

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving a Loan Transaction Among the Tohono O'odham Gaming Enterprise,
as borrower, and JPMorgan Chase Bank, N.A., as Lender, for Additional Financing
for the Nogales Highway Casino/Hotel Project)

RESOLUTION NO. 08-515

1 **WHEREAS, the Tohono O'odham Nation (the "*Nation*") is a federally recognized Indian tribe**
2 **organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48**
3 **Stat. 984; 25 U.S.C. § 476), which exercises sovereignty over both its members and its**
4 **lands; and**

5 **WHEREAS, pursuant to Article VI of the Nation's Constitution, the Tohono O'odham Legislative**
6 **Council (the "*Legislative Council*") is vested with all of the legislative powers of the**
7 **Nation and is empowered to enact laws, ordinances, and resolutions necessary or**
8 **incidental to the exercise of its legislative powers; and**

9 **WHEREAS, the Legislative Council of the Nation has enacted an Ordinance for Regulation of**
10 **Gaming Activities Within the Tohono O'odham Nation (the "*Gaming Ordinance*"),**
11 **which ordinance was adopted pursuant to Resolution No. 93-296 and amended by**
12 **Resolution 97-150, Resolution 97-168, Resolution 97-303, Resolution 99-206, and**
13 **Resolution 03-084; and**

14 **WHEREAS, the Gaming Ordinance provides that all gaming activities conducted within the Nation**
15 **shall be owned entirely by the Nation and conducted and operated by a tribal**
16 **enterprise; and**

17 **WHEREAS, the Tohono O'odham Gaming Enterprise (the "*Gaming Enterprise*"), which formerly**
18 **was known as the Tohono O'odham Gaming Authority, is a tribal governmental**
19 **enterprise of the Nation established pursuant to Article VI of the Nation's Constitution**
20 **as the tribal enterprise responsible for operating the Nation's gaming facilities and**
21 **conducting gaming activities in compliance with the requirements of the Gaming**
22 **Ordinance; and**

23 **WHEREAS, the Legislative Council adopted the Charter of the Gaming Enterprise (the "*Charter*")**
24 **by Resolution No. 93-311 and amended the Charter by Resolution 02-294, Resolution**
25 **No. 03-231, and Resolution 04-513; and**

26 **WHEREAS, the Gaming Enterprise operates three gaming facilities, known as the Golden Ha:San**
27 **Casino, the Desert Diamond Casino (Pima Mine Road), and the Desert Diamond Casino**
28 **& Hotel (Nogales Highway); and**

29 **WHEREAS, the Gaming Enterprise completed construction of the new Desert Diamond Casino &**
30 **Hotel (the "*Project*") earlier this fiscal year; and**

31

RESOLUTION NO. 08-515

(Approving a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as borrower, and JPMorgan Chase Bank, N.A., as Lender, for Additional Financing for the Nogales Highway Casino/Hotel Project)

Page 2 of 9

1 **WHEREAS, Section 5(d)(11) of the Charter authorizes the Gaming Enterprise to borrow funds,**
2 **subject to the express limitations that (i) the Gaming Enterprise may not incur**
3 **obligations in excess of its ability to pay as required and (ii) the Nation shall not be**
4 **liable for the debts or obligations of the Enterprise; and**

5 **WHEREAS, in accordance with Resolution No. 04-361 and Resolution No. 06-105, the Gaming**
6 **Enterprise obtained construction financing for the Project from JPMorgan Chase**
7 **Bank, N.A., a national banking association (the “Lender”), as administrative agent on**
8 **behalf of itself and other lenders (the “Administrative Agent”); and**

9 **WHEREAS, the Gaming Enterprise desires to obtain additional financing to pay the remaining**
10 **costs of the Project; and**

11 **WHEREAS, the Lender has presented an offer to the Gaming Enterprise to provide financing**
12 **consisting of a term loan in the amount of \$7,500,000.00 (the “Loan”), the proceeds of**
13 **which will be used to pay (i) the remaining costs of the Project and (ii) transaction costs**
14 **associated with the Loan; and**

15 **WHEREAS, the Gaming Enterprise is negotiating the terms of a loan agreement and related**
16 **documents (the “Loan Documents”), which set forth the terms on which the Lender is**
17 **willing to make the Loan and which include, but are not limited to:**

- 18 (a) **A Loan Agreement between the Gaming Enterprise and the Lender (the “Loan**
19 **Agreement”);**
- 20 (b) **A Note to evidence the obligations of the Gaming Enterprise under the Loan**
21 **Agreement;**
- 22 (c) **A Security Agreement between the Gaming Enterprise and the Lender to secure**
23 **the Gaming Enterprise’s obligations under the Loan Documents through a lien**
24 **or liens on the collateral securing the Gaming Enterprise’s obligations (the**
25 **“Collateral”);**
- 26 (d) **A Deposit Account Control Agreement between Borrower, the Lender, and**
27 **Depository Bank (JPMorgan Chase Bank, N.A.), to implement the Gaming**
28 **Enterprise’s obligations under the Security Agreement with respect to the Desert**
29 **Diamond Casinos;**
- 30 (e) **A Deposit Account Control Agreement between Borrower, the Lender, and**
31 **Depository Bank (Stockmen’s Bank), to implement the Gaming Enterprise’s**
32 **obligations under the Security Agreement with respect to the Golden Ha:San**

RESOLUTION NO. 08-515

(Approving a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as borrower, and JPMorgan Chase Bank, N.A., as Lender, for Additional Financing for the Nogales Highway Casino/Hotel Project)

Page 3 of 9

- 1 **Casino;**
- 2 **(f) A UCC-1 Financing Statement to perfect the Lender's lien rights under the**
- 3 **Security Agreement;**
- 4 **(g) An Environmental Indemnification Agreement by Borrower in favor and for the**
- 5 **benefit of the Lender;**
- 6 **(h) An Estoppel Certificate by the Nation and the Gaming Enterprise in favor and for**
- 7 **the benefit of the Lender (the "*Nation's Estoppel Certificate*");**
- 8 **(i) A Resolution of the Management Board of the Gaming Enterprise authorizing the**
- 9 **Gaming Enterprise's execution of the Loan Documents; and**
- 10 **(j) A Resolution of the Board of the San Xavier Development Authority; and**
- 11 **(k) A Closing Certificate executed by the Gaming Enterprise; and**
- 12 **(l) A Disbursement and Rate Management Signature Authorization and Instruction**
- 13 **Form.**

14 **WHEREAS, Section 8(b)(2) of the Charter contains a limited waiver of the Gaming Enterprise's**

15 **sovereign immunity with respect to claims based upon a written contract to which the**

16 **Gaming Enterprise is a party; and**

17 **WHEREAS, as a condition to obtaining the Loan, the Loan Documents require the Gaming**

18 **Enterprise to obtain a broader waiver of its immunity from suit, on the terms set forth**

19 **in the Loan Documents, which include an agreement to arbitrate disputes; and**

20 **WHEREAS, the Nation has not enacted a version of the Uniform Commercial Code or similar laws**

21 **of the sort that typically would govern complex commercial transactions of the nature**

22 **contemplated in the Loan Documents, nor do the Nation's Constitution, laws, or**

23 **customs address the interpretation and enforcement of transactions such as those**

24 **contemplated in the Loan Documents; and**

25 **WHEREAS, the Gaming Enterprise and the Lender desire that Loan Documents be interpreted and**

26 **enforced under the substantive provisions of Arizona law, including Art. II, § 25, of the**

27 **Arizona Constitution relating to the impairment of contracts and the applicable**

28 **provisions of Arizona's version of the Uniform Commercial Code; and**

29 **WHEREAS, the Lender has required, as a condition of providing the Loan, that the Loan**

30 **Documents and other ancillary documents that may be entered into in connection**

31 **with the Loan Documents (the "*Related Documents*") will be interpreted and enforced**

32 **under the substantive provisions of Arizona law, so the Gaming Enterprise and the**

RESOLUTION NO. 08-515

(Approving a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as borrower, and JPMorgan Chase Bank, N.A., as Lender, for Additional Financing for the Nogales Highway Casino/Hotel Project)

Page 4 of 9

1 **Lender both will be assured that the Loan Documents and the Related Documents will**
2 **be interpreted and enforced in accordance with their terms; and**

3 **WHEREAS, the Commerce Committee and the Budget and Finance Committee of the Legislative**
4 **Council have reviewed the transactions contemplated under the Loan Documents and**
5 **the Commerce Committee and Budget and Finance Committee have found that the**
6 **Nation's best interests will be served by the Gaming Enterprise obtaining the Loan**
7 **from the Lender;**

8 **WHEREAS, the Legislative Council finds that the Nation's best interests will be served by the**
9 **Gaming Enterprise obtaining the Loan from the Lender; and**

10 **WHEREAS, the Legislative Council finds that the Nation's best interests will be served by the**
11 **Legislative Council waiving the Gaming Enterprise's immunity from suit on the terms**
12 **set forth in this Resolution and by specifying the law that will govern the**
13 **interpretation and enforcement of the Loan Documents and the Related Documents.**

14 **NOW, THEREFORE, BE IT RESOLVED That the Tohono O'odham Legislative Council Hereby**
15 **Approves and Authorizes the Following:**

- 16 **1. Use of Loan Funds. Upon approval of this Resolution and the execution of all**
17 **associated loan documents, the Gaming Enterprise will utilize the Loan funds (in**
18 **the amount of \$7,500,000.00) to pay (i) the remaining costs of the Project and (ii)**
19 **transaction costs associated with the Loan.**
- 20 **2. Limited Waiver of the Gaming Enterprise's Immunity. The Nation hereby grants**
21 **a limited waiver of the sovereign immunity of the Gaming Enterprise from suit**
22 **or action (including, without limitation, any defense based thereon and all**
23 **judicial review proceedings) in favor of the Lender, in lieu of the provisions of**
24 **Section 8(b)(2) of the Charter, and consents to binding arbitration before the**
25 **American Arbitration Association to resolve any disputes arising out of or related**
26 **to the Loan Documents and the Related Documents, to the enforcement of the**
27 **Gaming Enterprise's agreement to arbitrate, to the enforcement of arbitration**
28 **decisions or awards rendered in conformance with the Loan Documents, as**
29 **described in Article 11 of the Loan Agreement and as summarized below, and to**
30 **any deposit accounts, related products, and Treasury Services products or**
31 **services that the Gaming Enterprise currently has or may open in the future with**
32 **the Lender.**

RESOLUTION NO. 08-515

(Approving a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as borrower, and JPMorgan Chase Bank, N.A., as Lender, for Additional Financing for the Nogales Highway Casino/Hotel Project)

Page 5 of 9

1
2
3
4
5
6
7
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

- A. The Nation waives any doctrine that otherwise would require the exhaustion of remedies in the Judicial Court of the Tohono O'odham Nation (including any administrative remedies) before proceeding with arbitration or litigation arising out of or related to the Loan Documents and any Related Documents, self-help remedies, foreclosure, and/or provisional and ancillary remedies in accordance with the Loan Documents.**
- B. The Nation consents to (i) the enforcement of the Gaming Enterprise's agreement to arbitrate and (ii) the confirmation and enforcement of any arbitration decisions or awards in the United States District Court for the District of Arizona and in any federal court to which the decisions of that court can be appealed ("*Federal Court*"). If there is no colorable claim that the Federal Court has jurisdiction, if the Federal Court determines that it lacks jurisdiction, or in the event of a challenge to the Federal Court's jurisdiction, then the Nation consents to (i) the enforcement of the Gaming Enterprise's agreement to arbitrate and (ii) the confirmation and enforcement of any arbitration decisions or awards in the Judicial Court of the Tohono O'odham Nation or in the Arizona Superior Court and in any court to which the decisions of those courts can be appealed. The Nation also consents to any party domesticating an arbitration award that has been reduced to a judgment in any jurisdiction in which the judgment debtor has property or assets and enforcing the judgment creditor's rights against the property or assets in any such jurisdiction.**
- C. The waiver and consent extends to an award of attorneys' fees and other costs against the Gaming Enterprise, in accordance with the Loan Documents. This waiver and consent shall not extend to permit any monetary judgments or awards against officials or agents of the Gaming Enterprise acting within the scope of their authority in the exercise of their duties to the Gaming Enterprise or to the Nation.**
- D. The Nation approves the choice of law, arbitration, service of process, and consent to jurisdiction provisions set forth in Article 11 of the Loan Agreement.**

RESOLUTION NO. 08-515

(Approving a Loan Transaction Among the Tohono O’odham Gaming Enterprise, as borrower, and JPMorgan Chase Bank, N.A., as Lender, for Additional Financing for the Nogales Highway Casino/Hotel Project)

Page 6 of 9

1
2
3
4
5
6
7
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

E. This waiver and consent shall be irrevocable and may not be rescinded, revoked, or modified without the prior written consent of the Lender. This waiver and consent are granted solely for purposes of the Loan Documents and Related Documents, and shall not extend to any other transactions or subjects.

3. Applicable Laws.

A. The Loan Documents shall be governed by, and construed in accordance with, the Nation’s Constitution, this Resolution, the laws of the State of Arizona (without giving effect to conflict of laws principles) including Art. II, § 25, of the Arizona Constitution relating to the impairment of contracts and the applicable provisions of Arizona’s version of the Uniform Commercial Code, and applicable Federal law, including the constitutional law of the United States prohibiting impairment of contracts. For purposes of this Resolution, the term “*Uniform Commercial Code*” shall mean Chapters 1, 8, and 9 of the Arizona *Uniform Commercial Code* (including the definitions incorporated by reference into Section 47-9102(B) thereof) as in effect from time-to-time. The Nation acknowledges that the transactions contemplated under the Loan Documents bear a reasonable relation to the State of Arizona, such that the Gaming Enterprise and the Lender may agree that the Uniform Commercial Code will govern their rights and duties under the Loan Documents and any Related Documents. The method of the creation, the effect of perfection and non-perfection, the priority among competing creditors, and the enforcement of all security interests granted by the Gaming Enterprise to the Lender, in accordance with the Loan Documents shall be governed by the Uniform Commercial Code. For purposes of the security interests to be granted under the Loan Documents, (i) the “location” of the Gaming Enterprise shall be Sahuarita, Arizona; and (ii) the office in which to file a financing statement to perfect a security interest in the Collateral is the Office of the Secretary of State of Arizona, except for as-extracted collateral, timber to be cut, or goods that are or are to become fixtures. For purposes of Section 47-9109(D)(14) of the Uniform Commercial Code, the Nation acknowledges that the Gaming Enterprise is not a “governmental unit” of the State of Arizona or any other state in the United States.

RESOLUTION NO. 08-515

(Approving a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as borrower, and JPMorgan Chase Bank, N.A., as Lender, for Additional Financing for the Nogales Highway Casino/Hotel Project)

Page 7 of 9

1
2
3
4
5
6
7
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

- B. If an arbitrator or court determines, for any reason, that the Uniform Commercial Code does not govern the rights and duties of the parties under the Loan Documents and the Related Documents, despite their agreement to the contrary, then, in accordance with Title III, Laws of the Tohono O'odham Nation, Section 1-102, the Nation's law governing the Loan Documents shall be the Uniform Commercial Code, except that, for purposes of the security interests to be granted under the Loan Documents, (i) the "location" of the Gaming Enterprise shall be Sahuarita, Arizona; and (ii) the office in which to file a financing statement to perfect a security interest in the Collateral shall be the Office of the Secretary of State of Arizona, except for as-extracted collateral, timber to be cut, or goods that are or are to become fixtures.**
- C. Any laws of the Nation, other than the Nation's Constitution and the Ordinances, that conflict with or are inconsistent with the provisions of this Resolution, the Loan Documents, the Nation's Estoppel Certificate, and/or the Related Documents shall be inapplicable to the Loan Documents, the Related Documents, the Collateral, and/or the Nation's Estoppel Certificate, to the extent of any such conflict or inconsistency.**
- 4. Authority to Execute the Nation's Estoppel Certificate. The Chairperson of the Nation is authorized to execute the Nation's Estoppel Certificate and to deliver it to the Lender on behalf of the Nation, as well as any and all other documents, certificates, financing statements, consents, representations, and warranties required in connection with the Loan, and to take all other actions consistent with this Resolution and necessary to consummate the financing. No further approval, consent, notice, or filing shall be required as a matter of Federal law or the Nation's law for the Gaming Enterprise to execute, deliver, and perform under the Loan Documents and Related Documents or for the Chairperson of the Nation to execute and deliver the Nation's Estoppel Certificate.**
- 5. Limited Waiver of the Nation's Immunity. The Nation hereby grants a limited waiver of its sovereign immunity from suit or action (including, without limitation, any defense based thereon and all judicial review proceedings) in favor of the Lender, and consents to binding arbitration before the American Arbitration Association to resolve any disputes arising out of or related to the**

RESOLUTION NO. 08-515

(Approving a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as borrower, and JPMorgan Chase Bank, N.A., as Lender, for Additional Financing for the Nogales Highway Casino/Hotel Project)

Page 8 of 9

1
2
3
4
5
6
7
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
39
40

Nation's Estoppel Certificate, to the enforcement of the agreement to arbitrate in the Nation's Estoppel Certificate, and to the enforcement of arbitration decisions or awards rendered in conformance with the Nation's Estoppel Certificate, as described in Article 7 of the Nation's Estoppel Certificate.

6. **Binding Obligation; Impairment.** When fully executed, the Loan Documents will be valid, binding, and enforceable obligations of the Gaming Enterprise. Upon perfection, the lien created by the pledge of the Collateral under the Security Agreement will have equal priority with the lien in favor of JPMorgan Chase Bank, N.A. a national banking association, as Administrative Agent, in connection with the original construction financing of the Project and will be valid and binding from the time the pledge is made as evidenced by the execution and delivery of the Loan Documents. The Nation will take no action that would materially impair the rights, liens, interests, and/or remedies provided in the Loan Documents without the prior written consent of the Lender. The Legislative Council finds that no provision of the Nation's Constitution or laws, and no custom, would impair the Loan Documents or Related Documents.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 10TH Day of SEPTEMBER, 2008 at a meeting at which a quorum was present with a vote of 2,534.5 FOR; -0- AGAINST; -0- NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by Article VI, Section 1 (c)(2) of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL


Verlon M. Jose, Legislative Chairman

17 day of September, 2008

ATTEST:


Lucille Lopez, Acting Legislative Secretary

10 day of September, 2008.

RESOLUTION NO. 08-515

(Approving a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as borrower, and JPMorgan Chase Bank, N.A., as Lender, for Additional Financing for the Nogales Highway Casino/Hotel Project)

Page 9 of 9

1 Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham
2 Nation on the 17 day of September, 2008 at 4:36 o'clock, P.M.,
3 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective
4 upon his approval or upon his failure to either approve or disapprove it within 48 hours of
5 submittal.

6
7 TOHONO O'ODHAM LEGISLATIVE COUNCIL

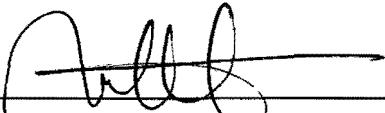
8
9 
10 _____
11 Verlon M. Jose, Legislative Chairman

12
13
14
15 APPROVED

on the 18 day of September, 2008

16
17 DISAPPROVED

at 5:50 o'clock, P.M.

18
19 
20 _____
21 NED NORRIS, JR., CHAIRMAN
22 TOHONO O'ODHAM NATION
23 VICE CHAIRMAN

24
25
26 Returned to the Legislative Secretary on the 19 day of

27
28 September, 2008, at 9.00 o'clock, A.M.

29
30 
31 _____
32 Lucille Lopez, Acting Legislative Secretary

33
34
35
36
37
38
39
40
41
42
43
44
45

ACTION: APPROVING A LOAN TRANSACTION AMONG THE TOHONO O'ODHAM GAMING ENTERPRISE, AS BORROWER, AND JPMORGAN CHASE BANK, N.A., AS LENDER, FOR ADDITIONAL FINANCING FOR THE NOGALES HIGHWAY CASINO/HOTEL PROJECT

MOVED: COUNCILWOMAN OLIVIA VILLEGAS-LISTON

SECOND: COUNCILWOMAN PHYLLIS CACHORA

DATE: SEPTEMBER 10, 2008

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 316.9	1. FRANCES MIGUEL (Roberta Harvey)	158.45	X			
	2. FRANCES G. ANTONE (Vernon Smith)	158.45	X			X
CHUKUT KUK 264.8	1. ETHEL GARCIA ()	132.40	X			
	2. VERLON M. JOSE ()	132.40	X			
GU ACHI 227.9	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	113.95	X			
	2. CYNTHIA E. MANUEL ()	113.95	X			
GU VO 199.2	1. GRACE MANUEL ()	99.60	X			X
	2. RAYMOND VICTOR ()	99.60	X			
HICKIWAN 172.0	1. MICHELLE ORTEGA ()	86.00	X			
	2. SANDRA ORTEGA ()	86.00	X			
PISINEMO 182.4	1. CHESTER ANTONE (Tony Murrietta)	91.20	X			
	2. GERALD FAYUANT ()	91.20	X			
SAN LUCY 181.1	1. LORRAINE EILER ()	90.55	X			
	2. GLORIA RAMIREZ ()	90.55	X			
SAN XAVIER 196.5	1. FELICIA NUÑEZ (Adam P. Andrews)	98.25	X			
	2. OLIVIA VILLEGAS-LISTON (Eileen A. Estrada-Lopez)	98.25	X			
SCHUK TOAK 154.6	1. FRANCES B. CONDE (Frederick Jose)	77.30	X			
	2. PHYLLIS CACHORA (Agnes Joaquin)	77.30	X			
SELLS 444.7	1. KIMBERLY LISTO ()	222.35	X			
	2. EVELYN B. JUAN MANUEL ()	222.35	X			
SIF OIDAK 194.4	1. WAVALENE ROMERO ()	97.20	X			
	2. MARY LOPEZ ()	97.20	X			
TOTAL		2,534.5	2,534.5	-0-	-0-	[02]

****PASSED VOTES**