

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Relating to a Loan Transaction Between the Tohono O'odham Gaming Enterprise**  
**and Bank of America, N.A.)**

**RESOLUTION NO. 14-560**

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 JPMorgan Chase Bank, N.A., a**  
22 **national banking association ("*JPMorgan*"), as administrative agent on behalf of**  
23 **its and others, under the terms of a loan agreement entered into in accordance**  
24 **with Resolution No. 06-105 and modified in accordance with Resolution No. 07-**  
25 **690, Resolution No. 08-515, and Resolution No. 13-116 (the "*JPMorgan Loan*");**  
26 **and**

27 **WHEREAS, the Gaming Enterprise has been negotiating with Bank of America, N.A., a**  
28 **national banking association ("*BofA*"), to obtain a new loan, the proceeds of**  
29 **which the Gaming Enterprise will use to pay off the JPMorgan Loan, to fund new**

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1                    **construction, to pay fees and expenses associated with the financing, and to**  
2                    **provide working capital; and**

3 **WHEREAS, the Gaming Enterprise negotiated the terms of a loan agreement and related**  
4                    **documents (the "*Loan Documents*"), which set forth the terms on which BofA is**  
5                    **willing to make the loan and which will include, but may not be limited to:**

6                    **(a) A Business Loan Agreement between the Gaming Enterprise and**  
7                    **BofA (the "*Loan Agreement*");**

8                    **(b) A form of Note to evidence the obligations of the Gaming Enterprise**  
9                    **under the Loan Agreement; and**

10                   **(c) A Security Agreement between the Gaming Enterprise and BofA, to**  
11                   **secure the Gaming Enterprise's obligations through a lien or liens on**  
12                   **the gross gaming revenue and other personal property gaming assets**  
13                   **securing the Gaming Enterprise's obligations (the "*Collateral*").**

14                   **; and**

15 **WHEREAS, BofA has conditioned its willingness to make a loan to the Gaming Enterprise on**  
16                   **the Nation entering into a Non-Impairment And Estoppel Agreement with BofA**  
17                   **and providing BofA with a Closing Certificate executed by the Nation**  
18                   **(collectively, the "*Non-Impairment Agreement*"); and**

19 **WHEREAS, the Loan Documents require a limited waiver of the sovereign immunity of the**  
20                   **Gaming Enterprise in favor of BofA to allow the Loan Documents to be enforced**  
21                   **in accordance with their terms and the Non-Impairment Agreement requires a**  
22                   **limited waiver of the sovereign immunity of the Nation in favor of BofA to allow it**  
23                   **to be enforced in accordance with its terms, all of which generally require the**  
24                   **arbitration of disputes; and**

25 **WHEREAS, the Nation has not enacted a version of the Uniform Commercial Code, an**  
26                   **arbitration act, or similar laws of the sort that typically would govern complex**  
27                   **commercial transactions of the nature contemplated in the Loan Documents,**  
28                   **nor do the Nation's Constitution, laws, or customs address the interpretation**  
29                   **and enforcement of transactions such as those contemplated in the Loan**  
30                   **Documents; and**

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1 **WHEREAS, BofA has conditioned its willingness to make a loan to the Gaming Enterprise on**  
2 **the Loan Documents and the Non-Impairment Agreement being interpreted and**  
3 **enforced under the substantive provisions of Arizona law, including Art. II, § 25,**  
4 **of the Arizona Constitution relating to the impairment of contracts and the**  
5 **applicable provisions of Arizona's version of the Uniform Commercial Code, so**  
6 **BofA can be assured that the Loan Documents and the Non-Impairment**  
7 **Agreement will be interpreted and enforced in accordance with their terms; and**

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

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

23 **WHEREAS, the Nation's best interests will be served by the Gaming Enterprise obtaining**  
24 **financing from BofA in accordance with the terms of the Loan Documents, the**  
25 **Nation entering into the Non-Impairment Agreement, the Nation granting the**  
26 **requested limited waivers of sovereign immunity, and the Nation providing that**  
27 **the Loan Documents and the Non-Impairment Agreement will be interpreted**  
28 **and enforced under the substantive provisions of Arizona law and in accordance**  
29 **with specified provisions relating to arbitration; and**

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

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

6 **1. Limited Waiver of the Gaming Enterprise's Immunity. The Nation hereby**  
7 **grants a limited waiver of the sovereign immunity of the Gaming**  
8 **Enterprise from suit or action in favor of BofA on the terms set forth in**  
9 **Exhibit A to this Resolution and in lieu of the provisions of Section 8(b)(2)**  
10 **of the Charter.**

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

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

30

**4. Applicable Laws.**

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

**B. The transactions contemplated under the Loan Documents and the Non-Impairment Agreement bear a reasonable relation to the State of Arizona, such that the Nation, the Gaming Enterprise, and BofA may agree that the Uniform Commercial Code will govern their rights and duties under the Loan Documents and the Non-Impairment Agreement. The method of the creation, the effect of perfection and non-perfection, the priority among competing creditors, and the enforcement of all security interests granted by the Gaming Enterprise or the Nation to BofA in accordance with the Loan Documents and the Non-Impairment Agreement will be governed by the Uniform Commercial Code, as defined above. For purposes of the security interests to be granted under the Loan Documents and the Non-Impairment Agreement, (i) the "location" of the Gaming Enterprise and the Nation will be Sahuarita, Arizona; and (ii) the office in which to file a financing statement to perfect a security interest in the Collateral will be the Office of the**

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1                   **Secretary of State of Arizona, except for as-extracted collateral,**  
2                   **timber to be cut, or goods that are or are to become fixtures. For**  
3                   **purposes of Section 47-9109(D)(14) of the Uniform Commercial**  
4                   **Code, the Nation acknowledges that the Gaming Enterprise is not a**  
5                   **“governmental unit” of the State of Arizona or any other state in**  
6                   **the United States.**

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

26                   **D. Any laws of the Nation that conflict with or are inconsistent with**  
27                   **the provisions of this Resolution, the Loan Documents, or the Non-**  
28                   **Impairment Agreement, other than the Nation's Constitution, will**  
29                   **be inapplicable to the Loan Documents, the Non-Impairment**

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**Agreement, and the Collateral to the extent of any such conflict or inconsistency.**

**E. The Nation hereby adopts the following provisions as the Arbitration Provisions applicable to the Loan Documents, the Non-Impairment Agreement, and the transactions contemplated thereby, which provisions shall be enforceable as a law of the Nation: (a) the agreements of the Nation and the Gaming Enterprise in the Loan Documents and the Non-Impairment Agreement to settle by arbitration any controversy or claim arising under the Loan Documents, Non-Impairment Agreement, and the transactions contemplated thereby are valid, irrevocable and enforceable; and (b) in any proceeding in the Nation's Courts relating to such claims: (i) the Nation's Courts will apply the procedural rules of the Nation's Courts and the substantive law of the jurisdiction selected by the parties to the Loan Documents and the Non-Impairment Agreement and authorized by these Resolutions; (ii) if any suit or proceeding is brought in the Nation's Courts upon any issue referable to arbitration under the Non-Impairment Agreement or the Loan Documents, the Court, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration; (iii) if any party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under the Non-Impairment Agreement or the Loan Documents petitions the Nation's Courts for an order directing that such arbitration proceed in the manner provided for in such agreement, the Court shall hear the parties and, upon being satisfied that the making of**

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

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

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

27                  **B. After the JPMorgan Loan is paid off and upon BofA's perfection of**  
28                  **its lien, the lien created by the Gaming Enterprise's pledge of the**  
29                  **Collateral under the Security Agreement will be superior to, and**  
30                  **will have first priority over, all other liens, and will be valid and**



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1 binding from the time the pledge is made as evidenced by the  
2 execution and delivery of the Loan Documents.

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

9 6. Economic Development Reserve. The Legislative Council further  
10 reserves from appropriation and expenditure the funds identified in the  
11 Economic Development Reserve Schedule, which is incorporated by this  
12 reference and which shall not be reported or disclosed, to meet the  
13 Nation's obligations under the Non-Impairment Agreement, as it may be  
14 amended; provided that the Nation's treasurer shall report the status of  
15 the reserve to the Investment Committee at least quarterly and to the  
16 Legislative Council during the treasurer's quarterly financial updates.  
17 The Legislative Council may adjust the Economic Development Reserve  
18 at the recommendation of the Investment Committee and by Legislative  
19 Council resolution to reflect the Nation's obligations under the Non-  
20 Impairment Agreement.

21 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 17<sup>TH</sup>  
22 day of DECEMBER, 2014 at a meeting at which a quorum was present with a vote of 2,946.5 FOR;  
23 ~~0~~ AGAINST; [01] NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council  
24 by Article V and Article VI of 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  
27 June 18, 1934 (48 Stat.984).  
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30 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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32 Timothy Joaquin, Legislative Chairman  
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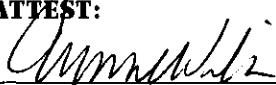
34 30 day of December, 2014  
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1 **ATTEST:**

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4 **Evonne Wilson, Legislative Secretary**

5 24 day of December, 2014  
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7  
8 **Said Resolution was submitted for approval to the office of the Chairman of the Tohono**  
9 **O'odham Nation on the 30 day of December, 2014 at 3:31 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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18 **Timothy Joaquin, Legislative Chairman**

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22  **APPROVED**

23 on the 30 day of December, 2014

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25  **DISAPPROVED**

26 at 5:05 o'clock, P .m.

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29 **NED NORRIS, JR., CHAIRMAN**  
30 **TOHONO O'ODHAM NATION**

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36 **Returned to the Legislative Secretary on the 31 day of**  
37 **December, 2014, at 9:05 o'clock, a .m.**

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42 **Evonne Wilson, Legislative Secretary**

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**ACTION: RELATING TO A LOAN TRANSACTION BETWEEN THE TOHONO O'ODHAM GAMING ENTERPRISE AND BANK OF AMERICA, N.A.**

**Moved: COUNCILWOMAN BARBARA HAVIER**

**SECOND: COUNCILWOMAN FRANCES MIGUEL**

**DATE: DECEMBER 17, 2014**

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
<b>SIF OIDAK 224.2</b>	1. LUCINDA ALLEN (Nicholas Jose)	112.1	X			
	2. MARY LOPEZ ( )	112.1	X			
<b>SELLS 502.0</b>	1. ARTHUR WILSON (Ophelia Patten)	251.0	X			
	2. BARBARA HAVIER (Beverly Rivas)	251.0	X			
<b>SCHUK TOAK 174.2</b>	1. FRANCES B. STEPHENS (Anthony J. Rios)	87.1	X			
	2. QUINTIN C. LOPEZ (John Fendenheim)	87.1	X			
<b>SAN XAVIER 224.2</b>	1. HILARION CAMPUS (Daniel L.A. Preston, III)	112.1	X			
	2. RACHEAL VILSON-STONER <i>(Absent)</i> (Olivia Villegas-Liston) <i>(Present)</i>	112.1	X			X
<b>SAN LUCY 219.6</b>	1. DIANA MANUEL (Gloria Ramirez)	109.8	X			
	2. JANA MONTANA ( )	109.8	X			
<b>PISINEMO 210.6</b>	1. CHESTER ANTONE <i>(Absent)</i> (Tony Murrietta) <i>(Present)</i>	105.3	X			
	2. EDWARD MANUEL, SR. ( )	105.3	X		X	
<b>HICKIWAN 196.9</b>	1. LOUIS R. LOPEZ ( )	98.45	X			
	2. SANDRA ORTEGA <i>(Absent)</i> (Manuel Osequeda, Jr.) <i>(Present)</i>	98.45	X			X
<b>HIA CED 19.6</b>	1. PATRICK ANDREWS (Janice E. Paul)	9.8	X			
	2. VIRGINIA GARCIA	9.8	X			
<b>GU VO 241.0</b>	1. GRACE MANUEL (Floyd Flores)	120.5	X			
	2. PAMELA ANGHILL (Jeffery Antone, Sr.)	120.5	X			
<b>GU ACHI 257.3</b>	1. TIMOTHY L. JOAQUIN ( )	128.65	X			
	2. LORETTA LEWIS (Louis Johnson)	128.65	X			
<b>CHUKUT KUK 319.2</b>	1. ETHEL GARCIA (Marlakay C. Henry)	159.6	X			
	2. BILLMAN LOPEZ ( )	159.6	X			
<b>BABOQUIVARI 357.7</b>	1. FRANCES MIGUEL (Roberta Harvey)	178.85	X			
	2. VERNON J. SMITH (Gloria Zazueta)	178.85	X			
<b>TOTAL</b>		<b>2,946.5</b>	<b>2,946.5</b>	<b>-0-</b>	<b>[01]</b>	<b>[02]</b>