

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving a Third Modification to the Loan Transaction Among the Tohono
O'odham Gaming Enterprise, as borrower, JPMorgan Chase Bank, N.A.,
as Administrative Agent, and Various Lenders)

RESOLUTION NO. 11-427

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, 1934 (48**
3 **Stat. 984; 25 U.S.C. § 476), which exercises sovereignty over both its members and its**
4 **lands; and**

5 **WHEREAS, pursuant to Article VI of the Nation's Constitution, the Tohono O'odham Legislative**
6 **Council (the "*Legislative Council*") is vested with all of the legislative powers of the**
7 **Nation and is empowered to enact laws, ordinances, and resolutions necessary or**
8 **incidental to the exercise of its legislative powers; and**

9 **WHEREAS, the Legislative Council of the Nation has enacted an Ordinance for Regulation of**
10 **Gaming Activities within the Tohono O'odham Nation (the "*Gaming Ordinance*"), which**
11 **ordinance was adopted pursuant to Resolution No. 93-296 and amended by Resolution**
12 **97-150, Resolution 97-168, Resolution 97-303, Resolution 99-206, Resolution No. 03-**
13 **084, and Resolution 07-300 (16 Tohono O'odham Code Chapter 1); and**

14 **WHEREAS, the Gaming Ordinance provides that all gaming activities conducted within the Nation**
15 **shall be owned entirely by the Nation and conducted and operated by a tribal**
16 **enterprise; and**

17 **WHEREAS, the Tohono O'odham Gaming Enterprise (the "*Gaming Enterprise*") is a tribal**
18 **governmental enterprise of the Nation established pursuant to Article VI of the**
19 **Nation's Constitution as the tribal enterprise responsible for operating the Nation's**
20 **gaming facilities and conducting gaming activities in compliance with the**
21 **requirements of the Gaming Ordinance; and**

22 **WHEREAS, the Legislative Council adopted the Charter of the Gaming Enterprise (the "*Charter*")**
23 **by Resolution No. 93-311 and amended the Charter by Resolution 02-294, Resolution**
24 **No. 03-231, and Resolution 04-513 (16 Tohono O'odham Code Chapter 2); and**

25 **WHEREAS, the Gaming Enterprise currently operates three gaming facilities, known as the Desert**
26 **Diamond Casino & Hotel (Tucson), the Desert Diamond Casino (Sahuarita), and the**
27 **Desert Diamond Casino (Why); and**

28 **WHEREAS, Section 5(d)(11) of the Charter expressly authorizes the Gaming Enterprise to borrow**
29 **funds, subject to the limitations that (i) the Gaming Enterprise may not incur**
30 **obligations in excess of its ability to pay as required and (ii) the Nation shall not be**

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1 **liable for the debts or obligations of the Enterprise; and**

2 **WHEREAS, by Resolution No. 06-105, the Legislative Council authorized the Gaming Enterprise to**
3 **enter into a loan transaction with JPMorgan Chase Bank, N.A., a national banking**
4 **association (the "*Lender*")**, as administrative agent on behalf of itself and other
5 **lenders (the "*Administrative Agent*") (collectively, the "*Lenders*")**, for a loan that
6 **originally was expected to have an aggregate principal amount of \$90,000,000.00 (the**
7 **"*Construction Loan*"; and**

8 **WHEREAS, on or about April 24, 2006, the Gaming Enterprise entered into a loan agreement and**
9 **related documents (the "*Loan Documents*")**, setting forth the terms on which the
10 **Administrative Agent and the Lenders made the Construction Loan, which included,**
11 **but which were not limited to:**

- 12 **(a) A Construction Loan Agreement among the Gaming Enterprise, the**
13 **Administrative Agent, and the Lenders (the "*Construction Loan Agreement*").**
- 14 **(b) A form of Note to evidence the obligations of the Gaming Enterprise under**
15 **the Construction Loan Agreement.**
- 16 **(c) A Security Agreement between the Gaming Enterprise and the**
17 **Administrative Agent to secure the Gaming Enterprise's obligations under**
18 **the Loan Documents through a lien or liens on the collateral securing the**
19 **Gaming Enterprise's obligations (the "*Collateral*").**
- 20 **(d) A Deposit Account Control Agreement between Borrower, the Administrative**
21 **Agent, and Depository Bank (JPMorgan Chase Bank, N.A.), to implement the**
22 **Gaming Enterprise's obligations under the Security Agreement.**
- 23 **(e) A UCC-1 Financing Statement to perfect the Administrative Agent's lien**
24 **rights under the Security Agreement.**
- 25 **(f) An Environmental Indemnification Agreement by Borrower in favor and for**
26 **the benefit of the Administrative Agent and the Lenders.**
- 27 **(g) An Estoppel Certificate by the Nation and the Gaming Enterprise in favor and**
28 **for the benefit of the Administrative Agent and the Lenders (the "*Estoppel***
29 ***Certificate*").**
- 30 **(h) A Resolution of the Management Board of the Gaming Enterprise**
31 **authorizing the Gaming Enterprise's execution of the Loan Documents.**
- 32 **(i) A Resolution of the Board of the San Xavier Development Authority.**

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1 **(j) A Closing Certificate executed by the Gaming Enterprise.**

2 **(k) A Disbursement and Rate Management Signature Authorization and**
3 **Instruction Form.**

4 **WHEREAS, on or about July 25, 2007, the Gaming Enterprise and the Administrative Agent entered**
5 **into a First Modification to Construction Loan Agreement (the "*First Modification*") to**
6 **reduce the rate of interest charged to the Gaming Enterprise under the Loan**
7 **Documents and to make various other minor changes to the Loan Documents, which**
8 **the Legislative Council approved in Resolution No. 07-690; and**

9 **WHEREAS, by Resolution No. 08-515, the Legislative Council authorized the Gaming Enterprise to**
10 **enter into a second loan transaction with the Lender, acting on its own behalf, for a**
11 **loan in the aggregate principal amount of \$7,500,000.00 (the "*Term Loan*"); and**

12 **WHEREAS, on or about September 29, 2008, the Gaming Enterprise and the Administrative Agent**
13 **entered into a loan agreement and related documents (the "*Term Loan Documents*")**
14 **setting forth the terms on which the Administrative Agent made the Term Loan; and**

15 **WHEREAS, on or about September 29, 2008 and in connection with the Term Loan, the Gaming**
16 **Enterprise and the Administrative Agent entered into a Second Modification to**
17 **Construction Loan Agreement, Intercreditor Agreement, and Modification to Loan**
18 **Agreement (the "*Second Modification*") which modified the Construction Loan**
19 **Agreement in various respects, principally to authorize the Term Loan and to provide**
20 **that the Lender's collateral under the Term Loan would be on an equal footing with**
21 **the Lenders' Collateral under the Construction Loan; and**

22 **WHEREAS, the Administrative Agent has presented an offer to the Gaming Enterprise to further**
23 **modify the Construction Loan Agreement (the "*Third Modification*") to, among other**
24 **things, permit the Gaming Enterprise to take an additional draw of approximately**
25 **\$41,000,000.00, the proceeds of which the Gaming Enterprise will use to pay off the**
26 **Term Loan and to pay the transaction costs associated with the Third Modification,**
27 **with the remainder of the proceeds used to create a sinking fund; and**

28 **WHEREAS, the Gaming Enterprise is negotiating the terms of the Third Modification and related**
29 **documents (the "*Third Modification Documents*"), which set forth the terms on which**
30 **the Administrative Agent is willing to enter into the Third Modification and which**
31 **include, but are not limited to, (i) a Third Modification to Construction Loan**
32 **Agreement and (ii) an updated Estoppel Certificate and Agreement evidencing the**

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1 Nation's consent to the Third Modification as the ground lessor for the Desert
2 Diamond Casino (Pima Mine Road) and the Desert Diamond Casino (Why) and
3 reaffirming the assurances provided in the original Estoppel Certificate; and

4 WHEREAS, the Commerce Committee and the Budget and Finance Committee of the Legislative
5 Council have reviewed the Third Modification and the Commerce Committee
6 recommends that the Gaming Enterprise enter into the Third Modification on terms
7 that are substantially the same as those set forth in the Third Modification
8 Documents; and

9 WHEREAS, the Legislative Council finds that the Nation's best interests will be served by the
10 Gaming Enterprise entering into the Third Modification with the Administrative Agent.

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

- 13 1. **Limited Waiver of the Gaming Enterprise's Immunity.** The provisions of
14 Paragraph 3 (including subparagraphs A - E) of Resolution No. 06-105 (captioned
15 Limited Waiver of the Gaming Enterprise's Immunity) shall apply to the
16 Construction Loan as modified by the First Modification, the Second Modification,
17 and the Third Modification.
- 18 2. **Applicable Laws.** The provisions of Paragraph 4 (including subparagraphs A - C)
19 of Resolution No. 06-105 (captioned Applicable Laws) shall apply to the
20 Construction Loan as modified by the First Modification, the Second Modification,
21 and the Third Modification.
- 22 3. **Authority to Execute Updated Estoppel Certificate and Agreement.** The Tohono
23 O'odham Legislative Council hereby authorizes the Chairman of the Nation to
24 execute an updated Estoppel Certificate and Agreement and to deliver it to the
25 Administrative Agent on behalf of the Nation, and to take all other actions
26 consistent with this Resolution that are necessary to consummate the Third
27 Modification. No further approval, consent, notice, or filing shall be required
28 from the Legislative Council for the Chairman of the Nation to execute and deliver
29 the updated Estoppel Certificate and Agreement.
- 30 4. **Limited Waiver of the Nation's Immunity.** The provisions of Paragraph 6 of
31 Resolution No. 06-105 (captioned Limited Waiver of the Nation's Immunity) shall
32 apply to the updated Estoppel Certificate and Agreement.

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1 **5. Binding Obligation; Impairment. When the Third Modification Documents are**
2 **fully executed, the Loan Documents, as amended by the First Modification, the**
3 **Second Modification, and the Third Modification, will be valid, binding, and**
4 **enforceable obligations of the Gaming Enterprise. The lien created by the pledge**
5 **of the Collateral under the Security Agreement will continue to be superior to all**
6 **other liens on the Collateral, will have first priority, and will be valid and binding**
7 **from the time the pledge was made. The Nation will take no action that would**
8 **materially impair the rights, liens, interests, and/or remedies provided in the**
9 **Loan Documents, as amended by the First Modification, the Second Modification,**
10 **and the Third Modification, without the prior written consent of the**
11 **Administrative Agent. No provision of the Nation's Constitution or laws, no tribal**
12 **custom, and no provision of the Nation's revenue allocation plan adopted under**
13 **25 U.S.C. § 2710(d)(3) impairs the Loan Documents, as amended by the First**
14 **Modification, the Second Modification, and the Third Modification, or impairs the**
15 **Gaming Enterprise's ability to perform under the Loan Documents, as amended**
16 **by the First Modification, the Second Modification, and the Third Modification.**

17 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 14TH Day**
18 **of SEPTEMBER, 2011 at a meeting at which a quorum was present with a vote of 2,780.60 FOR; -0-**
19 **AGAINST; [01] NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by**
20 **Section 1 (c)(2) of Article VI of the Constitution of the Tohono O'odham Nation, adopted by the**
21 **Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant**
22 **Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June**
23 **18, 1934 (48 Stat. 984).**

24
25 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

26
27 
28
29 **Timothy Joaquin, Legislative Chairman**

30
31 21 day of September, 2011

32
33 **ATTEST:**

34 
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36 **Evonne Wilson, Legislative Secretary**

37
38 20 day of September, 2011

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Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 21 day of September, 2011 at 2:52 o'clock, P.M., pursuant to the provisions of Section 4 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

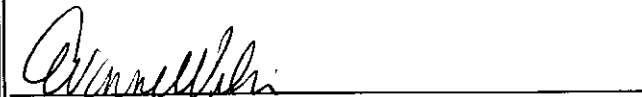
APPROVED

on the 22 day of September, 2011
at 8:55 o'clock, A.M.

DISAPPROVED


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

Returned to the Legislative Secretary on the 22 day of
September, 2011, at 9:53 o'clock, A.M.


Evonne Wilson, Legislative Secretary

ACTION: APPROVING A THIRD MODIFICATION TO THE LOAN TRANSACTION AMONG THE TOHONO O'ODHAM GAMING ENTERPRISE, AS BORROWER, JPMORGAN CHASE BANK, N.A., AS ADMINISTRATIVE AGENT, AND VARIOUS LENDERS

MOVED: COUNCILWOMAN FRANCES MIGUEL

SECOND: COUNCILWOMAN FRANCES G. ANTONE

DATE: SEPTEMBER 14, 2011

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 342.0	1. FRANCES MIGUEL (Roberta Harvey)	171.0	X			
	2. FRANCES G. ANTONE (Vernon Smith)	171.0	X			
CHUKUT KUK 302.2	1. ETHEL GARCIA (Sara Mae Williams)	151.10	X			
	2. BILLMAN LOPEZ ()	151.10	X			
GU ACHI 244.9	1. TIMOTHY L. JOAQUIN (Rose Johnson Antone)	122.45		X	X	
	2. CYNTHIA E. MANUEL (Louis L. Johnson)	122.45		X		
GU VO 226.7	1. GRACE MANUEL (Floyd Flores)	113.35	X			
	2. PAMELA ANGHILL (Angela Ortiz)	113.35	X			X
HICKIWAN 186.3	1. LOUIS R. LOPEZ (Michelle Ortega)	93.15		X		
	2. SANDRA ORTEGA ()	93.15		X		X
PISINEMO 200.7	1. CHESTER ANTONE <i>(Absent)</i> (Tony Murrietta) <i>(Present)</i>	100.35	X		X	
	2. EDWARD MANUEL (Gerald Fayuant)	100.35	X			
SAN LUCY 204.6	1. LORRAINE EILER ()	102.30	X			X
	2. JANA MONTANA (Gloria Ramirez)	102.30	X			
SAN XAVIER 215.8	1. HILARION CAMPUS ()	107.90	X			
	2. OLIVIA VILLEGAS-LISTON <i>(Absent)</i> (Eugene Enis) <i>(Present)</i>	107.90	X			
SCHUK TOAK 169.8	1. FRANCES B. CONDE ()	84.90	X			
	2. FREDERICK JOSE (Phyllis Cachora)	84.90	X		X	
SELLS 475.7	1. ARTHUR WILSON (Kimberly Mull)	237.85		X		
	2. EVELYN B. JUAN MANUEL ()	237.85		X		
SIF OIDAK 211.9	1. NICHOLAS JOSE ()	105.95	X		X	
	2. MARY LOPEZ ()	105.95	X			
TOTAL		2,780.60	1,873.70	906.90	[04]	[03]