

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Second Approval of Limited Waiver of Sovereign Immunity in Tohono O'odham Farming
Authority 2004 Financing Agreements)

RESOLUTION NO. 04-195

1 **WHEREAS, in February, 2004, the Tohono O'odham Farming Authority ("TOFA") negotiated with**
2 **ACCO Finance Co. ("AFC"):**

3 **(1)amendments to the TOFA Multiple Year Revolving Line of Credit Loan**
4 **Agreement, executed on November 27, 2000, in the amount of \$3,166,143, as**
5 **amended on December 3, 2002, February 6, 2003, March, 2003, and April 15, 2003**
6 **("Crop Loan Agreement"), and the related TOFA Multiple Year Revolving Secured**
7 **Promissory Note;**

8 **(2) amendments to the TOFA Multiple Year Revolving Line of Credit Loan Agreement,**
9 **executed on November 27, 2000, in the amount of \$300,000, as amended on April**
10 **25, 2002 and April 15, 2003 ("Vegetable Loan Agreement"), and the related TOFA**
11 **Multiple Year Revolving Secured Promissory Note; and**

12 **(3) an equipment loan in the amount of \$750,000 ("Equipment Loan Agreement")**
13 **and a related promissory note; and**

14 **WHEREAS, in February, 2004, TOFA negotiated a Business Agreement with Anderson Clayton**
15 **Corp. related to ginning of seed cotton grown by TOFA during the 2004 crop year (the**
16 **"Business Agreement"); and**

17 **WHEREAS, the Crop, Vegetable, and Equipment Loan Agreements and the Business Agreement**
18 **each contained limited waivers of TOFA's sovereign immunity with respect to**
19 **disputes arising thereunder; and**

20 **WHEREAS, on February 5, 2004, the Tohono O'odham Farming Authority ("TOFA") approved a**
21 **resolution titled "Resolution of the Tohono O'odham Farming Authority Board**
22 **Recommending and Requesting Tohono O'odham Legislative Council Action and**
23 **Authorizing Execution of Amendments to TOFA-ACCO Financing Documents and of**
24 **Related Documents", which approved the Crop, Vegetable, and Equipment Loan**
25 **Agreements, the Business Agreement and related documents for TOFA's 2004 crop**
26 **financing, requested Tohono O'odham Nation Legislative Council ("Legislative**
27 **Council") approval of the limited sovereign immunity waivers contained in the Crop,**
28 **Vegetable, and Equipment Loan Agreements and the Business Agreement, requested**
29 **that the Legislative Council authorize the Chairwoman or Vice Chairman of the**
30 **Tohono O'odham Nation to execute a Non-Disturbance Agreement with AFC, and**
31 **upon approval by the Legislative Council of the limited sovereign immunity waivers,**
32 **authorized TOFA Board members to execute the loan documents with AFC; and**

33 **WHEREAS, on March 1, 2004, the Legislative Council adopted Resolution No. 04-069, which**

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1 **approved the limited waivers of sovereign immunity in the Crop, Vegetable, and**
2 **Equipment Loan Agreements and the Business Agreement and authorized the**
3 **Chairwoman or Vice Chairman of the Tohono O'odham Nation to execute a Non-**
4 **Disturbance Agreement with AFC; and**

5 **WHEREAS, TOFA has not executed the loan documents anticipated by the February 5, 2004 TOFA**
6 **Board Resolution and the March 1, 2004 Legislative Council Resolution No. 04-069;**
7 **and**

8 **WHEREAS, in March and April, 2004, TOFA and AFC engaged in further negotiations regarding the**
9 **terms of TOFA's 2004 crop financing; and**

10 **WHEREAS, as a result of the March and April, 2004 negotiations,**

- 11 **(1) the Crop Loan Agreement and Note have been modified to decrease the amount**
12 **of the loan to \$3,000,000;**
- 13 **(2) AFC has requested that TOFA execute a new Crop Loan Note in the amount of**
14 **\$3,000,000;**
- 15 **(3) the limited sovereign immunity waivers in the Crop and the Vegetable**
16 **Agreements have been modified to increase the cap on attorney fees which a**
17 **court could award to ACCO if TOFA defaults on the loan agreements from \$10,000**
18 **to \$150,000;**
- 19 **(4) the limited sovereign immunity waiver in the Business Agreement has been**
20 **modified;**
- 21 **(5) TOFA will not enter into the Equipment Loan Agreement with AFC;**
- 22 **(6) TOFA will enter into a short-term loan agreement with AFC for the amount of**
23 **\$1,200,000 ("Short-term Loan Agreement"), and a related Promissory Note; and**
- 24 **(7) the Short-term Loan Agreement contains a limited sovereign immunity waiver;**
25 **and**
- 26 **(8) the other loan documents associated with TOFA's 2004 crop financing with AFC**
27 **have only been modified to conform to the new amounts of the loans, a new**
28 **address, and the dates of the transactions; and**

29 **WHEREAS, subparagraph 9.2.2(A) of the TOFA's Second Restated Plan of Operation requires**
30 **approval by the Legislative Council for waivers of sovereign immunity in connection**
31 **with crop production and related financing; and**

32 **WHEREAS, the Agriculture Committee and the Budget and Finance Committee have reviewed the**
33 **limited waivers of sovereign immunity in the Crop and Vegetable Loan Agreements,**
34 **as amended, the Short-Term Loan Agreement, and the Business Agreement, as**
35 **amended.**

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NOW, THEREFORE, BE IT RESOLVED THAT:

- 1. The Legislative Council approves the limited waivers of sovereign immunity in the Crop and Vegetable Loan Agreements, as amended, the Short-term Loan Agreement, and the Business Agreement, as amended; and**
- 2. The Legislative Council rescinds its approval of the limited waivers of sovereign immunity authorized in Legislative Council Resolution No. 04-069 (March 1, 2004).**
- 3. Except as expressly provided, this resolution does not modify or affect Legislative Council Resolution No. 04-069 (March 1, 2004).**

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 06TH Day of MAY, 2004 at a meeting at which a quorum was present with a vote of 1,376.5 FOR; AGAINST; -0-1,253.2 NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by Section 1 (f) 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



Isidro Lopez, Legislative Chairman

10th day of May, 2004

ATTEST:



Lucille Lopez, Acting Legislative Secretary

06 day of May, 2004.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'odham Nation on the 10th day of May, 2004 at 4:05 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon her approval or upon her failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL



Isidro Lopez, Legislative Chairman

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APPROVED

on the 11 day of May, 2004

DISAPPROVED

at 10:42 o'clock, a.M.



VIVIAN JUAN-SAUNDERS, CHAIRWOMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 11 day of

May, 2004, at 3:01 o'clock, P.M.



Lucille Lopez, Acting Legislative Secretary

ACTION: SECOND APPROVAL OF LIMITED WAIVER OF SOVEREIGN IMMUNITY IN TOHONO O'ODHAM FARMING AUTHORITY 2004 FINANCING AGREEMENTS

MOVED: COUNCILWOMAN FRANCES CONDE

SECOND: COUNCILMAN JEROME JOAQUIN

DATE: MAY 06, 2004

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF Oidak 192.6	1. ISIDRO LOPEZ (Nicholas Jose)	96.30	X			
	2. DARLENE ANDREW(Absent) (Rita Martinez)(Present)	96.30	X			X
SELLS 465.6	1. DENNIS E. JOSE** ()	232.80			X	
	2. EVELYN JUAN ()	232.80			X	
SCHUK TOAK 176.1	1. FRANCES B. CONDE ()	88.05	X			
	2. PHYLLIS JUAN ()	88.05	X			
SAN XAVIER 215.4	1. FELICIA NUÑEZ (Olivia Villegas-Liston)	107.70			X	
	2. DENNIS RAMON (Eleanor Hunter)	107.70			X	X
SAN LUCY 166.3	1. JOHN W. LAWSON, SR. ()	83.15			X	
	2. GLORIA RAMIREZ ()	83.15			X	
PISINEMO 175.4	1. BARBARA SALVICIO ()	87.70	X			
	2. PATRICIA CRUZ ()	87.70			X	
HICKIWAN 170.3	1. DELMA GARCIA (Mary E. Sam)	85.15	X			
	2. SANDRA ORTEGA ()	85.15	X			X
GU VO 191.4	1. RAYMOND VICTOR ()	95.70			X	
	2. MICHAEL FLORES (Willard Manuel)	95.70			X	X
GU ACHI 253.6	1. TIMOTHY L. JOAQUIN (Jonas Robles)	126.80			X	
	2. JEROME JOAQUIN (Roberta Picard)	126.80	X			
CHUKUT KUK 258.9	1. KENNETH WILLIAMS (Juanita Homer)	129.45	X			
	2. VERLON M. JOSE (David Garcia)	129.45	X			
BABOQUIVARI 364.1	1. FRANCES MIGUEL (Lucilda Norris-Valenzuela)	182.05	X			
	2. FRANCES G. ANTONE ()	182.05	X			
TOTAL		2,629.7	1,376.5	-0-	1,253.2	[04]

**PASSED VOTES