

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving a limited waiver of sovereign immunity for purpose
of entering into a Sublease Agreement with Tucson Airport
Authority, Inc. for the lease of office space)**

RESOLUTION NO. 94-128

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, or for the rental of off-Reservation property, 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, on behalf of its casino operation, is in the process of negotiating with the Tucson Airport Authority, Inc., to lease office space at the Tucson International Airport for use by the casino's accounting department; and

WHEREAS, under the terms of the proposed lease, the Nation will lease 9,270 square feet of office space at the Tucson

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International Airport for a term of one year, with the option to renew the sublease for two additional one year terms, at the rate of \$4,635 per month; and

WHEREAS, the Nation is requiring as a condition of the lease that the Airport Authority's right to recover damages as a result of default under the agreement be limited to either insurance (for those instances involving events or occurrences subject to and insured under the sublease agreement) or to the security deposit (in the event of failure to pay rent pursuant to the terms of the sublease agreement); and

WHEREAS, the Airport Authority is requiring as a condition of the lease that the Nation consent to the jurisdiction of the state or federal court in Arizona only insofar as to permit an action for repossession of the leased premises and the eviction of the Nation from the leased premises in the event the Nation is in breach of the terms and conditions of the agreement and fails to vacate the premises; and

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4 **WHEREAS, the Tohono O'odham Gaming Authority was established**
5 **by a charter adopted by the Legislative Council pursuant**
6 **to Resolution 93-311; and**

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

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12 **WHEREAS, under section 7(a) of the Gaming Authority's Charter,**
13 **one of such conditions is that the Nation shall transfer**
14 **the assets, and the Gaming Authority shall assume**
15 **certain of the liabilities, related to such gaming**
16 **operations; and**

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18 **WHEREAS, it is contemplated that following execution of the**
19 **proposed sublease agreement the Nation will transfer its**
20 **interests in the sublease to the Gaming Authority, and**
21 **the Gaming Authority will assume all liability under such**
22 **agreement; and**

23
24 **WHEREAS, the Airport Authority will require a limited waiver of**
25 **immunity from the Gaming Authority as a condition of**
26 **any consent to such transfer and assumption; and**

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28 **WHEREAS, it is in the Nation's interest to locate additional office**

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space for the casino's accounting operations.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Chairman of the Nation is authorized to negotiate and execute a sublease agreement with the Airport Authority for the lease of office space which includes the following provisions:

(a) The Airport Authority's right to recover damages as a result of a default under the sublease agreement shall be limited to:

(i) In those instances involving events or occurrences subject to and insured pursuant to the sublease agreement, the Airport Authority shall look solely to such insurance, which in all instances shall, with regard to fire and casualty insurance, be in an amount not less than the replacement value of the premises, and with regard to general liability insurance, be in an amount not less than \$1,000,000.00.

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(ii) With regard to damages arising as a result of Tenant's failure to pay rent pursuant to the terms of the sublease agreement, the Airport Authority shall be limited to the security deposit of the sublease, which shall be in an amount not less than three months' rent.

(b) The Nation's consent to a limited waiver of sovereign immunity from suit with regard to any and all actions maintained by the Airport Authority for the recovery and repossession of the leased premises and, if necessary, eviction in the event of a failure to surrender the leased premises.

(c) The Nation's consent to the jurisdiction of the state or federal court in Arizona for purposes of enforcement of clause 1(b), above.

2. Pursuant to the last paragraph of subsection 8(c) of the Gaming Authority's Charter, the Chairman is further authorized to agree to provisions in the sublease agreement by which the Gaming Authority

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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 sublease agreement, or as a limited or general waiver of the sovereign immunity of the Nation or the Gaming Authority other than as specifically provided in this Resolution.**

The foregoing Resolution was passed by the Tohono O'Odham Legislative Council on the 6TH day of APRIL, 1994 at a meeting at which a quorum was present with a vote of 1,763.0 FOR; -0- AGAINST; -0- NOT VOTING; and 04 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

06th day of April, 1994

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ATTEST:

Teresa M. Choyguha
Teresa M. Choyguha, Legislative Secretary

06th day of April, 1994.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 7 day of April, 1994 at 4:12 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

Earl A. Ramirez
Alex J. Ramon, Legislative Chairman

APPROVED on the 7 day of April, 1994

DISAPPROVED at 5:24 o'clock, P.M.

Sylvester Listo
**SYLVESTER LISTO, Chairman
TOHONO O'ODHAM NATION**

Returned to the Legislative Secretary on the 8th day of April, 1994, at 9:00 o'clock, A.M.

Guacinda Allen for:
Teresa M. Choyguha, Legislative Secretary

ACTION: APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY FOR PURPOSE OF ENTERING INTO A SUBLEASE AGREEMENT WITH TUCSON AIRPORT AUTHORITY, INC. FOR THE LEASE OF OFFICE SPACE
MOVED: COUNCILMAN ANDREW PATRICIO **SECOND:** COUNCILWOMAN ALBERTA LOPEZ
DATE: APRIL 06, 1994

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			
SELLS 290.0	1. ANDREW M. PATRICIO (Lucille Encinas)	145.0	X			
	2. JOSEPH T. JOAQUIN (Allen W. Garcia, Jr.)	145.0	X			
SCHUK TOAK 113.0	1. FRANCES FRANCISCO ()	56.5	X			
	2. KENNETH J. ANTONE ()	56.5	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 ()	115.0	X			
GU ACHI 180.0	1. WILLARD ANITA ()	90.0	X			
	2. ALEX J. RAMON (Marian Johnson)	90.0	X			X
PISINEMO 128.0	1. CHESTER ANTONE (Fernando Valentine)	64.0	X			X
	2. JOHNSON M. JOSE (Roseleen Antone)	64.0	X			
SAN LUCY 98.0	1. JOHN RENO ()	49.0	X			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			X
HICKIWAN 136.0	1. MANUEL OSEQUEDA, JR. ()	68.0	X			
	2. LLOYD FRANCISCO ()	68.0	X			
CHUKUT KUK 178.0	1. ALBERTA M. LOPEZ (Berdella Jose)	89.0	X			
	2. KENNETH WILLIAMS ()	89.0	X			
TOTAL		1,763.0	1,763.0	-0-	-0-	04

****PASSED VOTES**