

**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. 11-276

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**
3 **Vo 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**
6 **of the Nation, pursuant to Paragraph 3.1 of TOFA's Second Restated Plan of**
7 **Operation; and**

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

30 **WHEREAS, TOFA's Management Board executed the Financing Documents in early October,**
31 **2004; and**

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- 1 **WHEREAS, on May 6, 2005, the Tohono O'odham Legislative Council adopted Resolution No. 05-**
2 **233 (Delegating to the Nation's Chairwoman Authority Over the Tohono O'odham**
3 **Farming Authority); and**
- 4 **WHEREAS, due to the impending maturity date of the Business Loan Agreement on December**
5 **31, 2005 combined with the ongoing need for financing to fund operations and crop**
6 **production, TOFA initiated negotiations with BofA to amend the Financing**
7 **Documents to extend the Availability Period to July 1, 2006 to provide financing for**
8 **FY2006 operations and crop production; and**
- 9 **WHEREAS, by Resolution No. 05-649 (October 26, 2005), the Tohono O'odham Legislative Council**
10 **approved amendments to the Financing Documents to extend the Availability**
11 **Period, as defined in Sections 1.A.1.1(b) of the Business Loan Agreement, to July 1,**
12 **2006; and**
- 13 **WHEREAS, during the pendency of the TOFA-BofA transaction, TOFA required emergency**
14 **funding to continue farming operations and crop production, and pursuant to**
15 **Resolution No. 05-650 (October 26, 2005) the Tohono O'odham Legislative Council**
16 **authorized the Nation to approve a \$2.5 Million Emergency Loan to TOFA funded**
17 **from the SAWRSA Trust Account for operations and cotton harvesting; and**
- 18 **WHEREAS, by Resolution No. 06-410 (June 28, 2006), the Tohono O'odham Legislative Council**
19 **approved amendments to the Financing Documents to:**
- 20 **(1) Increase the revolving line of credit to \$7.3 Million.**
21 **(2) Extend the Availability Period to use the loan proceeds from December 31, 2005**
22 **to July 1, 2007.**
23 **(3) Extend the maturity date of the Business Loan Agreement to July 1, 2007.**
24 **(4) Limit the scope on the use of the loan proceeds (a) equipment purchases, (b)**
25 **operations, and (c) to make scheduled payments on the revolving line of credit**
26 **or term loan; and**
- 27 **WHEREAS, by Resolution No. 07-411, the Tohono O'odham Legislative Council approved**
28 **amendments to the Financing Documents to extend the Availability Period and the**
29 **maturity date of the Business Loan Agreement to July 1, 2008; and**
- 30 **WHEREAS, by Resolution No. 08-406, the Tohono O'odham Legislative Council approved further**
31 **amendments to the Financing Documents to extend the Availability Period and the**
32 **maturity date of the Business Loan Agreement to July 1, 2009, which amendments**

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1 **reduce the amount of the Revolving Line of Credit from \$7.3 Million to \$6.0 Million;**
2 **and**

3 **WHEREAS, by Resolution No. 09-370 the Tohono O'odham Legislative Council approved further**
4 **amendments to the Financing Documents to extend the Availability Period and the**
5 **maturity date of the Business Loan Agreement to July 1, 2010, with the amount of the**
6 **Revolving Line of Credit staying at \$6.0 Million; and**

7 **WHEREAS, by Resolution No. 10-253 the Tohono O'odham Legislative Council approved further**
8 **amendments to the Financing Documents to extend the Availability Period and the**
9 **maturity date of the Business Loan Agreement to July 1, 2011, with the amount of the**
10 **Revolving Line of Credit staying at \$6.0 Million; and**

11 **WHEREAS, due to the impending maturity date of the Business Loan Agreement on July 1, 2011**
12 **combined with the ongoing need for financing to fund operations and crop**
13 **production, it is critical that TOFA continue to receive this financing in a timely**
14 **manner so that it can continue its operations, crop production, and maintain its**
15 **relationships with its vendors; and**

16 **WHEREAS, in order to continue the TOFA financing past July 1, 2011, BofA has proposed**
17 **execution of the following Amended Financing Documents which extend the loan for**
18 **a two year period of time:**

- 19 **(1) Fifth Amended and Restated Security Agreement -- Pledge.**
20 **(2) Acknowledgement and Approval of Revolving Line of Credit Seventh Modification**
21 **Agreement and Fifth Amended and Restated Security Agreement -- Pledge.**
22 **(3) Revolving Line of Credit Seventh Modification Agreement, which further extends**
23 **the Availability Period to July 1, 2013; and**

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

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

- 28 **1. Grants the limited waiver of TOFA sovereign immunity necessary to implement**
29 **the dispute resolution remedies provided for in Sections 15 and 16 of the Fifth**
30 **Amended and Restated Security Agreement - Pledge, as required by**
31 **subparagraph 9.2.2(A) of TOFA's Second Restated Plan of Operation, and**
32 **authorizes TOFA to enter into the Revolving Line of Credit Seventh Modification**
33 **Agreement with a termination date of July 1, 2013, substantially in the form**

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1 attached hereto, and any instrument or agreement required under that
2 Agreement, and authorizes the Chairman of the Nation, on behalf of TOFA, to
3 execute and deliver the Revolving Line of Credit Seventh Modification Agreement
4 to the BofA.

5 2. Grants the limited waiver of the Nation's sovereign immunity necessary to
6 implement the dispute resolution remedies provided for in Sections 15 and 16
7 of the Fifth Amended and Restated Security Agreement -- Pledge, and authorizes
8 the Chairman of the Nation to execute and deliver the Fifth Amended and
9 Restated Security Agreement -- Pledge and the Acknowledgement and Approval
10 of Revolving Line of Credit Seventh Modification Agreement and Fifth Amended
11 and Restated Security Agreement -- Pledge, each with a termination date of July
12 1, 2013, substantially in the form attached hereto, in order to pledge \$8.0 Million
13 of the interest earned on the SAWRSA Trust Account held by the Bank of America
14 to secure performance of TOFA's Revolving Line of Credit with the Bank of
15 America.

16 3. Authorizes the Chairman of the Nation to execute such further documents as
17 may be reasonably necessary to implement the intent of this resolution.

18 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 30TH Day
19 of JUNE, 2011 at a meeting at which a quorum was present with a vote of 2,338.10 FOR; -0- AGAINST;
20 215.80[02] NOT VOTING; and 226.70[03] ABSENT, pursuant to the powers vested in the Council by
21 Article VI, Section 1 (d)(2) and 1(e) of the Constitution of the Tohono O'odham Nation, adopted by
22 the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant
23 Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June
24 18, 1934 (48 Stat. 984).

25
26 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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30 Timothy Joaquin, Legislative Chairman

31
32 30 day of June, 2011

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34 ATTEST:

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37 Evonne Wilson, Legislative Secretary

38
39 30 day of June, 2011

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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 30 day of June, 2011 at 3:15 o'clock, P.M.,
3 pursuant to the provisions of Section 4 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.

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TOHONO O'ODHAM LEGISLATIVE COUNCIL


Timothy Joaquin, Legislative Chairman

APPROVED on the 30th day of June, 2011
 DISAPPROVED at 4:31 o'clock, P.M.


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

Returned to the Legislative Secretary on the 30 day of
June, 2011, at 4:35 o'clock, P.M.


Evonne Wilson, Legislative Secretary

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 LORRAINE EILER

SECOND: COUNCILWOMAN ROBERTA HARVEY

DATE: JUNE 30, 2011

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQIVARI 342.0	1. FRANCES MIGUEL (<i>Absent</i>) (Roberta Harvey) (<i>Present</i>)	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			
	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
HICKIWAN 186.3	1. LOUIS R. LOPEZ (Michelle Ortega)	93.15	X			
	2. SANDRA ORTEGA ()	93.15	X			
PISINEMO 200.7	1. CHESTER ANTONE ()	100.35	X			
	2. EDWARD MANUEL (Gerald Fayuant)	100.35	X			
SAN LUCY 204.6	1. LORRAINE EILER ()	102.30	X			
	2. JANA MONTANA (Gloria Ramirez)	102.30	X			
SAN XAVIER 215.8	1. HILARION CAMPUS ()	107.90			X	
	2. OLIVIA VILLEGAS-LISTON (Eugene Enis)	107.90			X	
SCHUK TOAK 169.8	1. FRANCES B. CONDE ()	84.90	X			
	2. FREDERICK JOSE (Phyllis Cachora)	84.90	X			
SELLS 475.7	1. ARTHUR WILSON (Kimberly Mull)	237.85	X			
	2. EVELYN B. JUAN MANUEL ()	237.85	X			X
SIF OIDAK 211.9	1. NICHOLAS JOSE ()	105.95	X			
	2. MARY LOPEZ ()	105.95	X			
TOTAL		2,780.60	2,338.10	-0-	215.80 [02]	226.70 [03]