

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Relating to a Loan Transaction Among the Tohono O'odham Gaming
Enterprise and Bank of America, N.A., PNC Bank, National Association,
Wells Fargo Bank, National Association, and Others)

RESOLUTION NO. 15-486

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 currently is indebted to Bank of America, N.A., a national**
22 **banking association ("*BofA*"), under the terms of a loan agreement entered into**
23 **in accordance with Resolutions No. 14-560 and 15-063 (the "*BofA Loan*"); and**

24 **WHEREAS,** **the Gaming Enterprise has been negotiating with Bank of America, N.A., a**
25 **national banking association ("*BofA*"), as administrative agent, sole lead**
26 **arranger and sole book runner, to obtain a new syndicated multi-bank loan (the**
27 **"*Syndicated Loan*"), the proceeds of which the Gaming Enterprise will use to pay**
28 **off the BofA Loan, to fund construction, to pay fees and expenses associated with**
29 **the financing, and to provide working capital; and**

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1 **WHEREAS, the Gaming Enterprise has negotiated the terms of a credit agreement and**
2 **related documents which set forth the terms on which the Administrative Agent**
3 **and participating banks are willing to make the Syndicated Loan, which include,**
4 **but will not be limited to:**

5 (a) **A Credit Agreement (the "*Credit Agreement*") among BofA, as**
6 **Administrative Agent and L/C Issuer, the other Lenders party thereto, BofA as**
7 **Sole Lead Arranger and Sole Bookrunner, PNC Bank, National Association, a**
8 **national banking association ("*PNC*") as Syndication Agent and Wells Fargo**
9 **Bank, National Association, a national banking association ("*WFB*") as**
10 **Documentation Agent, (collectively, in all of their various capacities under the**
11 **Loan Documents, the "*Credit Parties*") and the Gaming Enterprise;**

12 (b) **A form of Revolving Credit Note to evidence the obligations of the**
13 **Gaming Enterprise under the revolving credit loan provisions of the Credit**
14 **Agreement to each of the Lenders requesting a note (the "*Revolving Credit***
15 **Notes");**

16 (c) **A form of Term Note to evidence the obligations of the Gaming**
17 **Enterprise under the term loan provisions of the Credit Agreement to each of the**
18 **Lenders requesting a note (the "*Term Notes*");**

19 (d) **A Security Agreement (the "*Security Agreement*") between the**
20 **Gaming Enterprise and BofA, in its capacity as administrative agent under the**
21 **Credit Agreement and collateral agent under the Security Agreement, to secure**
22 **the Gaming Enterprise's obligations through a lien or liens on the gross gaming**
23 **revenue and other personal property gaming assets securing the Gaming**
24 **Enterprise's obligations to the Credit Parties (the "*Collateral*"); and**

25 (e) **A Deposit Account Control Agreement (the "*Control Agreement*")**
26 **among the Gaming Enterprise, BofA as collateral agent and BofA as depository**
27 **bank.**

28
29 **The Credit Agreement, the Revolving Credit Notes, the Term Notes, the Security**
30 **Agreement, the Control Agreement and any other ancillary agreements the**

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1 **WHEREAS, the Budget and Finance and Commerce Committees of the Legislative Council**
2 **have reviewed the terms of the Loan Documents and the Non-Impairment**
3 **Agreement, including the proposed limited waivers of the sovereign immunity**
4 **of the Nation and the Gaming Enterprise in each; and**

5 **WHEREAS, the Budget and Finance and Commerce Committees of the Legislative Council**
6 **recommend that the Nation: (a) grant a limited waiver of the sovereign**
7 **immunity of the Gaming Enterprise in favor of the Credit Parties to allow the**
8 **Loan Documents to be enforced in accordance with their terms, (b) enter into**
9 **the Non-Impairment Agreement with BofA, on terms substantially the same as**
10 **those set forth in the draft agreements reviewed by the Committees; (c) grant a**
11 **limited waiver of the sovereign immunity of the Nation in favor of BofA, for the**
12 **benefit of the Credit Parties, to allow the Non-Impairment Agreement to be**
13 **enforced in accordance with its terms; and (d) provide that the Loan Documents**
14 **and the Non-Impairment Agreement will be interpreted and enforced under the**
15 **substantive provisions of Arizona law and in accordance with specified**
16 **provisions relating to arbitration; and**

17 **WHEREAS, the Nation's best interests will be served by the Gaming Enterprise obtaining**
18 **financing from the Credit Parties in accordance with the terms of the Loan**
19 **Documents, the Nation entering into the Non-Impairment Agreement, the**
20 **Nation granting the requested limited waivers of sovereign immunity, and the**
21 **Nation providing that the Loan Documents and the Non-Impairment Agreement**
22 **will be interpreted and enforced under the substantive provisions of Arizona**
23 **law and in accordance with specified provisions relating to arbitration; and**

24 **WHEREAS, capitalized terms used in this Resolution and its Exhibits but not defined in this**
25 **Resolution or the Exhibits have the meanings set forth in the Loan Documents**
26 **and the Non-Impairment Agreement.**

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

- 29 **1. Limited Waiver of the Gaming Enterprise's Immunity. The Nation hereby**
30 **grants a limited waiver of the sovereign immunity of the Gaming Enterprise**

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1 **from suit or action in favor of the Credit Parties on the terms set forth in Exhibit**
2 **A to this Resolution and in lieu of the provisions of Section 8(b)(2) of the Charter.**

3 **2. Approval of Non-Impairment Agreement and Related Documents. The**
4 **Legislative Council authorizes and approves the Non-Impairment Agreement.**
5 **The Nation's Chairman is authorized to execute the Non-Impairment Agreement**
6 **and to deliver it to BofA on behalf of the Nation, along with any and all other**
7 **documents, certificates, financing statements, consents, representations, and**
8 **warranties required in connection with the Loan Documents or the Non-**
9 **Impairment Agreement, and to take all other actions consistent with this**
10 **Resolution and necessary to allow the Gaming Enterprise to consummate a**
11 **financing transaction with the Credit Parties. No further approval, consent,**
12 **notice, or filing will be required as a matter of Federal law or the Nation's law for**
13 **the Nation's Chairman to execute and deliver the Non-Impairment Agreement**
14 **or other documents, certificates, financing statements, consents,**
15 **representations, and warranties required in connection with the Loan**
16 **Documents or the Non-Impairment Agreement.**

17 **3. Limited Waiver of the Nation's Immunity. The Nation hereby grants a**
18 **limited waiver of the sovereign immunity of the Nation from suit or action in**
19 **favor of the Credit Parties on the terms set forth in Exhibit B to this Resolution.**

20 **4. Applicable Laws.**

21 **A. The Loan Documents and the Non-Impairment Agreement will be**
22 **governed by, and construed in accordance with: the laws of the State of Arizona,**
23 **including Art. II, § 25, of the Arizona Constitution relating to the impairment of**
24 **contracts and the applicable provisions of Arizona's version of the Uniform**
25 **Commercial Code and without giving effect to conflict of laws principles;**
26 **applicable Federal law, including the constitutional law of the United States**
27 **prohibiting impairment of contracts; applicable provisions of the Nation's**
28 **Constitution; and this Resolution. For purposes of this Resolution, the term**
29 **"Uniform Commercial Code" will mean Chapters 1, 8, and 9 of the Arizona**

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1 **Uniform Commercial Code (including the definitions incorporated by reference**
2 **into Section 47-9102(B) thereof) as in effect from time-to-time.**

3 **B. The transactions contemplated under the Loan Documents and the Non-**
4 **Impairment Agreement bear a reasonable relation to the State of Arizona, such**
5 **that the Nation, the Gaming Enterprise, and the Credit Parties may agree that**
6 **the Uniform Commercial Code will govern their rights and duties under the**
7 **Loan Documents and the Non-Impairment Agreement. The method of the**
8 **creation, the effect of perfection and non-perfection, the priority among**
9 **competing creditors, and the enforcement of all security interests granted by**
10 **the Gaming Enterprise or the Nation to the Credit Parties in accordance with the**
11 **Loan Documents and the Non-Impairment Agreement will be governed by the**
12 **Uniform Commercial Code, as defined above. For purposes of the security**
13 **interests to be granted under the Loan Documents and the Non-Impairment**
14 **Agreement, (i) the "location" of the Gaming Enterprise and the Nation will be**
15 **Sahuarita, Arizona; and (ii) the office in which to file a financing statement to**
16 **perfect a security interest in the Collateral will be the Office of the Secretary of**
17 **State of Arizona, except for as-extracted collateral, timber to be cut, or goods**
18 **that are or are to become fixtures. For purposes of Section 47-9109(D)(14) of the**
19 **Uniform Commercial Code, the Nation acknowledges that the Gaming**
20 **Enterprise is not a "governmental unit" of the State of Arizona or any other state**
21 **in the United States.**

22 **C. If an arbitrator or court determines, for any reason, that the**
23 **Uniform Commercial Code does not govern the rights and duties of the parties**
24 **under the Loan Documents or the Non-Impairment Agreement, despite the**
25 **parties' agreement to the contrary, then, in accordance with Title III, Laws of the**
26 **Tohono O'odham Nation, Section 1-102, the Nation adopts Chapters 1, 8, and 9 of**
27 **the Arizona Uniform Commercial Code (including the definitions incorporated**
28 **by reference into Section 47-9102(B) of Chapter 9 and excluding Sections 47-**
29 **9109(C)(2) and 47-9109(D)(14)) as in effect from time-to-time as the Nation's law**
30 **that will govern the Loan Documents and the Non-Impairment Agreement,**

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1 **except that, for purposes of the security interests to be granted under the Loan**
2 **Documents or the Non-Impairment Agreement, (i) the "location" of the Gaming**
3 **Enterprise and the Nation will be Sahuarita, Arizona; and (ii) the office in which**
4 **to file a financing statement to perfect a security interest in the Collateral will be**
5 **the Office of the Secretary of State of Arizona, except for as-extracted collateral,**
6 **timber to be cut, or goods that are or are to become fixtures.**

7 **D. Any laws of the Nation that conflict with or are inconsistent with**
8 **the provisions of this Resolution, the Loan Documents, or the Non-Impairment**
9 **Agreement, other than the Nation's Constitution, will be inapplicable to the**
10 **Loan Documents, the Non-Impairment Agreement, and the Collateral to the**
11 **extent of any such conflict or inconsistency.**

12 **E. The Nation hereby adopts the following provisions as the**
13 **Arbitration Provisions applicable to the Loan Documents, the Non-Impairment**
14 **Agreement, and the transactions contemplated thereby, which provisions shall**
15 **be enforceable as a law of the Nation: (a) the agreements of the Nation and the**
16 **Gaming Enterprise in the Loan Documents and the Non-Impairment Agreement**
17 **to settle by arbitration any controversy or claim arising under the Loan**
18 **Documents, Non-Impairment Agreement, and the transactions contemplated**
19 **thereby are valid, irrevocable and enforceable; and (b) in any proceeding in the**
20 **Nation's Courts relating to such claims: (i) the Nation's Courts will apply the**
21 **procedural rules of the Nation's Courts and the substantive law of the**
22 **jurisdiction selected by the parties to the Loan Documents and the Non-**
23 **Impairment Agreement and authorized by these Resolutions; (ii) if any suit or**
24 **proceeding is brought in the Nation's Courts upon any issue referable to**
25 **arbitration under the Non-Impairment Agreement or the Loan Documents, the**
26 **Court, upon being satisfied that the issue involved in such suit or proceeding is**
27 **referable to arbitration under such agreement, shall on application of one of**
28 **the parties stay the trial of the action until such arbitration has been had in**
29 **accordance with the terms of the agreement, providing the applicant for the stay**
30 **is not in default in proceeding with such arbitration; (iii) if any party aggrieved**

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

23 **5. Binding Obligation; Lien Priority; Impairment.**

24 A. When fully executed, the Loan Documents will be valid, binding,
25 and enforceable obligations of the Gaming Enterprise and the Non-Impairment
26 Agreement will be a valid, binding, and enforceable obligation of the Nation.

27 B. After the BofA Loan is paid off and upon the perfection of a lien by
28 BofA, in its capacity as administrative agent under the Credit Agreement and
29 collateral agent under the Security Agreement, the lien created by the Gaming
30 Enterprise's pledge of the Collateral under the Security Agreement will be

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1 superior to, and will have first priority over, all other liens, and will be valid and
2 binding from the time the pledge is made as evidenced by the execution and
3 delivery of the Loan Documents.

4 C. The Nation will take no action that would materially impair the
5 rights, liens, interests, and/or remedies provided in the Loan Documents
6 without the prior written consent of the Credit Parties. The Legislative Council
7 finds that no provision of the Nation's Constitution or laws, and no custom,
8 would impair the Loan Documents or the Non-Impairment Agreement.

9 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 09th
10 day of DECEMBER, 2015 at a meeting at which a quorum was present with a vote of 2,794.9 FOR;
11 -0- AGAINST; -0- NOT VOTING; and 226.5[05] ABSENT, pursuant to the powers vested in the
12 Council by Article VI, Sections 1(d) 1(e) and 1(l) of the Constitution of the Tohono O'odham
13 Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the
14 Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to
15 Section 16 of the Act of June 18, 1934 (48 Stat.984).
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18 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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23 Timothy Joaquin, Legislative Chairman

24 10 day of December, 2015
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29 ATTEST:

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32 Evonne Wilson, Legislative Secretary

33 10 day of December, 2015
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36 Said Resolution was submitted for approval to the office of the Chairman of the Tohono
37 O'odham Nation on the 10 day of December, 2015 at 4:55 o'clock, P .m.,
38 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become
39 effective upon his approval or upon his failure to either approve or disapprove it within 48
40 hours of submittal.
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TOHONO O'ODHAM LEGISLATIVE COUNCIL


Timothy Joaquin, Legislative Chairman

APPROVED

on the 10 day of December, 2015

DISAPPROVED

at 5:32 o'clock, P.m.


EDWARD D. MANUEL, CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 14 day of

December, 2015, at 8:10 o'clock, A.m.


Evonne Wilson, Legislative Secretary

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ACTION: RELATING TO A LOAN TRANSACTION AMONG THE TOHONO O'ODHAM GAMING ENTERPRISE AND BANK OF AMERICA, N.A., PNC BANK, NATIONAL ASSOCIATION, WELLS FARGO BANK, NATIONAL ASSOCIATION, AND OTHERS

Moved: COUNCILWOMAN ETHEL GARCIA

SECOND: COUNCILMAN BILLMAN LOPEZ

DATE: DECEMBER 09, 2015

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 367.2	1. FRANCES MIGUEL (Roberta E. Harvey)	183.60	X			
	2. VERNON J. SMITH (Gloria Zazueta)	183.60	X			
CHUKUT KUK 332.1	1. ETHEL GARCIA (Marlakay K. Henry)	166.05	X			
	2. BILLMAN LOPEZ (Patricia Vicenti)	166.05	X			
GUACHI 265.0	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	132.50	X			
	2. LORETTA LEWIS ()	132.50	X			
GU VO 250.6	1. GRACE MANUEL (Dallas Lewis)	125.30	X			
	2. PAMELA ANGHILL (Jeffery Antone, Sr.)	125.30	X			
HICKIWAN 205.8	1. LOUIS R. LOPEZ (Shirley Molina)	102.90	X			
	2. SANDRA ORTEGA ()	102.90	X			X
PISINEMO 219.9	1. CHESTER ANTONE ()	109.95	X			
	2. MONICA K. MORGAN ()	109.95	X			
SAN LUCY 226.5	1. DIANA MANUEL ()	113.25				X
	2. JANA MONTANA (Gloria Ramirez)	113.25				X
SAN XAVIER 228.6	1. DANIEL L.A. PRESTON III ()	114.30	X			
	2. RACHEAL VILSON-STONER (Olivia Villegas-Liston)	114.30	X			X
SCHUK TOAK 180.6	1. ANTHONY J. FRANCISCO JR. ()	90.30	X			
	2. QUINTIN C. LOPEZ (John Fendenheim)	90.30	X			
SELLS 513.5	1. ARTHUR WILSON (Beverly Rivas)	256.75	X			
	2. BARBARA HAVIER ()	256.75	X			
SIF OIDAK 231.6	1. LUCINDA ALLEN (Nicholas Jose)	115.80	X			
	2. MARY LOPEZ ()	115.80	X			X
TOTAL		3,021.4	3,021.4	-0-	-0-	226.5 [05]