

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving Extension of Limited Waiver and Amendment to Amended and Restated Non-Impairment Agreement with Bank of America, N.A. and Other Syndicated Lenders)

RESOLUTION NO. 20-172

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; 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 responsible**
11 **for planning, constructing, and operating the Nation's gaming facilities and**
12 **conducting gaming activities (Charter of the Gaming Enterprise (the "Charter");**
13 **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) the**
16 **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,** **by Resolution No. 17-615, the Nation entered an Amended and Restated Non-**
22 **Impairment Agreement with Bank of America, N.A., a national banking**
23 **association and a syndicate of other banks (collectively, the "Syndicated**
24 **Lenders") in support of a Credit Agreement under which those Syndicated**
25 **Lenders extended financing to the Gaming Enterprise for the further**
26 **development of the Desert Diamond West Valley Casino and Resort; and**

27 **WHEREAS,** **in order to protect public health and safety during the COVID-19 epidemic and**
28 **consistent with Legislative Council Resolution No. 20-094, on March 18, 2020, the**
29 **Nation's chairperson issued Executive Order No. 2020-02 ordering the closure of**
30 **non-essential programs within the Nation's government, including the Tohono**
31 **O'odham Gaming Office, effective March 19, 2020 through April 23, 2020 and was**
32 **later extended through June 4, 2020; and**

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1 **WHEREAS, on March 18, 2020, the Tohono O'odham Gaming Enterprise initially closed its**
2 **Gaming Facilities in response to the COVID-19 epidemic for two weeks and**
3 **subsequently extended the closures until at least June 4, 2020; and**

4 **WHEREAS, the Syndicated Lenders agreed to a Limited Waiver and Amendment to the**
5 **Amended and Restated Credit Agreement between the Gaming Enterprise the**
6 **Syndicated Lenders and to the Non-Impairment Agreement between the**
7 **Syndicated Lenders and the Nation dated April 13, 2020 waiving certain defaults**
8 **of those Agreements resulting from the casino closures through May 31, 2020; and**

9 **WHEREAS, the Limited Waiver and Amendment was approved by the Legislative Council in**
10 **Resolution No. 20-101; and**

11 **WHEREAS, the Syndicated Lenders, the Gaming Enterprise and the Nation have agreed to an**
12 **Extension of Limited Waiver and Amendment that will extend the time period**
13 **covered by the Limited Waiver and Amendment through June 15, 2020; and**

14 **WHEREAS, the Budget and Finance and Commerce Committees of the Legislative Council**
15 **have reviewed the Extension of Limited Waiver and Amendment and**
16 **recommends its approval.**

17 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council approves the**
18 **Extension of Limited Waiver and Amendment in substantially the form presented**
19 **to the Legislative Council on May 22, 2020 and attached as Exhibit A, and**
20 **authorizes the Nation's chairperson to execute and deliver it.**

21 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 22ND**
22 **day of MAY, 2020 at a meeting at which a quorum was present with a vote of 3,175.7 FOR; -0-**
23 **AGAINST; -0- NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by**
24 **Article VI, Section 1(d), 1(e), and 1(f) of the Constitution of the Tohono O'odham Nation, adopted**
25 **by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy**
26 **Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the**
27 **Act of June 18, 1934 (48 Stat.984).**

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30 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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34 **Timothy Joaquin, Legislative Chairman**

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37 **22** day of **May**, 2020
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1 ATTEST:

2 *Evonne Wilson*

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4 Evonne Wilson, Legislative Secretary

5
6 22 day of May, 2020

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8 Said Resolution was submitted for approval to the office of the Chairman of the Tohono
9 O'odham Nation on the 20 day of May, 2020 at 1:02 o'clock, P.m.,
10 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become
11 effective upon his approval or upon his failure to either approve or disapprove it within 48
12 hours of submittal.

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14 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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16 *Timothy Joaquin* for
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18 Timothy Joaquin, Legislative Chairman
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23 APPROVED

24 on the 28 day of May, 2020

25 DISAPPROVED

26 at 11:20 o'clock, A.m.

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28 *Ned Norris, Jr.*
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30 NED NORRIS, JR., CHAIRMAN
31 TOHONO O'ODHAM NATION
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35 Returned to the Legislative Secretary on the 28 day of

36 May, 2020, at 11:23 o'clock, A.m.

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38 *Evonne Wilson*
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41 Evonne Wilson, Legislative Secretary
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ACTION: APPROVING EXTENSION OF LIMITED WAIVER AND AMENDMENT TO AMENDED AND RESTATED NON-IMPAIRMENT AGREEMENT WITH BANK OF AMERICA, N.A. AND OTHER SYNDICATED LENDERS

MOVED: COUNCILWOMAN JANICE MANUEL

SECOND: COUNCILWOMAN GRACE MANUEL

DATE: MAY 22, 2020

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 384.8	1. LEANDER MASE (Francine Schooling)	192.40	X			
	2. ALBERTA J. RAY (Frances G. Antone)	192.40	X			
CHUKUT KUK 347.5	1. VIVIAN JUAN-SAUNDERS (Juanita Homer)	173.75	X			
	2. MARLAKAY HENRY (Billman Lopez)	173.75	X			
GUACHI 279.3	1. VICTORIA HOBBS ()	139.65	X			
	2. TIMOTHY L. JOAQUIN (Louis L. Johnson)	139.65	X			
GU VO 264.5	1. DALLAS LEWIS (Nacho Flores)	132.25	X			
	2. GRACE MANUEL ()	132.25	X			
HICKIWAN 213.8	1. SANDRA D. ORTEGA ()	106.90	X			
	2. LOUIS R. LOPEZ (Delma M. Garcia)	106.90	X			X
PISINEMO 230.7	1. MONICA K. MORGAN ()	115.35	X			
	2. MARIETTA MARTIN ()	115.35	X			
SAN LUCY 235.6	1. GLORIA RAMIREZ ()	117.80	X			
	2. JANA MONTANA (Lorraine M. Eiler)	117.80	X			
SAN XAVIER 238.9	1. JANICE FELIX (Adam Andrews)	119.45	X			
	2. DANIEL L.A. PRESTON III (Racheal Vilson-Stoner)	119.45	X			
SCHUK TOAK 189.0	1. QUINTIN C. LOPEZ (Agnes V. Joaquin)	94.50	X			
	2. TERESA F. DONAHUE (Alberta Espinoza)	94.50	X			
SELLS 547.1	1. EVELYN JUAN MANUEL ()	273.55	X			
	2. ARTHUR WILSON ()	273.55	X			X
SIF OIDAK 244.5	1. LUCINDA ALLEN (<i>Absent</i>) (Yolonda Garcia) (<i>Present</i>)	122.25	X			
	2. MARY LOPEZ (Ann M. Garcia)	122.25	X			
TOTAL		3,175.7	3,175.7	-0-	-0-	[02]