



Mashpee Wampanoag Tribe

TRIBAL COUNCIL RESOLUTION 2020-RES-067 EMERGENCY RESOLUTION APPROVING EXTENSIONS FOR GENTING FINANCING DOCUMENTS AND OTHER RELATED MATTERS

- WHEREAS, This Resolution is being adopted at a meeting (this "Meeting") of the Tribal Council (the "Tribal Council"), the governing body of the Mashpee Wampanoag Tribe (the "Tribe") referred to in the Tribe's Constitution and By-Laws (the "Constitution") that is open to all tribal members, spouses and invited guests of the Tribal Council in accordance with Section 4(b) of 2009-ORD-007 (the "Meeting Ordinance") at which members of the Tribe have had a reasonable opportunity to be heard in accordance with Article IX, § 1(c) of the Constitution regarding the matters addressed in this resolution (this "Resolution"); and
- WHEREAS, This Meeting is an emergency meeting of the Tribal Council within the meaning of the Constitution that has been convened by the Chairperson of the Tribe; and
- WHEREAS, This meeting is being held through means of electronic communication as permitted by Section 8(c)(3) of 2009-ORD-003, entitled "Regulating Adoption, Amendment or Repeal of Ordinances and Resolutions", which provides that for emergency and special meetings the Tribal Council may consider and vote on a proposed resolution during a meeting conducted by phone and called in accordance with the requirements of special or emergency meetings in such Ordinance; and
- WHEREAS, In accordance with the Constitution, the Vice Chairperson of the Tribe is serving as the presiding officer of this Meeting; and
- WHEREAS, The Authority and the Tribe have an immediate need to obtain funds and obtain the Extensions as described below; and
- WHEREAS, The Presiding Officer and those members of the Council in attendance of this meeting have determined that such funding and the Extensions are critical and necessary for the preservation or protection of the immediate health, peace, safety, or property of the Tribe within the meaning of 2009-ORD-003; and
- WHEREAS, Pursuant to Article IX, § 1(e)(1) of the Constitution a quorum for this Meeting is seven (7) members of the Tribal Council; and



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WHEREAS, Pursuant to Article VI, § 2 of the Constitution, the Tribal Council is empowered to exercise certain powers, including the power to promote and protect the economic security and general welfare of the Tribe and its members, and the power to negotiate and enter into contracts with other governments and with private persons and corporate entities; and

WHEREAS, By emergency ordinance 2013-ORD-001 (as superseded by non-emergency ordinance 2013-ORD-001, as amended to date, the "Authority Ordinance"), the Tribe created the Mashpee Wampanoag Tribal Authority (the "Authority") as a limited liability company under the laws of the Tribe, having a legal existence separate and apart from the Tribe; and

WHEREAS, Previously, the following agreements have been entered into: (a) a certain Amended and Restated Loan Agreement dated as of August 9, 2012, with the Authority as borrower, the Tribe as a party, and Arkana Limited as the "Lender" ("Arkana") (as amended to date, the "Arkana Loan Agreement"), pursuant to which the Authority issued an Amended and Restated Promissory Note dated as of August 9, 2012, in the principal amount of \$24,850,960.06 as of August 9, 2012 (the "Arkana Note"); (b) a certain Note Purchase Agreement dated August 10, 2012, with the Authority as issuer, the Tribe as a party, and Sierra Springs SDN Bhd ("Sierra Springs"), as a successor to the "Purchaser" referred to therein (as amended to date, the "Sierra Springs Note Purchase Agreement"), pursuant to which the Authority has issued an outstanding Consolidated Promissory Note 21 dated February 24, 2016, in the maximum principal amount of \$175,000,000.00 ("Sierra Springs Note 21"); and (c) a certain Note Purchase Agreement dated March 30, 2016, with the Authority as issuer, the Tribe as a party, and Genting Massachusetts LLC ("GMA") as the "Purchaser" (as amended to date, the "GMA Note Purchase Agreement") pursuant to which the Authority has issued an outstanding a Fifth Amended and Restated Consolidated Promissory Note 1 dated January 30, 2019, in the maximum principal amount of \$180,000,000.00 (the "GMA Note 1," and together with the Arkana Loan Agreement, the Arkana Note, the Sierra Springs Note Purchase Agreement, Sierra Springs Note 21, the GMA Note Purchase Agreement, the "Existing Documents"); and

WHEREAS, Each of the Arkana Note, Sierra Springs Note 21 and GMA Note 1 (each, a "Note") has an outside maturity date of December 31, 2020 (with respect to each Note, the "Maturity Date"); and each of the Arkana Loan Agreement, Sierra Springs Note Purchase Agreement and GMA Note Purchase Agreement (each, a "Credit Agreement") restricts the Authority from, among other things, seeking



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certain third party financing through an exclusivity period that ends on December 31, 2020 (each, an "Exclusivity Period End Date"); and

WHEREAS, The Tribe and the Authority desire to:

- (1) extend each of the Maturity Date for the Arkana Note and the Exclusivity Period End Date in its related Credit Agreement to be December 31, 2021, by entering into with Arkana a Eighteenth Amendment to Amended and Restated Loan Agreement (the "Arkana Loan Agreement Amendment"), a form of which has been made available for review by the Tribal Council;
- (2) extend each of the Maturity Date of the Sierra Springs Note 21 and the Exclusivity Period End Date in its related Credit Agreement to be December 31, 2021, by entering into with Sierra Springs a Twentieth Amendment to Note Purchase Agreement (the "Sierra Springs Note Purchase Agreement Amendment"), a form of which has been made available for review by the Tribal Council; and
- (3) Extend the Maturity Date of GMA Note 1 and the Exclusivity Period End Date in its related Credit Agreement to be December 31, 2021, by entering into with GMA an Sixteenth Amendment to Note Purchase Agreement (the "GMA Note Purchase Agreement Amendment"), a form of which has been made available for review by the Tribal Council;

WHEREAS, In connection with each above-described extensions of the Maturity Dates and amendments the Exclusivity End Dates (collectively, the "Modifications"), it is proposed that SE Mass II LLC and Genting Management Services, LLC, as applicable, waive in writing until December 31, 2021, certain defaults under a certain Development and Construction Agreement dated August 30, 2012 and a certain Amended and Restated Management Agreement dated August 29, 2012 (collectively, the foregoing waivers being the "Waiver Letters"); and

NOW, THEREFORE, BE IT RESOLVED BY THE TRIBAL COUNCIL:

Section 1. General Findings. The members of the Tribal Council hereby determine and find that (a) the Tribal Council is the duly elected and governing body of the Tribe, with full power and authority to adopt this Resolution, (b) the Tribal Council's adoption of this Resolution is in the best interest of the Tribe, the Authority and the members of the Tribe, (c) the matters stated in the "Whereas" clauses of this Resolution are true and correct; (d) the Authority is validly existing under the Authority Ordinance; (e) the Authority Ordinance



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has not been amended, repealed or modified, and is in full force and effect under the laws of the Tribe; (f) the Modifications, the Documents defined below and any other documentation that sets forth the terms of or secures the forgoing, all relate to "Commercial Transactions" within the meaning of Ordinance 2009-ORD-008 (Commercial Transactions Ordinance); and (g) no laws, ordinances, rules, regulations, resolutions or other actions of the Tribal Council or any of the agencies or instrumentalities of the Tribe, either written or established by custom or tradition: (i) prohibit the Tribal Council from taking the actions herein set forth, or the consummation of the transactions contemplated herein; (ii) create any obligation of the Tribal Council to submit these matters for approval of or consent from any officer, body, agency or instrumentality of the Tribe other than the Board of Directors of the Authority and the Tribal Council, or any vote by members of the Tribe.

Section 2. Approval of the Modifications, the Documents, and the Waiver Letters. The Tribal Council hereby approves each of the Modifications and all documents that will reflect the terms of the foregoing or relate thereto, including the forms of the Arkana Loan Agreement Amendment, the Sierra Springs Note Purchase Agreement Amendment, the GMA Note Purchase Agreement Amendment and any provisions of other documents incorporated by reference therein, all as may be approved by an Authorized Representative referred to below (collectively, all of the foregoing being the "Documents"), with the approval by an Authorized Representative with respect to any Document to be conclusively established by the signature thereon of an Authorized Representative; and the Tribal Council authorizes the execution and delivery on behalf of the Tribe by an Authorized Representative of each of the Documents and the performance of each of such Documents by the Tribe and the Authority. The Tribal Council expressly acknowledges and agrees that each Document may include or incorporate by reference provisions relating to the Tribe's and/or the Authority's (a) limited waiver of sovereign immunity; (b) waiver of rights to require disputes to be heard before the Tribe's tribal court (the "Tribal Court") or other tribal tribunals; (c) consent to the jurisdiction of federal and state courts; (d) consent to the application of the laws of the State of New York; and (e) agreement that full faith and credit be given in the Tribal Court or other tribal tribunals of the Tribe to certain awards, orders, or decrees in federal or state court. The Tribal Council hereby approves the requests for and acceptances of the Waiver Letters.

Section 3. Authorization of Tribal Representative. In accordance with Section 4(e)(2) of the Meeting Ordinance, the Tribal Council hereby grants to the Tribal Vice Chairperson and, in the absence or unavailability of the Vice Chairperson, any other officer of the Tribal Council (each, an "Authorized Representative"), all requisite authority and power for and on behalf of the Tribe to negotiate and execute each of the Documents and to deliver the same to the Arkana, Sierra Springs and GMA, as applicable. Each Authorized Representative, all officers of the Tribal Council and all agents and attorneys of the Tribe shall



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have all requisite authority and power for and on behalf of the Tribe to enter into all agreements and instruments and to take such further and additional action as such person reasonably determines to be necessary or appropriate and in the interest of the Tribe to complete the transactions contemplated in this Resolution.

Section 4. Ratification and Approval of Existing Documents. The Tribal Council hereby ratifies, affirms, confirms and approves the execution and delivery of each of the Existing Documents, including all amendments thereof and extensions thereto, on behalf of the Tribe or the Authority and the performance thereof on behalf of the Tribe or the Authority, as applicable.

Section 5. Waiver of Sovereign Immunity; Full Faith and Credit. Being fully advised, and independent of the terms of any Document, but subject to a Document being executed and delivered by each of the Tribe and the Authority who is a party thereto, the Tribal Council hereby irrevocably waives the sovereign immunity of the Tribe and the Authority and consents to dispute resolution upon the terms as are set forth in or incorporated by reference in such Document. Subject to provisions in the Constitution that the Tribal Council and the Tribal Judiciary are separate but equal branches of the Tribe's government, and any limitations or restrictions arising from such provisions, the Tribal Court is directed to give full faith and credit to any award, order or decree rendered by any federal or state court in accordance with this Resolution and any Document, and, to the extent reasonably necessary, the Tribal Council agrees that it will cause the Tribe's police powers to be exercised to secure and support any enforcement efforts, and all police or other law enforcement officials of the Tribe shall carry out any orders that may be entered by the Tribal Court pursuant to this Resolution.

Section 6. Certification, Reliance. The Secretary of the Tribe is authorized to certify to the name and signature of the Authorized Representative, and each of Arkana, Sierra Springs and GMA shall be fully protected in relying on the signature or other authority (whether or not properly used) of the person whose name and signature is so certified, or refusing to honor any signature or authority not so certified. The Secretary and other officers of the Tribe are also authorized to certify to the genuineness or conformity to original of each Document, including laws of the Tribe and resolutions of the Tribal Council, as may be necessary or desirable to effect the transactions contemplated by the Documents or this Resolution.

Section 7. Determination. The Tribal Council hereby determines that no laws, ordinances, rules, regulations, resolutions or other actions of the Tribal Council or any of the agencies or instrumentalities of the Tribe, either written or established by custom or tradition: (a) prohibit the Tribal Council from taking the actions herein set forth, or the consummation of the transactions contemplated therein; (b) create any obligation of the Tribal Council to submit



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these matters for approval of or consent from any officer, body, agency or instrumentality of the Tribe, or any vote by members of the Tribe, except for such approvals and consents that have already been obtained and are in full force and effect or as set forth herein or are otherwise contemplated in this Resolution; or (c) except as may be required under the regulations of the Mashpee Wampanoag Tribal Gaming Commission, presently require Arkana, Sierra Springs or GMA to be licensed by the Tribe or any instrumentality thereof by reason of the Documents, except for such licenses that have been issued.

Section 8. Miscellaneous. If any provision of this Resolution or the application of any provision of this Resolution is held to be invalid, the remainder of this Resolution shall not be affected with respect to the same. To the extent lawful, all resolutions or actions of the Tribal Council heretofore taken, other than with respect to the enactment of ordinances or to the extent the same would cause a violation of any material agreement of the Tribe or the Authority presently in effect, are hereby modified to the extent required to be consistent with the provisions of this Resolution. This Resolution shall be effective immediately and shall continue pursuant to the authority vested in the Tribal Council pursuant to Article VI, §§2.A. and D. of the Constitution; provided that in accordance with 2009-ORD-2003, §8(f)(3), this resolution will be valid for no longer than thirty (30) days from the date hereof (unless exigent circumstances require a longer limited period of validity), and accordingly, this Resolution shall no longer be effective upon expiration of such period, unless upon the expiration of the thirty (30) day period, the Tribal Council expressly finds that the emergency situation necessitates extension of this resolution for another period not to exceed thirty (30) days.

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CERTIFICATION

We, the undersigned duly elected Vice Chairperson and Secretary of the Tribal Council do hereby certify that the above Resolution was duly adopted on December 29, 2020, by the Mashpee Wampanoag Tribal Council which is composed of 13 members, of whom 8 constituting a quorum, were present at the Meeting, duly called, noticed, convened, and held on December 29, 2020, and that the foregoing Resolution was duly adopted by the affirmative vote of 5 members, with 1 opposing, and with 2 not voting (it being understood that the Vice Chairperson does not vote except in the case of a tie), and that said Resolution has not been rescinded or amended in any way.

Dated this 29th day of December, 2020.

A handwritten signature in cursive script, appearing to read "Jessie Little Doe Baird".

Jessie little doe Baird, Vice Chairperson and Presiding Officer
Mashpee Wampanoag Tribal Council

ATTEST:

A handwritten signature in cursive script, appearing to read "Ann Marie Askew".

Ann Marie Askew, Secretary
Mashpee Wampanoag Tribal Council