

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Relating to Ancillary Agreements Between the Tohono O'odham Gaming Enterprise
and Bank of America, N.A. and its Affiliates)

RESOLUTION NO. 15-063

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,**
3 **1934 (48 Stat. 984; 25 U.S.C. § 476), which exercises sovereignty over both its**
4 **members and its lands; and**

5 **WHEREAS, pursuant to Articles V and VI of the Constitution of the Tohono O'odham Nation,**
6 **all the legislative powers of the Nation are vested in the Tohono O'odham**
7 **Legislative Council (the "*Legislative Council*"); and**

8 **WHEREAS, the Tohono O'odham Gaming Enterprise (the "*Gaming Enterprise*") is a tribal**
9 **corporation and economic development enterprise of the Nation established**
10 **pursuant to Article VI, Section 1(e), of the Nation's Constitution and is**
11 **responsible for planning, constructing, and operating the Nation's gaming**
12 **facilities and conducting gaming activities (Charter of the Gaming Enterprise**
13 **(the "*Charter*"); 16 Tohono O'odham Code Chapter 2); and**

14 **WHEREAS, Section 5(d) of the Charter expressly authorizes the Gaming Enterprise to enter**
15 **into and perform contracts, to borrow funds (subject to the limitations that (i)**
16 **the Gaming Enterprise may not incur obligations in excess of its ability to pay as**
17 **required and (ii) the Nation will not be liable for the debts or obligations of the**
18 **Gaming Enterprise), and to pledge or grant security interests in the personal**
19 **property, cash, accounts receivable, and other assets of the Gaming Enterprise;**
20 **and**

21 **WHEREAS, the Gaming Enterprise intends to obtain new financing from Bank of America,**
22 **N.A., a national banking association ("*BofA*"), and has negotiated the terms of a**
23 **loan agreement and related documents under which BofA will extend the new**
24 **financing (the "*Loan Documents*"); and**

25 **WHEREAS, by Resolution 14-560 the Legislative Council previously granted a limited waiver**
26 **of the sovereign immunity of the Gaming Enterprise in favor of BofA to allow the**
27 **Loan Documents to be enforced in accordance with their terms, which generally**
28 **require the arbitration of disputes; and**

29 **WHEREAS, in connection with moving its banking relationship to BofA, the Gaming**
30 **Enterprise will need to enter into various ancillary agreements with BofA or its**

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1 affiliates, including agreements relating to treasury services and deposit
2 accounts ("Ancillary Agreements"), which agreements will include dispute
3 resolution provisions and require limited waivers of the Gaming Enterprise's
4 sovereign immunity identical to, or substantially similar to, those in the Loan
5 Documents; and

6 **WHEREAS,** the Budget and Finance and Commerce Committees of the Legislative Council
7 have reviewed the limited waivers of the sovereign immunity of the Gaming
8 Enterprise in Resolution 14-560 and recommend that the Nation: (a) grant a
9 limited waiver of the sovereign immunity of the Gaming Enterprise in favor of
10 BofA and its affiliates to allow the Gaming Enterprise to enter into Ancillary
11 Agreements with dispute resolution provisions and limited waivers of the
12 Gaming Enterprise's sovereign immunity identical to, or substantially similar
13 to, those in the Loan Documents, and (b) provide that any Ancillary Agreements
14 will be interpreted and enforced under the substantive provisions of Arizona
15 law and in accordance with specified provisions relating to arbitration; and

16 **WHEREAS,** the Nation's best interests will be served by the Gaming Enterprise entering into
17 Ancillary Agreements with BofA and its affiliates with dispute resolution
18 provisions and limited waivers of the Gaming Enterprise's sovereign immunity
19 identical to, or substantially similar to, those in the Loan Documents, and with
20 the Nation providing that any Ancillary Agreements will be interpreted and
21 enforced under the substantive provisions of Arizona law and in accordance
22 with specified provisions relating to arbitration.

23 **NOW, THEREFORE, BE IT RESOLVED** that the Tohono O'odham Legislative Council hereby
24 approves and authorizes Exhibit A, including but not limited to a limited waiver
25 of the Gaming Enterprise's immunity.

26 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 05TH**
27 **day of MARCH, 2015 at a meeting at which a quorum was present with a vote of 2,946.5 FOR; -0-**
28 **AGAINST; -0- NOT VOTING; and [03] ABSENT, pursuant to the powers vested in the Council by**
29 **Article VI, Section 1(e) of the Constitution of the Tohono O'odham Nation, adopted by the**
30 **Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant**
31 **Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of**
32 **June 18, 1934 (48 Stat.984).**
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TOHONO O'ODHAM LEGISLATIVE COUNCIL

Timothy Joaquin

Timothy Joaquin, Legislative Chairman

10 day of March, 2015

ATTEST:

Evonne Wilson

Evonne Wilson, Legislative Secretary

10 day of March, 2015

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 10 day of March, 2015 at 8:32 o'clock, A .m., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Timothy Joaquin

Timothy Joaquin, Legislative Chairman

APPROVED

on the 11 day of March, 2015

DISAPPROVED

at 4:53 o'clock, P .m.

Ned Norris, Jr.
NED NORRIS, JR., CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 12 day of

March, 2015, at 9:37 o'clock, a .m.

Evonne Wilson

Evonne Wilson, Legislative Secretary

ACTION: RELATING TO ANCILLARY AGREEMENTS BETWEEN THE TOHONO O'ODHAM GAMING ENTERPRISE AND BANK OF AMERICA, N.A. AND ITS AFFILIATES

Moved: COUNCILWOMAN FRANCES B. STEPEHENS

SECOND: COUNCILWOMAN ETHEL GARCIA

DATE: MARCH 05, 2015

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 224.2	1. LUCINDA ALLEN (Nicholas Jose)	112.1	X			
	2. MARY LOPEZ ()	112.1	X			
SELLS 502.0	1. ARTHUR WILSON (Ophelia Patten)	251.0	X			
	2. BARBARA HAVIER (Beverly Rivas)	251.0	X			
SCHUK TOAK 174.2	1. FRANCES B. STEPHENS (Anthony J. Rios)	87.1	X			
	2. QUINTIN C. LOPEZ (John Fendenheim)	87.1	X			
SAN XAVIER 224.2	1. HILARION CAMPUS <i>(Absent)</i> (Daniel L.A. Preston, III) <i>(Present)</i>	112.1	X			
	2. RACHEAL VILSON-STONER <i>(Absent)</i> (Olivia Villegas-Liston) <i>(Present)</i>	112.1	X			X
SAN LUCY 219.6	1. DIANA MANUEL (Gloria Ramirez)	109.8	X			X
	2. JANA MONTANA ()	109.8	X			
PISINEMO 210.6	1. CHESTER ANTONE (Tony Murrietta)	105.3	X			
	2. EDWARD MANUEL, SR. ()	105.3	X			
HICKIWAN 196.9	1. LOUIS R. LOPEZ ()	98.45	X			
	2. SANDRA ORTEGA (Manuel Osequeda, Jr.)	98.45	X			
HIA CED 19.6	1. PATRICK ANDREWS (Janice E. Paul)	9.8	X			
	2. VIRGINIA GARCIA ()	9.8	X			
GU VO 241.0	1. GRACE MANUEL (Floyd Flores)	120.5	X			
	2. PAMELA ANGHILL (Jeffery Antone, Sr.)	120.5	X			X
GU ACHI 257.3	1. TIMOTHY L. JOAQUIN ()	128.65	X			
	2. LORETTA LEWIS (Louis Johnson)	128.65	X			
CHUKUT KUK 319.2	1. ETHEL GARCIA (Marlakay C. Henry)	159.6	X			
	2. BILLMAN LOPEZ ()	159.6	X			
BABOQUIVARI 357.7	1. FRANCES MIGUEL <i>(Absent)</i> (Roberta Harvey) <i>(Present)</i>	178.85	X			
	2. VERNON J. SMITH (Gloria Zazueta)	178.85	X			
TOTAL		2,946.5	2,946.5	-0-	-0-	[03]