

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

RESOLUTION NO. 15-217

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 has entered into a Business Loan Agreement and related**
22 **documents with Bank of America, N.A., a national banking association ("*BofA*"),**
23 **under which BofA has extended and will extend financing to the Gaming**
24 **Enterprise (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, the Gaming Enterprise intends to exercise the "Increase Option" provided for in**
30 **the Loan Documents; and**

31 **WHEREAS, the Gaming Enterprise intends to execute a commitment letter with BofA**
32 **relating to the "Increase Option" and related ancillary agreements (collectively,**
33 **the "*Commitment Letter*"), and the Commitment Letter will include dispute**

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resolution provisions, will require limited waivers of the Gaming Enterprise's sovereign immunity substantially similar to those in the Loan Documents, and will require certain undertakings by the Nation, that will be acknowledged and agreed to by the Nation through the execution of the Commitment Letter; and

WHEREAS,

the Budget and Finance and Commerce Committees of the Legislative Council have reviewed the limited waivers of the sovereign immunity of the Gaming Enterprise in Resolution 14-560 and recommend that the Nation: (a) grant a limited waiver of the sovereign immunity of the Gaming Enterprise in favor of BofA and its affiliates to allow the Gaming Enterprise to enter into the Commitment Letter with dispute resolution provisions and limited waivers of the Gaming Enterprise's sovereign immunity substantially similar to those in the Loan Documents, (b) provide that the Commitment Letter will be interpreted and enforced under the substantive provisions of Arizona law and in accordance with specified provisions relating to arbitration, and (c) agree to the undertakings by the Nation described below; and

WHEREAS,

the Nation's best interests will be served by the Gaming Enterprise entering into the Commitment Letter with BofA and its affiliates with dispute resolution provisions and limited waivers of the Gaming Enterprise's sovereign immunity substantially similar to those in the Loan Documents, and with the Nation providing that the Commitment Letter will be interpreted and enforced under the substantive provisions of Arizona law and in accordance with specified provisions relating to arbitration.

NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby approves and authorizes the following:

- 1. Limited Waiver of the Gaming Enterprise's Immunity. The Nation hereby grants a limited waiver of the sovereign immunity of the Gaming Enterprise from suit or action in favor of BofA and its affiliates with respect to the Commitment Letter, provided that any such agreements have terms that are substantially the same as those set forth in Exhibit A to this Resolution and in lieu of those provisions of Section 8(b)(2) of the Charter.**
- 2. Applicable Laws.**
 - A. The Commitment Letter will be governed by, and construed in accordance with: the laws of the State of Arizona, including Art. II,**

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1 § 25, of the Arizona Constitution relating to the impairment of
2 contracts and the applicable provisions of Arizona's version of the
3 Uniform Commercial Code and without giving effect to conflict of
4 laws principles; applicable Federal law, including the
5 constitutional law of the United States prohibiting impairment of
6 contracts; applicable provisions of the Nation's Constitution; and
7 this Resolution. For purposes of this Resolution, the term
8 "*Uniform Commercial Code*" will mean Chapters 1, 8, and 9 of the
9 Arizona Uniform Commercial Code (including the definitions
10 incorporated by reference into Section 47-9102(B) thereof) as in
11 effect from time-to-time.

12 **B.** The transactions contemplated under the Commitment Letter
13 bear a reasonable relation to the State of Arizona, such that the
14 Gaming Enterprise, BofA, and BofA's affiliates may agree that the
15 Uniform Commercial Code will govern their rights and duties
16 under those agreements. The method of the creation, the effect of
17 perfection and non-perfection, the priority among competing
18 creditors, and the enforcement of all security interests granted by
19 the Gaming Enterprise to BofA and its affiliates in accordance with
20 the Commitment Letter will be governed by the Uniform
21 Commercial Code, as defined above. For purposes of any security
22 interests to be granted under the Commitment Letter, (i) the
23 "location" of the Gaming Enterprise will be Sahuarita, Arizona;
24 and (ii) the office in which to file a financing statement to perfect a
25 security interest in any collateral will be the Office of the Secretary
26 of State of Arizona, except for as-extracted collateral, timber to be
27 cut, or goods that are or are to become fixtures. For purposes of
28 Section 47-9109(D)(14) of the Uniform Commercial Code, the
29 Nation acknowledges that the Gaming Enterprise is not a
30 "governmental unit" of the State of Arizona or any other state in
31 the United States.

32 **C.** If an arbitrator or court determines, for any reason, that the
33 Uniform Commercial Code does not govern the rights and duties
34 of the parties under the Commitment Letter, despite the parties'

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1 agreement to the contrary, then, in accordance with Title III, Laws
2 of the Tohono O'odham Nation, Section 1-102, the Nation adopts
3 Chapters 1, 8, and 9 of the Arizona Uniform Commercial Code
4 (including the definitions incorporated by reference in Section 47-
5 9102(B) of Chapter 9 and excluding Sections 47-9109(C)(2) and 47-
6 9109(D)(14)) as in effect from time-to-time as the Nation's law that
7 will govern the Commitment Letter, except that, for purposes of
8 any security interests to be granted under the Commitment Letter,
9 (i) the "location" of the Gaming Enterprise will be Sahuarita,
10 Arizona; and (ii) the office in which to file a financing statement to
11 perfect a security interest in any collateral will be the Office of the
12 Secretary of State of Arizona, except for as-extracted collateral,
13 timber to be cut, or goods that are or are to become fixtures.

14 **D. Any laws of the Nation that conflict with or are inconsistent with**
15 **the provisions of this Resolution or the Commitment Letter, other**
16 **than the Nation's Constitution, will be inapplicable to the**
17 **Commitment Letter and any collateral to the extent of any such**
18 **conflict or inconsistency.**

19 **E. The Nation hereby adopts the following provisions as the**
20 **"Arbitration Provisions" applicable to the Commitment Letter and**
21 **the transactions contemplated thereby, which provisions shall be**
22 **enforceable as a law of the Nation: (a) the agreements of the**
23 **Gaming Enterprise in the Commitment Letter to settle by**
24 **arbitration any controversy or claim arising under the**
25 **Commitment Letter and the transactions contemplated thereby**
26 **are valid, irrevocable and enforceable; and (b) in any proceeding**
27 **in the Nation's Courts relating to such claims: (i) the Nation's**
28 **Courts will apply the procedural rules of the Nation's Courts and**
29 **the substantive law of the jurisdiction selected by the parties to**
30 **the Commitment Letter and authorized by these Resolutions; (ii) if**
31 **any suit or proceeding is brought in the Nation's Courts upon any**
32 **issue referable to arbitration under the Commitment Letter, the**
33 **Court, upon being satisfied that the issue involved in such suit or**
34 **proceeding is referable to arbitration under such agreement,**

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1 shall on application of one of the parties stay the trial of the action
2 until such arbitration has been had in accordance with the terms
3 of the agreement, providing the applicant for the stay is not in
4 default in proceeding with such arbitration; (iii) if any party
5 aggrieved by the alleged failure, neglect, or refusal of another to
6 arbitrate under the Commitment Letter petitions the Nation's
7 Courts for an order directing that such arbitration proceed in the
8 manner provided for in such agreement, the Court shall hear the
9 parties and, upon being satisfied that the making of the
10 agreement for arbitration or the failure to comply therewith is not
11 in issue, the Court shall make an order directing the parties to
12 proceed to arbitration in accordance with the terms of the
13 agreement; if there is a dispute about whether a party has an
14 obligation to arbitrate any issue, the Court shall make an order
15 directing the parties to proceed to arbitration in accordance with
16 the terms of the agreement to resolve that dispute; (iv) an
17 arbitration award will not be subject to review or modification by
18 the Nation's Courts for any reason other than the circumstances
19 described in 9 U.S.C. §§ 10-11; (v) when an arbitration award
20 requires the performance of any act other than the payment of
21 money, the Nation's Courts may direct the enforcement thereon in
22 the manner provided by law; and (vi) to the extent permitted by
23 federal law, the jurisdiction of the Nation's Courts over any
24 actions to enforce an agreement to arbitrate, to compel
25 arbitration pursuant to the Commitment Letter and these
26 Resolutions, and to enforce an order and award resulting from an
27 arbitration shall be concurrent with the jurisdiction of any state
28 or federal court to the jurisdiction of which the Gaming Enterprise
29 has explicitly consented in the Commitment Letter and the Nation
30 has consented in these Resolutions.

- 31 3. **Related Undertakings of the Nation.** The Chairperson of the Nation is
32 authorized to execute the acknowledgement and agreement in the
33 Commitment Letter that provide: (i) from the date the Gaming Enterprise
34 and the Nation enter into the Commitment Letter until the earlier of (a)

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1 the closing date of the Increase Option or (b) December 31, 2015 (or such
2 earlier date as may be negotiated by the Gaming Enterprise), neither the
3 Nation, nor any other branch, department, agency, authority,
4 instrumentality, division, or enterprise of the Nation, will solicit any
5 other bank, investment bank, financial institution, person, or entity to
6 provide, structure, arrange, or syndicate financing to replace any
7 component of the financing provided by BofA to the Gaming Enterprise,
8 whether currently existing or as contemplated to be provided through
9 the Gaming Enterprise's exercise of the Increase Option; and (ii) that
10 BofA may share the confidential information provided by the Gaming
11 Enterprise and/or the Nation to BofA related to the Loan Agreement or
12 the Gaming Enterprise's exercise of the Increase Option with any BofA's
13 Bank or non-bank affiliates, agents, advisors (legal or otherwise) or
14 representatives, subject to the confidentiality provisions contained in
15 the Commitment Letter.

16 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 28TH
17 day of MAY, 2015 at a meeting at which a quorum was present with a vote of 2,926.9 FOR; -0-
18 AGAINST; -0- NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by
19 Article VI, Section 1(f) of the Constitution of the Tohono O'odham Nation, adopted by the
20 Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant
21 Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of
22 June 18, 1934 (48 Stat.984).

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24 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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28 Timothy Joaquin, Legislative Chairman

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30 5 day of June, 2015

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33 ATTEST:

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36 Evonne Wilson, Legislative Secretary

37 5 day of June, 2015
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1 **Said Resolution was submitted for approval to the office of the Chairman of the Tohono**
2 **O'odham Nation on the 5 day of June, 2015 at 12:25 o'clock, P .m.,**
3 **pursuant to the provisions of Section 5 of Article VII of the Constitution and will become**
4 **effective upon his approval or upon his failure to either approve or disapprove it within 48**
5 **hours of submittal.**

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8 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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12 **Timothy Joaquin, Legislative Chairman**

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17 **APPROVED**

on the 05 day of June, 2015

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19 **DISAPPROVED**

at 2:51 o'clock, P .m.

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23 **NED NORRIS, JR., CHAIRMAN**
24 **TOHONO O'ODHAM NATION**

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29 **Returned to the Legislative Secretary on the 5 day of**

30 June, 2015, at 3:21 o'clock, P .m.

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34 **Evonne Wilson, Legislative Secretary**

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

MOVED: COUNCILWOMAN FRANCES MIGUEL

SECOND: COUNCILWOMAN ETHEL GARCIA

DATE: MAY 28, 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. ANTHONY J. RIOS ()	87.1	X			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			
SAN LUCY 219.6	1. DIANA MANUEL (Gloria Ramirez)	109.8	X			
	2. JANA MONTANA ()	109.8	X			
PISINEMO 210.6	1. CHESTER ANTONE (Tony Murrletta)	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			
GU VO 241.0	1. GRACE MANUEL (Floyd Flores)	120.5	X			
	2. PAMELA ANGHILL (Jeffery Antone, Sr.)	120.5	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 (Roberta Harvey)	178.85	X			
	2. VERNON J. SMITH (Gloria Zazueta)	178.85	X			
TOTAL		2,926.9	2,926.9	-0-	-0-	[01]