 Initial Employment Plan.

Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the Laws of 1995 of the State, the Company agrees to file with the Agency, prior to the effective date of this Leaseback Agreement, an employment plan, in substantially the form attached hereto as **Exhibit E**.

Section 8.5 Employment Plan Status Report.

Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the Laws of 1995 of the State, the Company agrees to file with the Agency, on an annual basis, reports regarding the number of people employed at the Facility and certain other matters, said annual reports to be in substantially the form annexed hereto as **Exhibit F**.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Notices.

All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

Exhibit "G" Annexed to Affidavit of Photiadis.

To the Agency:	Niagara County Industrial Development Agency 6311 Inducon Corporate Drive Suite One Sanborn, New York 14132-9099 Attn: Executive Director
With a Copy To:	Harris Beach PLLC 800 Main Street, 4th Floor Niagara Falls, New York 14302 Attention: Mark J. Gabriele, Esq.
To the Company:	Lewiston Golf Course Corporation 310 Fourth Street Niagara Falls, New York 14303 Attn: E. Brian Hansberry, President & CEO
With a Copy To:	Harter Secrest & Emery LLP Twelve Fountain Plaza, Suite 400 Buffalo, New York 14202 Attn: Anthony D. Mancinelli, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

Section 9.2 Binding Effect.

This Leaseback Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and their respective successors and assigns.

Section 9.3 Severability.

In the event any provision of this Leaseback Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.4 Amendments, Changes and Modifications.

This Leaseback Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

Section 9.5 Execution of Counterparts.

This Leaseback Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

Section 9.6 Applicable Law.

This Leaseback Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York for contracts to be wholly performed therein.

Section 9.7 Recording and Filing.

This Leaseback Agreement or a memorandum thereof, shall be recorded or filed, as the case may be, in the Niagara County Clerk's Office, New York, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

Section 9.8 Survival of Obligations.

This Leaseback Agreement shall survive the performance of the obligations of the Company to make payments required by Section 2.6 hereof and all indemnities shall survive any termination or expiration of this Leaseback Agreement.

Section 9.9 Section Headings Not Controlling.

The headings of the several sections in this Leaseback Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Leaseback Agreement.

Section 9.10 No Broker.

The Agency and the Company represent and warrant to the other that neither the Agency nor the Company has dealt with any broker or finder entitled to any commission, fee, or other compensation by reason of the execution of this Leaseback Agreement, and each party agrees to indemnify and hold the other harmless from any charge, liability or expense (including attorneys' fees) the other may suffer, sustain, or incur with respect to any claim for a commission, fee or other compensation by a broker or finder claiming by, through or under the other party.

Section 9.11 No Recourse; Special Obligation.

(a) The obligations and agreements of the Agency contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (except the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (except the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(b) The obligations and agreements of the Agency contained hereby shall not constitute or give rise to an obligation of the State of New York or Niagara County, New York, and neither the State of New York nor Niagara County, New York, shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency,

payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall place, in an account with the Agency, an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (except the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Agency and its members, officers, agents (except the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

Section 9.12 Subordination of Leaseback Agreement to Mortgage(s).

The Agency agrees that this Leaseback Agreement shall be subordinate to the mortgage liens granted by the Company and the Agency in favor of any lender (the "Mortgagee") executed and delivered herewith and all further mortgage liens hereafter placed on the Leased Premises with the consent of the Agency and the Mortgagee, but that under no circumstances shall the Agency be required to mortgage, grant a security interest in, or assign its rights to receive the rentals described in Section 2.6 hereof, or its rights to be indemnified under Sections 1.2(d), 1.2(g), 2.1, 3.1(a) and 5.2 hereof.

Section 9.13 No Joint Venture Created.

The Agency and the Company mutually agree that by entering into this Leaseback Agreement the parties hereto are not entering into a joint venture.

[Remainder of Page Intentionally Left Blank]

Exhibit "G" Annexed to Affidavit of Photiadis.

[Signature Page to Leaseback Agreement]

IN WITNESS WHEREOF, the Agency and the Company have caused this Leaseback Agreement to be executed in their respective names, all as of the date first above written.

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Name: Henry M. Sloma
Title: Chairperson

LEWISTON GOLF COURSE CORPORATION

By: _____
Name: E. Brian Hansberry
Title: President & CEO

Exhibit "G" Annexed to Affidavit of Photiadis.

STATE OF NEW YORK)
)ss:
COUNTY OF NIAGARA)

On the 8 day of November in the year 2007, before me, the undersigned, personally appeared **Henry M. Sloma**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

MARK J. GABRIELE
No. 4948558
Notary Public, State of New York
My Commission Expires 03/20/20 11

STATE OF NEW YORK)
) ss:
COUNTY OF NIAGARA)

On the 8 day of November in the year 2007, before me, the undersigned, personally appeared **E. Brian Hansberry**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

MARK J. GABRIELE
No. 4948558
Notary Public, State of New York
My Commission Expires 03/20/20 11

Exhibit "G" Annexed to Affidavit of Photiadis.

Exhibit A

Legal Description of Leased Premises

Exhibit "G" Annexed to Affidavit of Photiadis.

PARCEL A, B AND C

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of lot 43, township 14, range 9 of the Holland Land Company Survey bounded and described as follows:

Beginning at a point in the centerline of Blairville-Creek Road, also known as Creek Road, a distance of 225.0 feet north of the southeast corner of lot 43.

Thence, S 89° 25' 40" W along the north line of lands conveyed to Marlene Burns by deed recorded in the Niagara County Clerk's Office in Liber 1952 at Page 135, a distance of 355.14 feet to the northwest corner of said Burns lands;

Thence, S 00° 10' 35" W along the west line of said Burns land, a distance of 228.86 feet to the southwest corner of said Burns land in the south line of lot 43;

Thence, S 88° 48' 26" W along the south line of lot 43, a distance of 256.36 feet to the northwest corner of land conveyed to Robert and Deborah Kenney by deed recorded in the Niagara County Clerk's Office in Liber 2107 at page 315;

Thence, N 87° 37' 11" W continuing along the south line of lot 43, a distance of 650.10 feet to the northeast corner of subdivision lot 257 of Lewistowne Park, Phase 9;

Thence, N 89° 12' 48" W continuing along the south line of lot 43 a distance of 1187.85 feet to the southwest corner of lot 43 being in the east line of lands appropriated for the Niagara Parkway, Section 4 (Robert Moses State Parkway);

Thence, northerly along the east line of lands appropriated for the Niagara Parkway, Section 4 of the following three (3) courses and distances;

(1) N 08° 18' 24" E, a distance of 800.98 feet to a point;
(2) N 06° 22' 35" E, a distance of 2670.71 feet to a point;
(3) N 00° 22' 47" W, a distance of 433.59 feet to the southwest corner of lands appropriated for Blairville Creek Road, State Highway 9322, Niagara County, Map 186 Parcel 130 filed in the Niagara County Clerk's Office in Liber 1428 at Page 923;

Thence, S 89° 47' 37" E along the south line of the last described parcel, a distance of 1066.38 feet to an angle point in said south line;

Thence, S 00° 26' 05" W parallel with the centerline of Blairville-Creek Road, a distance of 900.77 feet to a point;

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Thence, S 26° 23' 35" W a distance of 137.07 feet to a point;

Thence, S 89° 46' 51" W a distance of 72.28 feet to a point;

Thence, S 00° 26' 05" W, parallel with the centerline of Blairville-Creek Road, a distance of 650.04 feet to a point;

Thence, N 89° 46' 51" E a distance of 125.62 feet to a point;

Thence, S 00° 26' 05" W parallel with the centerline of Blairville-Creek Road, a distance of 222.13 feet to a point;

Thence, N 89° 46' 51" E a distance of 1008.22 feet to a point in the centerline of Blairville-Creek Road;

Thence, S 00° 26' 05" W along the centerline of said road a distance of 182.06 feet to the northeast corner of lands conveyed to Norton and Rose Douglas by deed recorded in Liber 2302 at Page 61;

Thence, S 89° 46' 50" W along the north line of said Douglas lands, a distance of 355.00 feet to the northwest corner of said lands;

Thence, S 00° 26' 05" W along the west line of said Douglas lands and said line extended, a distance of 467.00 feet to the southwest corner of lands conveyed to Marc and Carla Eagler by deed recorded in Liber 2971 at Page 245;

Thence, N 89° 46' 50" E along the south line of said Eagler lands, a distance of 355.00 feet to a point in the centerline of said Blairville Creek Road;

Thence, S 00° 26' 05" W along the centerline of said road, a distance of 66.00 feet to the northeast corner of lands conveyed to Charles and Eleanor Zelinski by deed recorded in Liber 1225 at page 443;

Thence, S 89° 46' 50" W along the north line of said Zelinski lands, a distance of 355.00 feet to the northwest corner of said lands;

Thence, S 00° 26' 05" W along the west line of said Zelinski lands and said line extended, a distance of 500.24 feet to the southwest corner of lands conveyed to John and Patricia Bartko by deed recorded in Liber 2156 at Page 171;

Thence, N 89° 25' 40" E along the south line of said Bartko lands, a distance of 355.03 feet to a point in the centerline of Blairville-Creek Road;

Thence, S 00° 26' 05" W along the centerline of said road, a distance of 66.00 feet to the northeast corner of lands conveyed to Walter and Patricia Yacus by deed recorded in Liber 2056 at page 172;

Exhibit "G" Annexed to Affidavit of Photiadis.

Thence, S 89° 25' 40" W along the north line of said Yacus lands, a distance of 355.00 feet to the northwest corner of said lands;

Thence, S 00° 26' 05" W along the west line of said Yacus lands and said line extended, a distance of 445.41 feet to the southwest corner of lands conveyed to Robert Wojtowicz by deed recorded in Liber 3288 at page 822;

Thence, N 89° 25' 40" E along the south line of said Wojtowicz lands, a distance of 355.00 feet to a point in the centerline of Blairville-Creek Road;

Thence, S 00° 26' 05" W along the centerline of said road a distance of 66.00 feet to the point or place of beginning, containing 140.22 acres, more or less.

Excepting and reserving from the above described parcel the following parcels of land appropriated by the New York Department of Public Works:

Map 103, Parcel 111 filed in the Niagara County Clerk's Office in Liber 1437 at page 527 (0.03 acres).

Map 108, Parcel 116 filed in the Niagara County Clerk's Office in Liber 1437 at page 546 (0.03 acres).

Map 114, Parcel 122 filed in the Niagara County Clerk's Office in Liber 1439 at page 19 (0.03 acres).

Map 114, Parcel 123 filed in the Niagara County Clerk's Office in Liber 1439 at page 19 (0.02 acres).

Part of Map 120, Parcel 129 filed in the Niagara County Clerk's Office in Liber 1432 at page 449 (0.08 acres).

The above described parcel containing 140.03 acres more or less.

PARCEL D1

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of lot 42, township 14, range 9 of the Holland Land Company Survey bounded and described as follows:

Beginning at a point in the westerly line of Blairville Creek Road (110.0 Feet Wide) at a distance of 260.00 feet south of the point of intersection of the said line with the north line of Lot 42;

Thence S 00° 03' 39" W along said west bounds of Blairville Creek Road, a distance of 75.02 feet to a point in the north line of lands conveyed to Mathew and Kathleen Wrobel by deed recorded in the Niagara County Clerk's Office in Liber 1621 at page 976;

Exhibit "G" Annexed to Affidavit of Photiadis.

Thence S 88° 48' 30" W along the north line of said Wrobel lands, a distance of 556.83 feet to the northwest corner of said lands;

Thence, S 00° 02' 15" W along the west line of said Wrobel lands and said line extended, a distance of 478.40 feet to the southwest corner of lands conveyed to Angelo J. Farbo by deed recorded in the Niagara County Clerk's Office in Liber 2598 at page 171;

Thence, S 00° 26' 14" W along the west line of lands conveyed to Anthony and Chris Iannucci by deed recorded in the Niagara County Clerk's Office in Liber 3156 at page 170 and said line extended, a distance of 405.31 feet to a point at the northwesterly corner of sub-lot 1703 on Ridge View Village Part IV;

Thence, S 00° 36' 57" W along the westerly line of said sub-lot, a distance of 47.58 feet to an angle point in said sub-lot;

Thence, S 62° 35' 27" W, along a northerly line of sub-lot 1704 of the aforementioned Ridge View Village Part IV, a distance of 100.00 feet to a point at the northwesterly corner of said sub-lot.

Thence S 47° 36' 13" W, a distance of 8.27 feet to a point at the northeasterly corner of sub-lot 80 of Lewistowne Park, Phase 3;

Thence, S 49° 32' 31" W, along the northerly line of sub-lots 80 and 81 of said Lewistowne Park, Phase 3, a distance of 126.42 feet to a point at the northwesterly corner of said sub-lot 81;

Thence N 87° 02' 41" W, along the northerly line of sub-lot 82 of said Lewistowne Park, Phase 3, a distance of 109.76 feet to the point of intersection with the easterly right-of-way line of Curtis Court North(66 feet wide);

Thence, northeasterly, along said easterly right-of-way line, along a curve to the right, having a radius of 300.00 feet, through a central angle of 10°-46'-652", an arc length of 56.45 feet to the southwest corner of sub-lot 107 of Lewistowne Park, Phase 4;

Thence, S 76° 15' 49" E, along said southerly line of sub-lot 107, a distance of 115.00 feet to the southeast corner of said sub-lot.

Thence the following sixteen (16) courses and distances along the rear lines of sub-lots 107-121 of said Lewistowne Park,
Phase 4:

(1) N 43° 53' 40" E, a distance of 117.25 feet to a point;
(2) N 14° 07' 45" W, a distance of 98.21 feet to a point;
(3) N 02° 49' 28" W, a distance of 91.84 feet to a point;
(4) N 09° 27' 13" W, a distance of 91.84 feet to a point;
(5) N 02° 10' 35" E, a distance of 99.74 feet to a point;
(6) N 07° 15' 15" E, a distance of 105.00 feet to a point;

Exhibit "G" Annexed to Affidavit of Photiadis.

(7) N 33° 00' 02" W, a distance of 150.00 feet to a point;
(8) N 72° 40' 34" W, a distance of 175.00 feet to a point;
(9) S 59° 48' 15" W, a distance of 185.00 feet to a point;
(10) S 11° 04' 03" W, a distance of 195.00 feet to a point;
(11) S 17° 59' 30" E, a distance of 122.96 feet to a point;
(12) S 20° 32' 34" E, a distance of 69.59 feet to a point;
(13) S 06° 34' 46" E, a distance of 69.59 feet to a point;
(14) S 00° 11' 17" W, a distance of 69.59 feet to a point;
(15) S 10° 28' 50" W, a distance of 90.00 feet to a point;
(16) S 82° 23' 12" E, a distance of 160.00 feet to a point of intersection with the westerly right-of-way line of Curtis Court North;

Thence southwesterly, along said westerly right-of-way line, along a curve to the left, having a radius of 366.00 feet, through a central angle of 05-° 54'-04", an arc length of 37.70 feet to the northeast corner of sub-lot 83 of the aforementioned Lewistowne Park, Phase 3;

Thence the following three (3) courses and distances along the rear lines of sub-lot 83-87 of the aforementioned Lewistowne Park, Phase 3:

(1) N 84° 25' 49" W, a distance of 92.09 feet to a point;
(2) N 76° 10' 02" W, a distance of 168.20 feet to a point;
(3) N 48° 52' 06" W, a distance of 74.61 feet to a point at the southeasterly corner of sub-lot 122 of Lewistowne Park, Phase 4;

Thence the following nine (9) courses and distances along the rear line of sub-lots 122-130 of Lewistowne Park, Phase 4;

(1) N 17° 06' 54" W, a distance of 75.00 feet to a point;
(2) N 29° 09' 19" W, a distance of 71.40 feet to a point;
(3) N 27° 25' 36" W, a distance of 85.00 feet to a point;
(4) N 25° 15' 56" E, a distance of 19.87 feet to a point;
(5) N 29° 06' 08" E, a distance of 85.00 feet to a point;
(6) N 28° 43' 16" E, a distance of 101.35 feet to a point;
(7) N 40° 43' 31" E, a distance of 111.58 feet to a point;
(8) N 06° 20' 26" E, a distance of 130.00 feet to a point;
(9) N 33° 39' 40" W, a distance of 175.00 feet to a point at the northwesterly corner of sub-lot 130 of Lewistowne Park, Phase 4.

Thence, N 03° 57' 24" E in part along the east line of sub-lots 258 and 257 of Lewistowne Park, Phase 9, a distance of 554.29 feet to a point of intersection with the north line of lot 42 at the northeast corner of said sub-lot 257;

Thence, S 87° 37' 11" E along the north line of lot 42 a distance of 650.10 feet to the northwest corner of lands conveyed to Robert A. and Deborah Kenney by deed recorded in the Niagara County Clerk's Office in Liber 2107 at page 315, said point being a distance of 612.21 feet west from the centerline of Blairville-Creek Road;

Exhibit "G" Annexed to Affidavit of Photiadis.

Thence, S 00° 01' 09" E along the west line of said Kenney lands and said line extended, a distance of 260.00 feet to the southwest corner of lands conveyed to Shannon L. Ligammari by deed recorded in the Niagara County Clerk's Office in Liber 3150 at page 60;

Thence, N 88° 48' 23" E, along the south line of said Ligammari lands, a distance of 556.83 feet to the point or place of beginning, containing 15.83 acres, more or less.

PARCEL D2

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of Lot 42, Township 14, Range 9 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at the southeast corner of Subdivision Lot 164 as shown on a map of Lewistowne Park, Phase 5, filed in Book 51 of Microfilmed Maps at Page 5101-5102;

Thence N 15° 51' 56" E along the easterly line of Subdivision Lot 164, a distance of 150.00 feet to the northeast corner thereof;

Thence N 73° 29' 50" W along the northerly line of Subdivision Lot 164, a distance of 87.89 feet to the northwest corner thereof, said point being the southeast corner of Subdivision Lot 226 as shown on a map of Lewistowne Park, Phase 8, filed in Book 57 of Microfilmed Maps at Pages 5713-5714;

Thence N 18° 08' 40" E along the easterly line of Subdivision Lot 226, a distance of 79.28 feet to the southeast corner of Subdivision Lot 225 as shown on a map of Lewistowne Park, Phase 8, filed in Book 57 of Microfilmed Maps at Page 5713-5714;

Thence N 8° 17' 39" E along the easterly lines of Subdivision Lots 225, 224 and 223 as shown on a map of Lewistowne Park, Phase 8, filed in Book 57 of Microfilmed Maps at Pages 5713-5714, a distance of 270.00 feet to the southeast corner of Subdivision Lot 263 as shown on a map of Lewistowne Park, Phase 9 filed in Book 59 of Microfilmed Maps at page 5900-5901;

Thence N 8° 17' 38" E along the easterly line of Subdivision Lot 263, a distance of 80.55 feet to the southwest corner of Subdivision lot 261 as shown on a map of Lewistowne Park, Phase 9;

Thence, S 71° 10' 46" E along the southerly line of Subdivision Lots 261 and 260 a distance of 223.36 feet to the southwest corner of Subdivision Lot 259 as shown on a map of Lewistowne Park, Phase 9;

Thence, N 70° 10' 48" E along the southeasterly line of Subdivision Lot 259, a distance of 228.03 feet to the southeast corner of Subdivision Lot 259, said corner being located on the westerly line of a parcel of land conveyed to the Town of Lewiston by Deed recorded in Liber 2529 at Page 219;

Exhibit "G" Annexed to Affidavit of Photiadis.

Thence, S 3° 57' 24" W along the westerly line of said parcel conveyed to the Town of Lewiston, a distance of 166.98 feet to the northeast corner of Subdivison Lot 131 as shown on a map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at Page 4925-4926;

Thence, N 83° 48' 14" W along the northerly line of Subdivision Lot 131, a distance of 202.46 feet to the northerly corner of Subdivision Lot 132 as shown on a map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at pages 4925-4926;

Thence, S 45° 43' 01" W along the northwesterly line of Subdivision Lot 132, a distance of 180.11 feet to northwesterly corner of Subdivision Lot 133 as shown on a map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at pages 4925-4926;

Thence S 12° 31' 57" W along the westerly line of Subdivision Lot 133, a distance of 80.00 feet to the northwest corner of Subdivision Lot 134 as shown on a map of Lewistowne Park, Phase 4, file in Book 50 of Microfilmed Maps at Page 4925-4926;

Thence, S 16° 48' 20" W along the westerly line of Subdivision Lot 134, a distance of 70.00 feet to the northwest corner of Subdivision Lot 135 as shown on map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at Pages 4925-4926;

Thence, S 21° 07' 46" W along the westerly line of Subdivision Lot 135, a distance of 70.00 feet to the northwest corner of Subdivision of Lot 136 as shown on a map of Lewistowne Park, Phase 4, filed in Book 50 of Microfilmed Maps at Page 4925-4926;

Thence S 16° 03; 16" W along the westerly line of Subdivision Lot 136, a distance of 128.12 feet to the southwesterly corner thereof, said point being on the northerly line of Raymond Drive;

Thence northwesterly along the northerly line of Raymond Drive along a curve to the left having a radius of 461.0 feet an arc length of 19.40 feet to the place of beginning. Containing 2.14 acres more or less.

PARCEL E

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Lewiston, County of Niagara and State of New York, being part of lot 44, township 14, range 9 of the Holland Land Company Survey bounded and described as follows:

Beginning at a point in the centerline of Pletcher Road, being also the north line of lot 44, at the northwest corner of lands conveyed to Eugene and Maureen Polin by deed recorded in the Niagara County Clerk's Office in Liber 1478 at page 377, said point being 1229.70 feet west from the intersection of said centerline with the centerline of Blairville Creek Road;

Thence, S 01° 28' 55" E along the west line of said Polin lands a distance of 853.60 feet to the southwest corner of said lands;

Exhibit "G" Annexed to Affidavit of Photiadis.

Thence, S 89° 35' 08"E along the south line of said Polin lands a distance of 200.00 feet to a point in the west line of lands conveyed to Donald and Yvonne Stephenson by deed recorded in the Niagara County Clerk's Office in Liber 3322 at page 656;

Thence, S 00° 23' 18" W along the west line of said Stephenson lands and said line extended, a distance of 2916.67 feet to the northwest corner of lands conveyed to Fred and Geraldine Vanoni by deed recorded in the Niagara County Clerk's Office in Liber 1495 at page 205;

Thence, S 00° 22' 01"W along the west line of said Vanoni lands and said line extended, a distance of 231.17 feet to the southeast corner of lands conveyed to Pletcher Associates by deed recorded in the Niagara County Clerk's Office in Liber 1613 at page 894, being also in the south line of lot 44;

Thence, N 89° 39' 17"W along the south line of lot 44, a distance of 1058.60 feet to a point in the east line of lands appropriated for the Niagara Parkway, Section 4 (Robert Moses Parkway);

Thence, northerly, along the east line of lands appropriated for the Niagara Parkway, Section 4, the following three (3) courses and distances:

(1) N 00° 22' 47"W a distance of 608.91 feet to a point;
(2) N 08° 07' 23"W a distance of 1594.88 feet to a point;
(3) N 12° 43' 39"W a distance of 803.98 feet to the southerly corner of lands acquired by the Niagara Frontier State Park Commission by deed recorded in the Niagara County Clerk's Office in Liber 1363 at page 171;

Thence, N 29° 19' 14"E along the boundary of the last described parcel a distance of 413.00 feet to an angle point in said boundary;

Thence, N 01° 42' 24"W continuing along the boundary of the last above described parcel, a distance of 624.90 feet to a point;

Thence, easterly along the arc of a circular curve to the left with a radius of 1180 feet an arc length of 132.04 feet to a point in the south bounds of Pletcher Road (66.0 feet wide);

Thence, N 89° 35' 08"W along the south bounds of Pletcher Road a distance of 664.30 feet to a point in the west line of lot 44;

Thence, N 22° 53' 39"W along the west line of lot 44 a distance of 35.91 feet to a point in the centerline of Pletcher Road being the northwest corner of lot 44;

Thence, S 89° 35' 08"E along the centerline of Pletcher Road a distance of 677.42 feet to the northwest corner of lands conveyed to Joseph and Ingeborg Praus by deed recorded in the Niagara County Clerk's Office in Liber 1411 at page 109;

Exhibit "G" Annexed to Affidavit of Photiadis.

Thence, S 01° 28' 55" E along the west line of said Praus land and said line extended, a distance of 853.60 feet to the southwest corner of lands conveyed to Marc and Cheryl Brunett by deed recorded in the Niagara County Clerk's Office in Liber 1719 at page 80;

Thence, S 89° 35' 08"E along the south line of said Brunett lands and said line extended, a distance of 884.00 feet to the southeast corner of lands conveyed to Marc and Cheryl Brunett by deed recorded in the Niagara County Clerk's Office in Liber 2520 at page 285;

Thence, N 01° 28' 55"W along the east line of said Brunett lands, a distance of 853.60 feet to the northeast corner of said lands in the centerline of Pletcher Road;

Thence, S 89° 35' 08"E along the centerline of Pletcher Road, a distance of 66.00 feet to the point or place of beginning containing 93.18 acres, more or less.

Exhibit "G" Annexed to Affidavit of Photiadis.

Exhibit B

Equipment

All machinery, apparatus, appliances, equipment, fittings, fixtures and furnishings and other property of every kind and nature whatsoever now or hereafter affixed to, located upon, appurtenant thereto or usable in connection with the present or future operation and occupancy of the Facility together with any replacements therefore to the extent acquired in the name of the Agency by the Company pursuant to the agency appointment described in Section 2.2 of that certain Leaseback Agreement, dated as of November 1, 2007, by and between the Agency and the Company (the "Leaseback Agreement"), or to the extent the Company conveys title to the Agency.

Exhibit "G" Annexed to Affidavit of Photiadis.

Exhibit C

Existing Tenant List

NONE

Exhibit "G" Annexed to Affidavit of Photiadis.

Exhibit D

[FORM OF TERMINATION OF LEASEBACK AGREEMENT]

WHEREAS, **Lewiston Golf Course Corporation,** a corporation duly organized and existing under the laws of the Seneca Nation of Indians (the "Company"), as tenant, and **Niagara County Industrial Development Agency** (the "Agency"), as landlord, entered into a certain lease agreement, dated as of November 1, 2007 (the "Leaseback Agreement"), whereby the Agency leased the Project (as defined in the Leaseback Agreement) to the Company; and

WHEREAS, pursuant to the Leaseback Agreement, the Company and the Agency agreed that the Leaseback Agreement would terminate on the earlier to occur of (i) **December 31, 2014**; or (ii) such earlier date as may be permitted by Article VIII of the Leaseback Agreement; and

WHEREAS, the Company and the Agency now desire to evidence the termination of the Leaseback Agreement.

NOW, THEREFORE, it is hereby agreed that the Leaseback Agreement will terminate as of the date hereof; provided, that, as provided in Section 2.5(e) of the Leaseback Agreement, certain obligations of the Company shall survive the termination of the Leaseback Agreement, and the execution of this Termination of Leaseback Agreement by the Agency is not intended, and shall not be construed, as a waiver or alteration by the Agency or the Company of the provisions of Section 2.5(e) of the Leaseback Agreement.

IN WITNESS WHEREOF, the respective Authorized Representatives of the Company and the Agency have executed this Termination of Leaseback Agreement this _____ day of _____, 20___.

LEWISTON GOLF COURSE CORPORATION

By: _____
Name:
Title:

NIAGARA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Name:
Title:

Exhibit "G" Annexed to Affidavit of Photiadis.

Exhibit E

INITIAL EMPLOYMENT PLAN

COMPANY NAME: _____

COMPANY ADDRESS: _____

TYPE OF BUSINESS: _____

CONTACT: _____

TELEPHONE NUMBER: _____

Please complete the following chart describing your projected employment plan following receipt of financial assistance (the "Financial Assistance") from the Niagara County Industrial Development Agency (the "Agency"):

Current and Planned Full-Time Occupations in the Company – Year 1	Current Number of Full-Time Jobs per Occupation – Year 2	Estimated Number of Full-Time Jobs after Completion of Project – Year 3

Please indicate the estimated hiring dates for the new jobs shown above and any special recruitment or training that will be required.

Exhibit "G" Annexed to Affidavit of Photiadis.

Are the employees of your firm currently covered by a collective bargaining agreement?

Yes _____ No _____

If yes, Name and Local: _____.

In the event that this application for financing is accepted, we agree to schedule a meeting with _____ (insert name of Local New York State Job Service Superintendent) and _____ (insert name of representative of Agency's area under the Federal Job Training Partnership Act) prior to closing of the financing for the purpose of supplying such information as may be requested in connection with this Employment Plan and to notify the regional office of the Department of Economic Development in advance, of the time and place of such meeting.

Prepared By: _____

Title: _____

Signature: _____

Date: _____

Exhibit "G" Annexed to Affidavit of Photiadis.

Exhibit F

[FORM OF ANNUAL EMPLOYMENT REPORT]

EMPLOYMENT PLAN STATUS REPORT

COMPANY NAME: _____

COMPANY ADDRESS: _____

TYPE OF BUSINESS: _____

CONTACT: _____

TELEPHONE NUMBER: _____

Number Filled _____

Occupation	Number of New Jobs	Number Listed[1]	Job Service Division Applicants	Job Training Partnership Act Eligible Persons

[1] With local Jobs Service Division and local service delivery office created pursuant to the Job Training Partnership Act.

Exhibit "H" Annexed to Affidavit of Photiadis.

DO NOT DETACH - THIS IS PAGE 1 OF RECORDED DOCUMENT

BOOK 3421 PAGE 0377

NIAGARA COUNTY CLERK RECORDING PAGE
OFFICE OF THE CLERK COUNTY OF NIAGARA
WAYNE F. JAGOW, COUNTY CLERK
County Courthouse, 175 Hawley Street, P.O. Box 461, Lockport, NY 14095
Phone (716) 439-7027 Fax (716) 439-7066

DATE: November 1, 2007

TYPE: Memorandum of Lease

14

(Names In Full)
Golf Course Corporation
County Industrial Development Agency
Town of Lewiston

HARRIS BEACH, PLLC
Main Street, 4th Floor
P.O. Box 712
Niagara Falls, New York 14302

THIS SPACE RESERVED FOR COUNTY CLERK

DOCUMENT # 1010539
BOOK 3421 PAGE 377 DEEDS
NUMBER OF PAGES 14
RECORDED 11/27/2007 02:22:27 P.M.
RECEIPT # 29936 DOCUMENT TOTAL: $77.00
PAID - COUNTY CLERK
WAYNE F. JAGOW

AMOUNT

family ( )Other

to be apportioned

TAX RECEIPT

State of New York} ss
County of Niagara}
I do hereby certify that I have
Received on the within Mortgage, being
the amount of the Recording Tax
Imposed thereon & paid at recording.

, 20

Clerk of Niagara County

2592
REAL ESTATE TRANSFER TAX
$ 0
11/27/2007
NIAGARA COUNTY

the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York
DO NOT DETACH

Exhibit "H" Annexed to Affidavit of Photiadis.

Book 3421 Page 0370

Closing Item No. 10

MEMORANDUM OF LEASE PURSUANT TO
SECTION 291-c OF THE REAL PROPERTY LAW
(Company to Agency)

THIS MEMORANDUM OF LEASE (the "Memorandum of Lease"), dated as of November 1, 2007, is by and between **LEWISTON GOLF COURSE CORPORATION**, a corporation duly organized and validly existing under the laws of the Seneca Nation of Indians and authorized to conduct its business in the State of New York, with offices at 310 Fourth Street, Niagara Falls, New York 14303 (the "Company") and the **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its offices at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York 14132 (the "Agency").

1. Reference to Lease: The Lease Agreement, dated as of November 1, 2007 (the "Lease Agreement"), whereby the Company leases certain real property to the Agency.

2. Description of the Leased Premises: Certain real property and improvements located at Pletcher Road and Robert Moses Parkway in the Town of Lewiston, Niagara County, New York, as more particularly described on Exhibit A attached hereto (the "Leased Premises").

3. Term of Lease: Commencing November 1, 2007 and ending December 31, 2014.

4. Date of Commencement: November 1, 2007.

5. Date of Termination: December 31, 2014.

6. Rights of Extension or Renewal: None.

[Remainder of Page Intentionally Left Blank]

Record and Return to:

Harris Beach PLLC
ATTN: Melinda Boesken
800 Main Street
P.O. Box 712
Niagara Falls, New York 14302

Exhibit "H" Annexed to Affidavit of Photiadis.

BOOK 3421 PAGE 0379

[Signature Page to Memorandum of Lease]

IN WITNESS WHEREOF, the Company and the Agency have caused this Memorandum of Lease to be executed in their respective names, all as of the date first written above.

LEWISTON GOLF COURSE CORPORATION

By: _____
Name: E. Brian Hansberry
Title: President & CEO

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Name: Henry M. Sloma
Title: Chairperson

20050-853413.2

Exhibit "H" Annexed to Affidavit of Photiadis.

BOOK 3421 PAGE 0380

STATE OF NEW YORK)
) ss:
COUNTY OF NIAGARA)

On the 8 day of November in the year 2007, before me, the undersigned, personally appeared **E. Brian Hansberry**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

MARK J. GABRIELE
No. 4948558
Notary Public, State of New York
My Commission Expires 03/20/20 11

STATE OF NEW YORK)
)ss:
COUNTY OF NIAGARA)

On the 8 day of November in the year 2007 before me, the undersigned, personally appeared **Henry M. Sloma**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

MARK J. GABRIELE
No. 4948558
Notary Public, State of New York
My Commission Expires 03/20/20 11

Exhibit "I" Annexed to Affidavit of Photiadis.

RECORDED DOCUMENT

BOOK 3421 PAGE 0391

NIAGARA COUNTY CLERK RECORDING PAGE
OFFICE OF THE CLERK COUNTY OF NIAGARA
WAYNE F. JAGOW, COUNTY CLERK
...ty Courthouse, 175 Hawley Street, P.O. Box 461, Lockport, NY 14095
Phone (716) 439-7027 Fax (716) 439-7066

DATE November 1, 2007

Memorandum of Leaseback

(14)

...es In Full)
...Golf Course Corporation
...County Industrial
...opment Agency
...wiston

...RIS BEACH, PLLC
...ain Street, 4th Floor
...P.O. Box 712
... Falls, New York 14302

THIS SPACE RESERVED FOR COUNTY CLERK

...OUNT

...ily ( )Other

...be apportioned

...AX RECEIPT

DOCUMENT # 1010540
BOOK 3421 PAGE 391
NUMBER OF PAGES 14 DEEDS
RECORDED 11/27/2007 02:23:54 P.M.
RECEIPT # 29936 DOCUMENT TOTAL: $77.00
PAID - COUNTY CLERK
WAYNE F. JAGOW

State of New York} ss
County of Niagara}
I do hereby certify that I have
Received on the within Mortgage, being
the amount of the Recording Tax
Imposed thereon & paid at recording.

, 20

...lerk of Niagara County

#2593
REAL ESTATE TRANSFER TAX
$ 0
11/27/200
NIAGARA COUNTY

...he Clerk's endorsement required by section 319 of the Real Property Law of the State of New York
DO NOT DETACH

Exhibit "I" Annexed to Affidavit of Photiadis.

BOOK 342 PAGE 0392

Closing Item No. 12

MEMORANDUM OF LEASEBACK PURSUANT TO
SECTION 291-c OF THE REAL PROPERTY LAW
(Agency to Company)

THIS MEMORANDUM OF LEASEBACK AGREEMENT (the "Memorandum of Leaseback"), dated as of November 1, 2007, is by and between the NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation duly existing under the laws of the State of New York with offices at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York 14132 (the "Agency"), and LEWISTON GOLF COURSE CORPORATION, a corporation duly organized and validly existing under the laws of the Seneca Nation of Indians and authorized to conduct its business in the State of New York, with offices at 310 Fourth Street, Niagara Falls, New York 14303 (the "Company").

1. Reference to Leaseback: Leaseback Agreement, dated as of November 1, 2007 (the "Leaseback Agreement"), whereby the Agency leases certain real property to the Company.

2. Description of the Leased Premises: Certain real property and improvements located at Pletcher Road and Robert Moses Parkway in the Town of Lewiston, Niagara County, New York, as more particularly described on Exhibit A attached hereto (the "Leased Premises").

3. Term of Leaseback: Commencing November 1, 2007 and ending December 31, 2014.

4. Date of Commencement: November 1, 2007.

5. Date of Termination: December 31, 2014.

6. Rights of Extension or Renewal: None.

[Remainder of Page Intentionally Left Blank]

Record and Return to:

Harris Beach PLLC
ATTN: Melinda Boesken
800 Main Street
P.O. Box 712
Niagara Falls, New York 14302

Exhibit "I" Annexed to Affidavit of Photiadis.

[Signature Page to Memorandum of Leaseback]

IN WITNESS WHEREOF, the Agency and the Company have caused this Memorandum of Leaseback to be executed in their respective names, all as of the date first written above.

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Name: Henry M. Sloma
Title: Chairperson

LEWISTON GOLF COURSE CORPORATION

By: _____
Name: E. Brian Hansberry
Title: President & CEO

Exhibit "I" Annexed to Affidavit of Photiadis.

BOOK 3421 PAGE 0394

STATE OF NEW YORK)
) ss:
COUNTY OF NIAGARA)

On the 8 day of November in the year 2007, before me, the undersigned, personally appeared **Henry M. Sloma**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

MARK J. GABRIELE
No. 4948558
Notary Public, State of New York
My Commission Expires 03/20/20[illegible]

STATE OF NEW YORK)
) ss:
COUNTY OF NIAGARA)

On the 8 day of November in the year 2007, before me, the undersigned, personally appeared **E. Brian Hansberry**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

MARK J. GABRIELE
No. 4948558
Notary Public, State of New York
My Commission Expires 03/20/20[illegible]

Exhibit "J" Annexed to Affidavit of Photiadis.

GOLF COURSE CONSTRUCTION AGREEMENT BETWEEN OWNER AND CONTRACTORS

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ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION 3

ARTICLE 4 CONTRACT SUM 4

ARTICLE 5 PROGRESS PAYMENTS 6

ARTICLE 6 TERMINATION OR SUSPENSION 8

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Exhibit "J" Annexed to Affidavit of Photiadis.

GOLF COURSE CONSTRUCTION AGREEMENT BETWEEN OWNER AND CONTRACTORS

THIS AGREEMENT is made as of the 5TH day of JULY 2007.

BETWEEN the CONTRACTORS:

Name: SUE-PERIOR CONCRETE & PAVING, INC.
Address: 1500 UNION ROAD; WEST SENECA, NEW YORK 14224
Attention: DAVID C. PFEIFFER, DIRECTOR
Phone: 716-677-5577
Fax: 716-677-5277

Name: GOLF COURSE CONSTRUCTION, INC.
Address: 1150 VICTORY DRIVE, HOWELL, MI 48843
Attention: GLEN CAVERLY
Phone: 517-545-3681
Fax: 517-545-3798

and the OWNER:

Name: LEWISTON GOLF COURSE CORPORATION
Address: 310 FOURTH STREET, NIAGARA FALLS, NEW YORK 14303
Attention: GARY PAUMEN, OWNER'S REPRESENTATIVE
Phone: 716-299-1100
Fax: 716-501-2881

THE PROJECT is known as: HICKORY STICK GOLF COURSE

THE GOLF COURSE ARCHITECT is:

Name: ROBERT TRENT JONES, GOLF COURSE ARCHITECTS
Address: 705 FOREST AVENUE, PALO ALTO, CALIFORNIA 94301
Attention: BRIAN DOOLEY
Phone: 650-326-3833
Fax: 650-326-6190

Exhibit "J" Annexed to Affidavit of Photiadis.

ARTICLE 1 THE CONTRACT DOCUMENTS

1.1 The Contract Documents consist of the Golf Course Construction Agreement between Owner and Contractors (this "Agreement"), including:

1.1.1 Conditions of the Contract

.1 General - as set forth in the Project Manual dated April 2007, and attached hereto as Exhibit A (the "Project Manual")

.2 Special – as set forth in the Project Manual

.3 Supplementary – as set forth in the Project Manual

.4 Other – as set forth in the Project Manual

1.1.2 Drawings: DATED MARCH 2007 (Engineering)
DATED JUNE 1, 2007 (Architectural)

The parties agree that in the event of inconsistencies between the foregoing drawings relating to the inclusion or exclusion of particular elements of construction, the Architectural drawings dated June 1, 2007 shall control. Owner acknowledges that the Contract Sum set forth in Article 4 hereof contemplates reduction of the required excavation at Lake E as set forth in the Architectural drawings dated June 1, 2007.

1.1.3 Construction Specifications, DATED MARCH 2007, as set forth in the Project Manual

1.1.4 Addenda issued prior to execution of the Contract:
BME CONTRACT ADDENDUM DATED 04/10/07
BME CONTRACT ADDENDUM DATED 04/23/07

1.1.5 The revised schedule of values and unit prices attached hereto as Exhibit B (excluding performance bond and orange fencing in excess of 2,000 linear feet)

1.1.6 Other documents listed in the Agreement and Modifications, including: NONE

1.2 This Agreement, the Notice to Proceed dated July 9, 2007, as attached hereto as Exhibit C ("Notice to Proceed") and all of the other Contract Documents form the "Contract" for construction of the golf course project (the "Project"). The Contract represents the entire and integrated agreement among the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8 (Enumeration of Contract Documents).

ARTICLE 2 THE WORK OF THIS CONTRACT

2.1 The Contractors shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. Contractors agree that they shall be jointly and severally liable for the performance of all Work and other obligations hereunder. For the avoidance of doubt, the parties acknowledge and agree that the following are not included as Work hereunder for the Contract Sum specified in Article 4:

2.1.1 Section E of bid – retaining wall
2.1.2 Section L of bid – PVC liner, 30 mil (replaced with 12" of onsite clay)
2.1.3 Section R of bid – Greens Seedbed mixture

Exhibit "J" Annexed to Affidavit of Photiadis.

2.1.4 With respect to Section S, Contractors agree to purchase sand for the Tee Seedbed Mixture which shall meet the sand specification identified at p. 36 Section 8-04(l) of the Construction Specifications in the Project Manual, but Contractors shall be free to acquire such sand from what ever source/supplier they desire.

2.1.5 Section W of bid – Irrigation

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner. JULY 9, 2007. If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows: NONE REQUIRED

3.2 The Contract Time shall be measured from the date of commencement.

3.3 The Contractors shall achieve Substantial Completion of the entire Work not later than 510 days from the date of commencement, or as follows: NOVEMBER 30, 2008, subject to adjustments of this Contract Time as provided in the Contract Documents. Owner agrees that Contractors shall not be penalized or be deemed to be in breach of this Agreement in the event the foregoing deadline for Substantial Completion is delayed due to adverse weather conditions, the failure of Owner to reasonably and timely install the irrigation system, or the failure of Owner to reasonably and timely procure the greens seedbed mixture. Notwithstanding the foregoing, Contractors agree that Owner shall not be responsible for any increased or additional cost payable to Contractors attributable to such adverse weather conditions.

ARTICLE 4 CONTRACT SUM

4.1 The Owner shall pay the Contractors the Contract Sum in current funds for the Contractors' performance of the Contract. The Contract Sum shall be TWELVE MILLION SEVEN HUNDRED THOUSAND DOLLARS ($12,700,000.00), subject to Section VII.C.1 of the General Conditions set forth in the Project Manual. Contractors agree that the foregoing amount shall be a fixed sum, except to the extent modified in accordance with the General Conditions to account for a change in the scope of Work, or Owner is subject to late payment fees pursuant to Section 7.3 of this Agreement.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner: NONE

4.3 Unit prices, if any, are as follows: NONE

ARTICLE 5 PROGRESS PAYMENTS

5.1 PROGRESS PAYMENTS

5.1.1 Based upon Applications for Payment submitted to the Golf Course Architect by the Contractors and Certificates for Payment issued by the Golf Course Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractors as provided below and elsewhere in the Contract Documents. All parties hereto acknowledge and agree that payments shall be made payable to Sue-Perior Concrete & Paving, Inc., and that upon such payment, Golf Course Construction, Inc. hereby specifically releases Owner from all liability for such payment whatsoever.

5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows: 25TH OF MONTH

Exhibit "J" Annexed to Affidavit of Photiadis.

5.1.3 The Contractors shall submit to the Golf Course Architect, with a copy to Owner, a completed Application for Payment not later than the 25TH day of the month. The Golf Course Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractors, for such amount as the Golf Course Architect determines is properly due, or notify the Contractors and Owner in writing of the Golf Course Architect's reasons for withholding certification in whole or in part. Owner shall forward payment no later than ten (10) days after the receipt of the Golf Course Architect's approval, in whole or in part, all amounts determined to be due and payable. If the Golf Course Architect withholds certification as to particular items, Owner agrees to make payment of the portion of the Application for Payment not in dispute within ten (10) days after receipt of the Golf Course Architect's approval.

5.1.4 Before the first Application for Payment, the Contractors shall submit to the Golf Course Architect a schedule of values allocating the entire Contract Sum to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Golf Course Architect and/or Owner may require. This schedule, unless objected to by the Golf Course Architect and/or Owner, shall be used as a basis for reviewing the Contractors' Applications for Payment.

5.1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. Each Application for Payment shall be in a standard AIA type format and include: (a) an invoice for the Work performed during the previous calendar month (in a standard AIA-type format), prepared in a form reasonably acceptable to Owner (an "Invoice"); (b) a certification that (I) such Application for Payment represents the amount to which Contractors are entitled to pursuant to the terms of this Agreement; and (II) Contractors have paid all amounts that are due and owing to subcontractors (other than amounts for Work included on any unpaid invoice, which will be paid by Contractors upon receipt of Owner's payment of such Invoice); and (c) a partial lien waiver (or, in the case of the final application, a final lien waiver) in a form acceptable to Owner from Contractors and each subcontractor performing Work included in such Invoice.

5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of 5% (subject to the conditions presented in Article 5.1.8 of this Agreement). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Article VII of the General Conditions;

.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing (subject to the applicable terms of the General Conditions), less retainage of 5% (subject to the conditions presented in Article 5.1.8 of this Agreement) except with respect to Tee sand for which no retainage shall be withheld;

.3 Add, on the first available Application for Payment after completion of any major division of Work (as determined by the Architect), any amount previously held as retainage for this Major Division of Work

.4 Add an amount such that the total retainage held by the Owner is no greater than 5% of the total contract amount;

.5 Subtract the amount of previous payments by the Owner;

DJP
G.C

Exhibit "J" Annexed to Affidavit of Photiadis.

.6 Subtract amounts, if any, for which the Golf Course Architect has withheld or nullified a Certificate for Payment as provided in Article 5.1.3 of the Construction Agreement.

5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

.1 Add, upon Substantial Completion of the Work and creation and approval of a Punch List, an amount sufficient to increase the total payments to the Contractors to the full amount of the Contract Sum, less the sum of a) 100% of the agreed upon Punch List value, and b) 100% of any incomplete Contract Work or Work as to which the Golf Course Architect has not certified payment.

.2 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractors or by issuance of Change Orders affecting final Completion, and the Golf Course Architect so confirms, the Owner shall, upon Application for Payment by the Contractors and certification by the Golf Course Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted.

5.1.8 Reduction or limitation of retainage shall be as follows:

.1 With respect to each progress payment, Owner shall retain 5% of the progress payment on labor, installation and appropriately stored materials excluding Tee sand for which no retainage shall be withheld.

.2 On the first available Application for Payment after completion of any Major Division of Work Owner shall release any amount previously held as retainage for this Major Division of Work.

.3 DELETED

.4 At Substantial Completion, retainage shall be reduced to 100% of the estimated value of the Punch List Work remaining, provided that Owner may also withhold any additional amounts described in Section 5.1.7.

5.1.9 Except with the Owner's prior approval, the Contractors shall not make payments to suppliers for materials or equipment which have not been delivered and stored at the site.

5.2 FINAL PAYMENT

5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractors when:

.1 The Contractors have fully performed the Contract except for the Contractors' responsibility to correct Work, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 the Golf Course Architect issues the Certificate of Final Completion, which constitutes a further representation that conditions listed as precedent to the Contractors' being entitled to final payment have been fulfilled; and

.3 Data has been received in such form as required by Owner from the Contractors, establishing payment for satisfaction of Contractors' obligations, such as,

Exhibit "J" Annexed to Affidavit of Photiadis.

.1 receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract for Construction, including data from subcontractors and suppliers;

.2 If required by Owner, an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or will be otherwise satisfied and paid within thirty (30) days of receiving the Owner's final payment;

.3 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner;

.4 A written statement that the Contractors know of no substantial reason that the insurance will not be renewable to cover the period required by the Contract;

.5 Consent of Surety, if any, to Final Payment.

5.2.2 The Owner's final payment to the Contractors shall be made no later than ten (10) days after the issuance of the Architect's final Certificate for Payment and the receipt of all items indicated in Article 5.2.1.

ARTICLE 6 TERMINATION OR SUSPENSION

6.1 The Contract may be terminated in accordance with the provisions of Article III, Section I of the General Conditions.

6.2 The Work may upon seven (7) days prior written notice, be suspended by the Owner or Contractors if it is proven that a substantial breach of a provision of the Contract Documents has occurred. Owner acknowledges that failure to make timely payment after written notice and a commercially-reasonable opportunity to cure (which in no event shall be more than five (5) days from the date of such notice) shall constitute a substantial breach hereunder entitling Contractors to suspend performance of Work.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 Where the reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Owner agrees that it has waived the requirement set forth in Article V, Section A of the General Conditions, that prior to commencement of the Work, Contractors shall provide to Owner a Payment and Performance Bond covering the faithful performance of this Agreement and the payment of all obligations arising under this Agreement.

7.3 Late Payment Charge and Interest On Unpaid Balances. If a payment is not received by Contractor on or before the date due as provided in this Agreement then a late payment charge of 2% on the amount due and payable on that invoice shall be immediately due and payable. Payments due and unpaid under this Agreement shall bear interest from ten (10) days after the date payment is due at the rate of 1% percent per month.

7.4 The Owner's Representative is: GARY PAUMEN
LEWISTON GOLF COURSE CORPORATION

Exhibit "J" Annexed to Affidavit of Photiadis.

310 FOURTH STREET,
NIAGARA FALLS, NEW YORK 14303

With copies of all correspondence
To be sent to:

GENERAL COUNSEL
LEWISTON GOLF COURSE CORPORATION
310 FOURTH STREET
NIAGARA FALLS, NEW YORK 14303

7.5 The Contractors' Representatives are:

DAVID C. PFEIFFER
SUE-PERIOR CONCRETE & PAVING, INC.
1500 UNION ROAD
WEST SENECA, NEW YORK 14224

GLEN CAVERLY
GOLF COURSE CONSTRUCTION, INC.
1150 VICTORY DRIVE
HOWELL, MI 48843

7.6 Neither the Owner's nor the Contractors' Representative shall be changed without 10 days written notice to the other party. Any replacement Representative designated by a Contractor shall have such experience and qualifications as may be necessary or appropriate to enable him to perform his duties hereunder.

ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS

8.1 The Contract Documents, except for Modifications issued after the execution of this Agreement, are enumerated as follows:

8.1.1 The Agreement is this executed document.

8.1.2 The General Conditions are The General Conditions of the Golf Course Construction Agreement set forth in the Project Manual.

8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual.

8.1.4 The Specifications are those contained in the Project Manual.

8.1.5 The Drawings are as follows:

DATED MARCH 2007 (Engineering)
DATED JUNE 1, 2007 (Architectural)

The parties agree that in the event of inconsistencies between the foregoing drawings relating to the inclusion or exclusion of particular elements of construction, the Architectural drawings dated June 1, 2007 shall control. Owner acknowledges that the Contract Sum set forth in Article 4 hereof contemplates reduction of the required excavation at Lake E as set forth in the Architectural drawings dated June 1, 2007.

8.1.6 The Addenda, if any, are as follows: BME CONTRACT ADDENDUM DATED 04/10/07; BME CONTRACT ADDENDUM DATED 04/23/07
Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

Exhibit "J" Annexed to Affidavit of Photiadis.

8.1.7 Other documents, if any, forming part of the Contract Documents are as follows: Notice to Proceed

[Signature Page Follows]

Exhibit "J" Annexed to Affidavit of Photiadis.

This Agreement is entered into as of the day and year first written above and is executed in at least four original copies, one of which is to be delivered to each of the Contractors, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

LEWISTON GOLF COURSE CORPORATION

By: _____
Owner (Signature)

E. BRIAN HANSBERRY, PRES. + CEO
(Printed name and title)

8-9-07
(Date)

GOLF COURSE CONSTRUCTION, INC.

By: _____
Contractor (Signature)

Claud M Caverly President
(Printed name and title)

8-9-07
(Date)

SUE-PERIOR CONCRETE & PAVING, INC.

By: _____
Contractor (Signature)

DAVID C. PALAFOX
(Printed name and title)

8-9-07
(Date)

Exhibit "K" Annexed to Affidavit of Photiadis.

COURT OF APPEALS
THE SENECA NATION OF INDIANS

****

Henry Lloyd Jacobs, Maxine Dowler,
Robert W. Jones and Senecas for Justice
and Preservation (SJP)
Appellant(s)

Vs.

Michael "Mickey" Brown
and Seneca Niagara Falls Gaming
Corporation (SNFGC)
Respondent(s)

BENCH RULINGS

In the Matter of the Appeal and Stay of the Peacemaker's Court Decision of December 31, 2003.

TRO #1129-03-1

****

PRESENT:
Henry Lloyd Jacobs, Appellant
Maxine Dowler, Appellant
Robert W. Jones, Appellant
Michael "Mickey" Brown, Respondent

APPEARANCE(S):
Barry Brandon, Atty. for Respondent

COURT OF APPEALS

At a session of the Court of Appeals held on Monday, June 7, 2004, on the Allegany Indian Reservation, Judicial Complex Building, 3582 Center Road, Salamanca, New York with the Honorable Maxine E. Black, Emery Williams, Sandra Abrams and Maurice A. John, Sr. presiding, with all parties being duly notified, and all testimony and evidence submitted taken into consideration, it is the evidentiary findings of this court as follows:

ISSUE APPEALED:

This appeal was filed by Robert W. Jones, Henry Lloyd Jacobs and Maxine Dowler in opposition to a final order of the Allegany Peacemakers' Court dated December 31, 2003.

EVIDENCE REVIEW:

Before this Court issues a final order or determination regarding TRO #1229-03-1, several bench rulings must be made concerning the chain of evidence submitted in trial court and oral testimony. Pursuant to the SNIRACP, Section 202 (c) states: "The Court of Appeals shall review the determinations of law, custom and fact made by the Trial Court. The Court of Appeals shall accept the factual determinations made by the Trial Court, except where such determinations are clearly contrary to the evidence submitted at trial."

Exhibit "K" Annexed to Affidavit of Photiadis.

These Bench Rulings concern **evidence only** and are **not appealable** to the Supreme Appellate Court or Tribal Council because these rulings are neither part of a final order or determination, as defined in the CPR's and Appellate Procedure Rules. It is this courts lawful opinion that important factual determinations of evidence are **clearly** contrary to the evidence at trial and the determinations of law, custom and fact are clearly contrary to the Seneca Constitution and Seneca Law.

First, the Court of Appeals would like to point out that a near conspiracy exists in that the same law firm of Akin Gump Strauss Hauer & Feld, LLP represents G. Michael Brown, each and every tribally incorporated governing gaming board of directors, and the Seneca Nation Tribal Council or Supreme Appellate Court. The conflict is that the Appellees legal counsel **penned** the tribal incorporation, the corporate structure or charters of each gaming corporation and is now defending each tribal enterprise and potentially all the judges on the Supreme Appellate Court or Seneca Nation Tribal Council. This court is merely pointing out this critical unethical problem of conflict of interest before any case is appealed to the Federal level. Our Tribal Council is urged to take the necessary immediate action to remedy this conflict of interest. Perhaps, using another law firm and different Seneca Nation **Department of Justice lawyers**, who allowed this situation to exist and threatens the Seneca Nation People to potentially bear the consequences. This important flaw in legal representation and advice should be of paramount importance to all Seneca Tribal members because of the possibility of serious legal litigation in the future. The Seneca Nation Constitution charges the Seneca Nation government to perpetuate our race and protect our sovereign territory. Legal advice that is contrary to the Seneca Constitution **is Unconstitutional.**

BENCH RULING #1:

This Court has sought and been provided with evidence in the forms of oral testimony, exhibits and letters, which evidence includes, but not limited to the resolution of the Seneca Nation Council, Seneca Gaming Corporate Charter Law Enactment (CN: S-8-I-02-03) held August 1, 2002, establishing the Seneca Gaming Corp. ("SNC"), the Respondents, SNGGC, the Seneca Erie Gaming Corp. ("SEGC") and the Seneca Allegany Gaming Corp. ("SAGC"), the Corporate Charters of SGC and SNFGC, and the Seneca Nation Gaming Compact with the State of New York; and also, creating and including Respondent G. Michael Brown's title of CEO. This Court's Bench Ruling is based upon **evidence** before it and therefore is not appealable.

The Appellees seek a dismissal of the action based on sovereign immunity. The Appellees argue that they are "by design" sovereign and have sovereign

Exhibit "K" Annexed to Affidavit of Photiadis.

immunity and, therefore, are not subject to the jurisdiction of this Court. Seneca Nation Council, Seneca Gaming Corporate Charter Law Enactment (CN: S-8-I-02-03) held August 1, 2002, establishing the Seneca Gaming Corp. ("SNC") did not provide authority to support the formation of **unconstitutional** entities and, further, holds that sovereignty can only be conferred on an entity to the extent that the Nation has retained control of the entity. There is no clear and explicit reference to sovereignty for the autonomous and independent tribally incorporated entities.

The Appellants argue that the Company shall constitute a governmental instrumentality of the Nation entitled to all of the privileges and immunities of the Nation. This case is a matter within the jurisdiction of this Court and the Peacemaker's Court and that the Respondents are not sovereign entities entitled to Seneca Constitutional Governmental Department powers. The Seneca Nation Council Resolution known as the Seneca Gaming Corporate Charter Law Enactment of August 1, 2002 granted to the Corporation pursuant to its charter (sue or be sued clause), the power to waive its immunity from suit. The power to be exercised by corporate resolution is hereby ruled **Unconstitutional.** The Third Amended Restated Charter of the Seneca Gaming Corporation, #7. Ability to Sue, and Be Sued Clause, cannot be included under paragraph #4 of afore mentioned Council Resolution of August 1, 2002.

The SGC's Charter states there must be only four Senecas out of seven board members, and since a quorum is four members of the Board of Directors and action may be taken by a majority of the quorum, any action may be taken by the three members who are not even Senecas. Even if there were a practice that the four appointed Senecas be elected Councillors, any action could still be taken without any Councillors participating.

Regardless, even if all actions required four Seneca Councillors' approval, this would not satisfy the mandate of the Constitution which requires ten Councillors for a quorum and ten Councillors for appropriation of money and at least nine Councillors (a majority of all elected) to conduct any activity. So, clearly, there is not even a requirement in the SGC Charter that any members be Seneca Councillors. However, even if there were a requirement or a practice that there be four Seneca Councillors, this would not provide the necessary control over the activity. Thus, the scheme set forth for action in the SGC Charter is also in derogation of the Constitution. The SNFGC, SEGC and SAGC have **identical provisions** for the conduct of business and also require four Senecas on their Boards, but they **differ** from SGC in that **the Seneca Nation Council** <u>does not</u> **appoint the directors, rather, the SGC does:**

Exhibit "K" Annexed to Affidavit of Photiadis.

9. Management of the Company

a. There is hereby established a Board of Directors of the Company, the purpose of which is to carry out the duties and powers of the Company as set forth in this Charter.

b. There shall be no less than four (4) nor more than seven (7) members of the Board, not less than four (4) of whom shall be Seneca and / or officers of the executive branch of the Nation. No employee of the Company may serve on the Board unless such employee is both a senior executive officer of the Company and a member of the Nation.

c. The SGC Board shall appoint all members of the Board of Directors of the Company. Vacancies shall also be filled by appointment of the SGC Board. An appointment of a Board member shall take effect from the date and time at which the SGC Board adopts the resolution authorizing such appointment.

(Amended and Restated Charter of the Seneca Niagara Falls Gaming Corporation, Section 9, page 12)(emphasis added).

since the SGC makes the appointment to the other corporation boards, it further **Unconstitutionally** removes the control of the activities from the duly elected Tribal Council and ultimately the Seneca Nation.

Therefore, it is this Courts Bench Ruling that the word "**sovereign immunity**" cannot be used in reference to any arguments set forth by the Appellees in this case. Furthermore, it is the Courts opinion that Tribally Incorporated Entities should not be viewed as one in the same as the Seneca Nation for the purpose of "sovereign immunity" as defined in the Seneca Constitution. Appellees legal counsel stated at the hearing held on June 7, 2004, page 25: "There are Council members that sit on these boards. In fact my **suggestion** is that always that a majority be Council members because I want those corporations to be in a position to be able to conduct business and to be immune from suit just as the Nation is", is a statement by Appellees legal counsel that reinforces the questionable rational of the usage of the term "**sovereign immunity.**"

BENCH RULING #2:

The Court of Appeals rules that the Appellees are subject to the jurisdiction of this Court and subject to the jurisdiction of the Nation's Courts. In asserting their alleged sovereignty, the Appellees have placed at issue the validity of the Respondent SNFGC, and its parent, SGC, and the other corporations which are similar to SGC: the SEGC and the SAGC. For the reasons set forth below, this Court holds that the creation and continued existence of the Gaming Corps. is UNCONSTITUTIONAL and that the Gaming Corporations are a nullity.

The Appellees claim that the SGC was formed under the authority of Section I of the Constitution of the Seneca Nation of Indians of 1848, as Amended. Section

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I, set forth below in its entirety, contains NO SUCH AUTHORITY to create such a corporation.

SECTION I.

Our government shall have a legislative, executive and judiciary department.

The legislative power shall be vested in a Council of sixteen members, who shall be known and called the Councilors of the Seneca Nation of Indians, eight Councilors elected to the Council shall be from the Cattaraugus Reservation, and eight Councilors elected to the Council shall be from the Allegany Reservation. Councilors shall be elected for four-year terms, except for the November, 1978 election. The staggered terms will be determined by the four Councilors having obtained the highest of votes from the Allegany from the Allegany and Cattaraugus Reservations. The four Councilors, per reservation, with the least number of majority votes shall serve a two year term. No person shall be eligible for the office of Councilor unless he is an enrolled member of the Nation, has attained age twenty-one (21), and has resided on the Reservation he represents for at least one (1) year prior to the date on which he takes office

The first election under this Constitution will be held on the first Tuesday of November, 1949, and thereafter on the first Tuesday of November every second year. The vote of the Nation shall be by single ballot containing the names of all party candidates and independent candidates, and shall be cast by the individual voter, out of presence of others, and be cast by him, without inspection by the Board of Inspectors. That on Election Day the polls shall be open at 9:00 a.m. and close at 7:00 p.m

On or before the 15th day preceding the biennial election, all candidates shall file with the Clerk of the Nation their name and office, and no further candidate shall be allowed to file for office after the 15th day preceding the biennial election, except in case of death, substitution will be permitted on party tickets so filed.

This single ballot shall be printed at the expense of the Nation, and by the Clerk distributed to the Board of Electors twenty-four 924) hours before the date of the election
(Constitution of the Seneca Nation of Indians of 1848, as Amended, Section I,).

The Constitution does provide that power shall be vested in sixteen elected Councilors.

(Constitution, Section I):

The legislative power shall be vested in a Council of sixteen members, who shall be known and called the Councillors of the Seneca Nation of Indians, eight Councillors elected to the Council shall be from the Cattaraugus Reservation, and eight Councillors elected to the Council shall be from the Allegany Reservation., Councillors shall be elected for four-year terms, except for the November, 1978 election. The staggered terms will be determined by the four Councillors having obtained the highest number of votes from the Allegany and Cattaraugus Reservations. The four Councillors, per reservation, with the least number of majority votes shall serve a two year term. No person shall be eligible for the office of Councillor unless he is an enrolled member of the Nation, has attained age twenty-one (21), and has resided on the Reservation he represents for at least one (1) year prior to the date on which he takes office.
(Constitution of the Seneca Nation of Indians of 1848, as Amended, Section I,)

The Constitution, in Section II, further provides that:

Ten of said Councillors when assembled in session regularly organized shall constitute a quorum for the transaction of business.

In all appropriations of public money an affirmative vote of at least ten of the whole number elected shall be necessary. It shall not be lawful for the Council to make appropriations of public money in any one year exceeding the sum of the aggregate revenue of that year; but the Council shall

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make appropriation of public money to carry on the government in extraordinary cases for the welfare of the Nation.
(Constitution of the Seneca Nation of Indians 1848, as Amended, Section II,).

The Constitution provides that the activities of the Nation shall be controlled by a Council which is elected by the people of the Nation. To allow activities and appropriations of the Nation's corporations to be controlled by any other entity or method is **unconstitutional.** The **"waiver of sovereign immunity"** for the purpose of selling stock or securing loans can be considered appropriations because it is a liability of the Seneca Nation and the Seneca People.

The SGC, in its so-called Charter, is described as having an "autonomous existence, separate and distinct from the Nation":

3.a. The Company shall constitute a governmental instrumentality of the Nation, having autonomous existence separate and distinct from the Nation.
(Third Amended and Restated Charter of the Seneca Gaming Corporation, Section3, page 2; emphasis added)

and that the SGC will exist forever:

The Company shall have perpetual succession in its corporate name.
(Third Amended and Restated Charter of the Seneca Gaming Corporation, Section 6, page 4).

There is absolutely no authority set forth in Section I of the Constitution, or any other section of the Constitution, for the establishment of an autonomous entity, separate and distinct from the Seneca Nation, to carryout and/or control Nation corporate activities. Such an entity is a government within the government and is **unconstitutional** and, therefore, a nullity.

The SNFGC and the SEGC and the SAGC have exactly the same descriptions in their Charters as being autonomous and separate and distinct and, therefore, they, too, are **unconstitutional** and are nullities.

Based on all of the evidence before this Court of Appeals, Bench Ruling # 2 is that the Gaming Corporations are subject to the jurisdiction of the Nation's Courts and that, in both their existence and operation, such corporations are **unconstitutional** as written and presented in evidence. Therefore, this Court hereby declares these corporations to be a nullity. The decision of this court, being based on evidence is **final** and **not** appealable.

FURTHER, that it is recommended that the Seneca Nation Council to reconstitute these entities as committees of the Council under the complete control of the Council. By making the Seneca Nation Corporate entities controlled and operated by committees of the Seneca Nation Council, the Seneca Nation Council would have complete authority and control over all of the activities, operations and financial liabilities previously contracted by the now nullified Gaming Corporations.

Exhibit "K" Annexed to Affidavit of Photiadis.

THAT these bench rulings are to be effective immediately and applied to all future Seneca Nation Corporate litigation as in accordance and compliance with the Seneca Nation Constitution of 1848 as amended.

Aug 10, 2004
Date

Hon. Sandra Abrams - Allegany

Hon. Maxine E. Black - Allegany
Admin. Judge

Hon. Maurice A. John, Sr. – Allegany

Hon. Emery Williams – Cattaraugus
Sr. Judge

xc: File
H. Jacobs, Appellant
M. Dowler, Appellant
M. Brown, Respondent
B. Brandon, Atty. for Respondent
Alleg. Peacemaker's Court
Catt. Peacemaker's Court
SNI Council
Catt. Clerk's Office

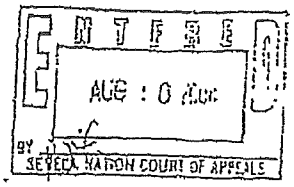


Exhibit "L" Annexed to Affidavit of Photiadis.

Seneca Nation of Indians

President - Rickey L. Armstrong, Sr.
Clerk - Sheila L. Kettle

P.O. BOX 231
SALAMANCA, NEW YORK 14779

Tel. (716) 945-1790
FAX (716) 945-1565

Treasurer - Shelley R. Huff

12837 ROUTE 438
IRVING, NEW YORK 14081

Tel. (716) 532-4900
FAX (716) 532-6272

SUPREME APPELLATE COURT

ORDER

Henry Lloyd Jacobs, Maxine Dowler, Robert W. Jones and 'Senecas for Justice and Preservation,' (SJP) vs. Michael "Mickey" Brown and Seneca Niagara Falls Gaming Corporation (SNFGC)

Re: "Bench Rulings - TRO #1129-03-1"

At a session of the Supreme Appellate Court held on Tuesday, August 17th 2004, on the Cattaraugus Territory, with a quorum being present, the court considered an Application for Writ of Permission, filed on August 13th 2004 by Seneca Niagara Falls Gaming Corporation, from the Nation's Court of Appeals "Bench Rulings" in the above matter dated August 10th which were served upon the Applicant by mail on August 12th, and upon granting of said Writ by affirmative vote of 10 Judges, upon the Court's own motion IT IS HEREBY ORDERED:

1. By operation of the Seneca Nation of Indians Rules of Appellate Civil Procedure, RACP, Section 304, "Writ of Permission, Stay on Appeal," subsection (b),[1] Applicant's filing of its application for Writ of Permission resulted in an automatic stay of all the proceedings below. By operation of the rule, pending further order of this

[1] The rule states: Section 304. Writ of Permission; Stay on Appeal

(b) The filing of the Application for a Writ of Permission shall stay the execution of the final order and/or judgment of the Trial Court and/or judgment of the Court of Appeals for the duration of the appeal, provided, that any injunctive relief ordered by the Trial Court or the Court of Appeals to preserve the status of the parties shall remain in force pending the outcome of the Application. If the Supreme Appellate Court denies Application for Writ of Permission, the automatic stay shall be removed upon such denial. If the Court grants a Writ of Permission, the stay shall remain in force pending the outcome of the appeal. Either the Supreme Appellate Court or the Court of Appeals may set aside the automatic stay pursuant to a party's motion, upon notice to all other parties, where the Court determines that the stay threatens immediate and irreparable harm to the moving party.

Exhibit "L" Annexed to Affidavit of Photiadis.

Court to direct or otherwise permit further action by the court below, the court below has no further jurisdiction in the above captioned matter. Moreover, upon the granting of the Writ application, upon its own motion, the Supreme Appellate Court specifically orders the Court of Appeals Judges, Maxine E. Black, Maurice A. John, Sr., and Sr. Judge Emery Williams from taking any action with respect to the above captioned matter, whether collectively or individually.

2. The "Bench Rulings" below constitute little more than a thinly veiled attempt to conclusively determine various issues of fact, law and Constitutional interpretation while purporting to act as 'interim rulings' which may not be appealed. One can hardly imagine a more final and conclusive 'bench ruling' than a death sentence, and the ruling below not only purported to pronounce multiple duly enacted legislative enactments as "unconstitutional" but also apparently intended to wipe out the very existence of the Corporations duly created by legislative enactments by calling each of them a 'nullity.' This Court notes in passing that RACP 304(b), see footnote one below, explicitly references "stay of execution of the final order and/or judgment of the Trial Court and / or judgment of the Court of Appeals...." Accordingly, this order deals with the 'judgment' of the above named Judges acting below, regarding various issues of fact, law and Constitutional interpretation which if undisturbed would have otherwise remained as conclusive determinations and this Court does so without regard to what the Judges chose to call their order.

Moreover, the Constitution of the Seneca Nation of Indians of 1848, as amended, controls the question of what may be subject to appeal to this Court. If any reading of any rule, order or 'bench ruling' might otherwise tend to contradict the Constitution then that rule must yield. Section IV of the Constitution states (at Page 5, paragraph two, the first sentence): "*All determinations of the Court of Appeals* shall be subject to appeal...upon the granting of a writ of permission by a vote of not less than seven Councillors." *Emphasis added.* "All" means "all." Any determination by the Court of Appeals that states it is not reviewable by this Court by its very terms violates the express language of the Constitution of 1848, as amended. The Supreme Appellate Court may review all determinations of the Court of Appeals, and the Court of Appeals Judges, individually and collectively, are hereby specifically ordered to cease and desist from signing any further orders stating or suggesting that such orders may not be appealed.

In its 'bench ruling' the court below states that Section I of the Constitution of the Seneca Nation of Indians of 1848, as amended, "contains NO SUCH AUTHORITY" to create corporations. Emphasis added by the Court of Appeals. As reprinted in its entirety on the fifth page of the second so-called bench ruling from the court below, Section I of the Constitution of the Seneca Nation of Indians of 1848, as amended, states (See, 'bench ruling' at page 5 or the Constitution itself at page one, second paragraph, first sentence):

> "The legislative power shall be vested in a Council of sixteen members, who shall be known as the Councillors of the Seneca Nation of Indians...." Emphasis added by the Supreme Appellate Court.

Exhibit "L" Annexed to Affidavit of Photiadis.

The Seneca Nation of Indians has a longstanding history of creating Nation entities by duly enacted Tribal Council resolution, such resolutions more typically than not specifically detailing the rights and responsibilities as well as the duties and obligations of each such entity. Such entities visibly exist and serve vital government functions across all the Nation's territories - from housing to health, from education to enterprises. The legislative power which created each such entity is no less valid than the enactments governing the judiciary, the ethical norms to be followed by Nation officials and even the Nation's electoral processes. Such laws govern conduct relevant to such laws and the duly enacted Charters of the Nation's entities govern the Nation's duly created corporate entities.

Each of the Nation's Class III Gaming related entities, the Seneca Gaming Corporation, SGC; the Seneca Niagara Falls Gaming Corporation, SNFGC; the Seneca Erie Gaming Corporation, SEGC; and the Seneca Territory Gaming Corporation, STGC; were duly enacted under the legislative power vested in the Tribal Council by Section I of the Nation's Constitution. Their valid and continuing existence may be defined by the duly enacted Charters via which Tribal Council enacted them. Moreover, their rights and responsibilities as well as their duties and obligations have been firmly established not only via their charters but also via established Nation legal precedent (See Williams v Seneca Nation Enterprises, Seneca Nation App.Ct., November 9th, 1991, cited for the proposition that the Nation and its entities possess sovereign immunity and are immune from unconsented suit).

Any bench ruling, judgment or order of any type that may state otherwise, or may be misinterpreted as stating otherwise, must not be allowed to stand, lest the Nation's members suffer the consequences of such improvident judgment.' Accordingly, the "Bench Rulings" in the above matter dated August 10th from the Nation's Court of Appeals and which were served upon the Applicant by mail on August 12th are hereby REVERSED, and no party shall take any action with respect thereto pending further order of this Court.

IT IS FURTHER ORDERED directing that the SGC shall submit any application for costs and fees to the Supreme Appellate Court Clerk/Administrative Officer within two weeks of service of this order.

SO ORDERED.

CERTIFICATION

I, the undersigned administrative officer of the Supreme Appellate Court and Clerk of the Seneca Nation of Indians, do hereby certify that the Tribal Council of the Seneca Nation of Indians composed of 16 members, of whom 12 constituting a quorum were present at the Supreme Appellate Court Session duly called, noticed convened this 17th of August 2004, that the foregoing decision was duly adopted at such session by the affirmative action vote of 10 members.

Dated this 17th of August, 2004.

SHEILA L. KETTLE, ADMINISTRATIVE OFFICER
SENECA NATION OF INDIANS

(SEAL)

Exhibit "M" Annexed to Affidavit of Photiadis.

COURT OF APPEALS
THE SENECA NATION OF INDIANS
****
Henry Lloyd Jacobs, Maxine Dowler,
Robert W. Jones and Senecas for Justice
and Preservation (SJP)
Appellant(s)

Vs. TRO #1129-03-1

Michael "Mickey" Brown
and Seneca Niagara Falls Gaming
Corporation (SNFGC)
Respondent(s)
****

PRESENT:
Henry Lloyd Jacobs, Appellant
Maxine Dowler, Appellant
Robert W. Jones, Appellant
Michael "Mickey" Brown, Respondent

APPEARANCE(S):
Barry Brandon, Atty. for Respondent

COURT OF APPEALS
DECISION

At sessions of the Court of Appeals held on Friday, January 23, 2004 with all Court of Appeals Judges in attendance and Monday, June 7, 2004, on the Allegany Indian Reservation, Judicial Complex Building, 3582 Center Road, Salamanca, New York with the Honorable Maxine E. Black, Emery Williams, Sandra Abrams and Maurice A. John, Sr. presiding, with all parties being duly notified, and all testimony and evidence submitted taken into consideration, it is the finding of this court as follows:

ISSUE APPEALED:

On December 29, 2003, tribal members Henry Lloyd Jacobs, Maxine Dowler and Robert W. Jones and Senecas for Justice and Preservation (SJP), filed an action for a temporary restraining order in Peacemakers' Court, the Nation's trial court, against G. Michael Brown, as President and CEO of SNFGC, and SNGGC attempting to enjoin Mr. Brown and SNFGC from making a $38 million exclusivity payment to New York State pursuant to the Compact. On December 31, 2003, the Peacemakers' Court dismissed the plaintiffs' complaint. On January 3, 2004, the plaintiffs filed an appeal to the Nation's Court of Appeals. Pursuant to: Section

Exhibit "M" Annexed to Affidavit of Photiadis.

202(c) which placed an automatic stay of the final order and / or judgment of the Trial Court was in effect for the duration of the appeal.

REVIEW:

The United States Indian Civil Rights Act states that no "Indian Tribe" shall "deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law." *Title 25 of United States Code, Section 1302 (8).*

A United States Federal Law created Indian Gaming. The Indian Civil Rights Act must be turned to, in order to protect the forgotten individual tribal members right to due process. There is no "Bill of Rights" allowed in the Seneca Constitution of 1848. It was created to form a Constitutional form of government to serve the Seneca People. The Seneca Constitution is specific and cannot be subject to just the interpretation of the Seneca Nation Justice Department and all other "outside" legal experts.

The Washington, D.C. Gump law firm submitted three documents to this court, including: the true and correct copy of the **August 1, 2002 Seneca Council Resolution** (CN: S-8-1-02-03) entitled SENECA GAMING CORPORATE LAW ENACTMENT under Section I of the Constitution of the Seneca Nation of Indians of 1848, as amended, a copy of the **Nation – State Gaming Compact Between the Seneca Nation of Indians and the State of New York** executed on August 18, 2002 and deemed approved by the Secretary of the Interior on October 25, 2002, under the legal authority of the Indian Gaming Regulatory Act of 1988 (IGRA), 25 USC 2701-2721 and **corporation charters of each of the four Nation gaming corporations.** The SGC was described as the primary holding company and the three other corporations were listed as subsidiaries, including Seneca Niagara Falls Gaming Corporation (SNFGC), Seneca Territory Gaming Corporation (STGC) and the Seneca Erie Gaming Corporation (SEGC). The charters of each were described as virtually identical to that of SGC. The SNFGC was created on August 1, 2002, the STGC on September 20, 2003 and SEGC on August 9, 2003. No Gaming Corporation records were submitted to this Court. Two SNI case laws were also cited and included: Williams vs. Seneca Nation Enterprises. (SNI Supreme Appellate Ct. 1991) and finally Cooper vs. SGC et. al., (SNI Peacemaker Ct. 2002).

The Gump law firm was permitted by this Court to allow for lawyers, Brandon and Araujo, to represent all the Respondents in this case.

Background:

On June 16, 2004, Justice Makowski of the Supreme Court of the State of New York agreed with the plaintiffs and held that the Compact provisions allowing

Exhibit "M" Annexed to Affidavit of Photiadis.

the Nation to locate a Class III gaming facility in Erie County outside the City of Buffalo is UNCONSTITUTIONAL. The Court's decision further permanently restrained and enjoined (1) Governor Pataki and the State of New York from any action or activity that would assist the Nation in owning and operating a Class III gaming casino in Erie County other than the City of Buffalo and (2) Uniland from the sale or transfer of the Cheektowaga Site to us.

The New York State Supreme Courts decisions pertains to the relationship between the compact and the New York State Constitution. This court system has not been included in that case.

On several occasions the Respondents argue that this court does not have **Jurisdiction** (October 30, 2002, CA #0919-02 based on the v Cooper decision and enjoys **Sovereign Immunity** authorized by the August 1, 2002 (S-8-1-02-03) and case law of the May 23, 1991, **Jane Williams** decision.

A sui generis Contempt of Court Proceeding was held on Thursday, February 19, 2004, against **G. Michael Brown**, who was charged and found guilty of Contempt of Court. **G. Michael Brown**, who stated that he is an attorney, denied knowing that an automatic stay is in place when a Peacemaker Court final order is appealed to the **Seneca Nation of Indians Court of Appeals**. **Mr. G. Michael Brown** was fined $75.00 (amount fixed at that date) plus court costs. This amount was $455.00. **Mr. G. Michael Brown** refused to pay. On March 1, 2004, a letter was sent from this court to Seneca Nation Comptroller to begin the garnishment of Seneca Nation employee **Mr. G. Michael Brown**. On March 3, 2003 Mr. G. Michael Brown sent a check in the amount of $1,355.00 which **concluded and satisfied his the separate Contempt Procedure.**

On August 13, 2004, the Respondents made application to the Clerk of the Court for a Writ of Permission to appeal the case to the Supreme Appellate Court. The Court of Appeals notified the Seneca Nation Tribal Council that there can be no Writ of Permission granted in the separate **Brown Contempt Procedure** because it was **final and conclusive**. The final order in the immediate action of TRO #1129-03-1 **Jones v. Brown, etc.** is **pending.**

In this Court's August 10, 2004 Decision, the Court wrote:

> **First,** the Court of Appeals would like to point out that a near conspiracy exists in that the same law firm of Akin Gump Strauss Hauer & Feld, LLP represents G. Michael Brown, each and every tribally incorporated governing gaming board of directors, and the Seneca Nation Tribal Council or Supreme Appellate Court. The conflict is that the Appellees legal counsel **penned** the tribal incorporation, the corporate structure or charters of each gaming corporation and is now defending each tribal enterprise and potentially all the judges on the Supreme Appellate Court or Seneca Nation

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Tribal Council. This court is merely pointing out this critical unethical problem of conflict of interest before any case is appealed to the Federal level. Our Tribal Council is urged to take the necessary immediate action to remedy this conflict of interest. Perhaps, using another law firm and different Seneca Nation Department of Justice lawyers, who allowed this situation to exist and threatens the Seneca Nation People to potentially bear the consequences. This important flaw in legal representation and advice should be of paramount importance to all Seneca Tribal members because of the possibility of serious legal litigation in the future. The Seneca Nation Constitution charges the Seneca Nation government to perpetuate our race and protect our sovereign territory. Legal advice that is contrary to the Seneca Constitution is Unconstitutional.

A memorandum, dated August 16, 2004 from Akin Gump Strauss Hauer & Feld, LLP was given to the Seneca Nation Department of Justice and to the Seneca Nation Council.

The memorandum recited:

> If the appellate court decision is upheld the immediate financial impact on the Nation will potentially include, but are not limited to the following:
>
> - Return of bond proceeds plus a default premium to the note holders (including $25 million dividend previously distributed to the Nation).
> - Acceleration of the $80 million Freemantle Loan and re-payment of the loan to Freemantle.
> - Recourse against the nation for both of the above financings due to breaches of representations and warranties and covenant defaults contained in the Nation Agreements entered into in connection with the above financings.
> - Exposure to the Internal Revenue Service for corporate income taxes since the appellate court held that SGC and its subsidiaries do not have sovereign immunity.

The contents of this Memorandum coming from Akin Gump Strauss Hauer & Feld, LLP, who is the counsel to the Nation, who is also counsel to the Nation Council and Supreme Appellate Court members and the Respondents constituted either advice to the Nation, Council and Judges, or argument in the case.

Completely ignoring the above recited finding of this Court regarding the Akin Gump Strauss Hauer & Feld, LLP conflict of interest, the Council purportedly convened as the Supreme Appellate Court and, with the improper assistance of the

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Seneca Nation Department of Justice lawyer, James Gildersleeve, and the conflicted Akin Gump Strauss Hauer & Feld, LLP firm, attempted to take action, on an ex parte basis, granting the Writ of Permission and reversing this Courts August 10, 2004 Decision.

In doing so, the Supreme Court failed to give the Appellants here an opportunity to be heard on the Writ of Permission and then further denied the Appellants here an opportunity to be heard on the question of reversing this Court's Decision.

In fact, the Supreme Appellate Court gave no notice whatsoever to the Appellants here of its' so called "Court proceeding". Despite the lack of notice, as aforesaid, to the Appellatns here, the Court did receive evidence and argument from the attorneys for the Respondents (Akin Gump Strauss Hauer & Feld, LLP) and from the Nation's own attorney, James Gildersleeve.

INVALID ORDER

The Supreme Appellate Court intended to invalidate this Court's Bench Rulings of August 10, 2004. The first bench ruling concluded that "sovereign immunity" was not available to the Appellees in this case. The second bench ruling concluded that "the creation and continued evidence of the Gaming Corps. is **unconstitutional** and that the Gaming Corporations are a nullity." This Court now concludes that the Supreme Appellate Court Order of August 17, 2004 is invalid for several reasons:

1. Supreme Appellate Court violated the Seneca Nation of Indians Rules of Appellate Civil Procedures (SNIRACP).

a. SNIRACP, Article III, Section 301(d) provides:

> The Application for a Writ of Permission shall be served by the Clerk of the Court of Appeals on the other party in the same manner as provided in Section 203. The other party shall have twenty (20) days to file a statement in opposition to the Application for a Writ of Permission.

The Supreme Appellate Court failed to give the Appellants here any notice whatsoever of the Application for a Writ of Permission and failed to provide the Appellants here an opportunity to be heard on and oppose the Application for a Writ of Permission.

Exhibit "M" Annexed to Affidavit of Photiadis.

b. SNIRACP, Article III, Section 308 provides as follows:

Preparation of Record on Appeal; Contents.

(a) The Clerk of the Court of Appeal shall prepare the Record on Appeal. After the Clerk of the Court of Appeals has assembled the Record on Appeal, he will notify the Appellants that the record has been prepared. The Appellant's times to file a brief or a statement in lieu therefore shall commence to run on the date that the Clerk of the Court of Appeals notifies him that the record is complete. The Clerk of the Court of Appeals shall make the original record or a copy of the record available to all parties to the action and their counsel.

(b) The Record on Appeal shall consist of (i) all papers that were submitted to the Court of Appeals, including briefs and (ii) the decision and / or judgment of the Court of Appeals.

The Supreme Appellate Court failed to have the record prepared and put before it and failed to notify the parties of such record.

c. SNIRACP, Article III, Section 309 provides:

Filing of Briefs: Form of Briefs.

(a) The provisions of Section 211 concerning the filing of briefs or statements in lieu thereof shall apply to briefs to be filed with the Supreme Appellate Court..

The Supreme Appellate Court failed to give the Appellants here an opportunity to prepare and file a brief in this matter.

d. SNIRACP, Article III, Section 311(a) provides as follows:

Argument of Appeal.

(a) The parties shall present oral argument in support of their positions at the date, time and

Exhibit "M" Annexed to Affidavit of Photiadis.

place determined by the Chief Judge of the Supreme Appellate Court.

The Supreme Appellate Court failed to provide the Appellants here an opportunity to argue their case. The Akin Gump Memorandum described above could be considered a brief by one of the parties to the action. It also was used as evidence upon which the Supreme Appellate Court based its' August 17, 2004 Order.

Simply, the Supreme Appellate Court issued its August 17, 2004 Order without notice to the Appellants here. This reflects a violation of due process of law in violation of Seneca Nation law, (SNIRACP), the Seneca Nation Constitution, and the United States Indian Civil Rights Act. The Seneca Nation Constitution, Section IV, states that in any matter before the Supreme Appellate Court, "Upon the hearing of an appeal, a party in interest shall have the right to be heard and to appear in person or by counsel and argue the merits of the case at his own expense."

The United Sates Indian Civil Rights Act states that no "Indian Tribe" shall "deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law." *Title 25 of United States Code, Section 1302(*).* While the Indian Civil Rights Act has not been adopted in the Seneca Nation, outside governments and parties cannot rely on Seneca Nation actions that violate its requirements. The failure to give notice of the filing of the Writ of Permission to the Appellants in this case is a clear and blatant violation of Seneca Nation and United States law.

The August 10, 2004 ruling of this Court was not a "determination" or "decision" subject to review by the Supreme Appellate Court. Pursuant to the Nation's Constitution and the SNIRACP, Section 301, the Supreme Appellate Court "shall have jurisdiction to review the determinations and decisions of the Courts of the Nation." The bench rulings issued by this Court on August 10, 2004, related to a case **pending** before this Court and were thus not final and subject to appeal to the Supreme Appellate Court. The action of the Supreme Appellate Court to issue a Writ of Permission and attempt to invalidate this Court's August 10, 2004 Bench Rulings is thus illegal and unconstitutional.

The Writ of Permission was also not properly granted. The Seneca Nation Constitution requires that a Writ of Permission be granted by "a vote of not less than seven Councillors." The August 17, 2004 Order of the Supreme Appellate Court indicates that the Writ was granted by an "affirmative vote of 10 Judges." However, this Court has determined that at least 8 of these Judges possess an illegal conflict of interest in this case.

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Eight Seneca Nation Councillors have been appointed to serve on the board of the four Gaming Corporations (T. Abrams, Frank, John, Mitchell, Ray, Schindler, Stevens, and White). In addition, Councillor Rovena Abrams is related to legal counsel in this case, Mr. Brandon. Also, President Rickey Armstrong, Sr. has been appointed to serve on two of the boards (SGC and SAGC). The board members receive $500.00 for every board meeting and are reimbursed for their expenses.

Section 2.2(a) of the Seneca Nation Ethics Law provides that "a public official shall not: (i) have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in conflict with proper discharge of his/her duties in the interest of the Nation; or (ii) participate in his/her official capacity in any matter in which his/her family or business associates have an interest."

On the basis of this clear language from the Ethics Law, this Court concludes that it is an impermissible and illegal conflict of interest for Councillors, R. Abrams, T. Abrams, Frank, John, Mitchell, Ray, Schindler, Stevens, and White to participate as Judges of the Supreme Appellate Court in any matter involving the Gaming Corporations. **These Councillors have a direct financial interest in the outcome of this case** and thus have an obvious **conflict of interest.** As a result of this illegal conflict, any Writ of Permission issued by the Supreme Appellate Court in which any of these individuals participated is illegal and invalid.

On August 17, 2004, the Supreme Appellate Court sought to prevent this Court from taking any further action in this case. However, in issuing its Order, the Court violated the Nation's Constitution and laws in a number of ways. It is usually the case that the actions of the Nation's Supreme Appellate Court are final. However, the Judges of this Court were sworn to uphold the Seneca Nation's Constitution and laws. In situations where the Councillors sitting as the Supreme Appellate Court have so clearly and obviously violated the Nation's Constitution and laws in conducting their affairs as Supreme Appellate Court Judges, then the Judges of this Court are not required to give recognition to their actions. This Court is the highest independent Court in the Seneca Nation. Therefore, we conclude that the **August 17, 2004 Order of the Supreme Appellate Court is illegal, invalid and of no force and effect.**

FINAL DETERMINATIONS:

FURTHER ORDERED; that the Bench Rulings issued on August 10, 2004 remain in full force and effect while proceedings in this case continue.

Exhibit "M" Annexed to Affidavit of Photiadis.

FURTHER ORDERED, this action is hereby remanded to the trial court to be heard by different and unbiased judges, not presiding in the original final order.

FURTHER ORDERED, that trial court be convened within thirty (30) days; **All Court of Appeals final determinations must be adhered to at the trial level;**

First, the defense of "sovereign immunity" is not available to the Appellees in this case. Attorneys for the Appellees have cited many American cases to support their argument that the Gaming Corporations have sovereign immunity. These American cases have no value in a Seneca Nation Court. The Appellees have cited the Williams case to support their position. This decision is in conflict with subsequent decision of this Court which conclude that all Nation officials are accountable for their actions in Court and may not raise the defense of sovereign immunity. *Ross L. John, Sr. v. Dennis Bowen, Sr., Civil Action No. 1111-94 (Court of Appeal March 17, 1995) and Rebecca Bowen v. The Tribal Council, Civil Action No. 1022-96-01.(Peacemakers Court October 28, 1996).* The Nation's Constitution clarifies any confusion over existence of the sovereign immunity defense: the "judicial power shall extend to ALL cases arising under this Constitution, the customs of laws of the Nation, and to any case in which the Nation, a member of the Nation, or any person or corporate entity residing on, organized on, or doing business on any of the Reservations shall be a party." **Sovereign immunity for the Seneca Nation may exist in American courts, but it does not exist in Seneca Nation courts.**

Second, the fact that **"Appellants were denied a restraining order without a hearing"** or motion at the trial court level, this court also **must stipulate** the proper legal due process afforded each Seneca plaintiff or defendant in accordance with the Seneca Constitution of 1848, as defined in Section IV paragraph IV, page four, paragraph 4, 5, and 6.

Third, this court never intended to close any casinos, jeopardize jobs or jeopardize any monetary transactions. **The Seneca Nation Court of Appeals wishes to give the "Appropriation Power" back to the Seneca Nation Council and Seneca people.** Furthermore, the UNCONSTITUTIONAL clauses and Sovereign Immunity clauses can be remedied by the Seneca Nation Council taking immediate appropriate oversight responsibility. The Gaming Corporate Boards are unconstitutional and a nullity. Section I of the Nation Constitution states that the Council shall have the "legislative power", but Section XIII of the Constitution states that "The Council shall have the power to make laws not inconsistent with this Constitution." One of these provisions is the requirement that "an affirmative vote of at least ten" of the Councillors is necessary to make **"appropriations of public money."** The Gaming Corporations are controlled by individuals who are not

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elected officials of the Nation with no authority to expend "public money". We acknowledge that the Council has created corporations in the past, such as for the Housing Authority. But the abuse of authority here is without precedent. This Court take notice of new reports that these Gaming Corporations have borrowed over $300 Million Dollars, it is the responsibility of their elected officials to make that commitment, not non-Seneca appointees.

FURTHER PROCEEDINGS

1. The petition filed by the Appellants in this case is reinstated and the Peacemakers Court is directed to proceed to review said petition in accordance with the Bench Rulings of this Court acknowledging that the Seneca Nation has never adopted a corporate code for its people or tribal enterprises.

2. The **motion for attorneys' fees** filed by Appellees' attorneys on August 31, 2004 is **denied.** The Seneca Nation Constitution is clear that parties to appeals shall bear their own costs. "Upon the hearing of an appeal, a party in interest shall have the right to be heard and to appear in person or by counsel and argue the merits of the case **at his own expense.**" The SNIRACP, Section 216 and 313 also prohibit the awarding of attorneys' fees.

3. This Court finds that the attorneys representing the Appellees in this case, Mr. Barry Brandon and Mr. Todd Araujo of Akin Gump Strauss Hauer & Feld, LLP, also represent the Seneca Nation, the Seneca Nation President, and possibly the Supreme Appellate Court in the case before us. Mr. Brandon and Mr. Araujo are directed to reply to this Court **no later than September 21st, 2004** why they do not have an impermissible conflict of interest and why they should not be removed as counsel of record in this case.

4. The Court further finds that the Department of Justice attorney, James Gildersleeve, has also participated in this conflict of interest activity by representing Mr. G. Michael Brown. **The Nation must seek independent counsel** to represent and advise it and not prejudice the Supreme Appellate Court in any case as set forth in the Seneca Nation Constitution of 1848.

FURTHER ORDERED, that this order is not appealable to the Supreme Appellate Court pursuant to the SNIRACP, Section 303, due to the prejudiced and many conflicts of interests, previously cited;

FURTHER ORDERED, that failure to comply with all aspects of this order will result in contempt of this court, with all appropriate fines and costs assessed to the Respondent(s).

Exhibit "M" Annexed to Affidavit of Photiadis.

COURT OF APPEALS - 11 - TRO #1129-03-1

Sept. 16, 2004
Date

Hon. Maurice A. John, Sr. - Allegany

Hon. Maxine E. Black - Allegany

Hon. Sandra Abrams – Allegany

Hon. Emery Williams – Cattaraugus

Enc. Memorandum by Akin Gump dated 08/16/04
Letter by B. Brandon dated 08/31/04

ENTERED
SEP 16 2004
BY SENECA NATION COURT OF APPEALS

xc: File
H. Jacobs, Appellant
M. Dowler, Appellant
M. Brown, Respondent
B. Brandon, Atty. for Respondent
Alleg. Peacemaker's Court
Catt. Clerk's Office

Exhibit "N" Annexed to Affidavit of Photiadis.

Seneca Nation Constitution

CONSTITUTION OF THE SENECA NATION OF INDIANS OF 1848, AS AMENDED (Effective November 9, 1993)

Made and adopted in convention assembled, duly called and organized in accordance with the provisions of the Constitution of the said Nation, convened at the Council House at Cold Spring on the Allegany Reservation; and also at the Council House on the Cattaraugus Reservation, on the 15th day of November, 1898.

We the people of the Seneca Nation of Indians, residing on the Cattaraugus, Allegany, and Oil Spring Reservations, in the States of New York, grateful to Almighty God of our national preservation, growth and prosperity, for the freedom and manifold blessings heretofore by us enjoyed honoring the traditions of our Nation, trusting in the present, with confidence in the future advancement and better condition of our race and desiring greater enlightenment in order to perpetuate our national relations to provide for ourselves greater safeguards to pursuit of life, liberty and happiness, and to bring ourselves, as a Nation, to as high a plane intellectually, socially, morally as possible, do make, adopt and establish the following resolution:

SECTION I.

Our government shall have a legislative, executive, and judiciary department.

The legislative power shall be vested in a Council of sixteen members, who shall be known and called the Councillors of the Seneca Nation of Indians, eight Councillors elected to the Council shall be from the Cattaraugus Reservation, and eight Councillors elected to the Council shall be from the Allegany Reservation. Councillors shall be elected for four-year terms, except for the November, 1978 election. The staggered terms will be determined be the four Councillors having obtained the highest number of votes from the Allegany and Cattaraugus Reservations. The four Councillors, per reservation, with the least number of majority votes shall serve a two year term. No person shall be eligible for the office of Councillor unless he is an enrolled member of the Nation, has attained age twenty-one (21), and has resided on the Reservation he represents for at least one (1) year prior to the date on which he takes office.

The first election under the Constitution will be held on the first Tuesday of November, 199, and thereafter on the first Tuesday of November every second year. The votes of the Nation shall be by single ballot containing the names of all party candidates and independent candidates, and shall be cast by the individual voter, out of presence of others, and be cast by him, without inspection by the Board of Inspectors. That on Election Day the polls shall be open at 9:00 a.m. and close at 7:00 p.m.

On or before the 15th day preceding the biennial election, all candidates shall file with the Clerk of the Nation their name and office, and no further candidate shall be allowed to file for office after the 15th day preceding the biennial election, except in case of death, substitution will be permitted on party tickets so filed.

This single ballot shall be printed at the expense of the Nation, and by the Clerk distributed to the Board of Electors twenty-four (24) hours before the date of the election.

SECTION II.

Ten of said Councillors when assembled in session regularly organized shall constitute a quorum for the transaction of business.

In all appropriations of public money an affirmative vote of at least ten of the whole number elected shall be necessary. It shall not be lawful for the Council to make appropriations of public money in any one year exceeding the sum of the aggregate revenue of that year; but the Council shall make appropriation of public money to carry on the government in extraordinary cases for the welfare of the Nation.

In case of vacancy in the office of the president, the Council shall choose from their number a president, who shall hold office until his successor shall be duly elected and shall have qualified.

In case of absence of the president, the Council shall choose from their number a presiding officer pro tempore.

The council shall have the power of impeachment, by vote of the majority of all the members elected.

The court for the trial of an impeachment shall be composed of the president and the Council or a majority of them in all cases except in that of the trial of the president; in that case, the court for the trial of impeachment shall be composed of at least a majority of the Council and of the surrogates of the Nation.

SECTION III.

The executive power shall be vested in a president whose duty it shall be at all times to preside over the deliberations of the Council having a casting vote therein.

The president shall from time to time give to the Council information of the state of the Nation and recommend to their consideration such measures as he shall judge necessary and expedient, not inconsistent with the true spirit and intent of the laws of the Seneca Nation. It shall be his duty to see that the laws applicable to the Nation are faithfully executed. He shall have power to fill all vacancies by appointment that shall occur either by death, resignation or impeachment of any of the officers of the Nation.

Such appointees shall hold office until their successors are elected and duly qualified.

The president shall have the power of veto. Every resolution or other measure, passed by Council carrying with it any appropriation out of the funds of the Nation, before it becomes operative shall be presented to the president for his approval or objections; if he approves, he shall sign it; but if not, he shall return it to the Council with his objections in writing.

The objections shall be entered at large on the minutes of the Clerk; after which the same may become operative and binding on the Nation only by a second passage of the same by not less than twelve votes of the Council.

In all such cases, the name of each member voting shall be entered in the journal of the proceedings of the Council.

SECTION IV.

The judicial power shall be vested in a Court of Appeals, a Peacemakers Court, and a Surrogates Court. There shall be one Court of Appeals. There shall be two Peacemakers Courts and two Surrogates Courts, one each to be established upon the Cattaraugus Reservation and one each to be established upon the Allegany Reservation.

The Court of Appeals shall be comprised of six judges, any three of whom shall hear each appeal. The judges of the Court of Appeals shall be trained in the law. The Peacemakers Court shall be comprised of three judges each, and two of whom shall have the power to hold Court and discharge all the duties of the Peacemakers Court. The Surrogates Court shall be comprised of one judge each.

The judges of the Court of Appeals shall be elected from the residents of the Allegany, Cattaraugus and Oil Springs Reservations, with three of the judges elected from the residents of the Cattaraugus Reservation and three of the judges elected from the residents of the Allegany and Oil Springs Reservations. The judges of each of the Peacemakers and Surrogates Courts on the Cattaraugus Reservation shall be elected from the residents of the Cattaraugus Reservation and the judges of each of the Peacemakers and Surrogates Courts on the Allegany Reservation shall be elected from the residents of the Allegany and Oil Springs Reservations. The election of judges shall be on the first Tuesday of November. Beginning in 1993, judges shall not be elected in the same year that the other Nation officials are elected. Judges elected in November, 1992 shall serve in office until their successors are duly elected in November, 1993, provided that judges of the Court of Appeals shall first be elected in November 1993.

The term of office of the judges of the Court of Appeals shall be four years. At the first election of the judges of the Court of Appeals, three positions on the Court of Appeals initially shall be for a term of two years and three positions initially shall be for a term of four years. The term of each position shall be determined by a lot

prior to the election, provided that at least one judge from each Reservation shall serve a two year term. All subsequently elected judges of the Court of Appeals shall be elected for a term of four years.

The term of office of the Peacemakers and Surrogates shall be four years, provided that, at the next judicial election following the approval of this amendment, except if judicial elections are moved to an off-year, one Peacemaker from each Peacemakers Court shall be elected for a term of two years, with the remaining two Peacemakers from each court and all subsequently elected Peacemakers elected for a term of four years.

The judicial power shall extend to all cases arising under this Constitution, the customs of laws of the Nation, and to any case in which the Nation, a member of the Nation or any person or corporate entity residing on, organized on, or doing business on any of the Reservations shall be a party.

The forms of process and proceedings in all Courts shall be such as is prescribed by law.

All determinations and decisions of the Peacemakers and Surrogates Courts shall be subject to appeal to the Court of Appeals. All cases of appeal shall be decided by the Court of Appeals upon the evidence taken in the Peacemakers and Surrogates Courts. In every case on appeal, it shall be the duty of the judge or judges before whom the case was heard to certify the evidence and record in that case to the Court of Appeals. The Court of Appeals shall then decide the case upon the certified evidence and record. Upon the hearing of the appeal, a party shall have the right to be heard and to appear in person or by counsel and argue the merits of the case at his own expense.

All determinations of the Court of Appeals shall be subject to appeal to the Council upon the granting of a writ of permission by a vote of not less than seven Councilors. Such appeal, if granted, shall be heard by at least a quorum of the Council. In the event that no appeal is made to the Council, the decision of the Court of Appeals is final, and no other court of subsequently elected Council shall have the right to re-open, re-hear, reverse or affirm the decision of the Court of Appeals. All cases of appeal shall be decided by the Council upon the evidence taken in the Peacemakers or Surrogates Courts. In every case on appeal, it shall be the duty of the judges before whom the case was heard to certify the record in the case to the Council. The Council shall then decide the case upon the certified evidence and record. Upon the hearing of an appeal, a party in interest shall have the right to be heard and to appear in person or by counsel and argue the merits of the case at his own expense.

On such matters of appeal from the Court of Appeals, the decision of the Council shall be final, and no subsequent elected Council shall have the right to re-open, re-hear, reverse or affirm the decision of a previous Council.

In every action in any Court, such action shall be brought in the name of the real party in interest.

Nothing herein shall be construed as affecting the right of any Council to repeal or modify existing laws and regulations passed and approved by a previous Council.

SECTION V.

The power of making treaties shall be vested in the Council, subject to the approval of at least three-fourths of the legal voters and of the consent of three-fourths of the mothers of the Nation.

SECTION VI.

There shall be a clerk and a treasurer of the Nation. The rights, duties and liabilities of such shall be defined by law.

SECTION VII.

There shall be two marshals for the Nation; one shall reside on the Cattaraugus and one on the Allegany Reservation. The rights, duties, and liabilities of each shall be as defined by law.

SECTION VIII.

The Council may provide for the election of Highway Commissioners, Overseers of the Poor, Assessors and Policeman for each of the said Reservations, their duties defined by law.

SECTION IX.

All officers of the Nation named in this Constitution, except for certain officers otherwise provided for herein, shall be elected biennially for the term of two years.

All officers of the Nation named in this Constitution may be impeached or removed for such cause as is recognized by law, in such manner and form as is prescribed by this Constitution.

SECTION X.

Every member of the Seneca Nation of Indians of the age of Twenty-one years and upwards, who shall not have been convicted of a felony, shall be competent to vote at all elections and meetings of the electors of the Nation and shall be eligible to any office in the gift of the people of the Nation. No person shall be eligible for the office of president unless he is an enrolled member of the Nation, has attained the age of thirty (30) years, has resided on the Reservation he represents for at least one year.

Exhibit "N" Annexed to Affidavit of Photiadis.

SECTION XI.

The compensation of all officers of the Nation named in this Constitution shall be such as prescribed by law and the salaries shall not be increased or diminished during their term of office.

SECTION XII.

The Council of the Nation shall meet, in general session to conduct business of the Nation, on the second Saturday of each month in the year; provided, however that if the second Saturday of any month is a legal holiday or if the Council so votes at its next preceding session, the Council shall meet on the third Saturday of the month.

The president shall have the power to convene the Council in extra session as often as the interests of the Nation in his judgment requires.

SECTION XIII.

The Council shall have the power to make laws not inconsistent with this Constitution.

SECTION XIV.

The laws and regulations heretofore made and adopted by the Council and not inconsistent with this Constitution shall continue in full force and effect as heretofore until repealed or amended, to the extent and in the manner, as the Council shall deem lawful and proper.

SECTION XV.

The present officers of the Nation shall hold their offices respectively until the first Tuesday of November, 1899, until others are elected in their place in accordance with the terms of this Constitution, unless removed for cause.

SECTION XVI.

It shall be lawful for the Council in their discretion, by at least a quorum vote to appoint a committee of three for revision of the Constitution. The duty of the committee shall be on ten days notice of their appointment, to prepare amendments or alterations of the Constitution as amended to the Council.

It shall be the duty of the Council to submit the same to the electors of the Nation for their approval or objection, to be determined by a majority vote of the qualified electors at a meeting called for that purpose on the Cattaraugus and Allegany Reservation, respectively. In the case the proposed amendments of the committee are rejected, no action shall be taken by the Council or the electors relative to

amending the constitution within one year from the date of said meeting and rejection.

available at: http://www.sni.org/node/14

Affirmation of Ryan G. Pitman In Support of Motion to Dismiss, Dated May 12, 2011.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.,

Plaintiff,

vs.

AFFIRMATION

Index No.: 141212

LEWISTON GOLF COURSE CORPORATION, SENECA NIAGARA FALLS GAMING CORPORATION, SENECA GAMING CORPORATION, JEFFREY L. GILL, MARK I. HALFTOWN, GLORIA HERON, MAURICE A. JOHN, SR., MICHAEL L. JOHN, KAREN KARSTEN, INA K. LOCKE, ROBERT E. MELE, RICHARD K. NEPHEW, MARIBEL PRINTUP, COCHISE N. REDEYE, GARY SANDEN, KEVIN W. SENECA, BARRY E. SNYDER, SR., STEVE TOME, NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, NIAGARA MOHAWK POWER CORPORATION, and JOHN DOE

Defendants.

RYAN G. PITMAN, an attorney duly admitted to practice before this Court in the State of New York, hereby affirms under penalty of perjury, pursuant to CPLR 2106, that:

1. I am associated with Phillips Lytle, LLP, attorneys for defendants Lewiston Golf Course Corporation ("LGCC"), Seneca Niagara Falls Gaming Corporation ("SNFGC"), Seneca Gaming Corporation ("SGC"), Jeffrey L. Gill, Mark I. Halftown, Gloria Heron, Maurice A. John, Sr., Michael L. John, Karen Karsten, Ina K. Locke, Robert Mele, Richard K. Nephew, Maribel Printup, Cochise N. Redeye, Gary Sanden, Kevin W. Seneca, Barry E. Snyder, Sr., and Steve Tome (the "Individual Defendants") (collectively, "Defendants"). I am fully familiar with the facts and proceedings in this action.

Affirmation of Ryan G. Pitman In Support of Motion to Dismiss, Dated May 12, 2011.

2. I make this affirmation in support of Defendants' motion, pursuant to CPLR 3211(a)(2), (7), to dismiss the action against certain Defendants for lack of subject matter jurisdiction and failure to state a cause of action.

3. On May 11, 2011, I reviewed the website for the Seneca Nation Capital Improvements Authority located at http://www.sni.org/node/31. That site lists the various projects that the Capital Improvements Authority is constructing or has recently constructed. These projects include the Nation's administration buildings, expansion of the Nation's health center, upgrading the electrical system at the Thomas Indian School Administrative complex, and other governmental infrastructure projects.

4. Defendants seek to provide the Court with additional key documents relevant and applicable to Defendants' motion. Each is a true and accurate copy of the referenced original.

5. Attached as Exhibit A is the opinion of the New York State Supreme Court for the County of Niagara in Seneca Gaming Corp. v. Toohey, Index No. 140634 (Sup. Ct. Niagara Cty, September 27, 2010) ("Toohey").

6. Attached as Exhibit B is the transcript of the September 9, 2010 oral argument in Toohey.

7. Attached as Exhibit C is the Distribution Agreement among the Seneca Nation of Indians, Seneca Nation of Indians Capital Improvements Authority, SGC and Wells Fargo Bank, N.A., dated April 27, 2007.

8. As set forth in the accompanying Memorandum of Law, and as the above-referenced documents and exhibits demonstrate, SGC, SNFGC, LGCC and the Individual

Affirmation of Ryan G. Pitman In Support of Motion to Dismiss, Dated May 12, 2011.

Defendants are entitled to the full protections of the Nation's sovereign immunity, which prevents the Court from exercising jurisdiction over those defendants.

May 12, 2011

RYAN G. PITMAN

Exhibit "A" Annexed to Affirmation of Pitman.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

ORIGINAL FILED
SEP 28 2010
WAYNE F. JAGOW
NIAGARA COUNTY CLERK

SENECA NIAGARA FALLS GAMING CORPORATION, and SENECA GAMING CORPORATION,

Plaintiffs,

-v-

TIMOTHY TOOHEY, MICHAEL J. DOWD, BERGAL MITCHELL, RACHEL MITCHELL, BARRY HALFTOWN, MARK GABRIELE, and MARILYN MITCHELL,

Defendants.

DECISION

Index No. 140634

Appearances: David R. Pfalzgraf, Jr., Esq.
Allen V. Faber, Esq.
Attorneys for Plaintiffs

Scott R. Hapeman, Esq.
Attorney for Defendant
Michael J. Dowd

John P. Bartolomei, Esq.
Attorney for Rachel Mitchell
and Barry Halftown

Terrance M. Connors, Esq.
Attorney for Mark Gabriele

KLOCH, A/J.S.C.

Defendants, Dowd, Rachel Mitchell, Halftown and Gabriele move pursuant to CPLR § 3211 (a) (3), (5), and (7) for dismissal of complaint.

UNDERLYING FACTS

In 2004 and 2005, the Seneca Nation of Indians (hereafter "Nation") began to explore constructing a golf course to compliment the Seneca Niagara Casino. In 2002, defendant-Dowd with two other individuals formed a limited liability company ("LLC") to develop a golf course. In 2005 defendant-Toohey contacted Dowd with an offer to

purchase the proposed golf course land from the LLC. Toohey contacted Dowd allegedly on behalf of the Nation in furtherance of the Nation's plan for a golf course location. Toohey and Dowd were former law partners, Toohey having been disbarred after a felony conviction. From the complaint, Toohey conducted the land sale negotiation between Dowd and Defendant-Bergal Mitchell, a Vice-Chairman and Board of Director member of both plaintiffs herein, which are described in the complaint as governmental entities or corporations existing under the laws of the Nation. In 2005 a Purchase and Sale Agreement was entered into between the LLC and the Nation which provided for the sale of the LLC property to the Nation for $2.1 million. That agreement was subsequently assigned by the Nation to plaintiff - Seneca Niagara Falls Gaming Corporation (hereafter SNFGC). On February 15, 2006, the real estate transaction closed. Thereafter, approximately $1.2 million was paid out to the owners of the property transferred to SNFGC. This lawsuit deals with the approximate $800,000.00 in consideration that never flowed to the Sellers of the property, but instead was retained and divided between defendants Toohey, Bergal Mitchell and Dowd. The complaint alleges that these defendants, working in concert, "hatched" a plan to defraud the Nation and the plaintiffs as well as the Sellers of the property, of a portion of the sale proceeds. The complaint further alleges that these three defendants breached or aided and abetted in the breach of fiduciary obligations and duties.

The suit also names three other individuals, Rachel Mitchell, Barry Halftown, and Mark Gabriele, whose involvements will be separately detailed below.

JURISDICTIONAL OBJECTIONS

All moving defendants seek dismissal claiming that plaintiffs, SNFGC and Seneca Gaming Corporation (hereafter "SGC") do not have the capacity to bring suit in a New York State court. Defendants variously dispute whether SNFGC and/or SGC are legitimate corporate entities of the Nation; whether they do business in the state; and, if deemed governmental entities of the Nation, whether the Nation has authorized this suit. Defendants chiefly rely on Business Corporation Law § 1312 (a) which provides that a foreign corporation doing business in the state without authority can not maintain an action in the State, unless authorized to do business.

The Court need not address this argument. Relying on Oneida Indian Nation of NY v. Barr, 132 AD2d 402 and Ransom v. St. Regis, 86 NY2d 553, and due to the findings of fact made on the record in Special Term as attached to this Decision, the Court finds the plaintiffs are "arms" of the Nations - governmental arms of the Nation with the capacity to bring this suit. The Court here also finds the Nation authorized this litigation. Accordingly, I dismiss the defendant's jurisdictional capacity arguments.

SECOND CAUSE OF ACTION - CONSPIRACY TO COMMIT FRAUD

For the reasons further set forth by the Court on the Special Term record and Alexander & Alexander of New York, Inc.v. Fritzen, 68 NY2d 968; Hebrew Institute for Deaf and Exceptional Children v. Kahana, 57 AD3d 734, New York does not recognize civil conspiracy to commit a tort as an independent cause of action. Plaintiff's counsel

concedes this, but alleges the cause of action is necessary to tie the acts of the defendants together. Not true.

Accordingly, the second cause of action is dismissed in total.

DEFENDANT MARK GABRIELE

Defendant Gabriele moves on the basis of the pleading requirements as set forth in CPLR 3016 (b) i.e. that "the circumstances constituting the wrong shall be stated in detail". Counsel for Gabriele was most passionate in regard to compliance with this pleading imperative. This must be meshed with the guidance of caselaw. Eurycleia Partners, LP v. Seward & Kissel, LLP, 12 NY3d 553, explores the pleading requirements of CPLR 3016 (b) in the shadow of that Court's decision in Pludeman v. Northern Leasing Sys., Inc., 10 NY3d 486. Pludeman, also dealing with whether plaintiff sufficiently pleaded a cause of action for fraud, states:

> " Although under section 3016 (b) the complaint must sufficiently detail the allegedly fraudulent conduct, that requirement should not be confused with unassailable proof of fraud," Pludeman, supra, at 492.

Most prophetically as it deals with this case, Pludeman further states,

> " . . we have never required talismanic, unbending allegations. Simply put, sometimes such facts are unavailable prior to discovery. Lest we wilfully ignore the obvious - or the strong suspicion of a fraud - we have always acknowledged that in certain cases, less that, plainly observable facts may be supplemented by the circumstances surrounding the alleged fraud." Pludeman, supra, at 493.

The reasons for this are obvious.

> "Thus, where concrete facts are peculiarly within the knowledge of the party charged with the fraud . . . it would work a potentially unnecessary injustice to dismiss a case at an early stage where any pleading deficiency might be cured later in the proceeding" Pludeman, supra, at 491.

Where then do we draw the line between the strict mandate of CPLR 3016 (b) and the rule from Pludeman? Eurycleia gives that guidance. In Eucycleia, the Court of Appeals affirmed the dismissal of the amended complaint based on CPLR 3016 (b). The Court therein stated:

> " . . . CPLR 3016 (b) is satisfied when the facts suffice to permit a reasonable inference of the alleged misconduct. And, in certain cases, less than plainly observable facts may be supplemented by the circumstances surrounding the alleged fraud" Eurycleia, supra, at 559.
>
> " . . . although we are mindful that a plaintiff need not produce absolute proof of fraud and that there may be cases in which particular facts are within a defendant's possession, it is also true that the strength of the requisite inference of fraud will vary based on the facts and context of each case." Supra, at 560. [emphasis added]

In dismissing the complaint in Eurycleia, the Court finds:

> "neither the allegations in the complaint nor the surrounding circumstances give rise to a reasonable inference that S&K participated in a scheme to defraud. . . ", supra, at 559.

With this guidance, the Court dismisses all stated causes of action against Mark Gabriele. Gabriele is an attorney who represented Toohey on several matters. Well after contract and a day after closing, Gabriele received a check for $202,000.00 from Dowd's IOLA account payable to him as attorney for Tero, Inc - an entity in which Toohey has an interest. Gabriele over the next 9 months paid out these funds at and for Toohey's interest. $112,000.00 was paid to a trust from which Toohey had apparently withdrawn funds wrongfully and was Court ordered to return. There is no indication that Gabriele made any misrepresentations or omissions; no indication he knew the details of the land transfer; no indication of anyone placing reliance upon him; no intent on Gabriele to do so; no apparent damages caused by him. Based on the insufficiency of the pleadings and the case-by-case review of the facts as contemplated by Eurycleia, there is no reasonable inference of a scheme to defraud.

DEFENDANTS RACHEL MITCHELL AND BARRY HALFTOWN

The same pleading arguments made by Gabriele are also raised by these defendants. However, the Court can not grant the same relief.

Rachel Mitchell is the wife of defendant-Bergel Mitchell. She is an admitted attorney in New York. It is unfathomable that she did not know her husband was an officer and/or board member of the plaintiff's. On February 17, 2006, two days after the property closing, Rachel Mitchell received $90,000.00 from sales funds by wire transfer to her IOLA account. Less than a month later, she transferred that amount to her personal account. That handling of funds by itself raises suspicion of wrong doing. If client funds, why transferred to personal accounts? If personal funds, why commingle with client money? That money was dissipated on personal expenses of her husband

Exhibit "A" Annexed to Affirmation of Pitman.

and herself. Here, the strength of the inference of fraud emanating from the surrounding circumstances, when combined with the pleadings, it is sufficient to satisfy pleading requirements. Accordingly, Rachel Mitchell's substantive motions regarding the First, Third, Fifth, and Sixth cause of actions are dismissed.

Barry Halftown is a relative and business associate of defendant-Bergal Mitchell. On February 17, 2006, two days after the property transfer, $248,000.00 was wire transferred into a business account of Halftown from sale funds. The very same day, defendant-Halftown signed a check transferring $125,000.00 of those funds for Bergal Mitchell to buy a house. Again, the inference of fraud is so strong from these circumstances that, when combined with the pleaded allegations, are sufficient to satisfy CPLR 3016 (b). Accordingly, Halftown's substantive motions regarding the First, Third, Fifth, and Sixth cause of actions are dismissed.

Both Rachel Mitchell and Barry Halftown should be deposed as contemplated by Pludeman.

The Court further finds regarding all defendant's motions as to the statute of limitations, that CPLR § 213 (8) applies and has not been offended.

Lastly, the Court, without further comment, dismisses all other motions of defendant-Dowd, except as to the SECOND cause of action.

All other arguments of defendants, not passed on, are denied.

Submit settled Order.

HON. RICHARD C. KLOCH, SR.
Acting Supreme Court Justice

GRANTED

SEP 27 2010

BY: NICOLE SCHUG
COURT CLERK

Exhibit "B" Annexed to Affirmation of Pitman.

COPY

STATE OF NEW YORK : COUNTY OF NIAGARA
SUPREME COURT

SENECA NIAGARA FALLS GAMING CORPORATION
and SENECA GAMING CORPORATION,
Plaintiffs,

-vs- INDEX # 140634

TIMOTHY TOOHEY, MICHAEL J. DOWD,
BERGAL MITCHELL, RACHEL MITCHELL,
BARRY HALFTOWN, MARK GABRIELE
and MARILYN MITCHELL,
Defendants.

---

175 Hawley Street
Lockport, New York
September 9, 2010

B E F O R E:

HONORABLE RICHARD C. KLOCH
Acting Supreme Court Justice

A P P E A R A N C E S:

ALLEN V. GABER, ESQ.,
and DAVID R. PFALZGRAF, JR, ESQ.,
Appearing for the Plaintiffs.

SCOTT R. HAPEMAN, ESQ.,
Appearing for Defendant Dowd.

JOHN P. BARTOLOMEI, ESQ.,
Appearing for Defendants
Rachel Mitchell and Barry Halftown.

TERRENCE M. CONNORS, ESQ.,
Appearing for Defendant Gabriele.

Exhibit "B" Annexed to Affirmation of Pitman.

THE COURT: Okay. Counselors, please note your appearances for the record, starting with the Plaintiffs.

MR. PFALZGRAF: David R. Pfalzgraf, Junior, on behalf of the Plaintiffs. Here with me today, I have Allen Farber from the law firm of Drink -- Drinker, Biddle and Reath in Washington DC, your Honor.

MR. HAPEMAN: Scott Hapeman of Personius, Melber here on behalf of Defendant Michael Dowd.

MR. CONNORS: Terry Connors for Mark Gabriele.

MR. BARTOLOMEI: John Bartolomei for Rachel Mitchell and Barry Halftown.

THE COURT: Okay. First of all, taking up the application for the admittance of Mr. Farber, correct?

MR. FARBER: Yes, your Honor.

THE COURT: Any opposition?

MR. HAPEMAN: I think I speak on behalf of all Defendants, your Honor, when we say we have no objection to that.

MR. BARTOLOMEI: I have a comment.

THE COURT: Sure.

MR. BARTOLOMEI: Okay. My comment is that I want to recognize that Mr. Pfalzgraf is in the courtroom and is also representing the same Plaintiffs here, that although Mr. Farber's made reference that he is familiar

Exhibit "B" Annexed to Affirmation of Pitman.

with the statutes in the State of New York, I'm very happy to see that there is an attorney admitted to practice in the State of New York with him for purpose of buttressing his argument.

THE COURT: Okay. Thank you. All right. As I look at the -- first of all, the jurisdictional aspects, if we assume that these entities are corporations, foreign corporations by necessity, how can they not be considered that they're doing business in the State of New York?

MR. HAPEMAN: As I understand it, your Honor, based on co-counsel's papers, that's exactly our position. They in fact do do business in the State of New York and need to register in order to properly maintain an action in the State of New York.

THE COURT: Business Corporation Law Section 1312-A couldn't be more clear.

MR. HAPEMAN: That's correct.

THE COURT: And it says foreign corporation doing business in the state without authority shall not maintain any action unless authorized to do business. It's pretty clear from the papers submitted on behalf of the Defendants that they're not authorized to do business in the state, that they may or may not be a foreign corporation. Again, I'm assuming that they're a foreign

Exhibit "B" Annexed to Affirmation of Pitman.

corporation.

Are they doing business in the state, Mr. Pfalzgraf? They've got a little thing called Hickory Stick Golf Course that's located in the State of New York. I mean, if that's not systematic, regular, permanent and continuous -- and Mr. Farber, I see you're the one that's going to try to dispute that.

MR. FARBER: Hickory Stick Golf Course, as I understand it, is not owned or operated by either one of the two Plaintiffs.

MR. HAPEMAN: Your Honor, they have already admitted to the fact that their purchase of this property was one instance of them reaching out and conducting business in the State of New York.

THE COURT: Who owns the Hickory Stick Golf Course?

MR. FARBER: A different entity associated with the nation.

THE COURT: Okay.

MR. BARTOLOMEI: Your Honor, I believe it's the Lewiston Golf Course Corp., which is a similarly described created entity as the -- the two Plaintiffs. But --

THE COURT: Let me tell you what I did. You know, I did something simple, I went onto -- I took my

Exhibit "B" Annexed to Affirmation of Pitman.

I-pad last night and I -- I typed in Seneca Niagara Casino popped right up. I hit the button, go to the home page, and the first thing you see is Hickory Stick Golf Course. I saw nothing on that page other than Seneca Nation and Seneca Gaming Corporation as the entities that are running it. So, okay, it may be owned -- I don't know. I don't know the corporate structure of that.

MR. FARBER: I'm representing that it's not, that the Plaintiffs do not own or operate that facility.

MR. BARTOLOMEI: Your Honor --

THE COURT: They have no business dealings in the State of New York, ever? The gaming corporation?

MR. FARBER: That's not what we said. What we said --

THE COURT: Well, I know it's got to be systematic and continuous.

MR. FARBER: And regular. And we said we don't qualify -- let me phrase it correctly. It's the Defendants' burden of proof to show that we have systematic, regular course of conduct in the State of New York doing business in the State of New York. They have not done that and we do not do that.

THE COURT: Fortunately we don't have to go there because the other aspect of the jurisdictional component is whether or not it's an arm of the nation.

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MR. FARBER: That's what I was going to suggest, that we don't have to go there because we're an arm of the nation and we have authority to sue as an arm of the nation.

THE COURT: Correct. And the Court is going to rely on Oneida Indian Nation of New York versus Barr, 132 AD 2d 402, and as further discussed in Ransom V Saint Regis, 86 NY 2d 553, both of which I've read. It's clear that the nation can maintain a suit within the state court; isn't that true?

MR. BARTOLOMEI: Absolutely.

THE COURT: Nobody disputes that. So, then the question becomes whether or not the two entities here, the two Plaintiff entities are arms of the nation. And Ransom set out a pretty thorough test for us to follow. And you know, I'm going to go through the factors here.

MR. BARTOLOMEI: Could you back up one second, Judge? Because that's the most difficult part of these -- this argument. It's the most extensive part of this argument. But I'd like to -- I'd like to still visit the initial thought the Court had as to the doing of business in New York State.

THE COURT: Well, I passed by that now because I think I don't even have to reach it, even though it was my, you know, assumption in framing my thoughts for today

in the motion that it's hard for me to believe that the two Plaintiff entities do not do business in the State of New York, that they're not foreign corporations, at least as alleged even by -- by the Plaintiffs themselves in their pleading, and therefore would be prohibited from maintaining a suit pursuant to 1312-A of the Business Corporation Law.

But there's another component to jurisdiction and that is whether or not they're an arm of the indian nation, the Seneca Nation. And that's what I really want to direct my attention to now. So, let's put off to the side -- if I were to find they're not an arm of the nation, then yes, we have to back up and consider the Business Corporation Law and the more sticky issue of whether or not those corporations are doing business in the state.

But let's deal with whether or not they're arms of the nation. And let's look at the Ransom decision. And they gave -- I mean, you spell -- I always, you know, beat on the appellate courts for not giving enough guidance. Here's a court that gives terrific guidance on whether or not we should consider one particular component or entity as being a arm of the nation and -- of the tribe. And in that particular case, true, it dealt with immunity as opposed to the jurisdictional

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aspects of bringing a suit, but the same principles are involved.

They set forth these factors: Number one, whether the entity is organized under the tribes law or constitution rather than federal law. In fact, these two entities are organized under the tribes law. That's pretty clear and without question.

MR. BARTOLOMEI: No, that's not -- that's not very clear at all, Judge.

THE COURT: Well --

MR. BARTOLOMEI: In fact, they were not organized under any valid tribal law. They claim to be organized under the constitution of the Seneca Nation. And the constitution of the Seneca Nation does not allow for the formation of this type of entity or any type of entity that they abdicate their governmental authority to.

THE COURT: Well, if I look at the decision of the -- I want to get the correct title down. The chief appellate court or --

MR. FARBER: The supreme court, your Honor.

MR. BARTOLOMEI: No, there's three courts, Judge. There's the peacemakers court, there's the court of appeals --

THE COURT: The supreme appellate court order.

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MR. BARTOLOMEI: -- and the supreme appellate court.

THE COURT: And that supreme appellate court order provides, and it's dated August of 2004, that in fact these two entities were validly constituted under the laws of the indian nation.

MR. BARTOLOMEI: Okay. Then you have to look at --

THE COURT: So, you want me to substitute my findings for that of the supreme appellate court?

MR. BARTOLOMEI: Well, there's another reason why you should do that. But no, what you want to do is look at the decision of the court of appeals that followed that decision.

THE COURT: But that was set aside subsequently by the nation itself in determining -- and by their chief law enforcement official, finding that that subsequent decision was a nullity. It's inferior court. It's like me overruling the Court of Appeals. I'm not going to overrule the Court of Appeals. I'm going to lose that a hundred out of a hundred.

MR. BARTOLOMEI: Now, Judge, you are trying to substitute yourself for the -- your own opinions for the laws of the Seneca Nation.

THE COURT: I'm not.

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MR. BARTOLOMEI: There is no chief enforcement officer that is given authority to interpret the laws or the decisions of the courts of the Seneca Nation. There is no such thing, okay.

THE COURT: Okay.

MR. BARTOLOMEI: That was a -- a letter from Robert Porter, who's then designated as counsel to the Seneca Nation or alternatively designated as attorney general for the Seneca Nation. There is no authority to give that --

THE COURT: Well --

MR. BARTOLOMEI: Nor does it have any effect on the decisions whatsoever of the courts of the Seneca Nation.

THE COURT: For purposes of my decision --

MR. BARTOLOMEI: Yes.

THE COURT: -- I'm accepting the supreme appellate court order --

MR. BARTOLOMEI: Let me tell you why you can't.

THE COURT: -- dated August 17, 2004, as the law of the nation, okay. And why can't I? They're the chief --

MR. BARTOLOMEI: As the law of the nation --

THE COURT: -- correct? Their determination. They're saying that that is a legally constituted --

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those two entities are legally constituted corporate entities organized under the laws of the indian nation. I'm -- I have to accept their determination. I can't supplant mine for the highest court of the indian nation.

MR. BARTOLOMEI: Judge, you have three decisions that were submitted to you, three decisions of the Seneca Nation. One was the first decision of the Seneca court of appeals that ruled that these corporations were not validly formed, that they were indeed nullities, unconsititutional nullities.

THE COURT: Correct.

MR. BARTOLOMEI: You then have a decision of the supreme appellate court.

THE COURT: Correct.

MR. BARTOLOMEI: Which followed that saying we reverse that, they are good corporation, they were validly formed.

THE COURT: Correct.

MR. BARTOLOMEI: You then have afterwards a decision which reviews and acknowledges the decision of the supreme appellate court of the Seneca Nation. You have a decision of the Seneca court of appeals which says --

THE COURT: The lower court again.

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MR. BARTOLOMEI: Which says -- not the lower court, the appellate court. And they have civil procedure laws, the Seneca Nation does, as to what the appellate court can do and what the supreme appellate could do.

THE COURT: You tell me which is the highest court.

MR. BARTOLOMEI: What it says, Judge, in reciting and acknowledging that the supreme appellate court convened wrongly, they did not give notice to the parties, that they violated the due process requirements of the Seneca constitution, which they are entitled to interpret, okay. Now, you have that now. And that decision then says, re-states these corporations are not validly formed, they are unconsititutional and a nullity.

Now, with these three decisions in front of you, Judge, as a foreign entity, the Seneca Nation, the question is can you accept those, can you use them in your court, can you use them under New York State Law. You can use two of them. You can't use the supreme appellate's. Let me tell you why you can't use --

THE COURT: You go with the majority, huh? Two to one, therefore --

MR. BARTOLOMEI: No, it's because we can only

use the laws or the decisions of a foreign nation to the extent that they comport to our basic fundamentals of law, to the extent that they comport to our basic fundamentals of due process of law.

Now, the supreme appellate court is the Seneca Nation council. By the Seneca constitution, it is the legislative branch of the Seneca government. That is exactly what it is. In fact, what you have there, Judge, which we don't have here, is no separation of powers. You have the legislative branch reviewing the decision of the judiciary.

THE COURT: I see that there's a -- a comingling of functions there. I see that.

MR. BARTOLOMEI: If there were a -- if there -- I don't think any of us could think of a more basic fundamental of law that we have to apply in our country, in our state, as the separation of powers.

THE COURT: Now listen, listen, I'm not going to allow you to overwhelm and take over my courtroom, okay. Because I've got to keep moving, there's other people that want to be heard.

MR. BARTOLOMEI: Okay.

THE COURT: You tell me which is the highest court of the state.

MR. BARTOLOMEI: As far as I know, the court of

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appeals.

THE COURT: As far as you know? Counsel, do you agree with that, Mr. Farber?

MR. FARBER: I do not. It's the supreme appellate court. The supreme appellate court is the highest court in the nation. It's issued a dispositive ruling. And in its ruling at the end, as we quoted in the papers, it says: After reversing the court of appeals and confirming the validity of these entities as arms and government instrumentalities, it says no party shall take any action with respect thereto pending further order of this court. That's the end of it. That's definitive.

It -- your Honor's analogy that if the Court of Appeals of this state issues a ruling and you don't like it and you just conduct yourself otherwise, it's a nullity. You can't overrule the Court of Appeals.

MR. BARTOLOMEI: Judge, I thought you asked me the question of what is the highest court in this state.

THE COURT: In the indian nation. In the indian nation.

MR. BARTOLOMEI: I think you asked state. That's why I said the Court of Appeals, that's as far as I know in this state it is the Court of Appeals.

THE COURT: I meant the indian nation.

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MR. BARTOLOMEI: In the indian nation the highest court as designated by their constitution is the Seneca council sitting as the supreme appellate court.

THE COURT: Well --

MR. BARTOLOMEI: What it is akin to, Judge, is to the New York State Legislature reviewing a decision of the Appellate Division, that's what -- what --

THE COURT: So.

MR. BARTOLOMEI: So, here's why so, is that we cannot use the judgments and decisions of a foreign nation when that judgment or decision was arrived at in violation of our basic tenets of law, of our fundamentals of due process.

And in this case, the fact that a legislative body can review and reverse the decision of a judiciary on interpretation of the constitution of that -- of that country is so repugnant to our basic fundamentals of law that you can't use that case here.

THE COURT: Clever argument, John. Clever argument.

MR. BARTOLOMEI: Clever?

THE COURT: It's very clever. You're a clever guy. But I don't buy it.

MR. BARTOLOMEI: I resent clever, Judge. I'm reciting the law. The law, the cases are cited in my --

my -- my briefs, my memorandums. It's nothing to do with clever, it has to do with the law in New York State, Judge.

THE COURT: Okay, John. So, what you said wasn't clever.

MR. BARTOLOMEI: Okay. Good.

THE COURT: But I'm not going to take my opinion and I'm not going to substitute it for that of the highest court of the nation, however it is established and however I disagree with it. There's things that I probably would disagree with in our constitution. But you know what, it's our constitution. I would have written it up a little differently and that's what I follow. And these people, this tribe set about their form of government in the way they felt it was best. I am not going to denegrate it. I'm going to respect it. I'm going to honor it. And I'm going to determine based upon that as to the first factor that the two entities were organized under the tribes law. That's only one factor. We got six more.

Secondly, whether the organization's purposes are similar to or serve those of the tribal government. Well, there's no question that the -- the gaming corporation aspects of the Seneca Nation are an integral part of their revenue stream. And they serve the

governmental functions of helping the members of the tribe. So, obviously the organization's purpose, namely revenue from gaming industry, is -- serves the tribal government.

The third factor, whether the organization's governing body is comprised mainly of tribal officials. Well, you completely answered that for me, there is such a comingling of the various supervisory and governmental entities in the tribe, as you've indicated even to the extent that their supreme court, their superior court, their highest court is composed of tribal officials, likewise this organization's governing body is comprised largely of tribal officials. So, the factor has been met.

MR. BARTOLOMEI: It is not -- it is not comprised of tribal officials. There is no -- no comprising of either of these entities of tribal officials.

THE COURT: John, I'm making my findings here.

MR. BARTOLOMEI: What are you basing those findings on, Judge?

THE COURT: Well, one thing would be the affidavit here that provides for the listing of the number of individuals from the tribe who are in fact -- here, let me find it for you, the nations council

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appoints a board of directors of Plaintiff SGC and not less than five of the no more than seven board members for each Plaintiff must be enrolled Senecas. The nation --

MR. BARTOLOMEI: Big difference, Judge, between enrolled Senecas and tribal officials, Judge. Big difference.

THE COURT: All right. I'm not going to have you interrupt me. Do we have other matters on the calendar?

THE CLERK: We do.

THE COURT: Okay. We'll -- we're going to take a break, John. I'm not going to have you interrupt me. I'm going to take the other people who are courteous enough, who will let me finish a sentence. Please step aside. Next case.

MR. FARBER: Can we leave our materials here, your Honor?

THE COURT: Certainly.

(Whereupon a short recess was taken.)

MR. BARTOLOMEI: Judge, let me on the record make an apology to you. I didn't realize I was cutting off all your sentences. As I think about it and I was advised by my colleagues, I was. I will wait until you complete. Let me know, but give me an opportunity,

please, to argue.

THE COURT: Sure. I appreciate that.

MR. BARTOLOMEI: Thank you.

THE COURT: I think I've always tried to do that and I really do think you're clever. So, you know, I'm always interested to hear what you have to say. But you know, I can only make a decision that I feel is right, the findings of fact that I feel are right. And we have a record here. And thank God we have an Appellate Division who's a hell of a lot smarter than me. Aand they'll make appropriate decisions in regard to anything I do right or wrong.

Going back to what I was saying about the jurisdictional aspects of this, and reasonable -- reasonable people could reasonably disagree with my determination. As I've indicated, I find that the entities are organized under the tribal laws and that the organization and purposes of the two Plaintiff entities serve the tribal government.

Where I was lastly was the organization governing body comprised mainly of tribal officials. And for the record, and if I'm wrong as far as the factual components, I'm laying them out and you can certainly take it up on appeal as to that. As I've indicated, based upon my knowledge both before this litigation and

subsequent, it's my understanding that the board of directors of the gaming corporation and the Niagara Falls Gaming Corporation are largely comprised of what I would call tribal leaders or members of the tribe itself. And accordingly, I find that that factor has been met.

Now we come to the fourth factor, which is whether the tribe has legal title or ownership of property used by the organization. Now, there I have a big question mark for the reasons that we've already made clear with Hickory Stick. You know, here I said, well, you know, don't they in fact do business in the State of New York because they own and operate this golf course? And then you gentlemen corrected me that in fact it's operated by another entity. I think you indicated the Lewiston Golf --

MR. BARTOLOMEI: I think it's called the Lewiston Golf Course Corp.

MR. FARBER: Something along those lines, your Honor.

THE COURT: Okay. Is that another Seneca Nation creation?

MR. FARBER: It is. It is.

THE COURT: Well, certainly that Seneca Nation creation is doing business in the State of New York.

MR. FARBER: But we're talking about arm or

instrumentality on --

THE COURT: I understand that.

MR. FARBER: Okay.

THE COURT: I'm just making an observation that at least that corporate entity of the nation is doing business in the State of New York.

MR. FARBER: No, I hear the observation, but obviously that's not before the Court.

THE COURT: Not relevant to this -- to this lawsuit. I agree.

Okay. So, then we go to -- so, leave four out as a big question mark in my mind. Now you can certainly say that the legal title or ownership -- and I believe, as indicated, all the gaming operations occur on nation territory. And I believe with an argument that's pending in front of Judge Boniello in that -- that you're making in regard to Splash Park and trying to set aside the taking, the argument there is that in fact the entities that own the casino are not the nation, correct?

MR. BARTOLOMEI: Yeah, it's not an argument, Judge. I've attached a portion of that -- the tax maps of the county to my reply affidavit. And I know you're very familiar with these shapes because of your being involved in the eminent domain proceedings.

The orange, Judge, is the -- the Seneca united

office -- the Seneca office building, which was the old Amendola property.

THE COURT: Correct.

MR. BARTOLOMEI: The -- this orange part here is the -- was the old bus terminal. And -- and now is the -- is the parking ramp of the casino. This is the old Niagara Falls Convention Center and was the -- is now the casino and hotel of the Seneca Nation. And this orange is that one hotel that was torn down, the old Ramada that was torn down and turned into a parking lot.

THE COURT: Correct.

MR. BARTOLOMEI: The orange properties are titled to the Seneca Nation. The green properties, which are the ones which were all eminent domain, this being the -- the DiCenzo, the Holiday Inn, this being the Splash Park, you know, they are titled to the Seneca Niagara Falls Gaming Corp. That is the tax records, the title are very clearly. All public records indicate that they are all titled to the Seneca Niagara Falls Gaming Corp. And I attached the tax map to indicate that in my reply.

THE COURT: So, at least in regard to that factor, it's sort of a muddled mess. Not all of the properties are owned -- the factor, again, as enumerated and set forth by Ransom is whether the tribe has legal

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title or ownership of property used by the organization. And some of it, yes, some of it, no.

MR. BARTOLOMEI: Right. And this -- this area, the old water park is used for parking for all of the customers of the Seneca Niagara casino and hotel. This area is used for -- as well for parking for -- for the customers and staging concerts. And this area is used for parking employees. And this area is used for parking employees. Now, not doing business in New York State --

THE COURT: John being such a clever guy, I'm surprised you didn't say the area used to be the Splash Park is the under-used parking.

MR. BARTOLOMEI: Absolutely, under used. But the doing business, if you're parking your customers there to the tune of twelve to twenty thousand people a day and they park there, I would say that's doing business.

THE COURT: Okay.

MR. BARTOLOMEI: Okay. So, I don't see -- and again, I know, your Honor, item four --

THE COURT: So, that factor arguably met, not met, muddled a little.

The next factor, number five, whether tribal officials exercised control over the administration or accounting activities of the organization. Again, I

believe that's true. The gaming corporations do not work in a vacuum. And in fact, as my understanding, either as a result, a consequence or merely at the same timing that the difficulties that bring us here in regard to these lawsuits came to light, that the nation replaced a lot of controlling entities or individuals, controlling individuals in the gaming corp. People were fired, people were removed. So, you know, I would say that that's a resounding big yes, that they control the administration.

Number six, whether the tribe's governing body has power to dismiss members of the organization's governing body. For the same reasons as I detailed on number five, I would think that's true. And more importantly, according -- and that's the language in -- I believe in Ransom, whether the corporate entity generates its own revenue, whether suit against the corporation will impact the tribe' fiscal resources and whether the subentity has the power to bind or obligate funds of the tribe.

There's such a combination, a joining of the interests of the gaming corp and the tribe itself, the indian nation itself, that it's hard to delineate where one stops and one starts. It really permeates the -- they permeate each other. So, I would say that that is,

as well.

So, following all of those factors, I make a factual determination that the Plaintiffs here, Seneca Niagara Falls Gaming Corporation and Seneca Gaming Corporation, are in fact arms of the nation. Accordingly, they have jurisdiction to bring the suit in the state court. That's my finding of fact. You can disagree with it, you can appeal that. That's my finding of fact.

So, now that turns us to the substantive issues of the actual causes of action that are laid out. And does there even exist a substantive civil cause of action for conspiracy?

MR. FARBER: I assume that's directed to me, your Honor.

THE COURT: Yeah.

MR. FARBER: If I might.

THE COURT: There's not.

MR. FARBER: Well, not as a stand-alone cause of action. But as the cases make clear, we cited the -- the significant cases, you can plead conspiracy to make each of the coconspirators responsible for the acts or omissions of the other. I mean, that's what the case law plainly says.

Looking at -- if I may, your Honor, in

Anesthesia Associates, which we cited, from the Appellate Division, it says a Plaintiff --

THE COURT: Which Appellate Division?

MR. FARBER: The second -- Second Department, Supreme Court of New York.

THE COURT: Okay.

MR. FARBER: And it says: Although an independent cause of action for civil conspiracy is not recognized in the state --

THE COURT: That's what I just said.

MR. FARBER: And I didn't disagree with that. A Plaintiff may plead the existence of a conspiracy in order to connect the actions of the individual Defendants with an actionable, underlying tort, fraud being the actionable underlying tort, and establish that those actions were part of a common scheme.

The Court goes on and says: The allegation of conspiracy carries no greater burden, but no less than to assert adequately common action for a common purpose by common agreement or understanding among a group, and this is the important part, from which common responsibility derives.

THE COURT: I follow all of that. But it's not a separate cause of action. It's involved with the very allegations of fraud.

MR. FARBER: It is.

THE COURT: You can allege that as part of these fraudulent claims, the -- the Defendants conspired together. But it's not a separate cause of action. It's a part of the main cause of action; that is, the fraud. And it's only an allegation as to the fact that they conspired together is no different than if you were to allege that an individual was driving the car that struck the Plaintiff and -- and the owner of the vehicle was the owner of it and vicariously liable by statute. They didn't conspire and, therefore, a separate cause of action to commit a negligent act, it's all encumbered by the very driving of the vehicle owned by another individual.

So, you can allege it. You can factually allege it as part of the cause of action of fraud, but it's not a separate cause of action.

MR. FARBER: I do not disagree with that. The purpose of -- of the assertion of conspiracy is to make each of the coconspirators liable, responsible, just as the case law says, irrespective of whether each of those coconspirators did a particular act for the acts and omissions of the other.

THE COURT: Well, I would amend your complaint in order to allege a conspiracy as facts that comprise

the fraudulent acts alleged against Defendants. So, as it stands as a separate cause of action, I strike -- I grant the relief as might be requested in regard -- by the various Defendants as to cause of action three, the conspiracy to commit fraud. And I grant that. That cause of action is stricken.

As far as breach of fiduciary duty, constructive trust, those cause of actions are not really requested any relief in regard to the moving parties here.

MR. FARBER: If I may, your Honor, breach of fiduciary duty remains in. The constructive trust was in the complaint as originally filed before the Court. In the first amended complaint the constructive trust claim is gone.

THE COURT: Okay.

MR. FARBER: It's not there.

THE COURT: So, the breach of fiduciary duty remains and there's no claim by any of the moving parties at this time to have that cause of action dismissed.

So, we move past that and we get to the real crux of why I think we're here, other than the jurisdictional aspects, which I already addressed, and that would be the aiding and abetting and the fraudulent acts as they affect Rachel Mitchell, Barry Halftown, Mark

Gabriele and Michael Dowd.

First of all, in a motion to dismiss, I must accept the allegations in the complaint as if they're established. So, as it affects the allegations of fraud, even though I have some questions, for example, why the hell Mark Gabriele is involved in this lawsuit, my understanding -- and again, this is for a factual determination that is not appropriate at this particular stage. But my understanding is that Mr. Gabriele was serving the other Defendant, Timothy Toohey, as his attorney. My understanding is that he prepared some type of an agreement for him of a, quote, consultive, end quote, nature. That he obtained some money from -- to the tune of about two hundred thousand dollars from Mr. Dowd. There's no indication as to whether Gabriele knew what the heck Mr. Toohey did in order to earn that money. Again, quote, earn that money, end quote. And whether people were apprised of the fact that he was getting this money.

Mr. Gabriele receives it, provides for the payment of a one hundred thousand dollar plus some attorney's fees to the nature of twelve thousand pursuant to a judicial order.

MR. CONNORS: Lawful act done in a lawful way.

THE COURT: Some would say laudatory.

MR. CONNORS: Compelled by 22 NYCRR.

THE COURT: Certainly didn't keep any of that money for himself.

MR. CONNORS: No.

THE COURT: And with the other sixty-seven thousand, there may be some money that is floating around that I'm not sure what the hell happened with. And that's, hence, the uncertainty of fact and the requirement that I must accept the allegations in the complaint as being truthful and the -- the reason why perhaps it's not appropriate to provide for anybody to be cut from the fraud cause of action at this point.

But he provides pursuant to his client's direction for sixty-seven thousand dollars to be paid over to him, namely the client in order to take care of a sixty-five thousand dollar concrete bill. You know, what is Gabriele supposed to do? I don't understand. Why -- I don't know why Mark Gabriele is in this lawsuit at this juncture. As I read, you know, the allegations, I'm trying to figure out why this guy is involved. But you know, I have to at this stage accept the allegations of fraud that are laid out in the first cause of action.

The same can be said, by the way, for Rachel Mitchell who --

MR. CONNORS: Before you leave Mark Gabriele.

THE COURT: -- who's even more benign. I mean, what does she do?

MR. BARTOLOMEI: She -- unfortunately, she's only alleged that she was the wife of Bergal Mitchell. That's the only fact they allege.

THE COURT: She married the wrong guy, at least apparently at this time because of this litigation. She married the wrong guy.

MR. BARTOLOMEI: And as to Barry Halftown, he's only his brother.

THE COURT: Or as the FBI referred to him, as the tribe drunk.

MR. BARTOLOMEI: Must be fraudulent -- a fraudulent drunk.

THE COURT: I don't know about Halftown. Again, there's a lot of muddled facts in Halftown. But for the purposes of a motion to dismiss, you know, and I'm -- I want to do this to the angst of the Appellate Division, I see there's nothing here, guys. And the Appellate Division when I provide for a motion to dismiss, it says it's not the appropriate time, calm down, it's not the appropriate time.

MR. CONNORS: But your Honor -- your Honor, keep in mind what you say is accurate with respect to the general rules of pleading and your requirement to accept

those particular allegations. But what you haven't addressed is the major premise of our argument, the fundamental point that we make that is supported by the Court of Appeals and by our Fourth Department.

The Fourth Department and/or Court of Appeals has said on several occasions, and I've cited all of them, this: You are dealing here with a fraud pleading, your Honor. This isn't a mere notice allegation of negligence. You have not only hornbook law, but statutory law under 306 B -- 3016-B of the CPLR that says when you make an allegation of fraud, because of the very essence of that claim, because of the nature of that theory, you need to tell the person that you are claiming was fraudulent what he did. And if you don't allege facts sufficient to support each essential element of the fraud, your pleading is defective.

And your Honor, you must, I say that respectfully, look at that because it -- it surmounts that general pleading that they rely upon, well, it's just the early stage, your Honor, it's a early pleading, give me the benefit of the doubt.

Let's look at what the Court of Appeals has said. When you allege -- when you allege a allegation of fraud, '09, this was last year, the Court of Appeals, you have to allege a material misrepresentation of fact as it

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pertains to Mark Gabriele.

THE COURT: What was the misrepresentation of fact he made?

MR. CONNORS: None. None.

THE COURT: What was the misrepresentation of fact? First of all, do you agree with that?

MR. FARBER: Do I agree with which?

THE COURT: Recital of the law that you must allege -- because I think it is the law, you must allege a misrepresentation.

MR. FARBER: A misrepresentation or an omission of material fact, one or the other.

THE COURT: Okay. Okay. So, by that answer, I take it you're going to say there was no misrepresentation, there was an omission.

MR. FARBER: We've not identified a material misrepresentation by Mr. Gabriele. However, if I may.

THE COURT: Please, I want to know where the omission is.

MR. FARBER: If I may, Mr. -- Mr. Mitchell, Bergal Mitchell had an ongoing obligation from the beginning of this whole proceeding until the closing, at least --

THE COURT: Can I stop you there?

MR. FARBER: Yes.

THE COURT: You know, it's early in the litigation, you don't jump to conclusions, you tell jurors to wait until all the proof is in, after you've heard the summations and after you've heard instructions on law. But he seems like he's up to here in this.

MR. CONNORS: He hasn't even moved to dismiss. He hasn't even moved to dismiss.

MR. FARBER: If I can finish.

MR. CONNORS: I'm just pointing something out. It was in the middle of my argument, so I'm pointing something out.

MR. FARBER: I'm only responding because his Honor asked me to. I would not interrupt you, Mr. Connors.

THE COURT: I'm asking, where's the omission?

MR. FARBER: But here it is, if you look at a case cited by Defendant, let me get the right one, it's LeFebvre versus New York Life Insurance, it's Appellate Division Third Department in 1995. It tells us that when you claim conspiracy, when you claim conspiracy, which is what we claim to tie the folks together, a claim of conspiracy to commit fraud may indeed be made out as Plaintiff suggests, even in the absence of allegations that Defendants themselves committed every element of the fraud.

Now, what that -- that means the following: Mr. Gabriele didn't have to affirmatively make a misrepresentation, nor did Mr. Gabriele have to make a material omission.

THE COURT: He just had to exist?

MR. FARBER: No. No. No. He had to conspire with others. And if one of those others did it, he is responsible for that act. That's exactly what LeFebvre says. But we have more than that here. That would be --

MR. CONNORS: May I respond to LeFebvre?

THE COURT: If I could stop you there and ask you this --

MR. CONNORS: Let me just respond.

THE COURT: It's important to what I -- let me ask you this --

MR. CONNORS: I love LeFebvre, I can't let this go.

THE COURT: I'll let you go with LeFebvre, but let me ask you this: What would be the harm in deposing Mr. Gabriele and ask him questions like: Did you ever talk to Mr. Toohey about the transaction between the gaming corporation and the golf course, the OCD? No.

Do you know what the terms of those were? No.

Were you involved in the closing? No.

Do you know what the purchase price that was

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paid at the time that you -- you handled these checks? No.

Did you subsequently become aware of that? Yes, I did.

How? Through this litigation and through the investigation.

Did you -- were you aware of those facts at the time that you received the money from Mr. Dowd? No.

Were you aware of it at the time that you sent a hundred thousand dollars plus twelve in order to meet the demands of the -- of the court, the surrogate court as to the -- to the trust that was apparently defrauded of money or lost money from Mr. Toohey's hands? No.

Did you -- did you know this when you gave the sixty-seven thousand dollars to Mr. Toohey at his instruction? No.

How did that come about? He said I earned the money, you pay the trust, I need some more money, keep the rest in case there's anything else that -- I don't know what the heck he was working on for him. And that can be fleshed out.

What would be the harm, Mr. Connors, of doing that. And with that record coming back for a summary judgment motion, saying, Judge, we laid it all bare. Mr. Gabriele, according to counsel at argument, didn't make a

misrepresentation, he didn't make an omission according to the counsel himself. And now we laid it pretty bare that he didn't work in concert. We've asked him all these questions. They can't give us a stick of proof otherwise. That pretty much seals it up with a red bow, doesn't it?

MR. CONNORS: It does. Your Honor, let me tell you the harm, let me tell you the harm, now you've asked that question and let me tell you, first of all, the harm is that it runs directly afoul of the rules as dictated by the Court of Appeals with respect to the pleading of lawsuits regarding fraud.

Second, it runs directly afoul of CPLR 3016-B that requires pleadings with specificity, all right.

Thirdly, it subjects a lawyer, a member of this bar, someone in this community to a role as a Defendant in a lawsuit. You have no -- well, I don't know if you do or not. You have no -- the problem that that creates for someone to be brought into a lawsuit not of his own making where he represents no party, to be on the outside looking at a fight and get pulled into the middle of a lawsuit and all of a sudden it's public knowledge about a lawsuit, when they haven't met their standard of pleading, your Honor, that's the problem I have with that.

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They can take his deposition, they know darn well, as a non-party witness any time they want. And it ought to be if they take the deposition as a non-party witness, then bring him in if you find something.

Instead they come to this courtroom, they shoot first and they come to you and hope that you're going to let them ask questions later. And that's not what the Court of Appeals allows.

And if you will give me one moment on LeFebvre, your Honor, because I love this case. I can't believe they're citing this case. The Third Department says: You can't let this cause of action stand for conspiracy. All right. You can't let it stand. It cannot stand if it's devoid of specific factual allegations that could support an inference that Defendants knowingly agreed to cooperate in a fraudulent scheme or shared a perfidious purpose with the Co-defendants. The scienter, the knowledge of intent has got to be pled.

THE COURT: It's got to be pled someplace.

MR. CONNORS: This is what they say in the end, this is our case, this is our case. When scienter is lacking, the mere fact that a Defendant -- that a Defendant's otherwise lawful activities, trust account, paying money, may have assisted another, even if it assisted another in the pursuit of guileful objectives,

it's not a sufficient basis for a finding that he or she conspired to defraud.

That's the case they want to rely on, Judge. I'll take that fight any time. Because they have no other cases. I've given you Eurycleia from the Court of Appeals. I've given you Roni. I've given you Weksel. I've given you Fourth Department authority. And we're just at the first prong, your Honor.

Eurycleia says you got to plead knowledge of the falsity. Where is the pleading in this particular complaint that brings this poor man into this dispute as a lawyer and says you have knowledge of the falsity? Where is that allegation in this complaint? If it's anywhere, I'll stand down. You have to plead an intent to induce reliance.

His conduct was three months after this deal -- three months, more, after this deal went down. Do you think, your Honor, for a moment that this PSA, this purchase and sale agreement wouldn't have gone down when it did if someone had an inkling that months and months later maybe Toohey would send some money to a trust account for disbursement? Of course it wouldn't, it's got nothing to do with it.

Then justifiable reliance, then I gave you the Fourth Department, the Gemstone case. And his conduct is

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all post transaction. There's nothing contemporaneous with the transaction. It all comes afterwards. So, there cannot be justifiable reliance on his actions. And so, what we have now is we have a violation of Eurycleia, we have a violation of 3016-B because there's no basic facts to establish the elements and there's no fiduciary relationship. Keep that in mind because that's really important.

So, that's why -- your Honor, that's what the harm would be. The harm would be in subjecting a member of this bar, a lawyer in this community to a lawsuit when he's got nothing to do with it. His tangential involvement of post-transaction events is so minimal that, quite frankly, I scratch my head when I look at this particular complaint and say how can it possibly stand. And well --

THE COURT: That's why I raised this.

MR. CONNORS: That's -- and your catch is great, Judge, but your instincts you worry about -- I don't know if you do or not, but you say the Court of Appeals and Appellate Division look at this and say, well, give them a break at this stage.

THE COURT: You know why, because I've done this before.

MR. CONNORS: I know it. We've talked about

this.

THE COURT: And you know what the Appellate Division says --

MR. CONNORS: Send it back.

THE COURT: -- have your depositions.

MR. CONNORS: But never in a situation have you done it, your Honor, where you have this kind of authority.

THE COURT: Right. Thank you. Mr. Bartolomei, I take it you would amplify that discussion in regard to Mr. Halftown and Rachel Mitchell. And I guess I'm going to give you the same opportunity that I raised in regard to Mr. Gabriele. What misrepresentation did Rachel Mitchell make, Counsel?

MR. FARBER: Your Honor, I have not pled that either Rachel Mitchell or Barry Halftown made a misrepresentation.

THE COURT: What about an omission?

MR. FARBER: If I may, I believe they both made omissions. And I did not say, your Honor, that Mr. Gabriele didn't make omissions. If I may --

THE COURT: I thought you did.

MR. FARBER: No, I did not. I did not. Here's what I in fact said: Mr. Mitchell had obligations to and including the date of closing, February 15, 2006, when

moneys were wired. Moneys were transferred to these three Defendants. Not a penny went to Toohey or to Mitchell directly, to Bergal Mitchell directly. Instead we're going by the allegations of the complaint, that's where we are.

The moneys were transferred on February 17th, less than forty-eight hours later to these three Defendants, okay. These three Defendants received money, according to the allegations in the complaint, for no legitimate purpose. Now --

THE COURT: But -- but -- and outside of the legitimate purpose claim, because I -- let's hold that off to the side, moneys went other places, as well. For example, they went to the trust, they went to a Mr. Wozniak. Why aren't they named Defendants? They received ill-gotten funds.

MR. FARBER: That's the second distribution of moneys. And if you'll just bear with me for a minute, because I do want to come to Mr. Gabriele's distribution of moneys.

On February 17th Mr. Dowd had to have had agreements with each of these three Defendants that they were going to receive money from this transaction. It's reasonable to infer that those agreements were not struck on February 17th, that those agreements were struck

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sometime before February 15th. Mr. Dowd was the fulcrum in the entire situation. He distributed the moneys, he had to have agreements and understandings where those moneys were going. It's reasonable to infer that that occurred before February 15th.

Up to and including February 15th, each of the people who was a party, each of the persons, excuse me, who was a party to the agreement is responsible for any act or omission of the other, including Bergal Mitchell's failure to disclose that he was on both sides of the transaction, Bergal Mitchell's failure to disclose the distribution of moneys that would be made for no legitimate purpose, Bergal Mitchell's failure to disclose the inflated price of the property.

So, each got the money. How did they get the money? Different than Mr. Connor says, Mr. Connor says he was a lawyer, he was receiving it pursuant to an agreement, where's that in my pleading? That's not in my pleading. I didn't plead that he was a lawyer and there was a side agreement and he received it pursuant to an agreement that Mr. -- that Mr. Toohey had. No. No.

Here's what actually happened based on the allegations in the complaint: On February 17 each of the three Defendants received money as if it fell out of the sky for no legitimate reason. Now, I will agree with Mr.

Connor on one thing.

MR. CONNORS: It's Connors.

MR. FARBER: Connors, I apologize. I'm trying.

MR. CONNORS: It's all right.

MR. FARBER: I will agree with him on one thing, if you just focused on what happened with Mr. Gabriele after the moneys hit his account and he thereafter distributed it, whether that's ethical or not, ethical whether he was doing what he was required to do, perhaps you could say he's an innocent bystander. Perhaps. However, that's not the proper focus. That is a -- we're looking at the wrong thing for Gabriele. For Gabriele the proper focus is how did the money come in the first instance? It dropped out of the sky for no legitimate reason based on a preexisting agreement.

Your Honor said at the beginning, quite correctly, of course, that you're bound to take the allegations in the complaint as true at this point. Perhaps the evidence will come out later that he did something for Mr. Toohey or he was representing Mr. Toohey at the time. We haven't even alleged he was representing Mr. Toohey on February 17th, that he received those moneys for Mr. Toohey. We don't know that. We haven't alleged that. Right now he's an

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outsider to a transaction who gets money falling from the sky based on a preexisting agreement for no legitimate purpose. That makes out a cause of action. Well, a conspiracy claim.

And LeFebvre and the words of LeFebvre and the other conspiracy cases that we cited, all of which say you allege this and you allege agreement, if there's agreement and is there a reasonable basis to infer agreement.

THE COURT: I've sort of gone beyond Gabriele to -- to Mitchell and Rachel Mitchell came to money pretty similar as -- as Mr. Gabriele did, as you say, fall from the sky.

MR. FARBER: Right.

THE COURT: But what my question is: What misrepresentation did she make to the Plaintiff?

MR. FARBER: I don't know that she made a misrepresentation. Here's what we don't know.

THE COURT: And what omissions did she make? Does she have an obligation?

MR. FARBER: I think she did.

THE COURT: To who?

MR. FARBER: To the Plaintiffs.

THE COURT: Knock on their door and say hi?

MR. FARBER: Absolutely. Here's why: Because

her coconspirator had that obligation. If her coconspirator Bergal Mitchell breaches that obligation, that breach flows through to everybody who's part of the conspiracy. So, she can say she didn't have a duty, but then she bears the consequences of Bergal Mitchell not properly dispenseing of his duty.

THE COURT: And her involvement, as I understand it --

MR. BARTOLOMEI: Received money into her IOLA account and transferred it to her law firm account. That is the complete --

MR. FARBER: Not quite. Not quite. But --

MR. BARTOLOMEI: Well, what's beyond that?

MR. FARBER: I'm going to address the Court if I might.

THE COURT: Received nine thousand -- while transferred to her IOLA account and then she thereafter transferred it all to her --

MR. FARBER: To her personal law firm account.

THE COURT: -- personal law firm account.

MR. FARBER: Okay. So what --

THE COURT: That raises some questions in my mind.

MR. FARBER: Doesn't it raise some questions? Why did she get ninety thousand dollars into her IOLA

account when there's no allegation she represented anybody having anything to do with this transaction? There's no allegation she was counsel for anybody, but yet ninety thousand dollars came out of the sky and landed in her account. Why did it land in her account? Why did it land in Gabriele's account?

Why? Because the other two Defendants, Toohey and Mitchell, were washing money. And these people participated in washing money. Now, it's possible --

MR. CONNORS: Geeze.

THE COURT: Listen --

MR. CONNORS: You can't participate in washing money without some specific intent and knowledge that it's -- that it's illegal gotten gains. But I can't let this go. This is just false, making stuff up out of whole cloth, it's got nothing to do with this.

THE COURT: I've actually gone beyond Gabriele to --

MR. CONNORS: I'd like to come back for a second.

THE COURT: I think I asked all the relevant questions and you responded to them about how did he know, you know, what did he do wrong, you know. But if I could, I would really want to get Mr. Bartolomei to answer in regard to the same thing I asked Mr. Connors.

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What would be the harm of having her deposed and having her say how did you come to get this money? My husband said that he earned some money he wanted to go to my IOLA account. I don't know if -- that's kind of curious why it would go to an IOLA account. She's got problems. She's an attorney admitted to practice in the State of New York?

MR. BARTOLOMEI: She is. And she can take her own money out of her IOLA account and put it into her own law firm, as we do every day. When we do closings we take our fees out.

THE COURT: Normally when you put money into your IOLA account, it's clients' money.

MR. BARTOLOMEI: Until it's yours, sure.

THE COURT: But all of it went. So, none of it was ever clients' money and it just flowed from the clients' repository to your own. That's curious. What the heck was she doing that for?

MR. BARTOLOMEI: If it's curious, it's okay, Judge. It's all right. These are not the -- the New York State Police, these are not the United States Attorneys, these are not the FBI. They do those things, they make those inquiries, they suggest nefarious acts, they suggest conspiracies and they go out and try to put factual evidence together. We're in a civil court here.

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And Judge, Mr. Connors indicated very clearly, as we have in our pleadings, you've got to do something to get to the point where you get to put someone under oath and demand things.

THE COURT: The pleading requirements --

MR. BARTOLOMEI: You got to plead them. You at least have to plead the bare modicum of fraud. You have to do what the cases say. You have to do what the Court of Appeals say, otherwise what are we doing here?

THE COURT: The LeFebvre case you say would be the pertinent case to look at?

MR. CONNORS: Great, but not the other Court of Appeals cases and the Fourth Department cases. They're even better on those.

Don't you think if they had a case they could cite for the proposition that with this limited kind of allegation, the complaint would stand? They would cite it to you. Don't you think they would do that?

We cited six cases where the allegations were more serious against lawyers and law firms, where they participated in the transaction, where they were representing the hedge fund, where they were doing this. And the Court said no, this isn't enough, you're not going to impute liability to them on the basis of these attenuated facts. And he's wrong.

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I don't want this to go -- he said it just dropped out of the sky. By their own documents they submitted here the moneys weren't even made payable to Mark Gabriele, they were made payable to Tero, Inc., who was Toohey's client. Their own allegation is that they then disbursed those funds for the benefit of Toohey, which is what you have to do if you have a client's money in an account and the client says, disburse it according to this particular direction. That's the only allegation.

This -- this can't possibly withstand, it's six to one now. They're trying to say, well, it dropped out of the sky and it's really suspicious. Their facts are -- their pathetic -- I say this respectfully, but their pathetic facts here are that the moneys went into Tero and were disbursed pursuant to Toohey's instructions, which he has to do under the code of professional responsibility. Lawful act in a lawful way. And then -- and then they have nothing else to -- to tie it in.

THE COURT: I got that. I got that. Let me tell you what I would have done, I would have talked to my client and said, where are these moneys coming from? What are these moneys for? How did you get these moneys?

MR. BARTOLOMEI: Really?

THE COURT: Yeah, why are they coming in to

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me?

MR. CONNORS: Could you point me to a -- I know the code pretty well, as you well know. Can you point me to a rule that says that's what you do?

THE COURT: I'm going to tell you, I told you this is what I would have done.

MR. CONNORS: That's not enough. I can sue you for fraud if you forgot to do that?

THE COURT: I didn't say that.

MR. CONNORS: You can't. You can't.

THE COURT: I also understand that even if -- even if I did that, it's after the alleged defrauding of the money.

MR. CONNORS: Sure. You know what, your Honor, the Court of Appeals has said in these cases, even if there is an ethical lapse, it doesn't give rise to a civil cause of action. You know, we cited those right in the beginning. Even if there was, and I submitted there absolutely wasn't here, this thing is on so many levels defective.

THE COURT: Thank you.

MR. CONNORS: I'm sorry.

THE COURT: By the way, you're a very clever guy, too, I don't want you --

MR. CONNORS: I appreciate that.

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THE COURT: I say John's clever. You're not. Thank you. Thank you. Yes, sir.

MR. FARBER: Your Honor, if I may, Mr. Connors said to your Honor, well, we cite six cases and they're all on point. None of the six cases are on point at all. Some of the six cases don't even include conspiracy allegations to begin with. Some of the six cases don't even include fraud allegations. None of the cases are on point.

The -- at least a couple of the cases that are cited stand for the proposition that the allegations in the complaint that came before the Court were inadequate. But they don't discuss what the allegations were. For example, Briarpatch. You can read Briarpatch. It's a page-and-a-half. It doesn't say what the allegations were.

You can read Roni. Read Roni that they want to rely on, Roni or Roni, however one pronounces it. They say Roni, that's dispositive because here they were suing a lawyer and they didn't make out a fraud claim. Well, there's a problem with that. The -- the Court of Appeals -- the Court, and I forget whether it was Court of Appeals or the department, said in Roni the only thing that was alleged was that this was an attorney practicing law on behalf of somebody doing a regular real estate

transaction. And the same thing is the case in -- I can't even begin to pronounce it, that begins with an E. The attorneys were acting in -- in -- as counsel in a transaction.

The mere fact that you're counsel for somebody doesn't make you accountable for their wrongdoing. I readily admit that. That's got to be the law. But look at the allegations in the complaint. We did not allege that Gabriele was Toohey's counsel acting on Toohey's behalf when these moneys landed in his account. And Mr. Connors says, well, you know the money came in to Tero, Inc. Well, Tero didn't have anything to do with anything in this.

So, I'm going to go back. Money falls out of the sky to a gentleman's account, Mr. Gabriele. Mr. Gabriele is not on the basis of this record representing anybody, on the basis of this record. Mr. Gabriele is doing what he's reached agreement for, the distribution of funds in advance of the closing. And you can tell from the date of the distribution of the moneys that that necessarily had to be the case. He's reached agreement for the distribution of funds for no legitimate purpose in advance of the closing at a time when Bergal Mitchell has duties and responsibilities, fiduciary duties that he breaches. And Mr. Gabriele receives twenty-three

thousand dollars of the money. And that's alleged in the complaint. The money came into Tero, Inc., but the twenty-three thousand passed immediately to him. So, it's not like he didn't get the money.

So, here's where we actually --

THE COURT: Mr. Gabriele got twenty-three thousand dollars from this transaction?

MR. FARBER: He did. He did.

MR. CONNORS: It's --

MR. FARBER: And I can tell you the --

MR. CONNORS: He asked me. Would you stand down for a second? He received the funds that were owed to his law firm that were paid for fees that were already provided, fees that were services rendered by his law firm, which just completely supports the point of view, they can try to get crafty and clever and say, well, I didn't allege that he was the attorney for Mr. Toohey.

Now, Judge, that is sophistry, that's all it is. Everyone knows he was his lawyer and everyone knows because they've alleged that the funds were distributed for the benefit of the client, two legitimate purposes.

THE COURT: So, did those services include representation on the Helms trust?

MR. CONNORS: Yes.

MR. FARBER: So, your Honor --

MR. CONNORS: He says it right in the complaint.

MR. FARBER: I'm sorry.

MR. CONNORS: Okay. It says it right in the -- paragraph sixty-one where the factual allegations are solely and exclusively that moneys came into Tero, they don't say Tero, but their supplement with the FBI report says it, came into Tero and then were distributed for the benefit of Mr. Toohey. How's that possibly a fraudulent act? How does that possibly reflect knowledge, a scienter of the perfidious intent on the part of someone else?

THE COURT: All right. As -- and I thank you all for your arguments. It's been very helpful. But as to Rachel Mitchell, Barry Halftown and Mark Gabriele and as to the first, second and seventh, now I'm going off the original complaint, the two aiding and abetting and the fraud cause of actions, I reserve on those. Certainly based upon the arguments here, I want to center in on the law all of you have indicated and re-read that.

I have to tell you that in preparing for today, a inordinate amount of time I spent on the jurisdictional aspects. So, I did not really fixate -- I felt as I was going through it that I would reserve, take your

arguments on the actual substantive cause of actions and try to come to a decision in regard to the jurisdictional area.

So, in fairness to all of you, I have to read the law and go through the pleadings again. And so, as to, again, your clients, Mr. Bartolomei, and yours, Mr. Connors, and those cause of actions dealing with fraud and aiding and abetting, the conspiracy already being dismissed, I -- I'm going to reserve on those.

MR. FARBER: May I make one comment, your Honor? May I make one comment?

THE COURT: Sure.

MR. FARBER: Just on Mr. Connors' last argument. Mr. Connors' last argument was to the effect here's what actually happened.. And without having said it, what Mr. Connors actually said was when this case is tried, here's what the evidence is going to show. And I don't disabuse him for a -- for a moment of his fervent belief that that may be what the evidence may show at trial.

THE COURT: Or when -- when the depositions occur.

MR. FARBER: Right.

THE COURT: They will be clearly obvious to everybody that he could also say that. And I brought

that up already, what would be the harm of doing this. But you would concede, Counsel, would you not, that in the State of New York there are specific pleading requirements for fraud cause of actions?

MR. FARBER: I would. But I would also invite your Honor's attention to the Pludeman case which we cited, which is out of the Court of Appeals in 2008 which -- and I'm going to say this by way of analogy, we all remember back when we were in law school there was a pornography case in the Supreme Court of the United States where Potter Stewart says, I don't know what it is, but I can -- but that's it.

And Pludeman essentially says when you have all these facts that tend to indicate a fraud, let's not take a talisman approach toward the pleading requirements. And if you look at the case that follows that, Paolucci that we cited, it said you should employ that standard in fraud even on summary judgment.

THE COURT: You know, I've done that in the past because I try to be a practical guy. But the Appellate Division sometimes requires rigid compliance with certain pleading requirements. So, you know, and I do have to -- you know, I follow the appellate courts and I follow what they say. And they educate me constantly. And so, I try to conform with what -- and they do require

certain strict adherences to the --

MR. FARBER: I think those two cases would be particularly helpful.

THE COURT: I jotted those down as we've gone through the arguments.

MR. FARBER: And the concept that your Honor expressed at the beginning, let's take the allegations as being correct and all the reasonable inferences as being correct.

THE COURT: Okay.

MR. FARBER: Let's not accept whatever Defendants' evidence or proffers of evidence may be. There's no evidence in the record right now, whatever the proffers may be. It's not time to make findings of fact, it's time to determine whether the pleadings are sufficient to go forward.

MR. CONNORS: I know you know this, but he took great pains to cite Pludeman, which I'm glad because Pludeman was 2008 in the Court of Appeals and in '09 they decided Eurycleia. And please write that down because when they talk of Eurycleia, they explain Pludeman and say this is not enough. It's helpful to us, I think makes our point. Thank you.

THE COURT: Thank you now.

MR. BARTOLOMEI: Can I make one complaint? I

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tried to understand this complaint, first I laugh at it then I said it's written on paper, it's frightening that someone would do it. But listening to Mr. Farber here, it seems to say that everything stems from Bergal Mitchell's duty to disclose and the breach of that fiduciary duty. And what comes from that is God-awful things, dirty money, the pornography, I mean, everything, just awful things come from that. It was a duty to disclose. What is the end result of it? How does it -- if Bergal Mitchell did breach his duty to disclose, how does it make this money dirty? How does it make this money washing to transfer it from one person to another? I don't know. This is -- this isn't anything like the prurient interest, I think we can all recognize that. But this is scary that he would put this in.

So, the big picture says what if he didn't disclose, Judge, what if he breached the duty and then disclosing took place over here and the money was distributed to me, to -- to you, to everyone? What's it got to do with anything? What's it got to do with Bergal Mitchell's failure to disclose? Does the disclosure precipitate all these God-awful things? It has been alleged that it does. Just a failure to disclose.

THE COURT: Thank you. I've been uncommonly quiet about Mr. Dowd. The most important question I have

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to ask you, is -- is there any other suit pending against Mr. Dowd, namely by Mr. Deck or Mr. Boos, is that -- has there been any litigation commenced or anticipated?

MR. HAPEMAN: No litigation to my knowledge, your Honor. We have a situation where an attorney with his representation on the line, he stands in a different position than the Defendants we talked about thus far. If I can do anything today it's to impart to you the importance of the date June 14th, 2005. That is the date when this purchase and sale agreement became final. It was executed. And that two point one million dollar purchase price became binding. It was done. The negotiations were complete. The land was going to be sold for two point one million dollars. For both the fraud and the aiding, abetting -- fraud and the aiding and abetting, breach of fiduciary duty claim that date is very important.

You heard here today Plaintiffs connect the duty to disclose to the fiduciary obligation of a Codefendant, Bergal Mitchell. That fiduciary duty was not relevant on the date of June 14th, 2005. The Plaintiffs to whom this alleged fiduciary duty was owed were not a party to the transaction. It was the Seneca Nation of Indians and OCD. OCD was represented by Mr. Dowd.

THE COURT: But thereafter it was assigned to the gaming corporation.

MR. HAPEMAN: Without any negotiations with Dowd, without any input from Dowd, without any knowledge to Dowd until five months after this two point one million dollar purchase price became binding. It's very important because when you read the complaint, that's what they're asking to undue, that two point one million dollar purchase price. It was set in stone. The assignment had nothing to do with that purchase price. It was done.

THE COURT: But what are you telling me, because he intended or worked in concert with Toohey and Mitchell to defraud the Seneca Nation, now that there's a suit brought by the gaming corporations, who are assignees of that, certainly benefited by the contract, that that's okay?

MR. HAPEMAN: They allege very clearly --

THE COURT: You can't transfer the fraud.

MR. HAPEMAN: I apologize, your Honor.

THE COURT: I'm sorry.

MR. HAPEMAN: They allege very clearly in their complaint, this is their allegation and this is what we have to work with, that the duty ran from Mr. Dowd to Seneca Niagara Gaming Corp. They draw a direct line

Exhibit "B" Annexed to Affirmation of Pitman.

between those two entities. They don't allege a duty owed by Mr. Dowd to Seneca Nation of Indians. That allegation is not within the complaint.

They allege a direct line, that in order for this complaint to be -- to be allowed to continue, there has to be a duty on Mr. Dowd's part to the Plaintiffs. And it has to relate to that purchase price of two point one million dollars. That's what they're trying to undue. And that was done, signed, sealed, delivered on June 15, 2005.

THE COURT: Except for the conspiratorial claims, Mr. Dowd's duty really ran to his clients, Mr. Deck and Mr. Boos.

MR. HAPEMAN: Who are not, again, not parties to this case in any way, shape or form.

THE COURT: He should have tried to have gotten three point one million in furtherance of Mr. Deck and Boos.

MR. HAPEMAN: He was representing the sale of property, which as a matter of fact, Judge, I happen to be a real estate agent, as well, you -- and that's your job is to get the most money you can.

THE COURT: Well, okay, I'm also going to reserve in regard to -- before I do that, Counselor, what about Mr. Dowd? You know, didn't he owe a duty more to

his clients? I mean, it should have been -- outside of this conspiratorial aspect of it, if in fact he sat down over -- with some cigars and brandy over -- over a table and talked with Mr. Mitchell and Mr. Toohey about, here, we're going to hatch this scheme in order to defraud the indians, the nation and subsequently the gaming corporations, you know, obviously he would be implicated in that. But other than that, I mean, his obligation was to get as big a price as he could for his -- for his clients.

MR. FARBER: I think that there's -- what we have before us here today, there's no question he had duties to Mr. Boos and Mr. Deck. And I think it's highly questionable whether he fulfilled those obligations. But I'm not their advocate, so I'm not here to comment further on that.

But I will comment on the arguments just made on Mr. Dowd's behalf. And that is they want to close the book on June 15th, 2005, and say whatever happened thereafter doesn't count. And that really doesn't work because of Mr. Mitchell's ongoing and continuous obligation. There can be no question -- I don't want to say it that way because there's always a question as to what the evidence will show. There's a reasonable inference that Mr. Dowd entered into agreements to

distribute moneys for no legitimate purpose for a whole variety of people, including Toohey, Bergal Mitchell and each of the other three Defendants.

Now, we've all stood before you and we've said, the complaint says this, the complaint says that. I'd invite your Honor to read the first amended complaint and let's see what it actually does say and let's see what the allegations are that have actually been made. Because neither my summary of those nor defense counsel's summary of those are -- are controlling in any respect. What is controlling is what we actually alleged and what the reasonable inferences are from that, your Honor.

THE COURT: Thank you. Thank you all. I'll reserve.

MR. BARTOLOMEI: Judge, you did say that I could -- I could -- Ransom, you would give me an opportunity to do that. I'm not going to hold you to that because of the time. But I do -- if you'll let me just make -- there's two things that you haven't touched on.

THE COURT: But John, can I really -- respectfully, can I tell you, I made a finding. And you know, you can disagree with those findings, but I -- I very clearly made the findings and the basis for it on record and -- and it gives you a beautiful record to

appeal the jurisdictional aspect. But you know, I don't want to, you know, insult you by saying, you know, you're wasting your breath. But you are wasting your breath. It's -- and I'm not doing it to be insulting. I'm telling you that I made findings, those findings in conformance with the law provide jurisdiction. There's jurisdiction here. They're an arm of the nation. Appeal it if you're not happy with it. You'll find a more persuasive audience, perhaps, from the folks --

MR. BARTOLOMEI: If you'll let me finish the sentence, Judge, you'll see that you'll be very interested in what I have to say. There are two other grounds that were submitted for -- as grounds for dismissal. One is the failure to include the necessary party. And the other is that there was no injury suffered by the Plaintiffs here. Both of them relate to your -- to your finding. And that's my -- my comment here, Judge, and my question.

If you found that these two entities, which you claim -- which you found are actually arms or government instrumentalities of the Seneca Nation, do we have the Seneca Nation here? Do we have -- is this -- is this who we're dealing with here? Because in their charter it was required that the Seneca Nation approve the resolution to start this suit. We don't think they did. We don't

think they did. But you're saying as long as we know we have the Seneca Nation here, okay. That's why I'm asking that.

If we have the Seneca Nation here, we really have to see was there any injury suffered by the Seneca Nation that agreed to pay two point one million dollars for two hundred acres of land. And they got two hundred acres of land for two point one million dollars. So, as to both things, necessary party, is the Seneca Nation here? If they're not here, do they have to be? And if they aren't, will you dismiss this case?

And secondly, did they suffer? Is it the Seneca Nation we're dealing with or is it the separate entities, separate, autonomous and distinct entities as per their charter who claim to have suffered injury? And where is it alleged that they've suffered that?

THE COURT: Well, I found --

MR. BARTOLOMEI: I told you you'd be interested.

THE COURT: Yeah, I am. I found that the entities are arms of the nation. But you know, in regard to that, is the nation here, accordingly?

MR. FARBER: The nation doesn't need to be here. I mean, just because -- if I might, is your Honor's question in any case in which an arm of the

nation brings an action does the nation have to be here? There's no law cited for that proposition.

And the one who suffered harm here, just as alleged in the complaint, is SNFGC paid an inflated price, those are the allegations in the complaint, and would not have closed but for the fraud that was perpetrated, okay.

So, that is an entity that suffered a harm. And SGC incurred expenses that it would not have incurred but for the fraud here. Those are the allegations in the complaint.

I've read all the briefs, including Mr. Bartolomei's that came in just before I got on an airplane late yesterday. And that brief I looked, I didn't see anything that says if an arm of a nation, a federally-recognized tribe brings a cause of action, the tribe must be joined, the nation must be joined. There's no case law on that. Just look at Ransom. In Ransom who's the Plaintiff? In Ransom --

THE COURT: Actually, even going beyond Ransom, cases that were generated by and came afterward, I think there's actually a -- a case out of Oklahoma where a gaming corp was found to be the appropriate party. And there was no necessity to assign the nation. I'm just going off of memory.

MR. FARBER: But you're right. There are -- there are lots of cases where arms and instrumentalities of the nation, not just in this jurisdiction, but across the country, bring an action and there's no -- I've seen no case law that -- or statute that stands for the proposition that an arm or instrumentality, if it brings a cause of action, must also bring in its creator nation.

THE COURT: John, in regard to that, I reserve. That's interesting, you're right.

MR. BARTOLOMEI: Thank you.

THE COURT: I find it interesting as far as the necessary party aspect. I will address that, as well, in a written decision.

As far as the damage, however, the allegations from the complaint, as I understand it, is that because of the fraud of Toohey and Bergal Mitchell, who were -- who had a fiduciary responsibility from what I can see, certainly claimed, to the corporation, that they paid an inflated price from what the market really would have allowed them to acquire that property.

MR. HAPEMAN: That was the point I was trying to make, Judge, that if that's what they're alleging, that it all has to do with this two point one million dollar purchase price that as of that day, June 15, 2005, that was set in stone.

MR. FARBER: Except for one thing, nobody would have closed had they known. Had -- had the folks fulfilled their obligations on February 15th, 2006, there would have been no closing and we would not have paid an inflated price and I can assure the Court --

THE COURT: One at a time.

MR. FARBER: And I can assure the Court, notwithstanding what Mr. Bartolomei just said, there is specifically an allegation that it's an inflated price.

THE COURT: You know, you could very well go through all this and get to the conclusion and to a jury say have they been harmed and they could say no. They agreed -- I would -- I would argue they agreed to pay two point one, they paid two point one, that's the end of it. I would certainly make that argument. They agreed to it. These people had their eyes open, they knew what they were paying, no one forced them. They paid two point one million.

They made a decision someplace along the line the sale had to have been approved by the board of directors or by the indian -- the tribal council. Someplace along the line it had to be approved. So, they made a business decision to buy it for two point one and they did. There's no damages, ladies and gentlemen.

And you may very well have a jury come back and

say zero. Once you get to the end of it, that's a very real possibility with a jury here in Niagara County. But that's miles down the road and we'll take it as it comes.

MR. CONNORS: Judge, we didn't get a chance to argue statute of limitations. We have a pretty strong argument in our brief on that topic, just so you know.

THE COURT: As to the fraud cause of action?

MR. CONNORS: Yes. When you -- just essentially it comes down to you look to the remedy sought, not to the remedy asked for. You look to the relief. And their own language calls it a theft, a conversion type, which is a three year statute. We cited you a couple of cases that stand for that proposition that would make the sale against Michael Dowd or against Michael Dowd probably and Mark Gabriele.

MR. FARBER: If I can comment on that for just a minute. When your Honor is reading cases, if you read the Paolucci case, which is found at 903 NYS 2d 584, I have the Lexis version here, so it's problematic for me to give you the page citation, it looks like the second page in the Lexis opinion, the Court there happened to address statute of limitations in a case where there was not even an allegation of fraud and was trying to decide whether the three year statute should apply or -- for a breach of fiduciary duty or a six year statute.

Exhibit "B" Annexed to Affirmation of Pitman.

And the Court said notwithstanding that there's no allegation of fraud, the foundation of Plaintiff's original claim was that Mauro and Wagner aided and abetted by Boni, used trickery, deceit and lack of candor to procure his withdrawal from the partnership. The court found notwithstanding there's no allegation of fraud, that because the gravamen of the complaint was trickery, deceit and lack of candor, which is our case, trickery, deceit and lack of candor, that the fraud statute of limitations applies. And it's a six year statute.

So, I request that your Honor take a careful look at that.

THE COURT: As I indicated, I -- in all candor, my concentration over the last several days as I read through this was in regard to the jurisdictional aspect. And I felt that I was going to hear you all out in regard to the substantive claims, if I got past the jurisdictional issue, which I did, and I would reserve and I -- I have not considered, as well, the -- the statutory limitations. So, I will take that up, as well as the necessary party.

MR. BARTOLOMEI: We too raised the statute of limitations, but as I understand your ruling, your finding, that had to do with these -- the companies being

the arms or government's instrumentalities of the Seneca Nation. I thought you did reserve on whether or not they were doing business in the state.

THE COURT: No, I never got to that.

MR. BARTOLOMEI: So, I ask you read my pleadings with the maps, title, everything.

THE COURT: Respectfully, I'm not going to do that. The motion is for me to dismiss jurisdictionally for lack of jurisdiction, lack of the -- of this -- these entities to bring suit. I find that they have the ability to do that as arms of the nation. If that is reversed, I understand what you're saying, that then the issue as to whether or not they're corporations that are not doing business in the state that would allow them to sue has not been determined. But I am so completely positive that they are arms of the nation and that there is jurisdiction, that, you know, if that in fact is reversed, I will have to take up, yes, whether or not they have the jurisdiction to bring this litigation as -- as corporation, foreign corporations, not doing business in the state. So, you're right, I mean, that is out there. But I don't think we're ever going to get to that. It's very clear to me they're arms of the nation. I don't have any doubt about that.

MR. BARTOLOMEI: The only other thing I want to

point out, you'll see in the pleadings the charters were attached to -- to Mr. Farber's pleadings, Mr. Pfalzgraf's pleadings. And very clearly in the charter it requires that the Seneca Nation council approve the bringing of a lawsuit. Judge, it's very clear. They have to adopt a resolution to do it and the Seneca Nation council has to approve it. But we've indicated that that's a prerequisite that should have been pled and we don't think they did approve bringing this lawsuit.

MR. FARBER: It's been approved, your Honor, by resolution.

MR. BARTOLOMEI: Okay.

THE COURT: Well, I mean --

MR. BARTOLOMEI: Maybe I'd get a copy of it. Maybe they want to amend their pleadings. Thank you, Judge, for your attention.

THE COURT: Just one thing, you know, my own thought. If not here, where is the jurisdiction? Tribal -- why don't you guys submit this to the tribal court?

MR. BARTOLOMEI: I know why they didn't, but you may want to ask them.

THE COURT: Why don't you guys all agree to submit it to the tribal court?

MR. BARTOLOMEI: We'd be willing. The federal court and the tribal court has concurrent jurisdiction on

intratribal matters. This is not an intratribal matter.

THE COURT: This deals with a -- a property now of the nation. And you know, looking at, you know, jurisdictional aspects, I think that disputes that deal with property that are owned by the nation should be resolved in the tribal court. So, you know, why don't you all stipulate and have the tribal court make a determination? What's wrong with that?

MR. CONNORS: Because you'd miss us, that's why.

THE COURT: Well, not that much.

MR. FARBER: I would miss you.

THE COURT: Okay.

MR. BARTOLOMEI: The quorum was chosen by the Plaintiffs here. If you're saying that doesn't belong here, we're happy for you to say that, throw it out. We want you to throw these guys out.

THE COURT: Would you be happy in a tribal court?

MR. BARTOLOMEI: It depends on what they plead there. It depends on what they bring there. There's only so many actions they can bring in -- the tribal court won't deal with their nonsense there. I mean, you have to -- and I see why you do, because you're a gentleman.

Exhibit "B" Annexed to Affirmation of Pitman.

THE COURT: Amend the complaint.

MR. BARTOLOMEI: Pardon me?

THE COURT: You want the tribal court to deal with the amended complaint?

MR. BARTOLOMEI: It's their choice. It's their choice and we're saying they don't have jurisdiction here, but they claim they do. They've submitted themselves to the jurisdiction of New York State.

THE COURT: Well, you know, I'm really as a Judge, you know, it's not -- it's to dispose of cases that come into the state system. So, providing --

MR. BARTOLOMEI: Dismiss them.

THE COURT: Providing for all of you to agree and stipulate to have the matter heard and determined by the tribal court, can we do that? Because we'll be able to mark this right off our calendar. How about you?

MR. BARTOLOMEI: You know what you could do without our stipulation? You could say these cases are dismissed, bring them in the tribal court.

MR. FARBER: We're not in a position to agree to that. We couldn't consider it without consulting other authorities. But I can tell you it was considered in the first instance and we made our election to come to this court, which properly has jurisdiction.

THE COURT: I find that absolutely amazing. I

Exhibit "B" Annexed to Affirmation of Pitman.

find that absolutely amazing. Okay. Well, thank you. Thank you all very much.

(PROCEEDINGS CONCLUDED.)

* * *

Certified to be a true and accurate transcript of the above-entitled matter.

Lisa Mullane

LISA A. MULLANE, RPR
Official Court Reporter

Exhibit "C" Annexed to Affirmation of Pitman.

Seneca Nation of Indians
DEPARTMENT of JUSTICE
P.O. Box 231, Seneca Nation • Salamanca, New York 14779
(716) 945-1790 • Fax (716) 945-6869 (not for service of papers)

April 4, 2005

RECEIVED
APR 20 2005
SENECA NATION OF INDIANS
PRESIDENTS OFFICE

President and Council of the Seneca Nation of Indians
1490 Route 438, Cattaraugus Territory
Irving, NY 14081

Re: *Constitutionality of Nation-Issued Corporate Charters*

Greetings:

This letter is to provide a basic overview of the Seneca Nation judicial system and to offer an assessment of the constitutionality of Nation-issued corporate charters.

Section IV, ¶ 1 of the Constitution of the Seneca Nation of Indians of 1848, as amended, provides that the "judicial power shall be vested in a Court of Appeals, a Peacemakers Court and a Surrogates Court." The Peacemakers Court serves as a court of general jurisdiction with the Surrogates Court as a court of specific jurisdiction governing the administration of estates. The Court of Appeals is empowered to hear appeals from both courts as a matter of right. Decisions of the Court of Appeals are subject to discretionary appeal to the Nation's Council sitting as the "Supreme Appellate Court" as provided by the Nation's Rules of Appellate Civil Procedure. For a matter to be appealed from the Court of Appeals to the Council, at least seven of sixteen Councillors must affirmatively vote to hear the appeal.

The jurisdictional authority of the Nation's courts is broad and, as set forth in Section IV, ¶ 6, extends to

> all cases arising under [the Nation's] Constitution, the customs or laws of the Nation, and to any case in which the Nation, a member of the Nation or any person or corporate entity residing on, organized on, or doing business on any of the Reservations shall be a party.

The Constitution also provides that process and procedure in the Nation's courts shall be as "prescribed by law." Council has acted to implement this provision by adopting procedural and organizational rules for all of the Nation's courts, as well as for their management and operation.

Recently, an action was filed in the Nation's court system seeking to enjoin payment of the exclusivity payment to the State under the Class III gaming compact. *See Jacobs v. Brown*, CA No. 1129-03-1. In the course of these proceedings, on August 10, 2004, the Nation's Court of Appeals

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ruled that the granting of the gaming corporation charters was unconstitutional and that the corporations were a "nullity". Seven days later, on August 17, 2004, the Nation's Council – convening as the Supreme Appellate Court – reversed the Court of Appeals' decision and upheld the legality of the gaming corporation charters. On September 16th, the Court of Appeals purported to set aside the decision of the Supreme Appellate Court and reinstated its prior decision invalidating the corporate charters. No further proceedings in the case have occurred.

Based on the clear language of the Nation's Constitution, the decision of the Supreme Appellate Court to reverse the Court of Appeals decision is conclusive. Section IV, ¶ 10 of the Nation Constitution provides that

> On such matters of appeal from the Court of Appeals, the decision of the Council shall be final, and no subsequent elected Council shall have the right to re-open, re-hear, reverse or affirm the decision of a previous Council.

Thus, the action of the Court of Appeals on September 16th purporting to set aside the Supreme Appellate Court's decision of August 17th is of no force and effect because the Supreme Appellate Court's decision was "final" by its terms. The Nation's Constitution makes no provision for review of Supreme Appellate Court decisions by the Court of Appeals under any circumstances. As a result, the Supreme Appellate Court's decision of August 17th is final and the Nation's gaming corporations are constitutional and valid legal entities.

This conclusion is also strongly implied from the text of the Nation's Constitution itself. Section I, ¶ 2 of he Nation's Constitution provides that the "legislative power shall be vested in a Council of sixteen members." Section IV, ¶ 6 provides that the Nation's judicial power shall extend "to any case in which . . . any . . . corporate entity . . . organized on . . . any of the Reservations shall be a party." For a "corporate entity" to be "organized on" any Nation reservation implies that the Council has the legislative power to grant corporate charters, i.e. to "organize" them. Since corporate charters – whether they be for private or public purposes (as are the Nation's gaming corporations) – can only be issued by sovereign governments, this constitutional grant of authority from the Seneca People confirms that the Nation's Council possesses the general authority to grant corporate charters. Accordingly, the Council thus has the constitutional authority to grant charters to create the Nation's gaming corporations.

Sincerely,

Robert Odawi Porter
Senior Policy Advisor and Counsel

Exhibit "D" Annexed to Affirmation of Pitman.

Execution Version

DISTRIBUTION AGREEMENT

among

SENECA NATION OF INDIANS,

SENECA NATION OF INDIANS CAPITAL IMPROVEMENTS AUTHORITY,

SENECA GAMING CORPORATION

and

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

dated April 27, 2007

This instrument was drafted by:

Dorsey & Whitney LLP
250 Park Avenue
New York, New York 10177

Exhibit "D" Annexed to Affirmation of Pitman.

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Exhibit "D" Annexed to Affirmation of Pitman.

DISTRIBUTION AGREEMENT

This DISTRIBUTION AGREEMENT, dated as of the 27th day of April, 2007, by and among the SENECA NATION OF INDIANS, a federally recognized and sovereign Indian Nation (the "Nation"), SENECA NATION OF INDIANS CAPITAL IMPROVEMENTS AUTHORITY, a governmental instrumentality of the Nation (the "Authority"), SENECA GAMING CORPORATION, a tribally chartered corporation wholly-owned by the Nation ("SGC") and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association with trust powers (the "Trustee");

WITNESSETH:

WHEREAS, the Authority has been established by the Nation for the purpose of acquiring, constructing, financing, operating and maintaining such capital improvements of the Nation as may from time to time be designated by the Nation's Council; and

WHEREAS, as directed by the Nation's Council, the Authority has determined to finance certain capital improvements of the Nation (the "Projects"); and

WHEREAS, the Authority has determined to finance all or a portion of the Projects through the issuance of bonds payable solely from and with recourse limited to, the Trust Estate (as defined herein); and

WHEREAS, in order to finance some or all of the costs of the Projects, the Authority has determined to enter into a Trust Indenture dated as of April 27, 2007 between the Authority and the Trustee (the "Indenture") and has duly authorized and directed the issuance of two series of bonds in the aggregate principal amount of $159,495,000 to be designated "Special Obligation Bonds," one series, designated Series 2007-A (tax-exempt), to be issued in the aggregate principal amount of $119,495,000 (consisting of $32,800,000 aggregate principal amount due 2016 (the "Series 2007-A Bonds due 2016"), and $86,695,000 aggregate principal amount due 2023 (the "Series 2007-A Bonds due 2023")) and one series, designated Series 2007-B (taxable), to be issued in the aggregate principal amount of $40,000,000 (the Series 2007-A Bonds, the Series 2007-B Bonds and any Additional Bonds issued under the Indenture being collectively referred to herein as the "Bonds"), thereunder; and

WHEREAS, SGC is an instrumentality of the Nation which, together with its three wholly-owned subsidiaries (also instrumentalities of the Nation), conducts all aspects of the Nation's Gaming Enterprise (as defined herein); and

WHEREAS, SGC makes Distributions (as defined herein) attributable to operations of the Gaming Enterprise; and

WHEREAS, the Nation has determined to transfer and assign a sufficient amount of the Distributions distributed to it by SGC to the Authority in order to provide for the Authority's payment of the principal of, premium, if any, and interest on the Bonds; and

WHEREAS, as security for the Bonds, the Authority has determined to pledge all of its right, title and interest in the Pledged Distributions (as defined herein) to the Trustee; and

WHEREAS, it is a condition for the issuance of the Bonds under the Indenture that the Nation, the Authority and SGC enter into this Agreement with the Trustee.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.01 Definitions. Unless the context otherwise requires, the terms defined in this Article I and in the recitals and succeeding Articles of this Agreement shall, for all purposes of this Agreement have the meanings herein specified, such definitions to be equally applicable to both the singular and plural forms of any of the terms defined:

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Affiliate Contract" has the meaning given in Section 4.23.

"Affiliate Transaction" has the meaning assigned to it in the SGC Indenture.

"Arm's Length Contract" has the meaning given in Section 4.23.

"Authority" has the meaning assigned to it in the Recitals.

"Bond Fund" means the Bond Fund established under Section 5.01 of the Indenture.

"Bonds" has the meaning assigned to it in the Recitals.

"Buffalo Creek Territory" means approximately nine acres of land located on the Nation's Buffalo Creek Territory in Buffalo, New York within the boundaries of Michigan Avenue, Perry Street, Marvin Street and South Park Avenue.

"Capital Expenditures" means all amounts that would, in accordance with GAAP, be included on the financial statements of a Person as additions to property, plant and equipment on a statement of cash flows for such Person in respect of (a) the acquisition, construction, improvement, replacement or betterment of land, buildings, machinery, equipment or of any other fixed assets or leaseholds, (b) to the extent related to and not included in clause (a), materials and contract labor (excluding expenditures properly chargeable to repairs or maintenance in accordance with GAAP), and (c) other capital expenditures and other uses recorded as capital expenditures or similar terms having substantially the same effect.

"Capital Stock" has the meaning assigned to it in the SGC Indenture.

"Class II Gaming" has the meaning assigned to it in IGRA.

"Class III Gaming" has the meaning assigned to it in IGRA.

"Closing Date" means the date on which the initial series of Bonds are issued and delivered to the initial purchaser thereof.

"Code" means the Internal Revenue Code of 1986, as now or hereafter amended.

"Compact" means the Nation-State Gaming Compact between the Seneca Nation of Indians and the State of New York, dated as of August 18, 2002, deemed approved by the Secretary of the Interior as of December 9, 2002, as amended, and as it may be further amended, extended, renewed or replaced from time to time.

"Compact Exclusivity Fee Payments" means the payments that the Nation is required to make to the State of New York under Section 12 of the Compact.

"Constitution" means the Constitution of the Seneca Nation of Indians of 1848, as amended.

"Contractual Obligation" of any Person means any indenture, note, lease, loan agreement, security, deed of trust, mortgage, security agreement, guaranty, instrument, contract, agreement or other form of contractual obligation or undertaking to which such Person is a party or by which such Person or any of its property is bound.

"Council" means the Council of the Nation identified in Section 1 of the Constitution of the Nation, or its successor governing body of the Nation.

"Default" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"Distributions" means all money, cash, cash and non cash dividends and distributions, investments (whether by means of a loan, advance or guarantee), and other amounts received by the Nation or any Affiliate of the Nation, or by any third party for the benefit of the Nation or any Affiliate of the Nation (excluding Distributions received by or for the benefit of SGC, each Restricted Subsidiary of SGC and the respective officers, directors and employees of each of the foregoing) after the date hereof and derived from the operation of the Gaming Enterprise; provided, that Distributions do not include Excluded Payments.

"Event of Default" has the meaning given in Section 6.01.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Payments" means all amounts received by the Nation or any Affiliate of the Nation (other than SGC or any Restricted Subsidiary of SGC) after the date hereof, derived from the operation of the Gaming Enterprise, and actually applied to the satisfaction of (a) Compact Exclusivity Fee Payments, (b) Operating Lease Payments, (c) payments pursuant to Permitted Affiliate Transactions or (d) reimbursement of Regulatory and Shared Services Expenses.

"Existing Affiliate Contract" has the meaning given in Section 4.23.

"Fair Market Value" has the meaning assigned to it in the SGC Indenture.

"Fiscal Year" means the fiscal year of SGC consisting of a 12-month fiscal period ending on each September 30, or such other period designated by SGC as its fiscal year.

"GAAP" means generally accepted accounting principles in effect in the United States as of the date hereof.

"Gaming Authority" means any agency, authority, board, bureau, commission, department, office or instrumentality of any nature whatsoever of the United States, the Nation, the State of New York or any political subdivision thereof, whether now or hereafter in existence, or any officer or official thereof, with authority to regulate the Gaming Enterprise.

"Gaming Enterprise" means the Class III Gaming and resort business and any activity or business incidental, related, complementary or similar thereto, or any business or activity that is a reasonable extension, development or expansion thereof or ancillary thereto, including without limitation any hotel, entertainment, transportation, recreation or other activity or business designed to promote, market, support, develop, construct or enhance the casino gaming and resort business operated by SGC and its Restricted Subsidiaries at the Venues.

"Gaming License" means each license, permit, franchise or other authorization from any Gaming Authority required on the Closing Date or at any time thereafter in order for SGC to conduct Class III Gaming at the Venues, including all licenses granted under the Nation Gaming Ordinance, and the regulations promulgated pursuant thereto, and other applicable federal, state, foreign or local laws.

"Gaming Regulations" means all federal, Nation and New York State laws, ordinances, rules, regulations and orders applicable to the Class III Gaming at the Venues, whether now or hereafter adopted or in effect.

"Governmental Authority" means any government body or regulatory authority exercising jurisdiction over the Gaming Enterprise.

"Holder," "Bondholder" or "owner" whenever employed herein with respect to a Bond means the person in whose name such Bond shall be registered under the Indenture.

"IGRA" means the Indian Gaming Regulatory Act, Public Law 100-497, codified as 25 U.S.C. §§ 2701-2721, as amended from time to time.

"Income Available for Distribution" means, as to any period, the amount of Consolidated Net Income (as defined in the SGC Indenture as such instrument is in effect on the date hereof) for such period that, subject to any contractual restrictions applicable to SGC, could be the subject of a Distribution to the Nation in that period, regardless of whether such amount was actually so distributed and without regard to any amount of Consolidated Net Income from prior periods that could be the subject of a Distribution in the period in question, less all Excluded

Payments (to the extent not already excluded in determining Consolidated Net Income) made or required to be made in such period.

"Indenture" has the meaning assigned to it in the Recitals.

"Independent Financial Advisor" means a nationally recognized accounting, appraisal or investment banking firm or consultant in the United States that is, in the judgment of the Trustee, qualified to perform the task for which it has been engaged (1) which does not, and whose directors, officers and employees or Affiliates do not, have a direct or indirect financial interest in SGC and (2) which, in the judgment of the Trustee, is otherwise independent and qualified to perform the task for which it is to be engaged.

"Laws" means, collectively, all federal, tribal and state treaties, laws, rules and regulations and administrative and judicial decisions.

"Lock-Down Event of Default" has the meaning assigned to it in the Indenture.

"Maintenance Capital Expenditures" means Capital Expenditures for the maintenance, repairs, restoration or refurbishment of tangible property (real and personal), but excluding any Capital Expenditure that expands property.

"Nation" has the meaning assigned to it in the Recitals.

"Nation Gaming Ordinance" means the Nation Gaming Ordinance of the Nation enacted by the Council on August 1, 2002, subsequently amended on November 16, 2002, and August 12, 2006, and approved by the Chairman of the National Indian Gaming Commission on November 26, 2002 and November 6, 2006.

"Nation Parties" means the Nation, the Authority and SGC.

"Nation Territory" means the Allegany, Cattaraugus, Oil Spring, Niagara Falls and Buffalo Creek Territories of the Nation.

"New Affiliate Contract" has the meaning given in Section 4.23.

"Niagara Territory" means the approximately 50 acres of land in Niagara Falls, New York designated in the Compact for ownership by the Nation.

"NIGC" means the National Indian Gaming Commission established under IGRA.

"Operating Lease Payments" means all lease payments made to the Nation for the use of the land and buildings used in connection with the Gaming Enterprise.

"Outstanding," whenever employed herein with respect to a Bond, shall have the meaning assigned to such term in the Indenture.

"Permitted Affiliate Transactions" means Affiliate Transactions which are permitted under the SGC Indenture or, should the senior notes issued under the SGC Indenture cease to

represent SGC's principal indebtedness, affiliate transactions permitted under the indenture or credit agreement then governing SGC's principal indebtedness.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government, Indian tribe or nation or any agency or political subdivision thereof.

"Pledged Distributions" means (a) all Distributions made by SGC pursuant, and subject to, Section 3.01 hereof and (b) to the extent not released to the Nation in accordance with Section 3.03 hereof, all Distributions made by SGC following the occurrence and during the continuation of a Lock-Down Event of Default (such Distributions to be made in accordance with, and subject to the terms of, Section 3.03 hereof).

"Purchase Agreement" has the meaning assigned to it in the Indenture.

"Projects" has the meaning assigned to it in the Recitals.

"Qualified Capital Stock" has the meaning assigned to it in the SGC Indenture.

"Regulatory and Shared Services Expenses" means (i) the SGA's costs of regulating the Gaming Enterprise; (ii) the regulatory costs that the Nation is required to pay to the NIGC pursuant to the IGRA and its accompanying regulations; (iii) the regulatory costs that the Nation is required to pay to the State of New York under the Compact; and (iv) the reasonably allocated costs to the Gaming Enterprise of the Nation's costs and expenses in providing certain governmental services for the operation and support of the Gaming Enterprise, including but not limited to the costs of fire protection services, law enforcement services, road improvements, water and waste treatment, and waste removal, (to avoid duplication, all to the extent to which such items are not otherwise reflected as operating expenses of the Gaming Enterprise).

"Restricted Subsidiary" means each of Seneca Erie Gaming Corporation, Seneca Niagara Falls Gaming Corporation and Seneca Territory Gaming Corporation and any of their respective permitted successors.

"SGA" means the Seneca Gaming Authority, the gaming regulatory instrumentality of the Nation, referred to in the Compact and created under the Nation Gaming Ordinance.

"SGC" means the Seneca Gaming Corporation, a tribally chartered corporation wholly-owned by the Nation, and any permitted successor to SGC.

"SGC Indenture" has the meaning given to such term in the Indenture.

"Trust Estate" has the meaning given to such term in the Indenture.

"Trustee" means Wells Fargo Bank, National Association, or its successor as trustee under the Indenture.

"Venues" means the multi-amenity Class III Gaming, food, lodging and entertainment complexes, located or to be located on the Nation Territory.

Section 1.02 Additional Provisions as to Interpretation. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not any particular Article, Section or subdivision hereof.

ARTICLE II

TRANSFER AND PLEDGE OF PLEDGED DISTRIBUTIONS

Section 2.01 Transfer and Assignment by Nation of Pledged Distributions. The Nation hereby transfers and assigns to the Authority all of its right, title and interest to and in the Pledged Distributions.

Section 2.02 Pledge by the Nation. The Nation hereby grants to the Trustee a security interest in, all of the Nation's contractual rights hereunder to enforce the obligation of SGC to make the Pledged Distributions (whether a general intangible or payment intangible), together with all proceeds of the foregoing.

ARTICLE III

COVENANTS OF SGC

SGC covenants and agrees that, so long as any Bonds are Outstanding under the Indenture, it shall and, to the extent applicable, shall cause its Restricted Subsidiaries to:

Section 3.01 Initial Monthly Distributions. Subject to any contractual restrictions applicable to SGC, make a Distribution to the Nation on or before the 5th day of each month in an amount equal to the amount required to be deposited by the Authority with the Trustee in that month under Section 5.01 of the Indenture. The Nation and the Authority, pursuant to duly adopted resolutions, have directed SGC to pay all Distributions made to the Nation under this section (and assigned by the Nation to the Authority pursuant to Section 2.01 hereof) directly to the Trustee (for the account of the Authority) for deposit to the Bond Fund.

Section 3.02 Subsequent Monthly Distributions. Not make any Distribution in any month, other than pursuant to Sections 3.01 or 3.03 hereof, until the Trustee has received the Distribution required by Section 3.01 in that month.

Section 3.03 Distributions during Lock-Down Event of Default. Upon receipt by the Authority and SGC of written notice from the Trustee that a Lock-Down Event of Default has occurred and is continuing, and until such time as the Authority and SGC receive written notice from the Trustee that such Lock-Down Event of Default is no longer continuing, at the direction of the Nation and the Authority (pursuant to duly adopted resolutions), not make any Distributions other than by paying the same to the Trustee for the account of the Authority. If a Lock-Down Event of Default is cured or waived or otherwise ceases to continue, then all Distributions paid by SGC to the Trustee pursuant to this Section 3.03 and not theretofore applied by the Trustee consistent with the terms of the Indenture shall be released by the Trustee

to the Nation and upon such release such Distributions shall no longer constitute Pledged Distributions.

Section 3.04 No Other Distributions. Not make any Distributions other than Distributions made in accordance with Section 3.01, 3.02 or 3.03.

Section 3.05 Calculation of Income Available for Distribution. Upon receipt of a written request from the Authority in connection with Section 2.10 of the Indenture, provide the Authority with a calculation showing the Income Available for Distribution for the period or periods requested by the Authority.

ARTICLE IV

COVENANTS OF THE NATION

The Nation covenants and agrees that, so long as any Bonds are Outstanding under the Indenture, it shall:

Section 4.01 Pledged Distributions. (a) Consistent with Section 2.01 hereof, take any further action necessary to ensure the continuing validity and effectiveness of its (i) transfer and assignment of all Pledged Distributions to the Authority and (ii) grant of a security interest pursuant to Section 2.02 hereof; (b) cause SGC, subject to any contractual restrictions, to make the Pledged Distributions required under Section 3.01 hereof and to pay all Pledged Distributions directly to the Trustee (for the account of the Authority) for deposit to the Bond Fund; and (c) in the event that it receives any Distribution from SGC in contravention of Section 3.01, 3.02, 3.03 or 3.04 hereof, hold such Distribution in trust for the benefit of the Trustee and promptly deliver such Distribution to the Trustee for deposit in the Bond Fund.

Section 4.02 Payment of Taxes. Cause SGC to pay prior to delinquency all material taxes, assessments, and governmental levies imposed upon SGC or any of its Restricted Subsidiaries, except for any tax, assessment or governmental levy contested in good faith and by appropriate proceeding or where the failure to make such payment is not adverse in any material respect to the ability of SGC to meet is obligations under this Agreement.

Section 4.03 Maintenance of Properties. Cause SGC to cause all material properties used or useful in the conduct of the Gaming Enterprise to be maintained and kept in good working condition, repair and working order at all times (reasonable wear and tear excepted) and supplied with all reasonably necessary equipment, and cause SGC to make all commercially reasonable repairs, renewals, replacements, betterments and improvements thereon.

Section 4.04 Maintenance of Insurance. Cause SGC to maintain insurance with responsible carriers against such risks and in such amounts as is customarily carried by similar businesses with such deductibles, retentions, self insured amounts and coinsurance provisions as are customarily carried by similar businesses of similar size, including, without limitation, property and casualty. Customary insurance will be deemed to include, without limitation, the following:

(a) workers' compensation insurance to the extent required to comply with the Compact or the laws and regulations of any applicable jurisdiction;

(b) comprehensive general liability insurance with minimum limits of $1,000,000 per occurrence;

(c) umbrella or excess liability insurance providing excess liability coverages over and above the foregoing underlying insurance policies up to a minimum limit of $4,000,000 in the aggregate;

(d) business interruption insurance with a minimum limit of at least $50,000,000; and

(e) property insurance protecting the property against losses and damages as is customarily covered by an "all-risk" policy or property policy covering "special" causes of loss for a business of similar type and size, providing coverage of not less than 100% of actual replacement value (as determined at each policy renewal based on the F. W. Dodge Building Index or some other recognized means) of any improvements customarily insured consistent with industry standards and with a deductible no greater than 2% of the insured value of the Venues or such greater amount as is available on commercially reasonable terms (other than earthquake or flood insurance, for which the deductible may be up to 10% of such replacement value).

All such insurance policies will be issued by carriers having an A.M. Best & Company, Inc. rating of A or higher and a financial size category of not less than VII, in each case on the date each such policy is issued to SGC, or if such carrier is not rated by A.M. Best & Company, having the financial stability and size deemed appropriate by an opinion from a reputable insurance broker.

Section 4.05 Compliance with Laws. Cause SGC to comply with all statutes, laws, ordinances or government rules and regulations to which it is subject, non-compliance with which would materially adversely affect the business, prospects, earnings, properties, assets or financial condition of SGC and its Restricted Subsidiaries taken as a whole.

Section 4.06 Gaming Licenses. Use its commercially reasonable efforts to obtain and retain in full force and effect at all times all Gaming Licenses necessary for the operation of the Gaming Enterprise; provided that, if in the course of the exercise of its governmental or regulatory functions the Nation is required to suspend or revoke any consent, permit or license or close or suspend any operation or any part of any Venue as a result of any noncompliance with the law, the Nation shall cause SGC to use its commercially reasonable efforts to promptly and diligently correct such noncompliance or replace any personnel causing such noncompliance so that such Venue will be opened and fully operating.

Section 4.07 Notices of Violations. File with the Trustee any Notice of Violation, Order of Temporary Closure, or Assessment of Civil Fines, from the NIGC pursuant to 25 C.F.R. Part 573 or 575 or any successor provision, and any written notice issued by, or cause of action commenced by, New York State under the Compact.

Section 4.08 Legal Existence. Subject to Section 4.09, cause SGC to do all things necessary to preserve and keep in full force and effect its legal existence, and the legal existence of each Restricted Subsidiary, in accordance with the respective organizational documents (as the same may be amended from time to time) of each Restricted Subsidiary and the material rights (charter and statutory), licenses and franchises of SGC and its Restricted Subsidiaries; provided that the Nation shall not be obligated to require SGC to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of its Restricted Subsidiaries, if the Board of Directors of SGC shall determine that the preservation thereof is no longer desirable in the conduct of the business of SGC and its Restricted Subsidiaries taken as a whole, and that the loss thereof is not adverse in any material respect to SGC's obligations under this Agreement.

Section 4.09 Mergers, Etc. Not permit SGC to consolidate with or merge into (whether or not SGC is the surviving Person), any other entity or to sell, convey, assign, transfer, lease or otherwise dispose of all or substantially all of SGC's and its Restricted Subsidiaries' assets (determined on a consolidated basis for SGC and its Restricted Subsidiaries) to any Person in a single transaction or series or related transactions, unless: either (i) SGC will be the surviving Person or (ii) the surviving Person (if other than SGC) will be an entity organized and existing under the laws of the Nation, and such surviving Person assumes by a proper legal instrument the performance and observance of every covenant of this Agreement to be performed or observed on the part of SGC.

For purposes of this Section 4.09, the transfer by lease, assignment, sale or otherwise, in a single transaction or series of transactions, of all or substantially all the assets of one or more Restricted Subsidiaries, the Capital Stock of which constitute all or substantially all the assets of SGC, will be deemed to be the transfer of all or substantially all the assets of SGC.

Section 4.10 Contractual Obligations. Not permit SGC to enter into any Contractual Obligation after the date hereof if the terms of such Contractual Obligation would materially adversely affect SGC's ability to make the Distributions described in Section 3.01 as and when required thereunder (for the avoidance of doubt, it is agreed that contractual restrictions comparable to those SGC is currently subject to under the SGC Indenture shall not be deemed to materially adversely affect SGC's ability to make such Distributions).

Section 4.11 Sovereign Immunity, Jurisdiction and Venue. Not permit SGC or the Authority to revoke or limit its limited waiver of sovereign immunity contained in Article VII hereof or in any way attempt to revoke or limit such limited waiver of sovereign immunity.

Section 4.12 Financial Statements. Furnish, without further action on the part of the Trustee, to the Trustee and the Initial Purchaser,

(a) not later than 90 days after the close of each Fiscal Year of SGC, copies of annual audited consolidated financial statements of SGC and its Restricted Subsidiaries for the preceding Fiscal Year, prepared in accordance with GAAP consistently applied, including balance sheet and operating statements, accompanied by an opinion of an independent certified public accountant; and

(b) not later than 45 days after the close of each fiscal quarter of SGC, a copy of the quarterly consolidated financial statements of SGC and its Restricted Subsidiaries, for the preceding fiscal quarter, prepared in accordance with GAAP consistently applied, including balance sheet and operating statements, certified by the chief financial officer of SGC;

provided, that so long as SGC files annual and quarterly reports with the SEC, such filings shall satisfy the Nation's obligations under this Section 4.12.

Section 4.13 Further Assurances, Financing Statements, Maintenance of Lien. At the request of the Trustee, cause to be delivered any financing statement or other instrument which is or may be required to carry out the intent of the parties as expressed in this Agreement, and file or cause to be filed any financing statements under the Uniform Commercial Code or similar instruments deemed necessary by the Trustee to perfect and continue the perfection of the security interest of the Trustee granted hereunder.

Section 4.14 Concerning the Pledged Distributions. Not create, incur or suffer to exist any lien, pledge or security interest on a parity with, or superior to, the pledge and security interest granted by the Authority to the Trustee in the Pledged Distributions under the Indenture, nor waive its sovereign immunity in any manner that would create recourse to the Pledged Distributions other than under this Agreement, the Indenture and the Purchase Agreement.

Section 4.15 Continued Operation of the Class III Gaming. Subject to Section 4.09, continue to operate the Class III Gaming operations at the Venues only through SGC and its Restricted Subsidiaries; and not restrict or eliminate the right of SGC to conduct Class III Gaming operations at the Venues in a manner that would materially adversely affect the ability of SGC to make the Distributions contemplated by Section 3.01 hereof.

Section 4.16 Operation of Class II Gaming. Not expand, develop or operate its Class II Gaming operations in a manner that materially adversely affects the ability of SGC to make the Distributions contemplated by Section 3.01 hereof.

Section 4.17 Ownership of SGC and Restricted Subsidiaries . Subject to Section 4.09, maintain 100% ownership of SGC and cause SGC to maintain 100% ownership of each of its Restricted Subsidiaries.

Section 4.18 Gaming Compliance/Termination. (a) At all times comply, and cause SGC and its Restricted Subsidiaries to comply, in each case in all material respects with, the Compact, the Constitution, the Nation Gaming Ordinance and the Gaming Regulations; (b) promptly after receiving written notice thereof, notify the Trustee in writing of any termination, revocation, suspension or limitation or proposed or threatened termination, revocation, suspension or limitation by any Governmental Authority of the authority of the Nation, SGC or any Restricted Subsidiary to operate the Gaming Enterprise in accordance with the Compact, and (c) not exercise any right to terminate the Compact voluntarily pursuant to Section 4 of the Compact.

Section 4.19 Operating Lease Payments. (a) Upon the occurrence and during the continuation of a Lock-Down Event of Default, not increase the amount that SGC or any of its

Restricted Subsidiaries is obligated to pay as Operating Lease Payments, and (b) at all other times, not increase the amount that SGC or any of its Restricted Subsidiaries is obligated to pay as Operating Lease Payments unless prior to such increase the Nation causes SGC to deliver to the Trustee a certification demonstrating that, had such increase been in effect for the most recent 12-month period for which financial statements of SGC are available, the Income Available for Distribution during such period would have been not less than 200% of the Distributions which SGC was required to make under Section 3.01 hereof during such period; provided, however that no certification shall be required under this Section 4.19(b) in connection with the 3% annual increases to Operating Lease Payments effected consistent with the terms of Section 4.13 of the SGC Indenture.

Section 4.20 Covenant to Provide Information. During any period in which the SGC is not subject to Section 13 or Section 15(d) of the Exchange Act, make available to any Holder of the Bonds in connection with any sale thereof, and to any prospective purchaser of such Bonds from such Holder, the information required by Rule 144(d)(4) under the Securities Act of 1933, as amended.

Section 4.21 Governmental Actions; Taxes. Not, by action of the Council, by referendum or any other means, permit its representatives, political subunits or councils, instrumentalities or enterprises, directly or indirectly, except as required by federal or state law or the Compact, to do any of the following:

(a) increase or impose any tax, fee, charge or other payment obligation on SGC or its Restricted Subsidiaries other than Regulatory and Shared Services Expenses and Operating Lease Payments and payments contemplated under any agreement in effect on the date hereof (this Section 4.21(a) does not restrict the Nation from imposing any sales, use, room occupancy, leisure and related charges, including admissions and cabaret charges, imposed on the patrons of the Venues; provided, however, that (i) such charges are not imposed on SGC or its Restricted Subsidiaries, and (ii) the rate and scope of such Nation charges shall not exceed those taxes imposed by state or local governments in New York State in connection with similar activities outside of Seneca Territories);

(b) impose any tax, fee, charge or other payment obligation with respect to the Bonds, the Indenture or any payments or deposits to be made thereunder;

(c) unless required by the Compact or other applicable Law, adopt, enact, promulgate or otherwise place into effect any statute, law, ordinance, rule or legal requirement that would have a material adverse effect on the rights of the Trustee or the Holders of the Bonds under this Agreement, the Indenture and the Bonds;

(d) commingle the assets of the Gaming Enterprise with any other assets of the Nation; or

(e) revoke or limit its limited waiver of sovereign immunity contained in Article VII hereof or attempt to revoke or limit such limited waiver of sovereign immunity.

Section 4.22 Capital Expenditures. Upon the occurrence and during the continuation of a Lock-Down Event of Default, not permit SGC to make any Capital Expenditures other than (a) Maintenance Capital Expenditures and (b) Capital Expenditures that had been approved by the board of directors of SGC prior to the occurrence of such Lock-Down Event of Default.

Section 4.23 Affiliate Transactions. Upon the occurrence and during the continuation of a Lock-Down Event of Default, not permit SGC or any of its Restricted Subsidiaries to make any payments pursuant to Affiliate Transactions other than Excluded Payments; provided that:

(a) the Nation shall not permit SGC or any of its Restricted Subsidiaries to (i) enter into any new contract with an Affiliate ("New Affiliate Contract") or (ii) increase any amounts payable under an existing contract with an Affiliate ("Existing Affiliate Contract, "and, together with a New Affiliate Contract, an "Affiliate Contract" or "Affiliate Contracts");

(b) the Nation shall not permit SGC or any of its Restricted Subsidiaries to make any payment under or pursuant to any Existing Affiliate Contract unless such contract, taken as a whole, is on terms which are no less favorable to SGC or such Restricted Subsidiary, as the case may be, than would be available in a comparable contract on an arm's-length basis with an unaffiliated third party ("Arm's Length Contract"); and for purposes of this Section 4.23(b), each operating lease and each Operating Lease Payment increase which is made consistent with Section 4.19 hereof, together with the applicable operating lease, shall be deemed an Arm's Length Contract;

(c) the Nation shall not permit SGC or any of its Restricted Subsidiaries to increase the amounts paid under clauses (i) or (iv) of the definition of the term "Regulatory and Shared Services Expenses" from the amounts designated in the approved fiscal year budget in effect at the time of the occurrence of the Lock-Down Event of Default; and

(d) if an Existing Affiliate Contract or series of related Existing Affiliate Contracts involves aggregate payments or other consideration having a Fair Market Value in excess of $3.0 million, (i) the Nation shall cause SGC or such Restricted Subsidiary to deliver to the Trustee, within 10 Business Days of the occurrence of the Lock-Down Event of Default, copies of any determinations obtained by SGC or such Restricted Subsidiary as to the fairness of such Existing Affiliate Contract from a financial point of view, and (ii) at any time after 20 Business Days of the occurrence of the Lock-Down Event of Default, if the Holders of twenty-five percent (25%) of the principal amount of the Outstanding Bonds so request, the Nation shall cause SGC to retain an Independent Financial Advisor to review such Existing Affiliate Contract and to determine whether such Existing Affiliate Contract is fair, from a financial point of view, to SGC or the Restricted Subsidiary involved in such Existing Affiliate Contract, as the case may be.

Section 4.24 Tax-Free Nature of Series 2007-A Bonds. For the benefit of the Holders of the Series 2007-A Bonds, not permit any thing or act to be done in such manner as would result in loss of the tax exemption of interest on the Series 2007-A Bonds under Section 103 of

the Code, nor permit the Authority to use any of the proceeds received from the sale of the Series 2007-A Bonds or any other money, directly or indirectly, in any manner which would result in the Series 2007-A Bonds being classified as arbitrage bonds within the meaning of Section 148 of the Code or private activity bonds within the meaning of Section 141 of the Code.

Section 4.25 Existence of Authority. Do all things necessary to preserve and keep in full force and effect the legal existence of the Authority and not amend the Charter of the Authority in any manner that would materially adversely affect the Trustee or the Holders of the Bonds or the ability of the Authority to comply with its obligations under the Indenture, the Bonds and this Agreement.

ARTICLE V

COVENANTS OF THE AUTHORITY

The Authority covenants and agrees, so long as any Bonds shall be Outstanding under the Indenture, that it will:

Section 5.01 Pledged Distributions; Distributions. (a) Pay all Pledged Distributions, transferred and assigned to the Authority by the Nation pursuant to Section 2.01 hereof, to the Trustee for deposit to the Bond Fund, such obligation to be deemed satisfied by SGC's direct payment of the Pledged Distributions to the Trustee pursuant to Sections 3.01 and 3.03 hereof; and (b) in the event that it receives any Pledged Distribution from SGC in contravention of Sections 3.01, 3.02, 3.03 or 3.04 hereof, hold such Pledged Distribution in trust for the benefit of the Trustee and promptly deliver such Pledged Distribution to the Trustee for deposit in the Bond Fund.

Section 5.02 Concerning the Pledged Distributions. Not create, incur or suffer to exist any lien, pledge or security interest on a parity with, or superior to, the pledge and security interest granted in the Pledged Distributions to the Trustee by the Authority under the Indenture, nor waive its sovereign immunity in any manner that would create recourse to the Pledged Distributions other than under this Agreement, the Indenture and the Purchase Agreement.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

Section 6.01 Events of Default. Each of the following constitutes an "Event of Default" hereunder:

(a) if SGC shall fail to perform or comply with any of the covenants or agreements in Sections 3.01, 3.02, 3.03 or 3.04; or

(b) if the Nation shall fail to perform or comply with any of the covenants or agreements in Sections 4.01 or 4.09; or

(c) if the Nation shall fail to perform or comply with any of the covenants or agreements in Sections 4.06, 4.15, or 4.17 and such failure continues for 10 days or more; or

(d) if the Nation shall fail to perform or comply with any of the covenants or agreements in Sections 4.10, 4.11, 4.14, 4.19, or 4.21 and such failure continues for 30 days or more; or

(e) if the Authority shall fail to perform or comply with any of the covenants or agreements in Section 5.01; or

(f) if the Authority shall fail to perform or comply with any of the covenants or agreements in Section 5.02 and such failure continues for five days or more; or

(g) if a default or defaults under the terms of one or more instruments evidencing or securing indebtedness of SGC or any of its Restricted Subsidiaries having an outstanding principal amount of the greater of (x) $10,000,000 and (y) the threshold dollar amount contained in the comparable cross-default provision of any future indenture or credit agreement evidencing SGC's principal indebtedness, individually or in the aggregate, which default (i) is caused by a failure to pay at final maturity principal on such indebtedness after giving effect to any applicable grace period, (ii) results in the acceleration of such indebtedness prior to its express final maturity or (iii) results in the commencement of judicial proceedings to foreclose upon, or to exercise remedies under applicable law or applicable security documents to take ownership of, the assets securing such indebtedness; or

(h) if any Nation Party shall fail to perform any of the other of its covenants or agreements contained in this Agreement and such failure shall have continued for a period of 60 days or more after written notice shall have been given to such Nation Party by the Trustee; provided, that if such failure can be remedied but not within a period of 60 days after notice and if the Nation Party has taken all action reasonably possible to remedy such failure within such 60-day period, such failure shall not become an Event of Default for so long as the Nation Party shall diligently proceed to remedy such failure for a period not to exceed 180 days; or

(i) if any Nation Party or any Restricted Subsidiary files a petition in voluntary bankruptcy, for the composition of its affairs or for its reorganization under any state or federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or consents in writing to the appointment of a trustee or receiver for itself or for the whole or any substantial part of its property; or

(j) if a court of competent jurisdiction shall enter an order, judgment or decree declaring any Nation Party or any Restricted Subsidiary an insolvent, or adjudging any Nation Party or any Restricted Subsidiary bankrupt, or appointing a trustee or receiver of any Nation Party or any Restricted Subsidiary or of the whole or any substantial part of its property under any applicable law or statute of the United States of

America or any State thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within 90 days from the date of the entry thereof; or

(k) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of any Nation Party or any Restricted Subsidiary or of the whole or any substantial part of its property, and such custody or control shall not be terminated within 90 days from the date of assumption of such custody or control.

Section 6.02 Enforcement of Covenants and Conditions. Upon any Event of Default, subject to the terms hereof, the Trustee may take such action or actions for the enforcement of its rights and the rights of the Bondholders as are available under applicable law. The provisions of Article VII of the Indenture related to the exercise of remedies by the Trustee and the Bondholders shall apply with equal force to the exercise of remedies upon an Event of Default under this Agreement, *mutatis mutandis*.

Section 6.03 Limited Recourse. Notwithstanding anything to the contrary in this Agreement, the obligations of the Nation and the Authority under this Agreement are limited recourse obligations of the Nation and the Authority with recourse limited to: (a) with respect to Nation obligations, the Pledged Distributions; and (b) with respect to Authority obligations, the Trust Estate.

Section 6.04 No Recourse to SGC. Notwithstanding anything to the contrary in this Agreement, neither the Trustee nor the Holders of the Bonds have any recourse under this Agreement to any revenues, assets or property of SGC, any of SGC's subsidiaries, or any other entity owned by, or affiliated with, SGC, in connection with the enforcement of SGC's obligations hereunder.

ARTICLE VII

GOVERNING LAW; ARBITRATION; SOVEREIGN IMMUNITY

Section 7.01 Governing Law. This Agreement shall be governed by and construed in accordance with the substantive law of the State of New York.

Section 7.02 Limited Waiver of Sovereign Immunity; Jurisdiction.

(a) Retention of Sovereign Immunity. By executing this Agreement, none of the Nation Parties waives, limits or modifies its sovereign immunity from unconsented suit or judicial litigation, except as provided herein.

(b) Waiver of Sovereign Immunity/Scope of Waiver. Each of the Nation Parties hereby grants to the Trustee (and the Holders of the Bonds and their respective representatives) an irrevocable limited waiver of sovereign immunity from unconsented suit and consents to suit in accordance with, and subject to the terms of, this Agreement solely and exclusively to:

(i) interpret or enforce the terms of this Agreement;

(ii) compel arbitration under the commercial arbitration rules of the American Arbitration Association;

(iii) enforce an arbitrator's decision with respect to arbitration under the commercial arbitration rules of the American Arbitration Association;

(iv) order amounts payable under this Agreement to be paid in accordance with the terms of this Agreement and, subject to the express limitations in Sections 6.03 and 6.04 hereof, enforce the award of damages owing as a consequence of a breach of this Agreement, whether such order or award is the product of litigation or arbitration;

(v) subject to the limitations in this Agreement, including those set forth in Sections 6.03 and 6.04 hereof, order the exercise of any other remedy available generally in the State of New York for judgment creditors;

(vi) determine whether any consent or approval of a Nation Party has been improperly granted or unreasonably withheld; and

(vii) enforce any judgment or arbitration decision prohibiting a Nation Party from taking any action, or mandating or obligating a Nation Party to take any action.

(c) Procedural Requirements. The limited waiver by each Nation Party of its sovereign immunity as to unconsented suit set forth in this Article VII is effective if, and only if, each and every one of the following conditions is met:

(i) the claim is made by the Trustee or the Holders of Bonds or their respective representatives;

(ii) the claim alleges a breach by the Nation Party under this Agreement;

(iii) the claim seeks (A) payment of a specified sum, some specific action, or discontinuance of some action by the applicable Nation Party to bring the applicable Nation Party into full compliance with the duties and obligations expressly assumed by the applicable Nation Party under this Agreement; or (B) as to the Nation or the Authority only, money damages for noncompliance with the terms and provisions of this Agreement;

(iv) the claim is made in a detailed written statement to the applicable Nation Party stating the specific action or discontinuance of action by such Nation Party that would cure the alleged breach or non-performance, or the sum of money claimed to be due and owing to the Trustee (or the Holders of the Bonds) by reason of such specific breach or non-performance, and the Nation Party shall have seven calendar days to cure or cause the cure of such breach or non-performance or to make such payment before judicial proceedings may be instituted; provided, however, that this cure period may be reasonably extended in

the sole discretion of the Trustee (or the Holders of the Bonds or their respective representatives) for non-monetary matters as long as the Nation Party is making good faith efforts to cure such breach or non-performance); and

(v) with respect to any claim authorized herein, initial suit as authorized herein, shall be commenced within the later of three years after the claim accrues or is discovered upon the exercise of due diligence, or such claim shall be forever barred.

The waiver granted herein shall commence on the date hereof and shall continue for three years following the date of payment and discharge of the Indenture pursuant to Section 10.01 thereof, except that the waiver shall remain effective for any proceedings then pending and all appeals therefrom.

(d) Recipient of Waiver. The recipients of the benefit of this irrevocable waiver of sovereign immunity are limited to the Trustee and each Holder of the Bonds.

(e) Enforcement. Each Nation Party irrevocably waives its sovereign immunity from a judgment or order consistent with the terms and provisions of this Agreement, which is final because either the time for appeal thereof has expired or the judgment or order is issued by a court having final appellate jurisdiction over the matter. Each Nation Party consents solely to the jurisdiction of, to be sued in and accepts and agrees to be bound by any order or judgment of any United States District Court for New York or the New York State Supreme Court in and for New York County, New York, and any federal or state court having appellate jurisdiction thereover, consistent with the terms and provisions of this Agreement. Each Nation Party irrevocably waives its sovereign immunity as to an action by the Trustee (or the Holders of the Bonds or their respective representatives) solely in any United States District Court for New York or the New York State Supreme Court in and for New York County, New York, and any federal or state court having appellate jurisdiction thereover, seeking injunctive and/or declaratory relief against the respective Nation Party based upon any attempt to revoke its irrevocable waiver of its sovereign immunity under this Agreement, and as to enforcement in said United States District Court or New York State Supreme Court in and for New York County, New York of any such final judgment against such Nation Party. Without in any way limiting the generality of the foregoing, each Nation Party expressly authorizes any governmental authorities who have the right and duty under applicable law to take any action authorized or ordered by any such court, to take such action to give effect to any judgment entered or order granted in accordance with the terms of this Agreement.

(f) Waivers. Each Nation Party hereby expressly and irrevocably waives:

(i) its rights to assert or demand that any dispute, controversy, suit, action or proceeding arising under this Agreement be heard in any forum other than as set forth in Section 7.02(e) hereof whether or not such forum now exists or is hereafter created;

under this Agreement (the "Dispute"), and neither the United States District Courts for New York nor the New York State Supreme Court in and for New York County, New York, can or is willing to hear the Dispute, then any party hereto may request binding arbitration of such Dispute in accordance with the procedures set forth herein. To initiate binding arbitration of such Dispute, a party shall notify the other parties hereto in writing. The Dispute shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided that judgment on the award rendered by the arbitrator may be entered solely in the United States District Courts for New York or the New York State Supreme Court in and for New York County, New York. One arbitrator shall preside and shall be selected by the American Arbitration Association.

(b) Restraining Order/Preliminary Injunction. Any party, before or during any arbitration, may apply to a court having jurisdiction as provided under Section 7.02(e) for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of the dispute resolution proceedings.

(c) Confidentiality. No party nor the arbitrator may disclose the existence or results of any arbitration hereunder, which shall be considered confidential to the parties hereto, except:

(i) with the express prior written consent of the other parties hereto, which consent shall not be unreasonably withheld or delayed;

(ii) as required by applicable law or the rules of any relevant stock exchange or requirement of the Trustee, by order or decree of a court or other governmental authority having jurisdiction over such party, or in connection with such party's enforcement of any rights it may have at law or in equity;

(iii) on a "need to know" basis to persons within or outside such party's organization, such as attorneys, accountants, bankers, financial advisors and other consultants; or

(iv) after such information has become publicly available without breach of this Agreement.

(d) Fees and Costs. In the event of arbitration, the prevailing party shall be entitled to all of its costs, including reasonable attorneys' fees and costs and expenses, from the nonprevailing party.

(e) Location of Arbitration. The arbitration shall take place at a location in an agreed city in the State of New York or such other place as the parties may jointly agree. The arbitrator shall render an award within 45 days from the conclusion of the arbitration.

(f) Enforcement of Arbitration Decisions. The decision of the arbitrator will be final and binding and enforced with the same force and effect as a decree of a court having competent jurisdiction as provided under Section 7.02 (e) hereof. For this

purpose, should the losing party in any arbitration proceeding pursuant to this Section 7.03 refuse to abide by the decision of the arbitrator, the prevailing party may apply solely to any United States District Court for New York or the New York State Supreme Court in and for New York County, New York to compel enforcement of the arbitrator's award resulting from binding arbitration. In the sole event that neither the United States District Courts of New York nor the New York State Supreme Court in and for New York County, New York, takes jurisdiction over such enforcement action, the prevailing party may apply to the courts of the Nation for the enforcement of such action. Each party hereto consents to the jurisdiction of each such court for this purpose. Each Nation Party hereby expressly and irrevocably waives its sovereign immunity with respect to the entry of judgment on, and enforcement of, such award by such courts.

(g) Designation of Service Recipients. In any action or proceeding as to which a Nation Party has waived its sovereign immunity as set forth in Section 7.02 hereof, each Nation Party consents and agrees that process against it shall be effective if served:

(i) if to the Nation, on the President of the Nation; or by sending two copies of the process by registered or certified mail to the President of the Nation at the address set forth in Section 8.07 hereof.

(ii) if to the Authority, on the Chairman of the Board of Commissioners of the Authority; or by sending two copies of the process by registered or certified mail to the Chairman of the Board of Commissioners of the Authority at the address set forth in Section 8.07 hereof.

(iii) if to SGC, on the President or Interim President of SGC; or by sending two copies of the process by registered or certified mail to the President of SGC at the address set forth in Section 8.07 hereof.

Courtesy copies of any such process shall also be provided to the Nation's Department of Justice and SGC's Office of General Counsel at the addresses set forth in Section 8.07 hereof; provided, however, that the failure to provide such courtesy copies shall not affect the validity of any process served on the Nation, Authority or SGC.

(h) Appointment Irrevocable. Each Nation Party irrevocably appoints each of the persons in the foregoing clauses and their respective successors in said offices from time to time, as agent for service of process made in accordance herewith.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Covenants to Bind Successors and Assigns. All the covenants and agreements in this Agreement of the Nation, the Authority and SGC shall bind and inure to the benefit of their respective successors.

Section 8.02 Immunity of Officers. No recourse for the performance of any obligation of the Nation, the Authority or SGC under this Agreement shall be had against any officer, director, member, Council member or agent of the Nation, the Authority or SGC as such, all such liability being hereby expressly released and waived as a condition of and as a part of the consideration for the execution of this Agreement.

Section 8.03 No Benefits to Outside Parties. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or to give to any Person, other than the parties hereto and the Bondholders any right, remedy or claim under or by reason of this Agreement or covenant, condition or stipulation thereof; and the covenants and agreements in this Agreement contained are and shall be for sole and exclusive benefit of the parties hereto, their successors and assigns.

Section 8.04 Severability of Provisions. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

Section 8.05 Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

Section 8.06 Headings Not Controlling. The headings of the several Articles and Sections hereof are inserted for the convenience of reference only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 8.07 Notices, etc. to Trustee, Nation, Authority and SGC. Any request, demand, authorization, direction, notice, consent or other document provided or permitted by this Agreement shall be sufficient for any purpose under this Agreement when hand delivered or mailed registered mail, return receipt requested, postage prepaid (except as otherwise provided in this Agreement) (with a copy to the other parties) at the following addresses (or such other address as may be provided by any party by notice) and shall be deemed to be effective upon receipt:

Exhibit "D" Annexed to Affirmation of Pitman.

IN WITNESS WHEREOF, the SENECA NATION OF INDIANS, has caused this Agreement to be signed in its name by its duly authorized officer, the SENECA NATION OF INDIANS CAPITAL IMPROVEMENTS AUTHORITY, has caused this Agreement to be signed in its name by its duly authorized officer, SENECA GAMING CORPORATION, has caused this Agreement to be signed in its name by its duly authorized officer and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee, has caused this Agreement to be signed by an authorized representative of the Trustee, all as of the day and year first above written.

SENECA NATION OF INDIANS

By: _____
Name: Maurice A. John, Sr.
Its: President

SENECA NATION OF INDIANS CAPITAL IMPROVEMENTS AUTHORITY

By _____
Name: Kevin Seneca
Its: Chairman

SENECA GAMING CORPORATION

By: _____
Name: Brian Hansberry
Its: Interim President and Chief Executive Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Trustee

By: _____
Name: Robert L. Reynolds
Its: Vice President

Exhibit "D" Annexed to Affirmation of Pitman.

IN WITNESS WHEREOF, the SENECA NATION OF INDIANS, has caused this Agreement to be signed in its name by its duly authorized officer, the SENECA NATION OF INDIANS CAPITAL IMPROVEMENTS AUTHORITY, has caused this Agreement to be signed in its name by its duly authorized officer, SENECA GAMING CORPORATION, has caused this Agreement to be signed in its name by its duly authorized officer and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee, has caused this Agreement to be signed by an authorized representative of the Trustee, all as of the day and year first above written.

SENECA NATION OF INDIANS

By: _____
Name: Maurice A. John, Sr.
Its: President

SENECA NATION OF INDIANS CAPITAL IMPROVEMENTS AUTHORITY

By _____
Name: Kevin Seneca
Its: Chairman

SENECA GAMING CORPORATION

By: _____
Name: Brian Hansberry
Its: Interim President and Chief Executive Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Trustee

By: _____
Name: Robert L. Reynolds
Its: Vice President

Amended Affirmation of Ryan G. Pitman In Support of Motion to Dismiss, Dated May 16, 2011.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.,

Plaintiff,

vs.

LEWISTON GOLF COURSE CORPORATION, SENECA NIAGARA FALLS GAMING CORPORATION, SENECA GAMING CORPORATION, JEFFREY L. GILL, MARK I. HALFTOWN, GLORIA HERON, MAURICE A. JOHN, SR., MICHAEL L. JOHN, KAREN KARSTEN, INA K. LOCKE, ROBERT E. MELE, RICHARD K. NEPHEW, MARIBEL PRINTUP, COCHISE N. REDEYE, GARY SANDEN, KEVIN W. SENECA, BARRY E. SNYDER, SR., STEVE TOME, NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, NIAGARA MOHAWK POWER CORPORATION, and JOHN DOE

Defendants.

AMENDED AFFIRMATION

Index No.: 141212

RYAN G. PITMAN, an attorney duly admitted to practice before this Court in the State of New York, hereby affirms under penalty of perjury, pursuant to CPLR 2106, that:

1. I am associated with Phillips Lytle, LLP, attorneys for defendants Lewiston Golf Course Corporation ("LGCC"), Seneca Niagara Falls Gaming Corporation ("SNFGC"), Seneca Gaming Corporation ("SGC"), Jeffrey L. Gill, Mark I. Halftown, Gloria Heron, Maurice A. John, Sr., Michael L. John, Karen Karsten, Ina K. Locke, Robert Mele, Richard K. Nephew, Maribel Printup, Cochise N. Redeye, Gary Sanden, Kevin W. Seneca, Barry E. Snyder, Sr., and Steve Tome (the "Individual Defendants") (collectively, "Defendants"). I am fully familiar with the facts and proceedings in this action.

Amended Affirmation of Ryan G. Pitman In Support of Motion to Dismiss, Dated May 16, 2011.

2. I make this affirmation in support of Defendants' motion, pursuant to CPLR 3211(a)(2), (7), to dismiss the action against certain Defendants for lack of subject matter jurisdiction and failure to state a cause of action.

3. On May 11, 2011, I reviewed the website for the Seneca Nation Capital Improvements Authority located at http://www.sni.org/node/31. That site lists the various projects that the Capital Improvements Authority is constructing or has recently constructed. These projects include the Nation's administration buildings, expansion of the Nation's health center, upgrading the electrical system at the Thomas Indian School Administrative complex, and other governmental infrastructure projects.

4. Defendants seek to provide the Court with additional key documents relevant and applicable to Defendants' motion. Each is a true and accurate copy of the referenced original.

5. Attached as Exhibit A is the opinion of the New York State Supreme Court for the County of Niagara in Seneca Gaming Corp. v. Toohey, Index No. 140634 (Sup. Ct. Niagara Cty, September 27, 2010) ("Toohey").

6. Attached as Exhibit B is the transcript of the September 9, 2010 oral argument in Toohey.

7. Attached as Exhibit C is the letter from the Seneca Nation of Indians Department of Justice to the President and Council of the Seneca Nation of Indians, dated April 4, 2005.

8. Attached as Exhibit D is the Distribution Agreement among the Seneca Nation of Indians, Seneca Nation of Indians Capital Improvements Authority, SGC and Wells Fargo Bank, N.A., dated April 27, 2007.

Amended Affirmation of Ryan G. Pitman In Support of Motion to Dismiss, Dated May 16, 2011.

9. As set forth in the accompanying Memorandum of Law, and as the above-referenced documents and exhibits demonstrate, SGC, SNFGC, LGCC and the Individual Defendants are entitled to the full protections of the Nation's sovereign immunity, which prevents the Court from exercising jurisdiction over those defendants.

May 16, 2011

RYAN G. PITMAN

Exhibit "A" Annexed to Amended Affirmation of Pitman.

Exhibit "A" - Decision in *Seneca Gaming Corp. v. Toohey*, Index No. 140634 (Sup. Ct. Niagara County September 27, 2010) is the same as that printed at pages 480 - 484.

Exhibit "B" Annexed to Amended Affirmation of Pitman.

Exhibit "B" - Transcript of Oral Argument in *Seneca Gaming Corp. v. Toohey*, Dated September 9, 2010 is the same as that printed at pages 485 - 560.

Exhibit "C" Annexed to Amended Affirmation of Pitman.

Exhibit "C" - Letter from Seneca Nation of Indians Department of Justice to President and Council of Seneca Nation of Indians, Dated April 4, 2005 is the same as that printed at pages 561 - 562.

Exhibit "D" Annexed to Amended Affirmation of Pitman.

Exhibit "D" - Distribution Agreement Between Seneca Nation of Indians, Seneca Nation of Indians Capital Improvements Authority, Seneca Gaming Corporation and Wells Fargo Bank, N.A., Dated April 27, 2007 is the same as that printed at pages 563 - 587.

Affirmation of Charles E. Graney In Opposition to Motion to Dismiss on Grounds of Sovereign Immunity, Dated September 30, 2011.

STATE OF NEW YORK
SUPREME COURT: COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.,

Plaintiff,

vs. Index No.: 141212

LEWISTON GOLF COURSE CORPORATION,
NIAGARA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY,
NIAGARA MOHAWK POWER CORPORATION, and
JOHN DOE,

Defendants

AFFIRMATION

I, Charles E. Graney, affirm, under the penalties of perjury, the following:

1. I am an attorney at law duly licensed to practice in the State of New York and am a partner of Webster Szanyi LLP, attorneys for Niagara County Industrial Development Agency ("NCIDA").

2. Currently pending before the Court is Defendants' motion to dismiss dated March 14, 2011.

3. Plaintiff served papers opposing the motion dated April 27, 2011.

4. On August 12, 2011 the NCIDA served a Consent to Change Counsel substituting Webster Szanyi as its counsel. The Court graciously permitted the NCIDA time to submit papers with respect to the motion to dismiss in light of the substitution of counsel.

Affirmation of Charles E. Graney In Opposition to Motion to Dismiss on Grounds of Sovereign Immunity, Dated September 30, 2011.

5. This affirmation is offered in support of Defendants' motion to dismiss, the third and sixth causes of action.

6. The NCIDA adopts and incorporates the arguments set forth in the motion to dismiss and the supporting affirmations and memorandum of law arguing that the third and sixth causes of action should be dismissed as duplicative of the second cause of action.

7. However, this affirmation, and the accompanying affidavit of Lawrence Witul (attached as Exhibit A), are also offered in opposition to the motion to dismiss to the extent it is based on the doctrine of sovereign immunity.

8. The NCIDA opposes the motion to dismiss the complaint on the grounds that the Seneca Gaming Corporation ("SGC"), Seneca Niagara Falls Gaming Corporation ("SNFGC") and the Lewiston Golf Course Corporation ("LGCC") are entitled to the protections of sovereign immunity applicable to the Seneca Nation of Indians.

9. The NCIDA adopts and incorporates the arguments of the Plaintiff only with regard to the opposition to the application of the defense of sovereign immunity to the SGC, SNFGC and the LGCC.

10. In addition, as set forth in the accompanying affidavit of Lawrence Witul, the LGCC, through its predecessor the Seneca Management Development Corporation ("SMDC"), applied for and was granted tax exemptions and deferrals from the NCIDA for the Hickory Stick golf course project and consistently held themselves out as a profit making corporation, separate and independent from the Seneca Nation of Indians.

11. For example, the corporation states in the NCIDA application that its purpose is to provide the Seneca Nation of Indians with an "*independent corporation* to conduct economic development projects" (Exhibit A, paragraph 8 (emphasis added)).

12. When asked to describe why the project was necessary and the effect it was projected to have on the company, the SMDC replied that it was:

> ...looking to create a championship level public/semi-private golf course offering the millions of visitors of the Niagara Falls region and the patrons of the Seneca Niagara Casino & Hotel a new tourist destination project that will attract golf enthusiasts from Canada and the United States and to capitalize on the growing tourist market, which will create new jobs and allow for prolonged stays in the area.
>
> (Exhibit A, paragraph 10).

13. Nowhere in the application does the LGCC or the SMDC imply that it is an arm of the Seneca Nation of Indians' government or that it is entitled to the protections of sovereign immunity. To the contrary, the application shows that the LGCC and the SMDC are separate and independent for profit corporations intended to construct and operate a championship level golf course on non native land to support tourism in the Niagara Region.

14. The LGCC also supplied the NCIDA with a certificate from the New York Secretary of State representing that it was a foreign corporation authorized to do business in the State of New York and designating the Secretary of State as its authorized agent for service. Exhibit B.

15. When these facts are considered in light of the Court of Appeals decision in *Ransom v. St. Regis Mohawk Educ. & Cmty. Fund, Inc.*, 86 N.Y.2d 553 (1995), and in addition to the facts and arguments already set forth by the Plaintiff with regard to the

application of the *Ransom* factors to this case, it is clear that LGCC is not entitled to the protections of sovereign immunity afforded to the Seneca Nation of Indians.

16. For these reasons, the NCIDA respectfully request that the Court grant the Defendants' motion to dismiss the third and sixth causes of action, but deny the motion to dismiss on the grounds of sovereign immunity.

Dated: September 30, 2010

WEBSTER SZANYI LLP
Attorneys for Defendant

Charles E. Graney
Kevin A. Szanyi
1400 Liberty Building
Buffalo, New York 14202
(716) 842-2800

Exhibit "A" Annexed to Affirmation of Graney.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.,

Plaintiff,

vs. Index No.: 141212

LEWISTON GOLF COURSE CORPORATION,
NIAGARA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY,
NIAGARA MOHAWK POWER CORPORATION, and
JOHN DOE,

Defendants.

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NIAGARA)

Lawrence Witul, being duly sworn, deposes and says:

1. I am a former Assistant Director of the Niagara County Industrial Development Agency ("NCIDA"). I make this affidavit, on behalf of the Niagara County Industrial Development Agency, in opposition to the Lewiston Golf Course Corporation's motion to dismiss the complaint on the grounds it is entitled to sovereign immunity.

2. As the Assistant Director of the NCIDA, I was involved with the application for IDA tax exemptions for the construction and opening of the Hickory Stick golf course in the town of Lewiston.

Exhibit "A" Annexed to Affirmation of Graney.

3. In 2005 representatives of the Seneca Management Development Corporation ("SMDC") approached the NCIDA in order to secure tax breaks for the purchase of approximately 250 acres of land and the construction and opening of a championship level golf course in the Town of Lewiston.

4. After some initial discussions the SMDC stated that the land and project would not be considered part of the native territory, but instead would remain on the tax rolls under the jurisdiction of the State of New York.

5. In various conversations and meetings the SMDC also indicated that the land would be owned, and the golf course would be operated, by a for profit corporation independent of the Seneca Nation.

6. This corporation became known as the Lewiston Golf Course Corporation.

7. The SMDC applied for tax abatements and deferrals worth an estimated $1 million for the Hickory Stick golf course project. A copy of the amended application, dated March 6, 2007 is attached as Exhibit A.

8. In the application the SMDC described itself as being "Chartered to provide the Seneca Nation of Indians with an *independent corporation* to conduct economic development projects" (section II.A.2. (emphasis added)).

9. The application also stated that this project was the first to be managed and developed by the SMDC (section II.A.7.).

10. When asked to describe why the project was necessary and the effect it was projected to have on the company, the SMDC replied that it was:

> ...looking to create a championship level public/semi-private golf course offering the millions of visitors of the Niagara Falls region and the patrons of the Seneca Niagara Casino & Hotel a new tourist destination project that will attract golf enthusiasts from Canada and the United States and to capitalize on the

growing tourist market, which will create new jobs and allow for prolonged stays in the area. (Section III.K.).

11. The SMDC's application was approved and the project was granted partial real property tax abatements, and sales and use tax exemptions for purchases and rentals related to the acquisition, construction and equipping of the golf course.

12. Upon information and belief, the Lewiston Golf Course Corporation became the successor in interest to the application.

13. Throughout the application process, representatives of the SMDC represented that this project was intended to be a profit making venture outside the compact territories. SMDC held themselves out as a separate and independent profit making corporation.

Lawrence Witul

Subscribed and sworn to before me this
29th day of September, 2011

Notary Public

CHARLES E. GRANEY
Notary Public State of New York
Qualified in Erie County
My Commission Expires Sept. 12, 2012

Exhibit "A" Attached to Exhibit "A".

SENECA MANAGEMENT DEVELOPMENT CORPORATION

March 6, 2007

Niagara County Industrial Development Agency
6311 Inducon Corporate Drive
Sanborn, NY 14132-9099
Attn: Mr. Samuel E. Ferraro

Dear Mr. Ferraro,

The Seneca Management Development Corporation has now finalized the IDA Application for Assistance as requested by your Agency for our golf course project in Lewiston, New York, and by this letter is re-submitting the Application for review.

As per your request for additional information dated March 8, 2006, the Seneca Management Development Corporation commissioned a study by an outside consultant to address the inquiries contained in your request. Specifically, the Marketing/Economic Impact Study, prepared by Paradigm Economics, LLC addresses the economic impacts on the area, number of jobs, annual payroll and property tax and value impacts. It also addresses the issue of the Project's impacts as a tourist destination.

In addition, we are providing you with a Resolution of the Lewiston Town Board supporting this project. As you are aware, the SMDC has worked closely and cooperatively with the Lewiston Town Board on the ongoing SEQRA review of the proposed project. With this Application package, we are also submitting a copy of Supplemental Draft Environmental Impact Study (SDEIS), which we are currently in the process of finalizing. This SDEIS answers the environmental questions you raised in your March 8th correspondence and provides additional information on how the proposed storm water drainage plan will alleviate some of the flooding currently experienced by the area residents, and other positive environmental impacts of the project.

If you have any questions, or would like to schedule a meeting to discuss the Project, our representatives would be happy to meet with your Board at your convenience. I can be reached at 716-501-2009.

Sincerely,

Michele F. Mitchell,
Deputy General Counsel

Enc. Application for Assistance (4 Copies)
Including: Permitting Schedule
Marketability/Economic Impact Study
List of Owners and Officers
Support Resolution
Special Use Permit

SDEIS (1 Copy)
Proposed Site Plan (1 Copy)

Exhibit "A" Attached to Exhibit "A".

Niagara County Industrial Development Agency
6311 Inducon Corporate Dr. - Sanborn, New York 14132
(716) 278-8760 Fax (716) 278-8769

Application for Assistance

Please answer all questions on the Niagara County Industrial Development Agency Application and Environmental Assessment Form. Information submitted as part of this application will not be made public prior to the passage of an Official Action Resolution by the Agency. After such action, this information may be subject to disclosure under the New York State Freedom of Information Act.

Prior to application submission, this project was reviewed with Lawrence Witul of the Niagara County Industrial Development Agency and assigned Project Number _____.

I. Company Data

A. Company Name: *Seneca Management Development Corporation*
Address: *William Seneca Bldg. 1490 Route 438, Cattaragus Reservation, Irving New York. 14081*

Telephone: *716-299-1100* Fax: *716-299-1200*
Email: *mmitchell@snfgc.com* Website: _____
IRS Identification No.: *41-2219405*

Company official completing this application and authorized to respond on behalf of the company:

Name: *Rajat R. Shah* Title: *Senior V.P.*

B. Company Owners, Officers, Directors and Partners: List name and home address, title and other principal business affiliations.

C. Legal Counsel: *Michele F. Mitchell*
Address: *310 Fourth Street Niagara Falls, NY 14303*
Telephone: *716-501-2009* Fax: *716-501-2881*
Email: *mmitchell@snfgc.com*

D. Accountant (Firm): *Ernst & Young*
Address: *1400 Key Tower Buffalo, NY 14202*
Telephone: *716-843-3088* Fax: *716-843-3175*
Email: *mark.kercher@ey.com*

E. Principal Bank of Account: *Key Bank*

Exhibit "A" Attached to Exhibit "A".

F. Type of Business ☒ Corporation ☐ Sub Chapter S ☐ Partnership ☐ Sole Proprietorship ☐ Other ____

G. Is Company authorized to do business in New York State? Yes☒ No☐

H. Principal Stockholders with 5% or more of stock outstanding in the company:

Name	Address	% of Holding
Seneca Nation of Indians	____	*100%*
William Seneca Building	*12837 Route 438*	
Irving, NY 14081	____	____

I. List subsidiary, associate, and/or affiliated companies of applicant.

n/a

J. Is the Company or management of the Company now a plaintiff or a defendant in any civil or criminal litigation? Yes☐ No☒

Has any person listed above ever been convicted of a criminal offense (other than a minor traffic violation)? Yes☐ No☒

Has any person listed above or any concern with whom such person has been connected ever been in receivership or been adjudicated a bankrupt? Yes☐ No☒

If the answer to any of questions 2 through 4 is yes, please, furnish details in a separate attachment.

K. Identify the assistance being requested of the Agency:

(1) ☐	Bond financing for new project; estimated amount	$____
(2) ☐	Bond/project refinancing; estimated amount	$____
(3) ☐	Lease/sale back	
(4) ☐	Assignment of lease	
(5) ☒	Exemption from Sales Tax; estimated benefit	$429,503.00
(6) ☐	Exemption from Mortgage Tax; estimated benefit	$____
(7) ☒	Exemption from Real Property Tax; estimated benefit	$618,790.00

Exhibit "A" Attached to Exhibit "A".

If you have selected (5),(6) or (7), indicate whether you are seeking a deviation from the Agency's uniform tax exemption policy: Yes☐; No☒. If the answer is yes, please furnish details in a separate attachment.

(8) ☐ Other (please furnish details in a separate attachment)

II. Business Data

A. Company Background

1. Describe when and where was the company established?
SMDC was chartered in May 2005 by the Seneca Nation of Indians.

2. Describe the type of business
SMDC was chartered to provide the Seneca Nation of Indians with an independent corporation to conduct economic development projects.

3. Description of Present Facilities:

Lot size: *n/a* Number of buildings: ____

Square footage of facilities: ____

☐ Owns OR ☐ Rents present facilities

4. What is the present employment of the company?

Full Time____ # Part Time ____

Estimated annual payroll: $____

5. Approximate annual sales: $____

6. Describe primary markets.
Western New York, throughout New York State, Pennsylvania, Ohio and Canada. Please see Market/Feasability Study.

7. Provide a brief description of the company and its history.
Established in 2005, SMDC was chartered by the SNI to provide a vehicle for economic development projects. The Lewiston Golf Course is the first project to be managed and developed by the SMDC.

Exhibit "A" Attached to Exhibit "A".

B. Provide types of business activity and approximate square feet of each for company's present facility:

	Square Feet
Manufacturing/Processing	N/A
Warehousing	N/A
Research & Development	N/A
Commercial	N/A
Retail*	N/A
Office	N/A
Other (specify)	N/A

* A retail business activity shall mean (i) sales by a registered vendor under article twenty-eight of the New York tax law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the tax law; or (ii) sales of a service to such customers.

C. Describe principal goods, products and/or services of the company:
We anticipate a championship public golf course, with all of the regular amenities, including a clubhouse, dining facilities and a retail golf shop. See Marketability/Economic Impact Study (attached).

III. Project Data

A. Location of Proposed Project:

1. Physical Address of proposed Project Site:

Address: *Pletcher Road and Robert Moses Parkway*
City, Town, Village: *Lewiston, New York*
County: *Niagara*

2. New York State Empire Zone Tax Incentives.

In addition to financial incentives that the Niagara County Industrial Development Agency can provide with respect to the proposed Project, the Project may also be eligible for New York State tax benefits (sales tax, income tax, and real property tax benefits and credits) under the New York State Empire Zone Program. Empire

Zone tax benefits can be utilized concurrently with Niagara County Industrial Development Agency benefits and incentives.

Is the proposed Project Site located in an Empire Zone?

☐ Yes ☒ No ☐ Unsure

3. New York State Brownfield Cleanup Program Tax Incentives

New York State provides for significant refundable New York State tax credits with respect to cleanup and construction (buildings and equipment) costs, real property tax expenses, and insurance costs related to remediating and developing a Brownfield/contaminated property. In addition, New York State provides for a release of liability with respect to such contamination located in, on or emanating from the Brownfield Site. New York State Brownfield Cleanup Program tax credits can be utilized concurrently with Niagara County Industrial Development Agency benefits and incentives.

Under the New York Brownfield Cleanup Program, a Brownfield or a Brownfield Site is any real property, the redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous waste, petroleum, pollutant, or contaminant (collectively, "contaminants").

Is the proposed Project Site located on a site where the known or potential presence of a contaminant(s) is complicating the development/use of the property?

☐ Yes ☒ No ☐ Unsure

Has a Phase I Environmental Assessment been prepared or will one be prepared with respect to the proposed Project Site?

☒ Yes ☐ No ☐ Unsure

Have any other studies or assessments been undertaken with respect to the proposed Project Site that indicate the known or suspected presence of contamination that would complicate the site's development?

☐ Yes ☒ No ☐ Unsure

Exhibit "A" Attached to Exhibit "A".

B. Existing Project Facilities:

1. Parcel Size: 251+- Acres **OR** ____ ft. x ____ ft.

2. Are there existing buildings on the Project site? Yes☐; No☒.

   a. If yes, indicate the number of buildings on the site: ____. Also, please briefly identify each existing building and indicate the approximate size (in square feet) of each such existing building:

Building Description	Size

   b. Are the existing buildings in operation? Yes☐; No☐. If yes, describe present use of present buildings:

Building	Use

   c. Are the existing buildings abandoned? Yes☐; No☐. About to be abandoned? Yes☐; No☐. If yes, describe:

   ____

   d. Attach photograph of present buildings.

3. Identify present landowner. *Seneca Niagara Falls Gaming Corporation*

4. Present zoning of site: *R1 - One-Family Residence*

Are there any variances or special permits affecting the Project site?
Yes☒ No☐.

If yes, list below and attach copies of all such variances or special permits.
Special Use Permit-See attached

Exhibit "A" Attached to Exhibit "A".

5. Provide Tax Map (section/block/lot) number(s):
87.00-1-10; 87.00-1-11; 87.00-1-12; 87.00-1-13; 87.16-1-25; 87.20-2-60; 73.00

6. List current assessed value: $361,900.00
List current annual property tax payment: $2,927.96

Exhibit "A" Attached to Exhibit "A".

7. Identify school district pertaining to Proposed Project location:
Lewiston-Porter Central School District

C. Proposed Project Facility and Equipment

1. Does part of the Project consist of the acquisition or construction of a new building or buildings? Yes☒; No☐.

If yes, indicate number and size of new buildings:

The project consists of an 18-hole championship golf course with an associated driving range, club house and pro shop.

2. Does part of the Project consist of additions and/or renovations to existing buildings located on the Project site? Yes☐; No☒.

3. If yes, indicate the buildings to be expanded or renovated, the size of any expansions and the nature of expansion and/or renovation:

____

3. Describe the principal uses to be made by the Company of the building or buildings to be acquired, constructed or expanded:

The new building will serve as a Club House/Pro Shop facility to serve the associated golf course. The Club House will offer retail and dining for golf course patrons and may be rented out for special events.

4. Will machinery and equipment be acquired and installed?

New: ☐ No ☒ Yes Type *Golf, landscape, retail, food service*

Used: ☒ No ☐ Yes Type ____

Describe the principal uses to be made by the Company of the Equipment to be acquired or installed:

SMDC will acquire and install all equipment and systems related to golf course operation, including sprinkler/drainage systems, golf carts, landscaping vehicles/equipment, kitchen and retail equipment.

5. Project Use

a. What are the principal products to be produced at the Project?

Exhibit "A" Attached to Exhibit "A".

The project will offer the use of an 18-hole championship golf course facility with related Club House and Pro Shop amenities.

Exhibit "A" Attached to Exhibit "A".

5. Project Use

b. What are the principal activities to be conducted at the Project?

	%		%
Warehousing		Manufacturing	
Processing		Pollution control	
Office	2%	Research & Development	
Retail*	3%	Commercial	
Recreational	95%	Other:	

* A retail business activity shall mean (i) sales by a registered vendor under article twenty-eight of the New York tax law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the tax law; or (ii) sales of a service to such customers.

c. Does the Project include facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities? Yes☒; No☐.

If yes, please see Addendum A attached hereto.

d. Will the completion of the Project result in the removal of a plant or facility of the Company or another proposed occupant of the Project (a "Project Occupant") from one area of the State of New York to another area of the State of New York? Yes☐ No☒ If yes, please explain:

e. Will the completion of the Project result in the abandonment of one or more plants or facilities of the Company located in the State of New York? Yes☐ No☒

If yes, please provide detail: ____

i. If the answer to either question (d) or question (e) is yes, indicate whether any of the following apply to the Project:

(1) Is the Project reasonably necessary to preserve the competitive position of the Company or such Project Occupant in its industry? Yes☒ No☐

If yes, please provide detail: *This is the only project being currently undertaken by the Company.*

(2) Is the Project reasonably necessary to discourage the Company or such Project Occupant from removing such other plant or facility to a location outside the State of New York? Yes☐ No☒

If yes, please provide detail: ____

6. Is this a single phase or multi-phase project? ☒ Single ☐ Multi

Phase I Activities: *Land development and construction of 18-hole golf course with associated driving range, Club House and Pro Shop.*

Phase II Activities: ____

Phase III Activities: ____

D. Utilities and services presently serving site. Provide name of utility provider.

Gas:	*National Fuel Gas*	Size:	*TBD*
Electric:	*National Grid*	Power:	*1200 amps*
Water:	*Town of Lewiston*	Size:	*8"*
Sewer:	*Town of Lewiston*	Size:	*6"*
Other (specify):			

E. What is your project timetable? (Provide dates)

1. Start date: acquisition or construction of facilities: *2/27/07*
2. Completion of project facilities: *7/1/08*
3. Project occupancy – starting date of operations: *4/1/09*

F. Have any contracts or purchases been made, committed and/or executed toward the project? ☐ No ☒ Yes,

If yes, please provide detail: *The property has been purchased and initial agreements have been entered into with golf course designer and civil engineers. In addition, preliminary site evaluation has begun, and DEC and ACOE permitting has begun.*

G. Has any work toward the completion of the project been initiated? ☐No ☒Yes,

If yes, please provide detail: *SMDC has contracted with Robert Trent Jones, II, a national golf course designer, for preliminary course plans and with BME Civil Engineering for initial site evaluatioion.*

H. Will the project require any government actions, permits or clearances (other than IDA requirements)? If yes, please provide the following details:

Action	Issuing Agency	Date of Issuance

Exhibit "A" Attached to Exhibit "A".

See Attached Permitting Schedule		

I. Include any site plans, drawings or blueprints that have been developed.

J. Does the Company intend to lease or sublease more than 10% (by area or fair market value) of the Project? Yes☐; No☒. If yes, please complete the following for each existing or proposed tenant or subtenant:

Sublessee name: _____
Present Address: _____
Address: _____
Employer's ID No.: _____

Sublessee is: ☐ Corporation ☐ Partnership ☐ Sole Proprietorship

Relationship to Company: _____

Percentage of Project to be leased or subleased: _____%

Use of Project intended by Sublessee: _____

Date of lease or sublease to Sublessee: _____

Term of lease or sublease to Sublessee: _____

Will any portion of the space leased by this sublessee be primarily used in making retail sales of goods or services to customers who personally visit the Project?
Yes☐ No☒.

If yes, please provide on a separate attachment: (a) details, and (b) the answers to questions III(D)(6)(c) through (f) with respect to each such sublessee.

K. Describe the reasons why this project is necessary and what effect it will have on your company: ***SMDC is looking to create a championship level public/semi-private golf course offering the millions of visitors of the Niagara Falls region and the patrons of the Seneca Niagara Casino & Hotel a new tourist destination project that will attract golf enthusiasts from Canada and the United States and to capitalize on the growing tourist market, which will create new jobs and allow for prolonged stays in the area.***

IV. Employment Impact

A) Will Niagara County contractors and / or sub contractors be utilized for the construction project? Yes☒ No☐.

Exhibit "A" Attached to Exhibit "A".

B) What is the estimated number of construction jobs to be created at the project site from Niagara County: 30, Erie County 16, Other Areas 10.

Exhibit "A" Attached to Exhibit "A".

C) Indicate below the number of people presently employed at the Project site and the number that will be employed at the Project site at end of the first and second years after the Project has been completed (Do not include construction workers). Also indicate below the number of workers employed at the Project site representing newly created positions as opposed to positions relocated from other project sites of the applicant.

	TYPE OF EMPLOYMENT			
	PROFESSIONAL OR MANAGERIAL	SKILLED OR SEMI-SKILLED	UNSKILLED	TOTALS
Present Full Time	0	0	0	0
Present Part Time	0	0	0	0
Present Seasonal	0	0	0	0
First Year Full Time	8	11	6	25
First Year Part Time				
First Year Seasonal	1	2	16	19
Second Year Full Time	8	11	6	25
Second Year Part Time				
Second Year Seasonal	1	2	16	19

V. Project Cost Data

A: Give breakdown of project costs:

Land	$2,100,000.00
Buildings: Acquisition	$
Renovation	$
New Construction	$5,750,000.00
Demolition	$
Utilities and Road	$500,000.00
Site work and preparation	$7,000,000.00
Acquisition of machinery & equipment	$1,000,000.00
Installation	$
Architectural and engineering fees	$100,000.00
Legal fees	$75,000.00
Interest during construction	$2,800,000.00
Other	$
TOTAL	$19,325,000.00

Have any of these expenditures been incurred to date? ☐ No ☒ Yes If yes, identify: *Legal costs associated with due diligence and with contract negotiations and some architectural and engineering fees.*

Exhibit "A" Attached to Exhibit "A".

B. Summary of Financing

Total Project Costs	$16,525,000.00
Amount of Bond or Leaseback financing	$
Amount of Conventional financing	$16,525,000.00
Equity	$0.00

C. Will any part of the project be financed with funds of the company? ☐No ☒Yes, If yes, please provide detail:

Item	$
Loan from Seneca Gaming Corporation	16,525,000.00

D. Will other forms of government financing be used to undertake the project: ☒No ☐Yes If yes, please provide detail:

Program	Amount	Status

E. Have financial institutions or potential bond purchasers been approached? ☒No ☐Yes

If yes, please provide detail: ____

F. List capital expenditures of the company:

	Past 3 years	Next 3 years
Real Property	$	$2,100,000.00
Buildings	$	$5,750,000.00
Equipment	$	$1,000,000.00

VI. Financial and Feasibility Data

A. Describe the need or demand for the product or services to be provided as a result of the project: See Marketability/Economic Impact Study

B. Has the company utilized bond financing before? ☒No ☐Yes.
If yes, describe when, where and amount: ____

Exhibit "A" Attached to Exhibit "A".

C. Provide any marketing, economic and/or feasibility studies that have been developed, particularly for tourist destination facilities.

D. The following information will be required by the Agency and returned once an action of the Agency has been taken:

1. Financial statements for the last three (3) years;
2. Projections for the next three (3) years including Balance Sheets, Profit and Loss Statements, Cash Flow Statements by quarters, etc.

VII. Financial Assistance Expected From The Agency

A. Tax Benefits.

1. Is the applicant requesting any real property tax exemption in connection with the Project that would not be available to a project that did not involve the Agency?
   Yes☒ No☐

   If yes, is the real property tax exemption being sought consistent with the Agency's Uniform Tax Exemption Policy? Yes☒ No☐
2. Is the applicant expecting that the financing of the Project will be secured by one or more mortgages? Yes☐ No☒

   If yes, what is the approximate amount of financing to be secured by mortgages?
   $____

3. Is the applicant expecting to be appointed agent of the Agency for purposes of avoiding payment of N.Y.S. Sales Tax or Compensating Use Tax? Yes☒ No☐.

   If yes, what is the approximate amount of purchases which the applicant expects to be exempt from the N.Y.S. Sales and Compensating Use Taxes? $5,368,790.00.

4. What is the estimated value of each type of tax-exemption being sought in connection with the Project? Please detail the type of tax-exemption and value of each exemption.
   a. N.Y.S. Sales and Compensating Use Taxes: $429,503.00
   b. Mortgage Recording Taxes: $____
   c. Real Property Tax Exemptions: $618,780.00
   d. Other (please specify):
      ____ $____
      ____ $____

5. Are any of the tax-exemptions being sought in connection with the Project inconsistent with the Agency's Uniform Tax-exemption Policy?
Yes☐ No☒.

If yes, please explain how the request of the applicant differs from the Agency's Uniform Tax-Exemption Policy: ____

VIII. Representations By The Applicant

The applicant understands and agrees with the Agency as follows:

A. Job Listings. In accordance with Section 858-b(2) of the New York General Municipal Law, the applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the "DOL") and with the administrative entity (collectively with the DOL, the "JTPA Entities") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA") in which the Project is located.

B. First Consideration for Employment: In accordance with Section 858-b(2) of the New York General Municipal Law, the applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, where practicable, the applicant will first consider persons eligible to participate in JTPA programs who shall be referred by the JTPA Entities for new employment opportunities created as a result of the Project.

C. Annual Sales Tax Filings: In accordance with Section 874(8) of the New York General Municipal Law, the applicant understands and agrees that, if the Project receives any sales tax exemptions as part of the Financial Assistance from the Agency, in accordance with Section 874(8) of the General Municipal Law, the applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance, describing the value of all sales tax exemptions claimed by the applicant and all consultants or subcontractors retained by the applicant.

D. Annual Employment Reports: The applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, the applicant agrees to file, or cause to be filed, with the Agency, on an annual basis, reports regarding the number of people employed at the project site.

E. Absence of Conflicts of Interest: The applicant has received from the Agency a list of the members, officers and employees of the Agency. No member, officer or employee of the Agency has an interest, whether direct or indirect, in any transaction contemplated by this Application, except as hereinafter described: ____

Exhibit "A" Attached to Exhibit "A".

CERTIFICATION

(to be executed by the principal of the applicant and acknowledged by a notary public)

I. *Rajat R. Shah* (name of chief executive officer or other authorized representative of applicant) deposes and says that he/she is the *Sr. Vice President* (title) of *Seneca Management Development Corporation* (name of corporation or other entity) named in the attached Application (the "Applicant"); that he/she has read the foregoing Application and knows the contents thereof, and that the same is true to his/her knowledge.

II. The grounds for deponent's belief relative to all matters in the Application which are not stated upon his/her own personal knowledge, are investigations which deponent has caused to be made concerning the subject matter of the Application, as well as information acquired by deponent in the course of his/her duties as an officer of and from the books and papers of said corporation or other entity.

III. As an officer of the Applicant deponent acknowledges and agrees that the Applicant shall be and is responsible for all costs incurred by the Agency and all legal counsel for the Agency, including its general counsel and/or bond/transaction counsel, whether or not the Application, the proposed project it describes, the attendant negotiations, or the issue of bonds or other transaction or agreement are ultimately ever carried to successful conclusion and agrees that the Agency shall not be liable for and agrees to indemnify, defend and hold the Agency harmless from and against any and all liability arising from or expense incurred by (A) the Agency's examination and processing of, and action pursuant to or upon, the Application, regardless of whether or not the Application or the proposed project described herein or the tax exemptions and other assistance requested herein are favorably acted upon by the Agency, (B) the Agency's acquisition, construction and/or installation of the proposed project described herein and (C) any further action taken by the Agency with respect to the proposed project; including without limiting the generality of the foregoing, all causes of action and attorney's fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing.

IV. By executing and submitting this Application, the Applicant covenants and agrees to pay the following fees to the Agency and the Agency's general counsel and/or the Agency's bond/transaction counsel, the same to be paid at the times indicated:

(a) The sum of *$1,000* as a non-refundable processing fee, plus the sum of _____ if Agency assistance in retaining professionals is requested, to be paid upon submission of the Application;

(b) Unless otherwise agreed to by the Agency, an amount equal to _____ of the total project costs to be paid at transaction closing;

(c) All fees, costs and expenses incurred by the Agency for (1) legal services, including but not limited to those provided by the Agency's general counsel and/or the

Agency's bond/transaction counsel, thus note that the Applicant is entitled to receive a written estimate of fees and costs of the Agency's general counsel and the Agency's bond/transaction counsel; and (2) other consultants retained by the Agency in connection with the proposed project; with all such charges to be paid by the applicant at the closing.

V. By executing and submitting this Application, and in the event the closing does not occur, the Applicant further covenants and agrees to pay the following fees to the Agency and the Agency's general counsel and/or the Agency's bond/transaction counsel:

(a) If the Applicant fails to conclude or consummate the necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable proper or requested action, or withdraws, abandons, cancels, or neglects the Application, the Applicant shall pay to the Agency, its agents, or assigns, upon presentation of an invoice, a sum of one and one quarter percent (1.25%) of (i) the amount of bond financing requested; or (ii) the amount on which the financial assistance for the proposed project was determined, and upon presentation of an invoice, all actual costs involved with respect to the Application, including but not necessarily limited to fees of the Agency's general counsel and/or the Agency's bond/transaction counsel; or

(b) If the Applicant is unable to find buyers willing to purchase the bond issue requested, or if the Applicant is unable to facilitate the sale/leaseback transaction, then upon presentation of an invoice, all actual costs involved with respect to the Application, up to that date and time, incurred by the Agency including but not necessarily limited to fees of the Agency's general counsel and/or the Agency's bond/transaction counsel.

VI. The Applicant acknowledges and agrees that all payment liabilities to the Agency and the Agency's general counsel and/or the Agency's bond and/or transaction counsel as expressed in Sections IV and V are obligations that are not dependent on final documentation of the transaction contemplated by this Application.

VI. The cost incurred by the Agency and paid by the Applicant, including bond/transaction counsel fees and the Agency's general counsel's fees and the processing fees, may be considered as a costs of the project and included in the financing of costs of the proposed project, except as limited by the applicable provisions of the Internal Revenue Code with respect to tax-exempt bond financing.

VI. The Applicant is aware and acknowledges that according to the New York Public Officer's Law, Article 6, Freedom of Information, the public has the right to request information about the project and the Applicant, and that in accordance with Public Officer's Law Article 7, all meetings of the Agency are open to the public.

The Applicant and the individual executing this Application on behalf of Applicant acknowledge that the Agency and its counsel will rely on the representations made in this Application and, if applicable, made in Addendum A, when acting hereon and hereby represents

Exhibit "A" Attached to Exhibit "A".

that the statements made herein and therein do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein or therein not misleading.

Seneca Management Development Corporation
(name of corporation or entity)

Rajat B. Shah
(name of officer)

Senior Vice President
(title)

NOTARY

Sworn to before me this 16 day of March, 2017

MICHELE F. MITCHELL
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02MI6112490
QUALIFIED IN FRANKLIN COUNTY
COMMISSION EXPIRES JULY 6, 2017

(Signature)

Exhibit "A" Attached to Exhibit "A".

ADDENDUM A

Niagara County Industrial Development Agency Application for Assistance

Retail Project Certification

The undersigned, hereby certifies the following:

1. An application for financial assistance from the Niagara County Industrial Development Agency (the "Agency") has been submitted by ***Seneca Management Development Corporation***, (the "Applicant") with respect to a certain Project, as described in the Application for Assistance, (the "Application") to which this Addendum is heretofore attached.

2. The Applicant, by its undersigned Authorized Representative, understands and agrees that Section 862 of the New York General Municipal Law provides for a prohibition on the types of projects that can benefit from the assistance of an Industrial Development Agency with respect to *a project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost.* The Applicant, by its undersigned Authorized Representative, understands and acknowledges the following:

a. Less than One-third Project costs. Financial assistance of the agency may be provided in respect of any *project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute less than one-third of the total project cost.*

b. Destination project. Financial assistance may be provided to a project that is a tourism destination project (defined as a location or facility which is likely to attract a significant number of visitors from outside the economic development region as defined under New York economic development law, in which the project is located) *even if the project or facilities that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost.*

c. Not-for-profit operations. Financial assistance may be provided to a project that is operated by not-for-profit corporation *even if the project or facilities that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost.*

d. Retaining jobs within the state. Financial assistance may be provided to a project where *facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services constitute more than one-third of the total project cost*, where the project occupant would, but for the assistance provided by the agency, locate the related jobs outside the state.

e. Unique services. Financial assistance may be provided to a project where *facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services constitute more than one-third of the total project cost* where the predominant purpose of the project would be to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the city, town, or village within which the proposed project would be located because of a lack of reasonably accessible retail trade facilities offering such goods or services.

Exhibit "A" Attached to Exhibit "A".

f. Highly distressed area. Financial assistance may be provided to a project where *facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services constitute more than one-third of the total project cost*, where the project is located in a highly distressed area. A "Highly distressed area" shall mean (a) a census tract or tracts or block numbering areas or areas or such census tract or block numbering area contiguous thereto which, according to the most recent census data available, has (i) *a poverty rate* of at least twenty percent for the year to which the data relates or at least twenty percent of households receiving public assistance; and (ii) *an unemployment rate* of at least 1.25 times the statewide unemployment rate for the year to which the data relates; or (b) a city, town, village or county within a city with a population of one million or more for which: (i) the ratio of the full value property wealth, as determined by the comptroller for the year nineteen hundred ninety, per resident to the statewide average full value property wealth per resident; and (ii) the ratio of the income per resident; as shown in the nineteen hundred ninety census to the statewide average income per resident; are each fifty-five percent or less of the statewide average; or (c) an area which was designated an Empire Zone.

3. The Applicant, by its undersigned Authorized Representative, understands and agrees that projects authorized pursuant to Section 2(d),(e), and (f), above, *shall not be approved unless the Agency shall find, after the public hearing* required by New York General Municipal Law, that undertaking the Project will serve the public purposes of the New York General Municipal Law by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the state. Where the Agency makes such a finding, *prior to providing financial assistance to the Project by the Agency, the chief executive officer of the municipality for whose benefit the agency was created shall confirm the proposed action of the agency.*

The Applicant, by its undersigned Authorized Representative, hereby represents that the project as described in the Application meets the following retail sale exceptions, as noted below and as described in Section 2, above, and further, acknowledges and understand that the approval of the chief executive officer of the municipality for whose benefit the agency was created may be necessary in order for the Agency to provide financial assistance to the Project:

☐ Less than one-third project costs ☒ Destination Project ☐ Retaining jobs within the state
☐ Unique Services ☐ Highly distressed area

5. The Applicant, by its undersigned Authorized Representative, hereby acknowledges that it has provided the Agency, as described on Schedule A attached hereto, with the appropriate project costs, market study, business plan, and census tract data, as appropriate, to support the conclusions with respect to the retail exception(s) as represented above in Section 4.

The Applicant, by its undersigned Authorized Representative has read the foregoing and knows the contents thereof and that the same is true to the Applicant's knowledge.

Applicant:
By:
Name: *Rajat R. Shah*
Title: *Senior Vice President*
Date:

Exhibit "A" Attached to Exhibit "A".

Schedule A

1. What percentage of the cost of the Project will be expended on such facilities or property primarily used in making retail sales of goods or services to customers who personally visit the Project? 100%

2. If the answer to the prior question is more than 33.33%, indicate whether any of the following apply to the Project:

(a) Will the Project be operated by a not-for-profit corporation?

Yes☐; No☒. If yes, please explain:

(b) Is the Project likely to attract a significant number of visitors from outside the economic development region in which the Project will be located?

Yes☒; No☐. If yes, please explain:

(c) Would the Project occupant, but for the contemplated financial assistance from the Agency, locate the related jobs outside the State of New York?

Yes☐; No☒. If yes, please explain:

(d) Is the predominant purpose of the Project to make available goods or services which would not, but for the Project, be reasonable accessible to the residents of the city, town or village within which the Project will be located, because of a lack of reasonably accessible retail trade facilities offering such goods or services?

Yes☐; No☒. If yes, please provide detail:

(e) Will the Project be located in one of the following: (i) an area designed as an Empire Zone pursuant to Article 18-B of the General Municipal Law; or (ii) a census tract or block numbering area (or census tract or block numbering area contiguous thereto) which, according to the most recent census data, has (a) a poverty rate of at least 20% for the year in which the data relates, or (b) at least 20% of households receiving public assistance, and (c) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relates?

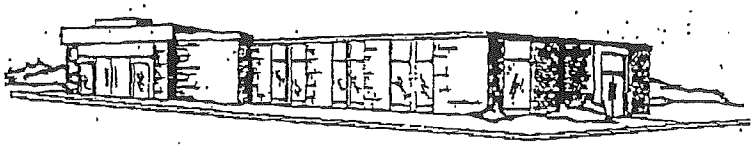
Yes☐; No☒. If yes, please explain:

(f) If the answers to any of subdivisions (a) through (e) of question (2) is yes, will the Project preserve permanent, private sector jobs or increase the overall number of permanent, private sector jobs in the State of New York?

Yes☒ No☐ If yes, please explain: *The golf course project will create new jobs in Western New York, including permanent management positions.*

Exhibit "A" Attached to Exhibit "A".

Town of Lewiston
P.O. Box 330
1375 Ridge Road
Lewiston, New York 14092
Phone: (716) 754-8213 or 754-8214
Fax: (716) 754-2821



SUPERVISOR
Fred M. Newlin

DEPUTY SUPERVISOR
Evan E. Elgin

COUNCIL MEMBERS
Alfonso M. Bax
Sean A. Edwards
Michael A. Johnson
Gary A. Pacioni

TOWN CLERK
Carol J. Brandon
Box 330
Lewiston, NY 14092

RECEIVER OF TAXES
Joan Brandel Stephens

HIGHWAY SUPERINTENDENT
Steven L. Reiter
Highway 754-8218

TOWN JUSTICES
Thomas J. Sheeran
Hugh C. Gee

ASSESSOR
Gene J. Virtuoso

TOWN ATTORNEY
Joseph L. Leone, Jr.
731 Third Street
Niagara Falls, NY 14301
285-9511 Fax 285-6618

PUTY TOWN ATTORNEY
David G. Boniello
2902 Pine Avenue
Niagara Falls, NY 14301
285-4300 Fax 285-1708

UILDING INSPECTOR
PLANNING-ZONING
Robert S. Coulter

CHIEF OF POLICE
Ronald R. Winkley
754-8477

LWPCC
ADMINISTRATOR &
CHIEF OPERATOR
Timothy R. Lockhart
754-8291

"TER DEPARTMENT
754-8213

SENIOR SERVICES
Jeanette L. Collesano
754-2071

RESOLUTION NO. 2005 – 17

The Lewiston Town Board of the Town of Lewiston on December 29, 2005, adopted the following Resolution. Motion made by Sup. Newlin and Seconded by Johnson. Carried 5-0.

Whereas, the Town Board supports the concept of private development of the proposed golf course, and

Whereas, the Town Board supports private development which would pay their fair share of the assessed value for their properties in school taxes, county taxes, special assessment and sales tax; and

Whereas, the Town Board supports the concept of private development rather than public development as originally proposed by a previous Town Board relative to the course to prevent any exposure to current or future taxpayers relative to the financing through municipal bonds, so

Be It Resolved, Whereas, the Town Board supports the development of a private golf course, and

Be It Resolved, that the Town Board wished to express their firm support that the proposed development of the private gold course in the Town of Lewiston.

Certified to be a true and correct copy of the approved Resolution and record on file in the office of the Town Clerk of the Town of Lewiston.

Carol J. Brandon
Town Clerk

SEAL

Exhibit "A" Attached to Exhibit "A".

TOWN OF LEWISTON
LEWISTON, NY

NOTICE OF ACTION OF ZONING BOARD OF APPEALS

Hearing # 18257 Date June 20, 2006

To: Seneca Niagara FAlls Gaming Corporation, Appellant

At a meeting of our Zoning Board of Appeals on 6/8/06 the reference appeal was considered and the action indicated below was taken on your:

XX Request for Special Permit
___ Request for variance in Zoning Ordinance
___ Request for Temporary Permit

By resolution of the Board it was determined that:
your request for a Special Use Permit per Section 30-10C of the Code of the Town of Lewiston, Uses Permitted, to construct a golf course with a clubhouse and maintenance facilities on approximatley 254 acres be grantec forthe conceptual plan and contingent on all required approvals. The golf course is the shaded area of the map that was submitted without anydetails.

and therefore it was further determined that your request

XX be granted
___ be denied
___ be tabled

You are therefore directed and ordered to comply with the conditions as set forth above.

ZONING BOARD OF APPEALS

Sandra L VanUden
Secretary

Exhibit "A" Attached to Exhibit "A".

Seneca Management Development Corporation
Board of Directors, as of March 5, 2007

Maurice A. John
2011 W. Perimeter Road
Steamburg, NY 14783

Barry E. Snyder, Sr.
11080 Lake Shore Road
Irving, NY 14081

Martin Seneca
12130 Brant Reservation Road
Irving, NY 14081

Bergal L. Mitchell, III
42 North Chapel Street
Gowanda, NY 14070

Norman Cochise Redeye
12380 Route 438
Irving, NY 14081

Maribel Printup
3778 Center Road
Salamanca, NY 14779

Exhibit "A" Attached to Exhibit "A".

Seneca Management Development Corporation
Owner & Officers, as of March 5, 2007

Other Principal Business Affiliations: The Seneca Nation of Indians also owns the Seneca Gaming Corporation, and its subsidiaries, the Seneca Niagara Falls Gaming Corporation, the Seneca Erie Gaming Corporation and the Seneca Territory Gaming Corporation

Seneca Nation of Indians, Owner
William Seneca Building
1490 Route 438
Irving, New York 14081

Other Principal Business Affiliations: The following Officers, also hold these same titles for the Seneca Gaming Corporation and its subsidiaries, the Seneca Niagara Falls Gaming Corporation, the Seneca Erie Gaming Corporation and the Seneca Territory Gaming Corporation.

Brian Hansberry, President & CEO
453 Guard Street
Lewiston, NY 14092

Rajat Shah, Senior Vice President
143 Brandywine Drive
Williamsville, New York 14221

Patrick Fox, Chief Financial Officer
310 Fourth Street (local) 11350 Steeplechase
Niagara Falls,NY 14303 Orland Park, IL 60467

Barry Brandon, General Counsel
5031 Donnington Road
Clarence, NY 14031

Exhibit "A" Attached to Exhibit "A".

Permitting Schedule
As of March 5, 2007

The following are local, state and federal permitting that may be required by the project. With the exception of Special Use Permit, granted on June 20, 2006, the other permits will be applied for as the project proceeds through the SEQRA process. Once the final course route is determined with the minimal wetland disturbance and the final stormwater drainage plans are approved, the final permitting will be sought.

PERMIT	AGENCY	ACTIVITY
FEDERAL		
Clean Water Act Section 404 Permit	Army Corps of Engineers	Disturbance to Federal Wetlands
STATE		
Freshwater Wetlands Permit	NYSDEC	Disturbance to Wetland 100' Buffer Areas
Stream Disturbance *(potential)*	NYSDEC	Necessary if there will be a disturbance to Four Mile Creek
SPDES Stormwater Discharge	NYSDEC	Coverage under the general SPDES permit for Stormwater Discharge for Construction Activities
Highway Work Permit	NYSDOT	Necessary for work in NYSDOT ROW
NYSDOT Land use and occupancy permit *(potential)*	NYSDOT	Necessary if there will be use of NYSDOT Right-of-Way
LOCAL		
Sanitary Sewer Extension approval	NYSDEC, NCDOH and Town of Lewiston	Extension of Sewer
Special Use and Site Plan approval	Town of Lewiston	Layout of Site and use as a Golf Course
Water Improvements	NYSDOH, NCDOH, and Town of Lewiston	Connect to Existing Domestic Water Supply, Fire Protection

Exhibit "B" Attached to Exhibit "A".

070703000 484

CT-07

New York State
Department of State
Division of Corporations, State Records
and Uniform Commercial Code
41 State Street
Albany, NY 12231
www.dos.state.ny.us

APPLICATION FOR AUTHORITY OF

Lewiston Golf Course Corporation

(Insert corporate name)

Under Section 1304 of the Business Corporation Law

FIRST: The name of the corporation is:

Lewiston Golf Course Corporation

If the name does not contain a required word or abbreviation indicating corporate character pursuant to § 301 of the Business Corporation Law, the corporation agrees to add the word or abbreviation to the end of its name for use in this state.

(Do not complete this section unless the corporation's true name is not available pursuant to §301 or § 302 of the Business Corporation Law.) The fictitious name under which the corporation will do business in New York is:

SECOND: The jurisdiction in which the corporation was organized is:
Seneca Nation of Indians The date of its incorporation is: June 28, 2007

THIRD: This corporation is formed to engage in any lawful act or activity for which a corporation may be organized under the Business Corporation Law, provided that it is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

FOURTH: The county within this state in which the office of the corporation is to be located is: Niagara . (A county in New York State must be stated. Please note that the corporation is not required to have an actual physical office in this state.)

Exhibit "B" Attached to Exhibit "A".

FIFTH: The secretary of state is designated as agent of the corporation upon whom process against the corporation may be served. The address to which the secretary of state shall mail a copy of any process accepted on behalf of the corporation is:

310 Fourth Street
Niagara Falls, New York 14303

SIXTH: (*Check the statement that applies.*)

☑ The foreign corporation has not since its incorporation or since the date its authority to do business in New York was last surrendered, engaged in any activity in this state.

☐ The consent of the State Tax Commission is attached.

X _____
Signature

E. Brian Hansberry
Name of signer

President & CEO
Title of signer

Stipulation in Lieu of Certification Pursuant to CPLR 5532.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

SUE/PERIOR CONCRETE & PAVING, INC.,

Plaintiff,

v.

LEWISTON GOLF COURSE CORPORATION, SENECA NIAGARA FALLS GAMING CORPORATION, SENECA GAMING CORPORATION, JEFFREY L. GILL, MARK I. HALFTOWN, GLORIA HERON, MAURICE A. JOHN, SR., MICHAEL L. JOHN, KAREN KARSTEN, INA K. LOCKE, ROBERT E. MELE, RICHARD K. NEPHEW, MARIBEL PRINTUP, COCHISE REDEYE, GARY SANDEN, KEVIN W. SENECA, BARRY E. SNYDER, SR., STEVE TOME, NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, NIAGARA MOHAWK POWER CORPORATION, and JOHN DOE

Defendants.

STIPULATION IN LIEU OF CERTIFICATION OF RECORD ON APPEAL PURSUANT TO CPLR 5532

Index No.: 141212

IT IS HEREBY STIPULATED pursuant to CPLR 5532, that the foregoing constitutes a true and correct copy of the entire Record on Appeal.

Stipulation in Lieu of Certification Pursuant to CPLR 5532.

Dated: Buffalo, New York
May 29, 2012

PHILLIPS LYTLE LLP

By _____
Michael B. Powers, Esq.
Sean C. McPhee, Esq.
Ryan G. Pitman, Esq.
Attorneys for Defendants
Lewiston Golf Course Corporation, Seneca Niagara Falls Gaming Corporation, Seneca Gaming Corporation, Jeffrey L. Gill, Mark I. Halftown, Gloria Heron, Maurice A. John, Sr., Michael L. John, Karen Karsten, Ina K. Locke, Robert E. Mele, Richard K. Nephew, Maribel Printup, Cochise Redeye, Gary Sanden, Kevin W. Seneca, Barry E. Snyder, Sr., and Steve Tome
3400 HSBC Center
Buffalo, New York 14203
Telephone No.: (716) 847-8400

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP

By _____
Gregory P. Photiadis, Esq.
Elizabeth A. Kraengel, Esq.
Attorneys for Plaintiff
Sue/Perior Concrete & Paving Inc.
1800 Main Place Tower
350 Main St.
Buffalo, New York 14202
Telephone No.: (716) 855-1111

WEBSTER SZANYI LLP

By _____
Charles E. Graney, Esq.
Attorneys for Defendant
Niagara County Industrial Development Agency
1400 Liberty Building
Buffalo, New York 14202
Telephone No. (716) 842-2800

Doc # 01-2574366.2