



Mashpee Wampanoag Tribe
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TRIBAL COUNCIL RESOLUTION
2023-RES-002
RESOLUTION RATIFYING AND 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 has been convened in compliance with all posting and notice requirements of the Constitution and laws of the Tribe, and pursuant to Article IX, § 1(a) of the Constitution a quorum for this Meeting is nine (9) members of the Tribal Council; and
- WHEREAS, In accordance with the Constitution, the Vice Chairperson of the Tribe is serving as the presiding officer of this Meeting (“Presiding Officer”); and
- WHEREAS, Pursuant to Article IX, § 1(e)(1) of the Constitution a quorum for this Meeting is nine (9) members of the Tribal Council; and
- 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, In ratification of the Emergency Resolution, the Tribal Council desires to evidence its approval 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, 2023, by entering into with Arkana a Twentieth 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, 2023, by entering into with Sierra Springs a Twenty-Second 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, 2023, by entering into with GMA an Eighteenth 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 the Exclusivity End Dates (collectively, the "Extensions"), it is proposed that each of SE Mass II LLC and Genting Management Services, LLC, as applicable, by letter waive in writing until December 31, 2023, 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 has not been amended, repealed or modified, and is in full force and effect under the laws of the Tribe; (f) the Extensions and 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; or (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. Ratification of Emergency Resolution and Approval of the Extensions, the Documents, and the Waiver Letters. The Tribal Council hereby ratifies the Emergency Resolution and approves each of the Extensions and all documents that 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 Tribe’s requests for and acceptances of the Waiver Letters. The Tribal Council hereby approves the effective date of any Document to be any date that occurs after the adoption of the Emergency Resolution that may be set forth in the finally executed form of the Document.

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 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. This Resolution shall become effective as of the date and time of its passage and approval by the Tribal Council. 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.

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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 January 11, 2023, by the Mashpee Wampanoag Tribal Council which is composed of 13 members, of whom 9 constituting a quorum, were present at the Meeting, duly called, noticed, convened, and held on January 11, 2023, and that the foregoing Resolution was duly adopted by the affirmative vote of 8 members, with 0 opposing, and with 0 not voting (it being understood that the Chairperson as Presiding Officer 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 11th day of January, 2023.



Carlton Hendricks, Jr.
Vice Chairperson and Presiding Officer
Mashpee Wampanoag Tribal Council

ATTEST:



Cassie Jackson, Secretary
Mashpee Wampanoag Tribal Council