

EXHIBIT “A”

**NOVEMBER 2014 AMENDMENT TO THE FOREST COUNTY
POTAWATOMI COMMUNITY OF WISCONSIN AND STATE OF
WISCONSIN
CLASS III GAMING COMPACT**

This November 2014 Amendment to the Forest County Potawatomi Community of Wisconsin and State of Wisconsin Class III Gaming Compact ("Compact") was selected by the Arbitration Tribunal pursuant to Compact Section XXII.A.11 to determine the rights, duties and obligations of the State and Potawatomi in the event the Governor of Wisconsin concurs in certain favorable determinations of the United States Secretary of the Interior ("Secretary") pursuant to 25 USC § 2719(b)(1)(A).

WHEREAS, the Forest County Potawatomi Community of Wisconsin ("Tribe") and the State of Wisconsin ("State") hereby agree to amend the Compact as follows:

1. **Section XXII.A.11 is deleted in its entirety.**
2. **The Compact is amended by adding a new Section XXXVII as follows:**

XXXVII. PROCEDURES REGARDING A POSITIVE SECRETARIAL DETERMINATION.

- A. **Agreement Regarding Concurrence.** If, after February 17, 2003, a federally recognized Indian tribe, other than the Tribe ("Applicant"), receives a positive determination from the Secretary of the Interior pursuant to 25 U.S.C. § 2719(b)(1)(A) (a "Secretary's Determination") regarding a proposed gaming establishment (an "Applicant Facility") on lands more than 30 miles and within 50 miles of the Tribe's hotel and casino facility in Milwaukee (the "Milwaukee Facility"), the State, acting through the Governor or otherwise, shall not concur in such a determination except as provided for herein. The gaming establishment proposed in Kenosha, Wisconsin by the Menominee Indian Tribe of Wisconsin ("Menominee") is an Applicant Facility.
- B. **Procedures Allowing Concurrence.** The Governor may only concur in a Secretary's Determination for an Applicant Facility after publication in the Federal Register, pursuant to 25 U.S.C. § 2710(d)(8)(D), of the notice of this Amendment.
- C. **Mitigation of Adverse Impact.** If the Governor of Wisconsin concurs in a Secretary's Determination for an Applicant Facility, then an annual Mitigation Payment to the Tribe equal to the Annual Revenue Loss is required pursuant to the terms and conditions of this section.
- D. **Definitions.**
 1. "Annual Revenue Loss" means the reduction over a Fiscal Year in Milwaukee Net Revenues caused by an Applicant Facility, calculated by

subtracting Milwaukee Net Revenues from Anticipated Baseline Net Revenues. ("Fiscal Year" means the fiscal year established and utilized by the Tribe in relation to the Milwaukee Facility, beginning on October 1 and concluding on September 30.)

2. "Milwaukee Net Revenues" means (a) revenue from Class III gaming, Class II gaming, food and beverage, hotel and entertainment activity, earned at the Milwaukee Facility, but not including Mitigation Payments received by the Tribe and not including any revenue from ancillary activity such as retail activity from other locations outside of the Milwaukee Facility; minus (b) the sum of direct and indirect operating expenses related to the Milwaukee Facility, but not including interest, taxes, depreciation and amortization, consistent with industry standards for comparable facilities and which are in accordance with Generally Accepted Accounting Principles and the most current edition of the "Accounting and Audit Guide—Casinos" published by the American Institute of Certified Public Accountants. The calculation of Milwaukee Net Revenues shall be based upon the audited financial statements of the Milwaukee Facility.
3. "Anticipated Baseline Net Revenues" means the Milwaukee Net Revenues that would have been earned but-for the operation of the Applicant Facility. It is therefore intended that Anticipated Baseline Net Revenues will reflect changes in Milwaukee Net Revenues resulting from other market dynamics, including competition from other jurisdictions. The Anticipated Baseline Net Revenues shall be calculated on the same fiscal year basis and using the same categories of revenue and expenses as applied in the calculation of Milwaukee Net Revenues.
 - a. For the first Fiscal Year during which an Applicant Facility is in operation, Anticipated Baseline Net Revenues shall be the Milwaukee Net Revenues for the immediately preceding Fiscal Year. Thereafter, Anticipated Baseline Net Revenues will be the same from year to year, subject to adjustment as provided below.
 - b. At any time after the first Fiscal Year during which an Applicant Facility is in operation, either the Tribe or the State may propose an adjustment to the Anticipated Baseline Net Revenues, but only during and for the then current and/or next Fiscal Year, to reflect changes in the competitive environment, macroeconomic conditions, or any other dynamic that would affect or may have affected Milwaukee Net Revenues. If the Tribe and the State reach agreement regarding a new Anticipated Baseline Net Revenues, then the agreed upon Anticipated Baseline Net Revenues shall be the new Anticipated Baseline Net Revenues utilized under this Section unless and until further modified pursuant to this subsection. If the Tribe and the State do not reach

agreement, then the party proposing an adjustment may include the adjustment in its estimate of Annual Revenue Loss under Section XXXVII.E. and the disagreement shall be resolved as provided therein.

E. Annual Mitigation Payments.

1. The State and the Tribe anticipate that the State will enter into agreements under which the Applicant will agree to pay the Mitigation Payment required in this Section. Timely payment of a Mitigation Payment in full to the Tribe by the Applicant satisfies the State's obligation to make that Mitigation Payment.
2. A Mitigation Payment is due to the Tribe annually on June 30th equal to the Annual Revenue Loss during the prior Fiscal Year of the Tribe. The first Mitigation Payment will be due on the June 30th following the first Fiscal Year during which gaming activity commences at an Applicant Facility.
3. The State is responsible for ensuring that the Mitigation Payments are paid in a timely manner and in full. This obligation is an obligation arising under a contract with the State and enforceable under this Compact, including section XXIII.E. The obligation of the State to pay the Annual Revenue Loss to the Tribe shall begin upon the commencement of any gaming activity at an Applicant Facility and shall continue for the duration of the Compact.
4. The State and Tribe shall each provide the other with a written good faith estimate of the Annual Revenue Loss anticipated during the Tribe's first two Fiscal Years during which any gaming activity will occur at an Applicant Facility. The written estimates shall be provided no later than 90 days before such gaming activity commences. Thereafter, the State and Tribe shall each provide to the other a written estimate of the Annual Revenue Loss anticipated during the next two Fiscal Years no later than 90 days before the start of the bi-annual Fiscal Year anniversary. Both the Tribe and the State may adjust their estimates at any time up to 30 days prior to the due date of a Mitigation Payment. The Tribe will provide the State with any records regarding the operation of the Milwaukee Facility that may assist the State in estimating the Annual Revenue Loss. Those records are subject to the protection of confidentiality required of other records of the Tribe under the Compact.
5. The Annual Revenue Loss shall be determined by the State annually on June 1 for the prior Fiscal Year, in good faith, based upon the State's choice of the Tribe's estimate or the State's estimate in accordance with the definitions and requirements of Section XXXVII.D.

6. The State's and the Tribe's Annual Revenue Loss estimates must be trueed up on or before the June 1 following the close of each Fiscal Year of the Tribe based on actual financial results as shown in the Tribe's audited financial statements.
7. If the State relies on its own final estimate to determine the Annual Revenue Loss for the annual Mitigation Payment due on June 30 and the estimate understates the actual Annual Revenue Loss by more than 10%, then the State is subject to a 5% penalty. If the State relies on the Tribe's final estimate and that estimate overstates the actual Annual Revenue Loss by more than 10%, then the Tribe is subject to a 5% penalty.
8. Any dispute under this paragraph E, including a dispute over the amount of the true-up, the calculation of the Annual Revenue Loss, or whether a penalty is due is a dispute subject to resolution under section XXII. The Mitigation Payment based on the Annual Revenue Loss determined by the State shall be paid pending the resolution of a dispute under Section XXII. After a dispute has been resolved, any amounts due to the Tribe or the State shall be paid with, or credited against, the next following Mitigation Payment to the Tribe.

F. **State Alternative Mitigation Payment Mechanism.** Upon the written request of the State, the Tribe shall negotiate in good faith to reach an agreement on reasonable terms proposed by the State which would obligate the Applicant or other third party to make some or all of the Mitigation Payments ("Alternative Mechanisms"). These proposals for Alternative Mechanisms could include such mechanisms as payments made out of the Lock Box established in the Menominee Compact Section XXXIII(C)(9) and (1 I) for Menominee Compact payments; establishing an Advance Account for the deposit of casino revenue from the Applicant Facility; requiring the Applicant to provide an Evergreen Letter of Credit that would guarantee some or all of the Mitigation Payments; or assigning the Applicant's State Compact Payments to the Tribe. Such Alternative Mechanisms do not relieve the State of its obligation, as set forth above, to ensure that the Mitigation Payments are paid in a timely manner and in full. The State agrees that if the Applicant fails to perform any duty required under the Alternative Mechanisms, it will use reasonable efforts to obtain compliance from the Applicant. Notwithstanding the foregoing statement, the State is responsible for ensuring that the Mitigation Payments are paid in a timely manner and in full.

G. **Additional Provisions.**

1. The State and Tribe shall not contest the validity of any provisions of this section XXXVII.
2. **Reservation of Rights.** Except for actions expressly required or prohibited by this section XXXVII of the Compact, the Tribe and the State each

separately reserve all rights to take any or all actions in support of or in opposition to any proposed gaming establishment in Wisconsin, including the right to participate in, to initiate, or to defend against any judicial or administrative proceeding and to assert any and all legal or equitable claims or defenses regarding any proposed gaming establishment in Wisconsin, including challenges to the actions and the authority of government officials to act. This section XXXVII. of the Compact shall not be considered in any proceeding or by any governmental agency as evidence of support for or opposition to any such gaming establishment, including as evidence of mitigation of any economic detriment or other impacts on the Tribe, the State, or on any other private or public interest or party. The execution by the Governor of the 2014 Compact Amendment does not constitute concurrence by the Governor, or an agreement to grant concurrence with a Secretarial Determination.

FOREST COUNTY POTAWATOMI
COMMUNITY OF WISCONSIN

By: Harold Frank
Harold Frank
Chairman

Executed on this 24 day of November, 2014

STATE OF WISCONSIN

By: Scott Walker
Scott Walker
Governor

Executed on this 25 day of Nov., 2014