

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Authorizing Limited Waiver of Sovereign Immunity for Districts Participating in**  
**Community Development Financial Institution Home Renovations Loan Program)**

RESOLUTION NO. 09-402

1 **WHEREAS, the Tohono O'odham Legislative Council is vested with the power "To authorize,**  
2 **charter and regulate public or private corporations and associations whether**  
3 **organized for profit, or for non-profit or charitable purposes" ; and**

4 **WHEREAS, the Legislative Council established the Community Development Financial Institution**  
5 **of the Tohono O'odham Nation ("CDFI") "as one means to achieve economic self-**  
6 **sufficiency and in accordance with applicable federal law regarding the establishment**  
7 **and operations of community development financial institutions" (Resolution No. 04-**  
8 **103); and**

9 **WHEREAS, the CDFI has implemented a loan program for the districts of the Tohono O'odham**  
10 **Nation ("Districts") to address renovations to homes that: (i) are not covered under**  
11 **the HUD umbrella, (ii) do not qualify for funds available through the Ki:Ki Association**  
12 **of the Nation, or (iii) are "traditional" or HUD residences that have been paid off and**  
13 **do not qualify for assistance under other governmental programs ("CDFI Home**  
14 **Renovations Loan Program"); and**

15 **WHEREAS, there is a great need for home renovations throughout the Nation and the Districts**  
16 **desire to utilize the CDFI Home Renovations Loan Program to renovate homes within**  
17 **their Districts; and**

18 **WHEREAS, pursuant to the terms of the CDFI Home Renovations Loan Program Secured Loan**  
19 **Agreement and additional loan documents identified in Exhibit B to the Secured Loan**  
20 **Agreement (collectively, "Loan Documents"), any disputes arising under the Loan**  
21 **Documents between the CDFI and a District participating in the CDFI Home**  
22 **Renovations Loan Program ("Participating District") will be resolved exclusively in**  
23 **the Tohono O'odham Judicial Court; and**

24 **WHEREAS, while the Loan Documents require the waiver of a Participating District's sovereign**  
25 **immunity to allow disputes to be heard and remedies enforced, such a waiver must be**  
26 **authorized by the Nation to be valid; and**

27 **WHEREAS, a Participating District is required to pledge its gaming revenues as collateral and, in**  
28 **the event of a default, the CDFI may require a Participating District to direct the**  
29 **Nation to make a lump sum payment from the Participating District's gaming revenue**  
30 **distribution that is due and owing in a "current fiscal year"; and**

**RESOLUTION NO. 09-402**

**(Authorizing Limited Waiver of Sovereign Immunity for Districts Participating in Community Development Financial Institution Home Renovations Loan Program)**

**Page 2 of 4**

1           **Distribution Formula and District Allocation Guidelines, which provide that the**  
2           **District Allocation of gaming revenues shall only be made available for expenditure**  
3           **by authorization of the Legislative Council and “in accordance with a District budget**  
4           **authorized by district council resolution and approved by the Legislative Council” (26**  
5           **Tohono O’odham Code, Chapter One, Article 3, Sections 1302 and 1304); and**

6 **WHEREAS, a Participating District is therefore required to create and maintain a line item to**  
7           **repay the CDFI Home Renovations Loan in an annual district budget that is approved**  
8           **by Legislative Council resolution; and**

9 **WHEREAS, it is in the Nation’s best interest to support Districts choosing to participate in the**  
10           **CDFI Home Renovations Loan Program by authorizing limited waivers of those**  
11           **Participating Districts’ sovereign immunity.**

12 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O’odham Legislative Council hereby**  
13           **authorizes a limited waiver of the sovereign immunity of any Participating District for**  
14           **the exclusive purpose of entering a CDFI Home Renovations Loan, subject to the**  
15           **following terms and conditions:**

16           **(a) No waiver of a Participating District’s sovereign immunity shall be valid unless**  
17           **the Participating District Council adopts a resolution**

18                   **(1) expressly requesting such a waiver, and**

19                   **(2) authorizing the Participating District or its officials acting on the**  
20                   **Participating District’s behalf to participate in the CDFI Home**  
21                   **Renovations Loan Program.**

22           **(b) Subject to (a) above and the additional requirements of this resolution, the**  
23           **Nation expressly waives the sovereign immunity of a Participating District and**  
24           **any defense based thereon from a suit, action or proceeding brought within the**  
25           **Tohono O’odham Judicial Court (“Judicial Court”) or from any legal process**  
26           **with respect to actions arising under or relating to the Loan Documents**  
27           **executed by the Participating District in accordance with the CDFI Home**  
28           **Renovations Loan Program; provided that any recovery upon any judgment**  
29           **resulting therefrom shall be limited to the amounts due under the Loan**  
30           **Documents and shall be limited to recovery against the Participating District’s**  
31           **share of the District Allocation, after that share has been apportioned to a**

**RESOLUTION NO. 09-402**

**(Authorizing Limited Waiver of Sovereign Immunity for Districts Participating in Community Development Financial Institution Home Renovations Loan Program)**

**Page 3 of 4**

1 established by Legislative Council resolution for that fiscal year in accordance  
2 with 26 T.O.C. Chapter One, Article 3, and shall not extend to any other assets  
3 of the Participating District.

4 (c) The Participating District is not authorized to submit to the jurisdiction of any  
5 court or forum other than the Judicial Court for the purposes of any  
6 controversy or claim between the CDFI and the Participating District for claims  
7 arising out of or relating to the CDFI Home Renovations Loan.

8 (d) The waivers described herein shall inure to the exclusive benefit of the CDFI  
9 and shall not, under any circumstances, extend to any other person or entity.  
10 The CDFI shall have and be entitled to bring available actions for legal and  
11 equitable remedies, including the right to money damages and injunctive or  
12 declaratory relief, provided that no recovery shall exceed the principal, loan  
13 fee, expenses, and other amounts expressly authorized under the CDFI Home  
14 Renovations Loan Documents.

15 BE IT FURTHER RESOLVED that nothing contained in this resolution shall be construed as a  
16 waiver of the sovereign immunity of the Nation.

17 BE IT FURTHER RESOLVED that nothing contained in this resolution shall be construed as an  
18 extension or expansion of the waivers of sovereign immunity of the CDFI in Article IX  
19 of its Charter.

20 BE IT FINALLY RESOLVED that under no circumstance shall the assets of the Nation be subjected  
21 to attachment to fulfill any debt or judgment arising from any CDFI Home Renovations  
22 Loan.

23 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 9<sup>TH</sup>. Day  
24 of JULY, 2009 at a meeting at which a quorum was present with a vote of 1,657.45 FOR; 938.05  
25 AGAINST; 2 NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by Article  
26 VI Section 1 (d) and (e) of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono  
27 O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary -  
28 Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48  
29 Stat. 984).

30  
31 TOHONO O'ODHAM LEGISLATIVE COUNCIL

32   
33  
34 Verlon M. Jose, Legislative Chairman

35  day of July, 2009

**RESOLUTION NO. 09-402**

**(Authorizing Limited Waiver of Sovereign Immunity for Districts Participating in Community Development Financial Institution Home Renovations Loan Program)**

**Page 4 of 4**

1 **ATTEST:**

2 Evonne Wilson

3 **Evonne Wilson, Legislative Secretary**

4 9 day of July, 2009.

5  
6  
7 **Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham**  
8 **Nation on the 23<sup>rd</sup> day of July, 2009 at 9:02 o'clock, a .M.,**  
9 **pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective**  
10 **upon his approval or upon his failure to either approve or disapprove it within 48 hours of**  
11 **submittal.**

12  
13  
14 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

15 Felicia Sanchez  
16 **Verlon M. Jose, Legislative Chairman**

17  
18  
19  
20  
21  **APPROVED**

on the 24 day of July, 2009

22  
23  **DISAPPROVED**

at 4:10 o'clock, P .M.

24 Ned Norris, Jr.  
25 **NED NORRIS, JR., CHAIRMAN**  
26 **TOHONO O'ODHAM NATION**

27  
28  
29  
30  
31 **Returned to the Legislative Secretary on the 24 day of**

32 July, 2009, at 4:12 o'clock, P .M.

33 Evonne Wilson  
34 **Evonne Wilson, Legislative Secretary**

35  
36  
37  
38

**ACTION: AUTHORIZING LIMITED WAIVER OF SOVEREIGN IMMUNITY FOR DISTRICTS PARTICIPATING IN  
COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION HOME RENOVATIONS LOAN PROGRAM**

**MOVED: COUNCILWOMAN ETHEL GARCIA**

**SECOND: COUNCILWOMAN FRANCES MIGUEL**

**DATE: JULY 09, 2009**

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