

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving a Limited Waiver of Sovereign Immunity for purpose of
entering into a Sales Contract with Sodak Gaming, Inc. for the
purchase of Gaming Devices)**

RESOLUTION NO. 93-334

**WHEREAS, the Tohono O'odham Nation is a sovereign tribal government
and as such has all the attributes of governmental sovereignty,
including immunity from suit; and**

**WHEREAS, from time to time it is in the interest of the Nation to authorize
a limited waiver of immunity from suit; and**

**WHEREAS, when the Nation engages in commercial transactions for the
purchase of goods from non-tribal entities, the Nation is often
requested to waive its immunity from suit as a condition of the
transaction in order to provide a means of recourse against the
Nation in the event of default by the Nation under the terms of
the transaction; and**

**WHEREAS, the Nation is in the process of negotiating with Sodak Gaming,
Inc., located in Rapid City, South Dakota, to purchase
approximately 500 class III gaming devices and related
equipment (the "gaming devices") in order to allow the Nation's
gaming operation to commence class III gaming pursuant to the
terms of the Tribal-State Gaming Compact; and**

**WHEREAS, under the terms of the proposed sale, the Nation will purchase
from Sodak the gaming devices and related equipment for
\$3,799,658.09, with no money down and the balance to be paid**

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4 at the rate of 25% of net win (gross revenues from the gaming
5 devices minus payouts) payable weekly commencing one week
6 after opening of the gaming facility using the gaming devices,
7 with no interest during the first 90 days of operation and with
8 interest after the first 90 days of operation at the rate of 3%
9 over the prime rate, and the balance payable in full 12 months
10 after commencement of class III gaming; and
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12
13 **WHEREAS, Sodak is requiring as a condition of the sale a limited waiver by**
14 **the Nation of its immunity from suit only in connection with the**
15 **proposed sales and security agreement and only as it related to**
16 **the terms and conditions of the proposed sales and security**
17 **agreement; and**
18

19 **WHEREAS, Sodak is also requiring as a condition of the sale that the Nation**
20 **agree that the proposed sales and security agreement be subject**
21 **to, governed by, and construed according to the laws of the**
22 **State of South Dakota, and that the Nation consent to the**
23 **jurisdiction of the United States District Court for the District**
24 **of South Dakota and to waive the jurisdiction in the tribal court;**
25
26 **and**
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**WHEREAS, the Tohono O'odham Gaming Authority was established by a
charter adopted by the Legislative Council pursuant to
Resolution 93-311; and**

**WHEREAS, upon satisfaction of certain conditions, the Authority is
empowered to operate the Nation's gaming facilities; and**

**WHEREAS, under section 7(a), one of the conditions is that the Nation shall
transfer all assets, and the Authority shall assume all liabilities,
related to such gaming operations; and**

**WHEREAS, it is contemplated that following execution of the proposed sales
and security agreement and delivery of the gaming devices, the
Nation will transfer ownership of such devices to the Authority,
and the Authority will assume all liability under such agreement;
and**

**WHEREAS, it is anticipated that Sodak will require a limited waiver of
immunity from the Authority as a condition of any consent to
such transfer and assumption; and**

**WHEREAS, it is in the Nation's interest to commence class III gaming
operations as soon as possible since such operations will provide
an important source of tribal revenue to permit the Nation to
provide needed services and programs to the members of the**

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Nation; and

WHEREAS, it is in the Nation's interest to purchase the gaming devices from Sodak.

NOW, THEREFORE, BE IT RESOLVED THAT:

- 1. The Chairman of the Nation is authorized to negotiate and execute a sales and security agreement with Sodak for the purchase of gaming devices which includes the following provisions; (a) a limited waiver of sovereign immunity of the Nation only for purposes of the sales and security agreement with Sodak and only as it relates to the terms and conditions of the agreement; (b) a consent to the terms and conditions of the sales and security agreement being subject to, governed by, and construed according to the laws of the State of South Dakota; (c) a consent to the jurisdiction of the United States District Court for the District of South Dakota; and (d) a consent to waive jurisdiction in tribal court.**
- 2. Pursuant to the last paragraph of subsection 8(c) of the Authority's charter, the Chairman is further authorized to agree to provisions in the sales and security agreement by**

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which the Authority would be bound by the limited waivers and consents prescribed in clause 1 above.

3. Nothing contained in this limited waiver of sovereign immunity shall be construed or interpreted to apply to anything beyond the terms and conditions of the sales and security agreement, or as a limited or general waiver of the sovereign immunity of the Nation or the Authority other than as specifically provided in this Resolution.

The foregoing Resolution was passed by the Tohono O'Odham Legislative Council on the 17TH, day of SEPTEMBER, 1993 at a meeting at which a quorum was present with a vote of 1,484.5 FOR; 67.5 AGAINST; 113.0 NOT VOTING; and 98.0 [06] ABSENT, pursuant to the powers vested in the Council by Section 1(f), (i)(3) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL



Alex J. Ramon, Legislative Chairman

21st day of September, 19 93

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ATTEST:

Guinda Allen for:
Teresa M. Choyguha, Legislative Secretary

21st day of September, 1993.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 21st day of September, 1993 at 1:22 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

Alex J. Ramon
Alex J. Ramon, Legislative Chairman

APPROVED on the 21 day of September, 1993

DISAPPROVED) at 7:30 o'clock, P.M.

Sylvester Listo
SYLVESTER LISTO, Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 22nd day of September, 1993, at 12:08 o'clock, P.M.

Guinda Allen for:
Teresa M. Choyguha, Legislative Secretary

ACTION: APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY FOR PURPOSES OF ENTERING INTO A SALES CONTRACT WITH SODAK GAMING, INC. FOR THE PURCHASE OF GAMING DEVICES

Moved COUNCILMAN ANDREW PATRICIO

SECOND: COUNCILMAN MICHAEL FLORES

DATE: SEPTEMBER 17, 1993

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF Oidak 151.0	1. WILLARD JUAN, SR. (Delbert Thomas)	75.5	X			
	2. MARY ANN ANTONE (Nellie Miguel)	75.5	X			X
SELLS 290.0	1. ANDREW M. PATRICIO (Lucille Encinas)	145.0	X			
	2. JOSEPH T. JOAQUIN** (Allen W. Garica, Jr.)	145.0	X			
SCHUK TOAK 113.0	1. FRANCES FRANCISCO ()	56.5			X	
	2. KENNETH J. ANTONE ()	56.5			X	X
SAN XAVIER 135.0	1. EUGENE ENIS, SR. ()	67.5		X		
	2. DENNIS RAMON ()	67.5	X			
BABOQUIVARI 230.0	1. FRANCES MIGUEL ()	115.0	X			
	2. EARL A. FRANCISCO (Lucilda Norris)	115.0	X			X
GU ACHI 180.0	1. WILLARD ANITA** ()	90.0	X			
	2. ALEX J. RAMON (Marian Johnson)	90.0	X			
PISINEMO 128.0	1. CHESTER ANTONE (Fernando Valentine)	64.0	X			
	2. JOHNSON M. JOSE (Roseleen Antone)	64.0	X			
SAN LUCY 98.0	1. JOHN RENO ()	49.0				X
	2. ALBERT MANUEL, JR. (Ernestine Marquez)	49.0				X
GU VO 124.0	1. EMILIO LEWIS ()	62.0	X			
	2. MICHAEL FLORES (Fern Salcido)	62.0	X			
HICKIWAN 136.0	1. MANUEL OSEQUEDA, JR. ()	68.0	X			
	2. LLOYD FRANCISCO (Henry A. Ramon)	68.0	X			
CHUKUT KUK 178.0	1. ALBERTA M. LOPEZ (Berdella Jose)	89.0	X			X
	2. KENNETH WILLIAMS ()	89.0	X			
TOTAL		1,763.0	1,484.5	67.5	113.0	98.0 [06]

****PASSED VOTES**