

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Authorizing the Tohono O'odham Nation's Chairman to Negotiate and Execute
Amendments to the Tohono O'odham Farming Authority and Bank of America
Financing Documents and to the Tohono O'odham Nation and Bank of America
Security Agreement-Pledge)**

RESOLUTION NO. 09-370

1 **WHEREAS, the Tohono O'odham Farming Authority ("TOFA") is the Tohono O'odham Nation's**
2 **("Nation's") enterprise authorized to operate the San Lucy, Schuk Toak, and Vaiva Vo**
3 **Farms on behalf of the Nation; and**

4 **WHEREAS, TOFA is responsible for promoting the economic development and general welfare**
5 **of the Nation and its members by profitably developing the agricultural resources of**
6 **the Nation, pursuant to Paragraph 3.1 of TOFA's Second Restated Plan of Operation;**
7 **and**

8 **WHEREAS, in 2004, after evaluating various financing options to sustain farming operations, and**
9 **after consulting with the Chairwoman and Treasurer of the Nation, TOFA selected the**
10 **Bank of America ("BofA") as the best qualified lender to provide a Revolving Line of**
11 **Credit of \$4 Million and a Term Loan of \$1.5 Million as the best alternative to improve**
12 **the financial condition of the farming operation; and**

13 **WHEREAS, the Tohono O'odham Legislative Council must approve waivers of sovereign**
14 **immunity, both for the Nation and enterprises chartered pursuant to the laws of the**
15 **Nation, such as TOFA; and**

16 **WHEREAS, by Resolution No. 04-460 (September 22, 2004), the Tohono O'odham Legislative**
17 **Council:**

18 **(a) Approved the limited waivers of sovereign immunity in the Financing Documents**
19 **between TOFA and BofA, which are listed below:**

20 **(1) Business Loan Agreement for the \$4 Million Revolving Line of Credit and \$1.5**
21 **Million Term Loan,**

22 **(2) Secured Promissory Note for the \$1.5 Million Term Loan,**

23 **(3) Security Agreement-Agricultural Credit placing liens on farm products and**
24 **related collateral,**

25 **(4) Environmental Indemnity Agreement to indemnify BofA from farming**
26 **impacts on the environment,**

27 **and authorized the Chairwoman of the Nation to execute a Security Agreement-**
28 **Pledge by the Nation pledging interest income on the SAWRSA Trust Account to secure**

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- 1 **payment of TOFA's Revolving Line of Credit and Term Loan; and**
- 2 **WHEREAS, TOFA's Management Board executed the Financing Documents in early October, 2004;**
- 3 **and**
- 4 **WHEREAS, on May 6, 2005, the Tohono O'odham Legislative Council adopted Resolution 05-233**
- 5 **(Delegating to the Nation's Chairwoman Authority Over the Tohono O'odham**
- 6 **Farming Authority); and**
- 7 **WHEREAS, due to the impending maturity date of the Business Loan Agreement on December 31,**
- 8 **2005 combined with the ongoing need for financing to fund operations and crop**
- 9 **production, TOFA initiated negotiations with BofA to amend the Financing**
- 10 **Documents to extend the Availability Period to July 1, 2006 to provide financing for**
- 11 **FY2006 operations and crop production; and**
- 12 **WHEREAS, by Resolution No. 05-649 (October 26, 2005), the Tohono O'odham Legislative Council**
- 13 **approved amendments to the Financing Documents to extend the Availability Period,**
- 14 **as defined in Sections 1.A.1.1(b) of the Business Loan Agreement, to July 1, 2006; and**
- 15 **WHEREAS, during the pendency of the TOFA-BofA transaction, TOFA required emergency**
- 16 **funding to continue farming operations and crop production, and pursuant to**
- 17 **Resolution No. 05-650 (October 26, 2005) the Tohono O'odham Legislative Council**
- 18 **authorized the Nation to approve a \$2.5 Million Emergency Loan to TOFA funded from**
- 19 **the SAWRSA Trust Account for operations and cotton harvesting; and**
- 20 **WHEREAS, by Resolution No. 06-410 (June 28, 2006), the Tohono O'odham Legislative Council**
- 21 **approved amendments to the Financing Documents to:**
- 22 **(1) Increase the revolving line of credit to \$7.3 Million.**
- 23 **(2) Extend the Availability Period to use the loan proceeds from December 31, 2005**
- 24 **to July 1, 2007.**
- 25 **(3) Extend the maturity date of the Business Loan Agreement to July 1, 2007.**
- 26 **(4) Limit the scope on the use of the loan proceeds (a) equipment purchases, (b)**
- 27 **operations, and (c) to make scheduled payments on the revolving line of credit**
- 28 **or term loan; and**
- 29 **WHEREAS, by Resolution No. 07-411, the Tohono O'odham Legislative Council approved**
- 30 **amendments to the Financing Documents to extend the Availability Period and the**

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1 **maturity date of the Business Loan Agreement to July 1, 2008; and**

2 **WHEREAS, by Resolution No. 08-406, the Tohono O'odham Legislative Council approved further**
3 **amendments to the Financing Documents to extend the Availability Period and the**
4 **maturity date of the Business Loan Agreement to July 1, 2009, which amendments**
5 **reduce the amount of the Revolving Line of Credit from \$7.3 Million to \$6.0 Million;**
6 **and**

7 **WHEREAS, due to the impending maturity date of the Business Loan Agreement on July 1, 2009**
8 **combined with the ongoing need for financing to fund operations and crop**
9 **production, it is critical that TOFA continue to receive this financing in a timely**
10 **manner so that it can continue its operations, crop production, and maintain its**
11 **relationships with its vendors; and**

12 **WHEREAS, in order to continue the TOFA financing past July 1, 2009, BofA has proposed**
13 **execution of the following Amended Financing Documents:**

- 14 **(1) Fourth Amended and Restated Security Agreement -- Pledge.**
15 **(2) Security Agreement-Pledge -- Fifth Modification Agreement Acknowledgment**
16 **and Approval.**
17 **(3) Revolving Line of Credit Fifth Modification Agreement, which further extends the**
18 **Availability Period to July 1, 2010; and**

19 **WHEREAS, TOFA requests that the Tohono O'odham Legislative Council approve the limited**
20 **waiver of TOFA's sovereign immunity necessary to execute the Revolving Line of**
21 **Credit Fifth Modification Agreement between TOFA and BofA.**

22 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby:**

- 23 **1. Grants the limited waiver of TOFA sovereign immunity necessary to implement**
24 **the dispute resolution remedies provided for in Sections 15 and 16 of the Fourth**
25 **Amended and Restated Security Agreement - Pledge, as required by**
26 **subparagraph 9.2.2(A) of TOFA's Second Restated Plan of Operation, and**
27 **authorizes TOFA to enter into the Revolving Line of Credit Fifth Modification**
28 **Agreement substantially in the form attached hereto, and any instrument or**
29 **agreement required under that Agreement, and authorizes the Chairman of the**
30 **Nation, on behalf of TOFA, to execute and deliver the Revolving Line of Credit**

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Fifth Modification Agreement to the BofA.

- 2. Grants the limited waiver of the Nation's sovereign immunity necessary to implement the dispute resolution remedies provided for in Sections 15 and 16 of the Fourth Amended and Restated Security Agreement -- Pledge, and authorizes the Chairman of the Nation to execute and deliver the Fourth Amended and Restated Security Agreement -- Pledge and the Security Agreement-Pledge--Fifth Modification Agreement, Acknowledgement and Approval, substantially in the form attached hereto, in order to pledge \$8.0 Million of the interest earned on the SAWRSA Trust Account held by the Bank of America to secure performance of TOFA's Revolving Line of Credit with the Bank of America.**
- 3. Authorizes the Chairman of the Nation to execute such further documents as may be reasonably necessary to implement the intent of this resolution.**

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 6TH. Day of JULY, 2009 at a meeting at which a quorum was present with a vote of 2,390.8 FOR; -0- AGAINST; -0- NOT VOTING; and 204.7[02] ABSENT, pursuant to the powers vested in the Council by Section 1 (d)(2) and (e) 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

Jelicia Nunez for
Verlon M. Jose, Legislative Chairman

7th day of *July*, 2009

ATTEST:

Evonne Wilson
Evonne Wilson, Legislative Secretary

10 day of *July*, 2009.

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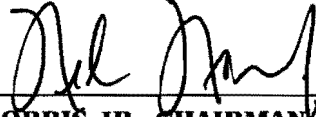
1 Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham
2 Nation on the 7th day of July, 2009 at 9:58 o'clock, P.M.,
3 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective
4 upon his approval or upon his failure to either approve or disapprove it within 48 hours of
5 submittal.

6
7 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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11 Verlon M. Jose, Legislative Chairman

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15 APPROVED on the 08 day of July, 2009

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17 DISAPPROVED at 11:50 o'clock, A.M.

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

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26 Returned to the Legislative Secretary on the 8 day of

27
28 July, 2009, at 12:36 o'clock, P.M.

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32 Evonne Wilson, Legislative Secretary

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ACTION: AUTHORIZING THE TOHONO O'ODHAM NATION'S CHAIRMAN TO NEGOTIATE AND EXECUTE AMENDMENTS TO THE TOHONO O'ODHAM FARMING AUTHORITY AND BANK OF AMERICA FINANCING DOCUMENTS AND TO THE TOHONO O'ODHAM NATION AND BANK OF AMERICA SECURITY AGREEMENT- PLEDGE

MOVED: COUNCILWOMAN FRANCES CONDE

SECOND: COUNCILWOMAN FRANCES MIGUEL

DATE: JULY 06, 2009

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF Oidak 198.7	1. WAVALENE ROMERO (Nicholas Jose)	99.35	X			
	2. MARY LOPEZ ()	99.35	X			
SELLS 449.6	1. KIMBERLY LISTO ()	224.80	X			
	2. EVELYN B. JUAN MANUEL ()	224.80	X			
SCHUK TOAK 159.0	1. FRANCES B. CONDE (Fredrick Jose)	79.50	X			
	2. LINDA PARLEY (Agnes Joaquin)	79.50	X			
SAN XAVIER 204.7	1. FELICIA NUÑEZ ()	102.35				X
	2. OLIVIA VILLEGAS-LISTON (Eugene Enis)	102.35				X
SAN LUCY 187.1	1. LORRAINE EILER (Charlotte Cadavas)	93.55	X			
	2. GLORIA RAMIREZ ()	93.55	X			
PISINEMO 184.5	1. CHESTER ANTONE (Tony Murrietta)	92.25	X			
	2. EDWARD MANUEL (Gerald Fayuant)	92.25	X			
HICKIWAN 174.5	1. MICHELLE ORTEGA ()	87.25	X			
	2. SANDRA ORTEGA ()	87.25	X			
GU VO 206.3	1. GRACE MANUEL ()	103.15	X			
	2. PAMELA ANGHILL (Angela Ortiz)	103.15	X			
GU ACHI 230.1	1. TIMOTHY L. JOAQUIN ()	115.05	X			
	2. CYNTHIA E. MANUEL ()	115.05	X			
CHUKUT KUK 277.0	1. ETHEL GARCIA (Sara Mae Williams)	138.50	X			
	2. VERLON M. JOSE ()	138.50	X			
BABOQUIVARI 324.0	1. FRANCES MIGUEL (Roberta Harvey)	162.0	X			
	2. FRANCES G. ANTONE ()	162.0	X			