

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Relating to a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as Borrower and; Bank of America, N.A., as Administrative Agent, L/C Issuer, Left Lead Arranger, Joint Bookrunner and a Lender; other financial institutions to be determined acting as Joint Lead Arrangers and Joint Bookrunners and a syndicate of other financial institutions as additional Lenders)

RESOLUTION NO. 22-445

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. § 5123), 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 tribally
9 chartered economic development enterprise of the Nation established pursuant
10 to Article VI, Section 1(e), of the Nation's Constitution and is responsible for
11 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 (a) the
16 Gaming Enterprise may not incur obligations in excess of its ability to pay as
17 required and (b) 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*"), and a syndicate of other financial institutions,
23 under the terms of an Amended and Restated Credit Agreement dated as of
24 January 24, 2018, (as amended the "*Existing Credit Agreement*") and related
25 documents (the "*Syndicated Loan*"), which the Gaming Enterprise entered into in
26 accordance with Tohono O'odham Legislative Council Resolution No. 17-615
27 ("Resolution No. 17-615"); and

28 **WHEREAS,** in connection with the Syndicated Loan, pursuant to Resolution No. 17-615, the
29 Nation entered into an Amended and Restated Non-Impairment and Estoppel
30 Agreement dated January 24, 2018 (the "*Existing Nation Agreement*") with BofA, in

RESOLUTION NO. 22-445

(Relating to a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as Borrower and: Bank of America, N.A., as Administrative Agent, L/C Issuer, Left Lead Arranger, Joint Bookrunner and a Lender; other financial institutions to be determined acting as Joint Lead Arrangers and Joint Bookrunners and a syndicate of other financial institutions as additional Lenders)

Page 2 of 15

1 its capacities as administrative agent under the Existing Credit Agreement and
2 collateral agent under the security agreement for the Syndicated Loan; and
3 **WHEREAS,** **the Gaming Enterprise's indebtedness under the Existing Credit Agreement**
4 **matures on January 24, 2023; and**
5 **WHEREAS,** **the Gaming Enterprise has been negotiating with BofA and other financial**
6 **institutions to refinance outstanding amounts under the Syndicated Loan and**
7 **increase the amount of credit available to the Gaming Enterprise and to extend**
8 **the maturity date of the Syndicated Loan, which will allow the Gaming Enterprise**
9 **to: refinance its existing indebtedness; provide the Gaming Enterprise with**
10 **access to additional funds to use as working capital for its operations; pay the**
11 **costs of constructing Phase 1 of the Far West Valley Resort; and to pay the fees and**
12 **expenses associated with the refinancing of the Syndicated Loan, the terms of**
13 **which refinancing will provide the Gaming Enterprise with the option to seek a**
14 **further increase to the aggregate amount of the Syndicated Loan to provide**
15 **working capital to pay the costs of constructing Phase 2 of the Far West Valley**
16 **Resort and Phase 2 of the West Valley Resort; and**
17 **WHEREAS,** **the Gaming Enterprise has negotiated the terms of a second amended and**
18 **restated credit agreement and related documents, which set forth the terms on**
19 **which BofA and other participating banks will refinance the Gaming Enterprise's**
20 **existing indebtedness, extend additional credit to the Gaming Enterprise and**
21 **extend the maturity of the Syndicated Loan (the "*Second Amended and Restated***
22 ***Syndicated Loan*";) and**
23 **WHEREAS,** **as a condition of extending the Second Amended and Restated Syndicated Loan,**
24 **BofA, and other participating banks will require the Gaming Enterprise to**
25 **execute new loan documentation, including:**
26
27 **(a) A Second Amended and Restated Credit Agreement (the "*Second***
28 ***Amended and Restated Credit Agreement*") among the Gaming Enterprise and**
29 **BofA (as Administrative Agent, L/C Issuer, Left Lead Arranger, and other**
30 **participating banks (collectively, in all of their various capacities under the**
31 **Second Amended and Restated Loan Documents (as defined below), the "*Credit***
32 ***Parties*";)**

RESOLUTION NO. 22-445

(Relating to a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as Borrower and: Bank of America, N.A., as Administrative Agent, L/C Issuer, Left Lead Arranger, Joint Bookrunner and a Lender; other financial institutions to be determined acting as Joint Lead Arrangers and Joint Bookrunners and a syndicate of other financial institutions as additional Lenders)

Page 3 of 15

1 **(b) A form of Revolving Credit Note to evidence the obligations of the**
2 **Gaming Enterprise under the revolving credit loan provisions of the Second**
3 **Amended and Restated Credit Agreement to each of the Lenders requesting a note**
4 **(the "*Revolving Credit Notes*";**

5
6 **(c) A form of Term Note to evidence the obligations of the Gaming**
7 **Enterprise under the term loan provisions of the Amended and Restated Credit**
8 **Agreement to each of the Lenders requesting a note (the "*Term Notes*";**

9
10 **(d) A form of Tax Exempt Note to evidence the obligations of the**
11 **Gaming Enterprise under the tax exempt loan provisions of the Second Amended**
12 **and Restated Credit Agreement to each of the Lenders who may request a note**
13 **(the "*Tax Exempt Notes*" and with the Revolving Credit Notes and Term Notes, the**
14 **"Notes");**

15
16 **(e) A Second Amended and Restated Security Agreement (the "*Security***
17 ***Agreement*") between the Gaming Enterprise and BofA (as administrative agent**
18 **under the Second Amended and Restated Credit Agreement and collateral agent**
19 **under the Security Agreement) to secure the Gaming Enterprise's obligations**
20 **through a lien or liens on the gross gaming revenue and other personal property**
21 **gaming assets securing the Gaming Enterprise's obligations to the Credit Parties**
22 **(the "*Collateral*"; and**

23
24 **(f) A Third Amendment to the Deposit Account Control Agreement (the**
25 **"*Control Agreement Amendment*") among the Gaming Enterprise and BofA (as**
26 **collateral agent under the Security Agreement and as depository bank);**

27
28 **(g) One or more Notes in favor of the lenders ("*Promissory Notes*";**

29
30 **(h) One or more engagement letters and/or commitment letters and**
31 **fee letters with BofA as Left Lead Arranger, L/C Issuer, Administrative Agent and a**

RESOLUTION NO. 22-445

(Relating to a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as Borrower and: Bank of America, N.A., as Administrative Agent, L/C Issuer, Left Lead Arranger, Joint Bookrunner and a Lender; other financial institutions to be determined acting as Joint Lead Arrangers and Joint Bookrunners and a syndicate of other financial institutions as additional Lenders)

Page 4 of 15

1 **Lender and other financial institutions as Joint Lead Arrangers (*"Engagement***
2 ***Letters"*)**;

3
4 **(i) Any other Loan Document (as such term is defined in the Second**
5 **Amended and Restated Credit Agreement), which may include Letters of Credit;**

6
7 **(j) Agreements for Ancillary Services (defined below) that may be provided by**
8 **the Credit Parties (*"Ancillary Agreements"*); and**

9
10 **(k) Potential future agreements related to interest rate protection**
11 **agreements, for purposes of reducing financial exposure of the Gaming**
12 **Enterprise due to fluctuations in interest rates, including without limitation an**
13 **ISDA 2002 Master Agreement (the *"Master ISDA Agreement"*), ISDA Schedule to the**
14 **2002 Master Agreement (the *"ISDA Schedule"* and together with the Master ISDA**
15 **Agreement, the *"Master Agreement"*) and related Confirmations (as defined in the**
16 **Master ISDA Agreement) with one or more Credit Parties (collectively, with such**
17 **other confirmations, instruments, agreements, certifications or other**
18 **documents and forms as may be contemplated by the Master Agreement and**
19 **Schedule, the *"Swap Documents"*);**

20
21 **The Second Amended and Restated Credit Agreement, the Notes, the Security**
22 **Agreement, the Control Agreement Amendment, the Engagement Letters and any**
23 **other Ancillary Agreements the Gaming Enterprise may enter into with any or all**
24 **of the Credit Parties, or their affiliates, in connection with the Second Amended**
25 **and Restated Syndicated Loan are referred to as the *"Second Amended and***
26 ***Restated Loan Documents;"* and**

27
28 **WHEREAS, as a condition of entering into the Second Amended and Restated Loan**
29 **Documents, the Credit Parties also will require the Nation to enter into a Second**
30 **Amended and Restated Non-Impairment and Estoppel Agreement with BofA (as**
31 **administrative agent under the Second Amended and Restated Credit Agreement**
32 **and collateral agent under the Security Agreement) and to provide BofA with a**

RESOLUTION NO. 22-445

(Relating to a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as Borrower and: Bank of America, N.A., as Administrative Agent, L/C Issuer, Left Lead Arranger, Joint Bookrunner and a Lender; other financial institutions to be determined acting as Joint Lead Arrangers and Joint Bookrunners and a syndicate of other financial institutions as additional Lenders)

Page 5 of 15

1 closing certificate executed by the Nation (collectively, the "*Second Amended and*
2 *Restated Non-Impairment Agreement*"); and

3 **WHEREAS,** the Second Amended and Restated Loan Documents require a limited waiver of
4 the sovereign immunity of the Gaming Enterprise in favor of the Credit Parties to
5 allow the Second Amended and Restated Loan Documents to be enforced in
6 accordance with their terms, and the Swap Documents will require a limited
7 waiver of the sovereign immunity of the Gaming Enterprise in favor of the Credit
8 Parties that are counterparties to the Swap Documents to allow the Swap
9 Documents to be enforced in accordance with their terms; and

10 **WHEREAS,** the Second Amended and Restated Non-Impairment Agreement requires a
11 limited waiver of the sovereign immunity of the Nation in favor of the Credit
12 Parties to allow the Second Amended and Restated Non-Impairment Agreement
13 to be enforced in accordance with its terms; and

14 **WHEREAS,** the Second Amended and Restated Loan Documents and the Second Amended
15 and Restated Non-Impairment Agreement generally require the arbitration of
16 any disputes; and

17 **WHEREAS,** the Nation has not enacted a version of the Uniform Commercial Code, an
18 arbitration act, or similar laws of the sort that typically would govern complex
19 commercial transactions of the nature contemplated in the Second Amended and
20 Restated Loan Documents, the Swap Documents and the Second Amended and
21 Restated Non-Impairment Agreement, nor do the Nation's Constitution, laws, or
22 customs address the interpretation and enforcement of transactions such as
23 those contemplated in the Second Amended and Restated Loan Documents, the
24 Swap Documents and the Second Amended and Restated Non-Impairment
25 Agreement; and

26 **WHEREAS,** the Credit Parties have conditioned their willingness to extend the Second
27 Amended and Restated Syndicated Loan upon the terms of the Second Amended
28 and Restated Loan Documents and the Second Amended and Restated Non-
29 Impairment Agreement being interpreted and enforced under the substantive
30 provisions of Arizona law, including Art. II, § 25, of the Arizona Constitution
31 relating to the impairment of contracts and the applicable provisions of Arizona's
32 version of the Uniform Commercial Code, so the Credit Parties can be assured

RESOLUTION NO. 22-445

(Relating to a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as Borrower and Bank of America, N.A., as Administrative Agent, L/C Issuer, Left Lead Arranger, Joint Bookrunner and a Lender; other financial institutions to be determined acting as Joint Lead Arrangers and Joint Bookrunners and a syndicate of other financial institutions as additional Lenders)

Page 6 of 15

1 that the Second Amended and Restated Loan Documents and the Second
2 Amended and Restated Non-Impairment Agreement will be interpreted and
3 enforced in accordance with their terms; and

4 **WHEREAS,** the Swap Documents will require that such Swap Documents be interpreted and
5 enforced under the substantive provisions of New York law; and

6 **WHEREAS,** the Gaming Enterprise Management Board, on November 30, 2022, enacted a
7 Resolution (attached hereto as Attachment 1) approving (a) the Second Amended
8 and Restated Syndicated Loan, (b) the Second Amended and Restated Loan
9 Documents, and (c) a limited waiver of the Gaming Enterprise's sovereign
10 immunity, as set forth in Exhibit A to this Resolution, subject to the Nation's
11 Legislative Council authorizing and approving the limited waiver of the
12 Enterprise's sovereign immunity as set forth in Exhibit A; and

13 **WHEREAS,** the Budget and Finance and Commerce Committees of the Legislative Council
14 have reviewed the terms of the Second Amended and Restated Loan Documents
15 and the Second Amended and Restated Non-Impairment Agreement, including
16 the proposed limited waivers of the sovereign immunity of the Nation and the
17 Gaming Enterprise in each (which waivers are, in all material respects, identical
18 to the waivers previously provided in connection with the Syndicated Loan); and

19 **WHEREAS,** the Gaming Enterprise may, from time to time, enter into Swap Documents for
20 purposes of mitigating financial risk exposure due to fluctuations in interest
21 rates, and the Gaming Enterprise seeks a limited waiver of its sovereign immunity
22 to allow it to enter into the Swap Documents, with such Swap Documents having
23 waivers of sovereign immunity and dispute resolution provisions substantially
24 similar to those in the Second Amended and Restated Loan Documents, except
25 that such Swap Documents are expected to be governed and interpreted by the
26 laws of the State of New York, with consent by the Gaming Enterprise to the
27 jurisdiction of federal or state courts in the State of New York for the enforcement
28 of the Swap Documents and may not contain arbitration provisions (the "Swap
29 Documents Waivers and Consents"); and

30 **WHEREAS,** the Gaming Enterprise will, from time to time, enter into Ancillary Agreements
31 with the Credit Parties to obtain services not directly related to the Second
32 Amended and Restated Syndicated Loan, which agreements may include, but will

RESOLUTION NO. 22-445

(Relating to a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as Borrower and Bank of America, N.A., as Administrative Agent, L/C Issuer, Left Lead Arranger, Joint Bookrunner and a Lender; other financial institutions to be determined acting as Joint Lead Arrangers and Joint Bookrunners and a syndicate of other financial institutions as additional Lenders)

Page 7 of 15

1 not be limited to, agreements for depository accounts, treasury and cash
2 management services, merchant services (including the processing of credit
3 cards, debit cards, electronic checks, and gift cards), tax services (for the payment
4 of federal, state, and other taxes), cash vault services, business credit cards, and
5 safe deposit boxes ("Ancillary Services"); and

6 **WHEREAS,** the Gaming Enterprise seeks a limited waiver of its sovereign immunity to allow
7 the Gaming Enterprise to enter into agreements for Ancillary Services with the
8 Credit Parties, with those agreements having dispute resolution provisions
9 similar to those in the Second Amended and Restated Loan Documents and with
10 those agreements being able to be enforced in accordance with their terms;

11 **WHEREAS,** the Budget and Finance and Commerce Committees of the Legislative Council
12 recommend that the Nation: (a) grant a limited waiver of the sovereign immunity
13 of the Gaming Enterprise in favor of the Credit Parties to allow the Second
14 Amended and Restated Loan Documents to be enforced in accordance with their
15 terms, (b) grant a limited waiver of the sovereign immunity of the Gaming
16 Enterprise to allow it to enter into agreements with the Credit Parties for
17 Ancillary Services, with those agreements having dispute resolution provisions
18 similar to those in the Second Amended and Restated Loan Documents and with
19 those agreements being able to be enforced in accordance with their terms; (c)
20 enter into the Second Amended and Restated Non-Impairment Agreement with
21 BofA, on terms substantially the same as those set forth in the draft agreements
22 reviewed by the Committees; (d) grant a limited waiver of the sovereign immunity
23 of the Nation in favor of BofA, for the benefit of the Credit Parties, to allow the
24 Second Amended and Restated Non-Impairment Agreement to be enforced in
25 accordance with its terms; (e) provide that the Second Amended and Restated
26 Loan Documents and the Second Amended and Restated Non-Impairment
27 Agreement will be interpreted and enforced under the substantive provisions of
28 Arizona law and in accordance with specified provisions relating to arbitration;
29 (f) grant a limited waiver of the sovereign immunity of the Gaming Enterprise in
30 favor of the Credit Parties who are counterparties to the Swap Documents to allow
31 the Swap Documents to be enforced in accordance with their terms; (g) provide

RESOLUTION NO. 22-445

(Relating to a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as Borrower and; Bank of America, N.A., as Administrative Agent, L/C Issuer, Left Lead Arranger, Joint Bookrunner and a Lender; other financial institutions to be determined acting as Joint Lead Arrangers and Joint Bookrunners and a syndicate of other financial institutions as additional Lenders)

Page 8 of 15

1 that the Swap Documents will be interpreted and enforced under the substantive
2 provisions of New York law; and

3 **WHEREAS,** the Nation's best interests will be served by: the Gaming Enterprise obtaining
4 additional financing from the Credit Parties in accordance with the terms of the
5 Second Amended and Restated Loan Documents; the Gaming Enterprise being
6 able to enter into agreements with the Credit Parties for Ancillary Services, with
7 those agreements having dispute resolution provisions similar to those in the
8 Second Amended and Restated Loan Documents and with those agreements
9 being able to be enforced in accordance with their terms; the Nation entering into
10 the Second Amended and Restated Non-Impairment Agreement; the Nation
11 granting the requested limited waivers of sovereign immunity; and the Nation
12 providing that the Second Amended and Restated Loan Documents and the
13 Second Amended and Restated Non-Impairment Agreement will be interpreted
14 and enforced under the substantive provisions of Arizona law and in accordance
15 with specified provisions relating to arbitration; the Gaming Enterprise being
16 able to enter into the Swap Documents, with those agreements having the Swap
17 Documents Waivers and Consents so those agreements may be enforced in
18 accordance with their terms; and

19 **WHEREAS,** capitalized terms used in this Resolution and its Exhibits, but not defined in this
20 Resolution or the Exhibits, have the meanings set forth in the Second Amended
21 and Restated Loan Documents and the Second Amended and Restated Non-
22 Impairment Agreement.

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

- 25
- 26 **1. Limited Waiver of the Gaming Enterprise's Immunity.** The Nation hereby
27 grants a limited waiver of the sovereign immunity of the Gaming Enterprise from
28 suit or action in favor of the Credit Parties on the terms set forth in Exhibit A to
29 this Resolution and in lieu of the provisions of Section 8(b)(2) of the Charter. The
30 Nation hereby grants a limited waiver of the sovereign immunity of the Gaming
31 Enterprise to enable the Gaming Enterprise to enter into agreements for
32 Ancillary Services with the Credit Parties, with those agreements having dispute

RESOLUTION NO. 22-445

(Relating to a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as Borrower and: Bank of America, N.A., as Administrative Agent, L/C Issuer, Left Lead Arranger, Joint Bookrunner and a Lender; other financial institutions to be determined acting as Joint Lead Arrangers and Joint Bookrunners and a syndicate of other financial institutions as additional Lenders)

Page 9 of 15

1 resolution provisions similar to those in Exhibit A to this Resolution, in lieu of the
2 provisions of Section 8(b)(2) of the Charter, and with those agreements being able
3 to be enforced in accordance with their terms.

4
5 2. Approval of the Second Amended and Restated Non-Impairment
6 Agreement and Related Documents. The Legislative Council authorizes and
7 approves the Second Amended and Restated Non-Impairment Agreement. The
8 Nation's Chairman is authorized to execute the Second Amended and Restated
9 Non-Impairment Agreement and to deliver it to BofA on behalf of the Nation,
10 along with any and all other documents, certificates, financing statements,
11 consents, representations, and warranties required in connection with the
12 Second Amended and Restated Loan Documents or the Second Amended and
13 Restated Non-Impairment Agreement, and to take all other actions consistent
14 with this Resolution and necessary to allow the Gaming Enterprise to
15 consummate the modification of the Syndicated Loan with the Credit Parties. No
16 further approval, consent, notice, or filing will be required as a matter of Federal
17 law or the Nation's law for the Nation's Chairman to execute and deliver the
18 Second Amended and Restated Non-Impairment Agreement or other documents,
19 certificates, financing statements, consents, representations, and warranties
20 required in connection with the Second Amended and Restated Loan Documents
21 or the Second Amended and Restated Non-Impairment Agreement; provided that
22 the Gaming Enterprise shall not seek Incremental Credit Extensions (as set forth
23 in Section 2.14 of the Credit Agreement) for Phase 2 of the Far West Valley Resort
24 or Phase 2 of the West Valley Resort until the Nation has authorized such Phase or
25 Phases by Legislative Council resolution.

26
27 3. Limited Waiver of the Nation's Immunity. The Nation hereby grants a
28 limited waiver of the sovereign immunity of the Nation from suit or action in favor
29 of the Credit Parties on the terms set forth in Exhibit B to this Resolution.

30
31 4. Gaming Enterprise Swap Documents Waivers and Consents. The Nation
32 hereby grants a limited waiver of the sovereign immunity of the Gaming

RESOLUTION NO. 22-445

(Relating to a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as Borrower and: Bank of America, N.A., as Administrative Agent, L/C Issuer, Left Lead Arranger, Joint Bookrunner and a Lender; other financial institutions to be determined acting as Joint Lead Arrangers and Joint Bookrunners and a syndicate of other financial institutions as additional Lenders)

Page 10 of 15

1 **Enterprise from suit or action in favor of the Credit Parties that are**
2 **counterparties to the Swap Documents on terms set forth in Exhibit C to this**
3 **Resolution.**

4
5 **5. Applicable Laws.**

6
7 **A. The Second Amended and Restated Loan Documents (except for the**
8 **Swap Documents) and the Second Amended and Restated Non-Impairment**
9 **Agreement will be governed by, and construed in accordance with: the laws of the**
10 **State of Arizona, including Art. II, § 25, of the Arizona Constitution relating to the**
11 **impairment of contracts and the applicable provisions of Arizona's version of the**
12 **Uniform Commercial Code and without giving effect to conflict of laws principles;**
13 **applicable Federal law, including the constitutional law of the United States**
14 **prohibiting impairment of contracts; applicable provisions of the Nation's**
15 **Constitution; and this Resolution. For purposes of this Resolution, the term**
16 **"Uniform Commercial Code" will mean Chapters 1, 8, and 9 of the Arizona**
17 **Uniform Commercial Code (including the definitions incorporated by reference**
18 **into Section 47-9102(B) thereof) as in effect from time-to-time.**

19
20 **B. The transactions contemplated under the Second Amended and Restated**
21 **Loan Documents and the Second Amended and Restated Non-Impairment**
22 **Agreement bear a reasonable relation to the State of Arizona, such that the**
23 **Nation, the Gaming Enterprise, and the Credit Parties may agree that the Uniform**
24 **Commercial Code will govern their rights and duties under the Second Amended**
25 **and Restated Loan Documents and the Second Amended and Restated Non-**
26 **Impairment Agreement. The method of the creation, the effect of perfection and**
27 **non-perfection, the priority among competing creditors, and the enforcement of**
28 **all security interests granted by the Gaming Enterprise or the Nation to the Credit**
29 **Parties in accordance with the Second Amended and Restated Loan Documents**
30 **and the Second Amended and Restated Non-Impairment Agreement will be**
31 **governed by the Uniform Commercial Code, as defined above. For purposes of the**
32 **security interests to be granted under the Second Amended and Restated Loan**

RESOLUTION NO. 22-445

(Relating to a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as Borrower and: Bank of America, N.A., as Administrative Agent, L/C Issuer, Left Lead Arranger, Joint Bookrunner and a Lender; other financial institutions to be determined acting as Joint Lead Arrangers and Joint Bookrunners and a syndicate of other financial institutions as additional Lenders)

Page 11 of 15

1 Documents and the Second Amended and Restated Non-Impairment Agreement,
2 (i) the "location" of the Gaming Enterprise and the Nation will be Sahuarita,
3 Arizona; and (ii) the office in which to file a financing statement to perfect a
4 security interest in the Collateral will be the Office of the Secretary of State of
5 Arizona, except for as-extracted collateral, timber to be cut, or goods that are or
6 are to become fixtures. For purposes of Section 47-9109(D)(14) of the Uniform
7 Commercial Code, the Nation acknowledges that the Gaming Enterprise is not a
8 "governmental unit" of the State of Arizona or any other state in the United States.
9

10 C. If an arbitrator or court determines, for any reason, that the
11 Uniform Commercial Code does not govern the rights and duties of the parties
12 under the Second Amended and Restated Loan Documents or the Second
13 Amended and Restated Non-Impairment Agreement, despite the parties'
14 agreement to the contrary, then, in accordance with Title III, Laws of the Tohono
15 O'odham Nation, Section 1-102, the Nation adopts Chapters 1, 8, and 9 of the
16 Arizona Uniform Commercial Code (including the definitions incorporated by
17 reference into Section 47-9102(B) of Chapter 9 and excluding Sections 47-
18 9109(C)(2) and 47-9109(D)(14)) as in effect from time-to-time as the Nation's law
19 that will govern the Second Amended and Restated Loan Documents and the
20 Second Amended and Restated Non-Impairment Agreement, except that, for
21 purposes of the security interests to be granted under the Second Amended and
22 Restated Loan Documents or the Second Amended and Restated Non-Impairment
23 Agreement, (i) the "location" of the Gaming Enterprise and the Nation will be
24 Sahuarita, Arizona; and (ii) the office in which to file a financing statement to
25 perfect a security interest in the Collateral will be the Office of the Secretary of
26 State of Arizona, except for as-extracted collateral, timber to be cut, or goods that
27 are or are to become fixtures.

28
29 D. Any laws of the Nation that conflict with or are inconsistent with the
30 provisions of this Resolution, the Second Amended and Restated Loan
31 Documents, the Second Amended and Restated Non-Impairment Agreement or
32 the Swap Documents, other than the Nation's Constitution, will be inapplicable to

RESOLUTION NO. 22-445

(Relating to a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as Borrower and; Bank of America, N.A., as Administrative Agent, L/C Issuer, Left Lead Arranger, Joint Bookrunner and a Lender; other financial institutions to be determined acting as Joint Lead Arrangers and Joint Bookrunners and a syndicate of other financial institutions as additional Lenders)

Page 12 of 15

1 the Second Amended and Restated Loan Documents, the Second Amended and
2 Restated Non-Impairment Agreement, the Swap Documents and the Collateral to
3 the extent of any such conflict or inconsistency.
4

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

RESOLUTION NO. 22-445

(Relating to a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as Borrower and; Bank of America, N.A., as Administrative Agent, L/C Issuer, Left Lead Arranger, Joint Bookrunner and a Lender; other financial institutions to be determined acting as Joint Lead Arrangers and Joint Bookrunners and a syndicate of other financial institutions as additional Lenders)

Page 13 of 15

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

20
21 **F. The Swap Documents will be governed by, and construed in accordance**
22 **with the laws of the State of New York.**

23
24 **6. Binding Obligation; Lien Priority; Impairment.**

25
26 **A. When fully executed, the Second Amended and Restated Loan**
27 **Documents and the Swap Documents will be valid, binding, and enforceable**
28 **obligations of the Gaming Enterprise and the Second Amended and Restated Non-**
29 **Impairment Agreement will be a valid, binding, and enforceable obligation of the**
30 **Nation.**

31

RESOLUTION NO. 22-445

(Relating to a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as Borrower and; Bank of America, N.A., as Administrative Agent, L/C Issuer, Left Lead Arranger, Joint Bookrunner and a Lender; other financial institutions to be determined acting as Joint Lead Arrangers and Joint Bookrunners and a syndicate of other financial institutions as additional Lenders)

Page 14 of 15

1 B. Upon the perfection of a lien by BofA (as administrative agent
2 under the Second Amended and Restated Credit Agreement and collateral agent
3 under the Security Agreement), the lien created by the Gaming Enterprise's
4 pledge of the Collateral under the Security Agreement will be superior to, and will
5 have first priority over, all other liens, and will be valid and binding from the time
6 the pledge is made as evidenced by the execution and delivery of the Second
7 Amended and Restated Loan Documents.

8
9 C. The Nation will take no action that would materially impair the
10 rights, liens, interests, and/or remedies provided in the Second Amended and
11 Restated Loan Documents, the Swap Documents or the Second Amended and
12 Restated Non-Impairment Agreement without the prior written consent of the
13 Credit Parties. The Legislative Council finds that no provision of the Nation's
14 Constitution or laws, and no custom, would impair the Second Amended and
15 Restated Loan Documents, the Swap Documents or the Second Amended and
16 Restated Non-Impairment Agreement.

17
18 **BE IT FINALLY RESOLVED** that the Second Amended and Restated Non-Impairment and Estoppel
19 Agreement and Exhibits A, B, and C and Attachment 1 thereto shall remain
20 confidential and shall not be reported or disclosed.

21 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 14TH**
22 **day of DECEMBER, 2022 at a meeting at which a quorum was present with a vote of 2,436.6 FOR;**
23 **781.4 AGAINST; [01] NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council**
24 **by, Section 1 (e) of Article VI the Constitution of the Tohono O'odham Nation, adopted by the**
25 **Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant**
26 **Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June**
27 **18, 1934 (48 Stat.984).**

28
29
30 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

31
32
33 
34 **Timothy Joaquin, Legislative Chairman**

35
36 15 day of December, 2022
37
38

RESOLUTION NO. 22-442

(Relating to a Loan Transaction Among the Tohono O'odham Gaming Enterprise, as Borrower and Bank of America, N.A., as Administrative Agent, L/C Issuer, Left Lead Arranger, Joint Bookrunner and a Lender; other financial institutions to be determined acting as Joint Lead Arrangers and Joint Bookrunners and a syndicate of other financial institutions as additional Lenders)

Page 15 of 15

ATTEST:



Evonne Wilson, Legislative Secretary

15 day of December, 2022

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 15 day of December, 2022 at 7:00 o'clock, P.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, Legislative Chairman

APPROVED

on the 15 day of December, 2022

DISAPPROVED

at 7:02 o'clock, P.m.



NED NORRIS, JR., CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 15 day of

December, 2022, at 7:03 o'clock, P.m.



Evonne Wilson, Legislative Secretary

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ACTION: RELATING TO A LOAN TRANSACTION AMONG THE TOHONO O'ODHAM GAMING ENTERPRISE, AS BORROWER AND; BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT, I/C ISSUER, LEFT LEAD ARRANGER, JOINT BOOKRUNNER AND A LENDER; OTHER FINANCIAL INSTITUTIONS TO BE DETERMINED ACTING AS JOINT LEAD ARRANGERS AND JOINT BOOKRUNNERS AND A SYNDICATE OF OTHER FINANCIAL INSTITUTIONS AS ADDITIONAL LENDERS

MOVED: COUNCILWOMAN JANICE FELIX

SECOND: COUNCILMAN ARTHUR WILSON

DATE: DECEMBER 14, 2022

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 245.6	1. MARY LOPEZ (Ann M. Garcia)	122.8	X			
	2. LUCINDA ALLEN (Francis Homewytewa)	122.8	X			
SELLS 556.5	1. ARTHUR WILSON (Shelia Espino)	278.25	X			
	2. EVELYN JUAN-MANUEL (Arvada Liston)	278.25		X		
SCHUK TOAK 190.5	1. TERESA F. DONAHUE (Alberta Espinoza)	95.25	X			
	2. DELISA M. RAMON (Sharon A. Francisco)	95.25	X			
SAN XAVIER 242.6	1. DANIEL L.A. PRESTON III (Racheal Vilson-Stoner)	121.3	X			
	2. JANICE FELIX (Adam P. Andrews)	121.3	X			
SAN LUCY 243.8	1. JANA MONTANA (Lorraine M. Eiler)	121.9	X			
	2. ROGER MANUEL (Christina Andrews)	121.9	X			
PISINEMO 232.7	1. MARIETTA MARTIN ()	116.35	X			
	2. EDWARD D. MANUEL (Monica Morgan)	116.35		X		
HICKIWAN 216.6	1. LOUIS R. LOPEZ ()	108.3	X			
	2. DELMA M. GARCIA ()	108.3		X		
GU VO 270.7	1. GRACE MANUEL ()	135.35	X			
	2. CYNTHIA SAAVEDRA (Dallas Lewis)	135.35	X			
GU ACHI 278.5	1. TIMOTHY L. JOAQUIN ()	139.25		X	X	
	2. VICTORIA HOBBS (Tonya L. Joaquin)	139.25		X		
CHUKUT KUK 351.6	1. MARLAKAY HENRY (Billman Lopez)	175.8	X			
	2. VIVIAN JUAN-SAUNDERS (Cornelius Antone)	175.8	X			X
BABOQUIVARI 388.9	1. ALBERTA J. RAY (Frances G. Antone)	194.45	X			
	2. LEANDER MASE (Francine Schooling)	194.45	X			
TOTAL		3,218.0	2,436.6	781.4	[01]	[01]