

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Authorizing the Tohono O'odham Farming Authority Management Board to Execute
the Tohono O'odham Farming Authority and Bank of America Second Loan
Modification Documents and Authorizing the Chairman to Execute
the Pledge Agreement Acknowledgment and Approval of Second
Modification Agreement on Behalf of the Nation)**

RESOLUTION NO. 17-273

1 **WHEREAS, the Tohono O'odham Legislative Council is authorized to "consult, negotiate and**
2 **conclude agreements and contracts on behalf of the Tohono O'odham Nation..."**
3 **(Constitution of the Tohono O'odham Nation, Article VI, Section 1(f); and**

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

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

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

14 **WHEREAS, by Resolution No. 13-422, the Tohono O'odham Legislative Council approved a**
15 **revolving line of credit by and between Bank of America, N.A. ("B of A"), in the**
16 **original maximum available principal amount of six million dollars**
17 **(\$6,000,000.00) (the "2013 TOFA Loan"), as set forth in the following 2013 TOFA**
18 **Loan documents (collectively referred to as the "Loan Documents"):**

- 19 1. a Loan Agreement between B of A and TOFA that provides for a revolving
20 line of credit facility through July 1, 2015;
- 21 2. an Acknowledgement and Approval between B of A and the Nation;
- 22 3. a Pledge Agreement between B of A and the Nation pledging the Nation's
23 interest income in the Nation's SAWRSA Trust Account to secure payment
24 of the 2013 TOFA Loan (the "Pledged Collateral");
- 25 4. a Security Agreement between B of A, the Nation, and TOFA;
- 26 5. a Closing Certificate of Borrower executed by TOFA; and
- 27 6. an Authorizing Resolution executed by the TOFA Management Board.

28 **WHEREAS, by Resolution No. 13-422, the Tohono O'odham Legislative Council authorized**
29 **the Nation's Chairman to execute and deliver the Pledge Agreement, the Security**
30 **Agreement, and the Acknowledgement and Approval document in order to**

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1 pledge the SAWRSA Trust Account held by the Bank of America in the amount
2 necessary to secure the TOFA indebtedness in the Loan Agreement; and

3 **WHEREAS,** by Resolution No. 13-422, the Tohono O'odham Legislative Council approved
4 the limited waiver of TOFA's sovereign immunity, as set forth in the Loan
5 Documents because such limited waiver of sovereign immunity was necessary
6 for the execution of the 2013 Loan Documents; and

7 **WHEREAS,** by Resolution No. 15-307, the Tohono O'odham Legislative Council approved
8 the First Modification Documents extending the Availability Period of the 2013
9 TOFA Loan to July 1, 2017; and

10 **WHEREAS,** on February 19, 2016, the Legislative Council approved Resolution 16-077
11 "Appointing Agricultural and Natural Resources Committee Members to Tohono
12 O'odham Farming Authority Interim Management Board" and on August 24,
13 2016, the Legislative Council approved Resolution 16-414 "Extending Tohono
14 O'odham Farming Authority Interim Management Board Appointments"; and

15 **WHEREAS,** based upon the July 1, 2017 maturity date of the 2013 TOFA Loan, combined with
16 the ongoing need for financing to fund TOFA operations, crop production, and
17 infrastructure construction, it is critical to extend the Availability Period of the
18 2013 TOFA Loan to July 1, 2019, to provide financing and TOFA's use of the line of
19 credit from July 1, 2017 through June 30, 2019; and

20 **WHEREAS,** TOFA has requested and B of A has agreed to modify and amend the Loan
21 Documents to extend the maturity date of the 2013 TOFA Loan, upon the terms
22 and conditions set forth in the Revolving Line of Credit Second Modification
23 Agreement (the "Second Modification Agreement") and the documents executed
24 in connection with the Second Modification Agreement, including the Pledge
25 Agreement Acknowledgment and Approval of Second Modification Agreement
26 (collectively, the "Second Modification Documents").

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

- 28 1. approves the Second Modification Documents and authorizes TOFA's
29 authorized officer ("TOFA's Authorized Officer") to execute, deliver and
30 perform the Second Modification Documents on behalf of TOFA and such
31 other documents, instruments, agreements, certificates and any
32 additional documentation or agreements by TOFA with B of A or any
33 affiliate of B of A, as may be required by the Second Modification
34 Documents or as may be deemed necessary or convenient in the

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1 **discretion of TOFA's Authorized Officer to consummate the transactions**
2 **contemplated by the Second Modification Documents, whether at the**
3 **time of the closing or thereafter;**

- 4 **2. approves the Pledge Agreement Acknowledgment and Approval of**
5 **Second Modification Agreement and authorizes the Nation's Chairperson**
6 **(the "Nation's Authorized Officer") to execute, deliver and perform the**
7 **Pledge Agreement Acknowledgment and Approval of Second Modification**
8 **Agreement on behalf of the Nation and such other documents,**
9 **instruments, agreements, certificates and any additional documentation**
10 **or agreements by the Nation with B of A or any affiliate of B of A, as may be**
11 **required by the Second Modification Documents or as may be deemed**
12 **necessary or convenient in the discretion of the Nation's Authorized**
13 **Officer to consummate the transactions contemplated by the Second**
14 **Modification Documents, whether at the time of the closing or thereafter;**
- 15 **3. grants the limited waiver of the TOFA's sovereign immunity necessary to**
16 **implement the dispute resolution remedies and indemnification**
17 **provisions incorporated by reference into the Second Modification**
18 **Documents;**
- 19 **4. grants the limited waiver of the Nation's sovereign immunity necessary to**
20 **implement the dispute resolution remedies and indemnification**
21 **provisions incorporated by reference into the Second Modification**
22 **Documents;**
- 23 **5. confirms the continuing grant to B of A by the Nation of a lien covering**
24 **the Nation's Pledged Collateral and the security interests granted by the**
25 **Nation therein pursuant to the Loan Documents;**
- 26 **6. agrees that this Resolution relates solely to the Second Modification**
27 **Documents and does not in any manner affect any borrowing heretofore**
28 **or hereafter made under any other financing arrangement, and that this**
29 **Resolution shall not serve to revoke or alter any resolutions previously**
30 **delivered by the Nation to B of A and shall not (unless specifically**
31 **otherwise provided) be revoked by any Resolutions subsequently**
32 **delivered to B of A relating to other financing arrangements between B of**
33 **A, the Nation and/or TOFA.**
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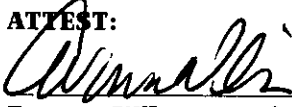
1 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 23RD**
2 **day of JUNE, 2017 at a meeting at which a quorum was present with a vote of 2,528.35 FOR;**
3 **556.25 AGAINST; -0- NOT VOTING; and -0- ABSENT, pursuant to the powers vested in the Council**
4 **by Article VI, Section 1(e) and 1(f) of the Constitution of the Tohono O'odham Nation, adopted by**
5 **the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant**
6 **Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of**
7 **June 18, 1934 (48 Stat.984).**

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10 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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13 **Timothy Joaquin, Legislative Chairman**

14 24 day of June, 2017

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18 **ATTEST:**

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21 **Evonne Wilson, Legislative Secretary**

22 26 day of June, 2017

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25 **Said Resolution was submitted for approval to the office of the Chairman of the Tohono**
26 **O'odham Nation on the 26 day of June, 2017 at 2:16 o'clock, P.m.,**
27 **pursuant to the provisions of Section 5 of Article VII of the Constitution and will become**
28 **effective upon his approval or upon his failure to either approve or disapprove it within 48**
29 **hours of submittal.**

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31 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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36 **Timothy Joaquin, Legislative Chairman**

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41 **APPROVED**

on the 26 day of June, 2017

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43 **DISAPPROVED**

at 3:13 o'clock, P.m.

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47 **EDWARD D. MANUEL, CHAIRMAN**
48 **TOHONO O'ODHAM NATION**
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Returned to the Legislative Secretary on the 26 day of

June, 2017, at 3:29 o'clock, P.m.

Evonne Wilson
Evonne Wilson, Legislative Secretary

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ACTION: AUTHORIZING THE TOHONO O'ODHAM FARMING AUTHORITY MANAGEMENT BOARD TO EXECUTE THE TOHONO O'ODHAM FARMING AUTHORITY AND BANK OF AMERICA SECOND LOAN MODIFICATION DOCUMENTS AND AUTHORIZING THE CHAIRMAN TO EXECUTE THE PLEDGE AGREEMENT ACKNOWLEDGMENT AND APPROVAL OF SECOND MODIFICATION AGREEMENT ON BEHALF OF THE NATION

MOVED: COUNCILMAN BILLMAN LOPEZ

SECOND: COUNCILWOMAN MONICA K. MORGAN

DATE: JUNE 23, 2017

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 235.8	1. MARY LOPEZ ()	117.9	X			
	2. LUCINDA ALLEN (Yolonda Garcia)	117.9	X			
SELLS 527.2	1. ARTHUR WILSON (<i>Absent</i>) (Beverly Rivas) (<i>Present</i>)	263.6	X			
	2. ADRIANNE TILLER (Idaleen Reyes)	263.6	X			
SCHUK TOAK 185.7	1. ANTHONY J. FRANCISCO JR. (<i>Absent</i>) (Teresa F. Donahue) (<i>Present</i>)	92.85	X			
	2. QUINTIN C. LOPEZ (Agnes V. Joaquin)	92.85		X		
SAN XAVIER 232.3	1. DANIEL L.A. PRESTON III (Felicia Nunez)	116.15		X		
	2. JANICE FELIX (Rachael Vilson-Stoner)	116.15		X		
SAN LUCY 231.1	1. JANA MONTANA ()	115.55		X		
	2. GLORIA RAMIREZ (Lorraine Eiler)	115.55		X		
PISINEMO 225.9	1. CHESTER ANTONE (Caroline D. Garcia)	112.95	X			
	2. MONICA K. MORGAN ()	112.95	X			
HICKIWAN 209.0	1. LOUIS R. LOPEZ (<i>Absent</i>) (Shirley Molina) (<i>Present</i>)	104.5	X			
	2. SANDRA D. ORTEGA ()	104.5	X			
GU VO 256.9	1. GRACE MANUEL ()	128.45	X			
	2. DALLAS LEWIS (Nacho Flores)	128.45	X			
GU ACHI 270.9	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	135.45	X			
	2. LORETTA LEWIS (Victoria Hobbs)	135.45	X			
CHUKUT KUK 337.7	1. BILLMAN LOPEZ (Patricia Vicenti)	168.85	X			
	2. VIVIAN JUAN-SAUNDERS (Juanita Homer)	168.85	X			
BABOQUIVARI 372.1	1. FRANCES MIGUEL (Roberta E. Harvey)	186.05	X			
	2. LEANDER MASE ()	186.05	X			
TOTAL		3,084.6	2,528.35	556.25	-0-	-0-