

# Oneida Nation

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Oneida, WI 54155

## BC Resolution # 04-12-17-E

### Adoption of Second Amendment and the Amended and Restated Revolving Credit Note of the Oneida Nation

- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1 of the Oneida Nation Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Oneida Nation has entered into an Amended and Restated Credit Agreement dated as of January 20, 2012, as amended by that certain Waiver and First Amendment to Amended and Restated Credit Agreement dated as of January 19, 2017 (as amended by the Second Amendment (defined below) and as further amended, restated or otherwise modified from time to time, the "Credit Agreement") with Bank of America, N.A., as a lender and as administrative agent (in such capacity, the "Agent") for certain other lenders; and
- WHEREAS,** the Oneida Nation has requested to extend the maturity date and make certain other amendments to the Credit Agreement pursuant to that certain Second Amendment to Amended and Restated Credit Agreement (the "Second Amendment"), and the Agent and the Lenders have agreed to enter into the Second Amendment; and
- WHEREAS,** there have been prepared and submitted to the Oneida Business Committee drafts of the following documents (collectively, the "Financing Documents") relating to the Credit Agreement:
1. the Second Amendment; and
  2. Amended and Restated Revolving Credit Note of the Oneida Nation in favor of Bank of America, N.A. in the stated principal amount of \$30,000,000;
- WHEREAS,** the Oneida Business Committee has reviewed the limited waivers of the Oneida Nation's sovereign immunity and all dispute resolution provisions in the Financing Documents, including but not limited to the waiver of right to the exhaustion of tribal remedies, consent to specified federal and state courts, consent to specified state and federal laws (including the application of the laws of the State of Illinois) to govern and interpret the Financing Documents, consent to the arbitration of disputes, and consent to arbitration procedures contained in the Financing Documents (collectively, the "Dispute Resolution Provisions") and has found such to be fully enforceable and in conformity with all applicable tribal laws, including without limitation Chapter 14 of the Tribal Code; and
- WHEREAS,** the Oneida Business Committee has determined it is in the best interests of the Oneida Nation to authorize the arbitration of disputes in the Financing Documents and to adopt as a matter of Tribal law certain procedures for the enforcement of agreements to arbitrate in the Financing Documents, and resulting arbitration awards, by the Oneida Judiciary; and

**WHEREAS,** the Oneida Business Committee has determined it is in the best interests of the Oneida Nation to adopt as a matter of Tribal law the provisions of the Wisconsin Uniform Commercial Code, Wis. Statutes, Chapter 401-411 ("WI UCC") with respect to perfection, effect of perfection or nonperfection of any security interests granted by the Oneida Nation under the Financing Documents; and

**NOW THEREFORE BE IT RESOLVED** that the Financing Documents and the loan facilities reflected therein are hereby approved by the Oneida Business Committee.

**BE IT FURTHER RESOLVED** that the Secretary and the Treasurer of the Oneida Business Committee are hereby authorized and directed to execute and deliver the Financing Documents on behalf of the Oneida Nation, in substantially the form heretofore provided to this Business Committee with such changes thereto as the Secretary and the Treasurer in their discretion, upon the advice of legal counsel to the Oneida Nation and the Chief Financial Officer shall approve, and to execute and deliver on behalf of the Oneida Nation such additional instruments and certifications as may be necessary and appropriate in order to implement this Resolution and to evidence or secure the obligations under the Credit Agreement, the Secretary's and the Treasurer's execution and delivery of any document or additional instrument or certification being conclusive evidence of their approval thereof in accordance with this Resolution.

**BE IT FURTHER RESOLVED** that the approvals and authorizations herein contained shall constitute sufficient approvals and authorizations for the borrowing, repayment and reborrowing, from time to time, of the amounts available to be borrowed, and requests for extensions of letters of credit, by the Oneida Nation under the Credit Agreement in the manner provided therein without further action of this Business Committee.

**BE IT FURTHER RESOLVED,** it is hereby acknowledged that each and every agreement, note, pledge agreement, collateral agreement, and other instrument made pursuant to the foregoing Resolutions is and will be made and given for the business purposes of the Oneida Nation.

**BE IT FURTHER RESOLVED,** the Secretary of the Oneida Business Committee shall certify to the Lenders the names and signatures of the persons who presently are duly elected, qualified and acting as the officers authorized to act under the foregoing Resolutions, and the Secretary of the Oneida Business Committee shall from time to time hereafter, upon a change in the facts so certified, immediately certify to the Lenders the names and signatures of the persons then authorized to sign or to act, the Lenders shall be fully protected in relying on such certificates and on the obligation of the Secretary of the Oneida Business Committee immediately to certify to the Lenders any change in any fact certified, and the Banks shall be indemnified and saved harmless by the Oneida Nation from any and all claims, demands, expenses, costs and damages resulting from or growing out of honoring or relying on the signature or other authority (whether or not property used) or any officer whose name and signature was so certified, or refusing to honor any signatures or authority not so certified.

**BE IT FURTHER RESOLVED,** that the Oneida Business Committee on behalf of the Oneida Nation approves the Dispute Resolution Provisions as set forth in the Financing Documents, and hereby independently grants to, and agrees for the benefit of, the Agent and Lenders, and their respective successors and assigns, through this Resolution as set forth below (with any capitalized terms not otherwise defined in this Resolution having the meanings given such terms in the Financing Documents and with each reference to a defined term or specific Section incorporating the corresponding term or Section in the Credit Agreement, as applicable):

(1) At the request of the Agent or the Oneida Nation, any controversy or claim between or among the parties, including but not limited to those arising out of or relating to the Oneida Nation's obligations arising out of the loan by the Administrative Agent and the Lenders to the Oneida Nation, the Financing Documents and any agreements or instruments relating thereto or delivered in connection therewith and any claim based on or arising from an alleged tort shall be determined by

arbitration. The arbitration shall be conducted in accordance with the United States Arbitration Act (Title 9, U.S. Code), notwithstanding any choice of law provision in the Financing Documents, and under the Commercial Rules of the American Arbitration Association ("AAA"). The arbitrators shall give effect to statutes of limitation in determining any claim. Any controversy concerning whether an issue is arbitrable shall be determined by the arbitrators. Judgment upon the arbitration award may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief. No provision of this section of the Resolution shall limit the right of any party to the Financing Agreement to exercise self-help remedies such as setoff, to foreclose against or sell any real or personal property collateral or security or to obtain provisional or ancillary remedies from a court of competent jurisdiction before, after, or during the pendency of any arbitration or other proceeding. The exercise of a remedy does not waive the right of any party to resort to arbitration or reference.

(2) (a) THE ONEIDA NATION HEREBY EXPRESSLY WAIVES ITS SOVEREIGN IMMUNITY (AND ANY DEFENSE BASED THEREON) FROM ANY SUIT, ACTION OR PROCEEDING OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OF NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION, EXECUTION, EXERCISE OF CONTEMPT POWERS, OR OTHERWISE) IN THE FORA SPECIFIED IN SECTION 10.16(b) OF THE CREDIT AGREEMENT, WITH RESPECT TO THE NATION'S OBLIGATIONS ARISING OUT OF THE LOANS MADE BY THE AGENT AND THE LENDERS TO THE ONEIDA NATION, THE FINANCING DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY. NOTWITHSTANDING THE FOREGOING SENTENCE, THE ONEIDA NATION DOES NOT WAIVE ITS SOVEREIGN IMMUNITY (OR ANY DEFENSE THEREON) FROM ANY SUIT OR PROCEEDING THAT THE AGENT, THE L/C ISSUER, THE SWING LINE LENDER AND THE LENDERS ARE PROHIBITED FROM ASSERTING AGAINST THE ONEIDA NATION OR ANY PROPERTY OF THE ONEIDA NATION PURSUANT TO SECTION 10.22 OF THE CREDIT AGREEMENT.

(b) THE ONEIDA NATION HEREBY CONSENTS TO THE JURISDICTION OF THE COURTS OF THE STATE OF WISCONSIN OR OF THE COURTS OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN (IN EACH CASE AS MAY BE SELECTED BY THE AGENT AT THE REQUEST OF THE REQUIRED LENDERS) OVER ANY ACTION REFERRED TO IN THE FOREGOING CLAUSE (a) AND OVER THE ONEIDA NATION, THE AGENT AND THE LENDERS AND WAIVES ANY OBLIGATION TO EXHAUST TRIBAL COURT REMEDIES IN CONNECTION WITH ANY SUCH ACTION. THE ONEIDA NATION IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN ANY SUCH JURISDICTION IN RESPECT OF THE FINANCING DOCUMENTS OR ANY DOCUMENT RELATED THERETO. THE ONEIDA NATION WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY APPLICABLE LAW. THE AGENT AND THE LENDERS SHALL HAVE ALL AVAILABLE LEGAL AND EQUITABLE REMEDIES, INCLUDING THE RIGHT TO SPECIFIC PERFORMANCE, MONEY DAMAGES AND INJUNCTIVE OR DECLARATORY RELIEF.

(c) THE ONEIDA NATION AGREES NOT TO COMMENCE ANY SUIT, ACTION, PROCEEDING OR LEGAL PROCESS IN THE ONEIDA NATION'S COURTS WITH RESPECT TO FINANCING DOCUMENTS AND TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY. THE ONEIDA NATION AGREES THAT IF IT COMMENCES ANY SUCH SUIT, ACTION, PROCEEDING OR LEGAL PROCESS IN THE ONEIDA NATION'S COURTS, THE ONEIDA NATION'S COURTS SHALL DISMISS THE ACTION AND SHALL ORDER THE PARTIES TO

PROCEED UNDER CLAUSE (b), OR, IF APPLICABLE, SECTION 10.15, OF THE CREDIT AGREEMENT.

(d) THE WAIVER OF SOVEREIGN IMMUNITY AND CONSENT TO JURISDICTION CONTAINED IN THIS RESOLUTION IS IRREVOCABLE, AND THE ONEIDA NATION EXPRESSLY WAIVES (FOR THE LIMITED PURPOSES OF THE FINANCING DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY) ANY SOVEREIGN POWER THAT IT MAY HAVE TO REVOKE SUCH WAIVER AND CONSENT.

(3) (a) Notwithstanding any other provision of the Financing Documents or this Resolution to the contrary, the limited waiver of the Oneida Nation's sovereign immunity in this Resolution is subject to the covenants of the Agent, the L/C Issuer, the Swing Line Lender, and the Lenders in the Financing Documents that they shall not take recourse against any Protected Assets.

(b) Notwithstanding any other provision of the Financing Documents or this Resolution to the contrary, but subject to clause (3)(a) set forth above, the limited waiver of the Oneida Nation's sovereign immunity in this Resolution is subject to the covenants of the Agent, the L/C Issuer, the Swing Line Lender, and the Lenders in the Financing Documents that they shall not take recourse against the Oneida Nation with respect to the Obligations of the Oneida Nation under the Financing Documents except recourse to Enterprise Property (including without limitation the Collateral Accounts, the revenues of the Enterprise and any Distributions and Operating Costs and Expenses Transfers made in violation of the terms of the Financing Documents), provided that:

(i) in the event that any Recourse Event occurs, then the Agent, the L/C Issuer, the Swing Line Lender and the Lenders shall be irrevocably released from this covenant and the Obligations shall be (and shall be deemed continuously to have been) full recourse obligations of the Oneida Nation, subject to clause (3)(a) set forth above; *provided, however,* that with respect to a violation of (x) Section 7.06 of the Credit Agreement, recourse may only be sought to the extent of any Distribution or Restricted Payment made in violation of Section 7.06 of the Credit Agreement, (y) Section 7.13 of the Credit Agreement, recourse may only be sought the extent of any commingling of, or failure to segregate, assets made in violation of Section 7.13 of the Credit Agreement and (y) Section 7.12(c) of the Credit Agreement, recourse may only be sought to the extent of any tax, charge, assessment, fee or other imposition made in violation of Section 7.12(c) of the Credit Agreement; and;

(ii) this clause 3(b) shall not impair any rights or remedies of the Agent, the L/C Issuer, the Swing Line Lender or the Lenders against the Oneida Nation, its Properties or revenues, which arise by means of their subrogation or other succession to the rights of any other Person, whether by means of the payment to such Person of any obligation or indebtedness owed to that Person by the Oneida Nation, the purchase by the Agent, the L/C Issuer, the Swing Line Lender or the Lenders of Indebtedness or other obligations owed to such Person by the Oneida Nation, or otherwise.

**BE IT FURTHER RESOLVED**, that the Oneida Business Committee on behalf of the Oneida Nation hereby determines that any agreement in a Financing Document, in a separate writing executed by the parties to any Financing Document or independently in this Resolution, to settle by arbitration any claim, dispute or controversy thereafter arising out of a Financing Document or any transaction contemplated thereunder (each such agreement, an "Arbitration Provision") shall be valid, irrevocable and enforceable. With respect to the Financing Documents, and any other contracts, agreements or instruments executed by the parties in connection with or related to the Financing Documents or the transaction contemplated thereby or by this Resolution, the Oneida Business Committee on behalf of the Oneida Nation hereby determines that:

**(1) Laws to be Applied.**

(a) In any contract, agreement or instrument containing an Arbitration Provision, the parties may agree upon the jurisdiction whose substantive law shall govern the interpretation and enforcement of the contract, agreement, instrument or claim, dispute or controversy. Such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties thereto, provided that the subject matter of the contract, agreement, instrument or claim, dispute or controversy, or at least one of the parties thereto, shall have some contact with the jurisdiction so selected.

(b) In any proceeding in the Oneida Judiciary or any other courts or dispute resolution forums of the Oneida Nation (collectively, the "Tribal Court") relating to a contract, agreement or instrument containing an Arbitration Provision, whenever the contract, agreement or other instrument sets forth a choice of law provision, the Tribal Court shall apply the procedural rules of the Tribal Court and the substantive law of the jurisdiction selected in such choice of law provision; provided that no procedural rule of the Tribal Court shall bar, delay or impair any action, proceeding or remedy where such action, proceeding or remedy would not be barred, delayed or impaired by the procedural rules of the courts of the jurisdiction whose substantive law applies.

(c) In any proceeding in the Tribal Court relating to a contract, agreement or instrument containing an Arbitration Provision, whenever the contract, agreement or other instrument does not set forth a choice of law provision, the Tribal Court shall apply the substantive law of the Oneida Nation, including any applicable choice of law principles.

**(2) Stay of Proceedings in Tribal Court and Order to Proceed with Arbitration.**

(a) If any action for legal or equitable relief or other proceeding is brought in the Tribal Court by any party to any contract, agreement or instrument containing an Arbitration Provision, the Tribal Court shall not review the merits of the pending action or proceeding, but shall stay the action or proceeding until an arbitration has been had in compliance with the agreement.

(b) If any party to any contract, agreement or instrument containing an Arbitration Provision, claiming the neglect or refusal of another party thereto to proceed with an arbitration thereunder, makes application to the Tribal Court for an order directing the parties to proceed with the arbitration in compliance with their agreement, the Tribal Court shall order the parties to arbitration in accordance with the provisions of the contract, agreement or instrument and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

**(3) Advice of the Tribal Court.** At any time during an arbitration of any claim, dispute or controversy arising out of related to a Financing Document or any transactions contemplated thereby, upon request of all the parties to the arbitration, the arbitrator(s) may make application to the Tribal Court for advice on any question of tribal or state law arising in the course of the arbitration so long as such parties agree in writing that the advice of the Tribal Court shall be final as to the question presented and that it shall bind the arbitrator(s) in rendering any award.

**(4) Time Within Which Award Shall be Rendered.**

(a) If the time within which an award is rendered has not been fixed in an Arbitration Provision, the arbitrator(s) shall render the award within thirty days from the date the arbitration has been completed. The parties may expressly agree to extend the time in which the award may be made by an extension or ratification thereof in writing.

(b) An arbitration award arising out of an arbitration to which this Resolution applies shall be in writing and signed by the arbitrator(s). The arbitrator(s) shall provide written notice of the award to each party by certified or registered mail, return receipt requested.

**(5) Application for Order Confirming Award; Record to be Filed with Clerk of Court; Effect and Enforcement of Judgment.**

(a) At any time within one year after an arbitration award arising out of an arbitration to which this Resolution applies has been rendered and the parties thereto notified thereof, any party to the arbitration may make application to the Tribal Court for an order confirming the award.

(b) Any party applying to the Tribal Court for an order confirming an arbitration award arising out of an arbitration to which this Resolution applies shall, at the time the order is filed with the Clerk of the Tribal Court for entry of judgment thereon, file the following papers with the Clerk: (1) the agreement to arbitrate; (2) the selection or appointment, if any, of the arbitrator(s); (3) any written agreement requiring the reference of any question as provided in Section 3 of this Resolution; (4) each written extension of the time, if any, within which to make the award; (5) the award; (6) each notice and other paper used upon an application to confirm; and (7) a copy of each order of the Tribal Court upon such an application.

(c) An arbitration award arising out of an arbitration to which this Resolution applies shall not be subject to review or modification by the Tribal Court for any reason other than in the circumstances described in 9 U.S.C. §§ 10 and 11. The judgment confirming any such award shall be docketed as if it were rendered in a civil action. The judgment so entered shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in the Tribal Court. When the award requires the performance of any other act than the payment of money, the Tribal Court may direct the enforcement thereon in the manner provided by law.

**(6) Arbitration Award Not Appealable.** No further appeal may be taken from an order issued by the Tribal Court pursuant to this Resolution enforcing an agreement to arbitrate or an award issued by an arbitrator.

**(7) Jurisdiction of the Tribal Court.** To the extent allowed by federal law, the jurisdiction of the Tribal Court over any action to enforce an Arbitration Provision, to compel arbitration pursuant to an Arbitration Provision and to enforce an award made by an arbitrator pursuant to an Arbitration Provision shall be concurrent with the jurisdiction of any state or federal court to the jurisdiction of which the parties to such contract, agreement or other instrument shall have explicitly consented therein. Any consent to the jurisdiction of a state or federal court contained in a contract, agreement or other instrument containing an Arbitration Provision, and any waiver of the obligation of the parties to exhaust Tribal Court remedies, shall be valid and enforceable in accordance with its terms.

**BE IT FURTHER RESOLVED**, that the Oneida Business Committee (a) adopts the provisions of the WI UCC (other than Section 409.109(3) of the WI UCC) as such may be amended from time to time, as the law of the Oneida Nation with respect to the Financing Documents and the transactions contemplated thereby so long as the Financing Documents shall be in effect, subject to such modification from time to time as is permitted under the Financing Documents, (b) designates that for purposes of the WI UCC Sections 409.301 through 409.342, the Oneida Nation shall be considered located in the State of Wisconsin, (c) designates that the proper office for filing a financing statement against the Oneida Nation shall be the office specified by Wisconsin law as if the Tribe were located in the State of Wisconsin, (d) directs that no filing of any such financing statement is required in any office or agency of the Oneida Nation and (e) intends that this Resolution adopting the WI UCC be considered a law, within the meaning of WI UCC Section 409.307(c), which generally requires information concerning a non-possessory security interest to be made generally available in a filing, recording or registration system.

**BE IT FURTHER RESOLVED**, that the Oneida Business Committee on behalf of the Oneida Nation hereby determines that no licenses or permits are required under the law of the Oneida Nation to be issued to the Agent or Lenders as a condition to the effectiveness and enforceability of the Financing Documents, including without limitation the Oneida Vender Licensing, Chapter 56 of the Tribe's code, the Gaming Compact of 1991, dated as of November 8, 1991, between the Oneida Nation and the State of Wisconsin, as amended, and the Oneida Comprehensive Gaming Ordinance enacted as of July 6, 1992, as amended.

**BE IT FURTHER RESOLVED**, that any resolutions or other actions of the Oneida Nation that are in conflict with or inconsistent with the terms of this Resolution or any provision set forth in the Financing Document are hereby to such extent superseded by such conflicting or inconsistent term for so long as any amounts owing under the Credit Agreement shall remain outstanding. This Resolution shall supersede any prior or currently existing resolutions or other actions of the Oneida Business Committee or the Oneida Nation that are contrary to the actions authorized or contemplated herein or in a Financing Document to the extent that it is so contrary.

**BE IT FURTHER RESOLVED**, that if any section of this Resolution or part thereof, or the application thereof to any party, shall be held invalid for any reason whatsoever by a court of competent jurisdiction or by federal legislative action, the remainder of the relevant section or part of this Resolution shall not be affected thereby and shall remain in full force and effect.

**BE IT FINALLY RESOLVED**, that this Resolution shall become effective as of the date and time of its passage and approval by the Oneida Business Committee on behalf of the Oneida Nation.

#### **CERTIFICATIONS**

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum, 5 members were present at a meeting duly called, noticed and held on the 12<sup>th</sup> day of April 2017; that the foregoing resolution was duly adopted at such meeting by a vote of 4 members for; 0 members against, and 0 members not voting; and that said resolution has not been rescinded or amended in any way.


I further certify that the Oneida Business Committee has, and at the time of adoption of the foregoing Resolutions had, full power and lawful authority to adopt the foregoing resolutions and to confer the powers therein granted upon the officers designated, and that such officers have full power and authority to exercise the same.

I further certify that the officers whose names appear below have been duly elected to and now hold the offices in the Oneida Business Committee as set forth below until August 2017, said date being the expiration date of the terms of said elected officers, and that the signature appearing opposite the name of each of such officers is authentic and official:

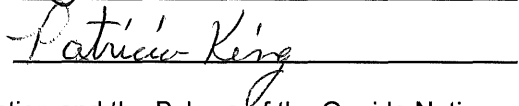
Cristina Danforth, Chairwoman

  
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Melinda J. Danforth, Vice-Chairwoman

  
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Lisa M. Summers, Secretary

  
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Patricia King, Treasurer

I further certify that copies of the Constitution of the Oneida Nation and the Bylaws of the Oneida Nation, as set forth on Exhibits A and B, respectively, are complete, true and correct copies of the same, together with all amendments therein adopted to the date hereof, if any, and each is in full force and effect on the date hereof.

  
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Lisa M. Summers, Secretary

According to the By-Laws, Article I, Section I, the Chair votes "only in the case of a tie."