

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Approving TOFA-Bank of America Financing Documents and Authorizing a Pledge of Interest**  
**Income from the SAWRSA Trust Account to Support the TOFA-Bank of America Loans)**

**RESOLUTION NO. 04-460**

- 1 **WHEREAS, the Tohono O'odham Farming Authority ("TOFA") is the Tohono O'odham Nation's**  
2 **enterprise authorized to operate the San Lucy, Schuk Toak and Vaiva Vo Farms on**  
3 **behalf of the Nation; and**
- 4 **WHEREAS, TOFA is responsible for promoting the economic development and general welfare**  
5 **of the Tohono O'odham Nation and its members by profitably developing the**  
6 **agricultural resources of the Nation, Paragraph 3.1, TOFA Second Restated Plan of**  
7 **Operation; and**
- 8 **WHEREAS, for several years TOFA has relied on ACCO Finance Company for crop production**  
9 **financing and equipment financing, including most recently the April 2004 Multiple**  
10 **Year Revolving Line of Credit and Term Loan; and**
- 11 **WHEREAS, the TOFA Management Board directed management to evaluate whether an**  
12 **alternative source of financing could be obtained which would provide improved**  
13 **financing terms that would enhance the profitable operation of the TOFA farms; and**
- 14 **WHEREAS, after evaluating various financing options and after consulting with the Chairwoman**  
15 **and Treasurer of the Nation, the management recommended and the Management**  
16 **Board of TOFA selected the Bank of America as the best qualified lender to provide**  
17 **a Revolving Line of Credit of \$4 million and a Term Loan of \$1.5 million as the best**  
18 **alternative to improve the financial condition of the farming operation; and**
- 19 **WHEREAS, on August 3, 2004 a final term commitment was negotiated between TOFA and the**  
20 **Bank of America which would provide much improved interest rates and greater**  
21 **financial flexibility for TOFA if the Nation will agree to pledge interest income earned**  
22 **on the SAWRSA Trust account held by the Bank of America as credit support for the**  
23 **TOFA-Bank of America loans; and**
- 24 **WHEREAS, the Management Board of TOFA is responsible for improving the financial success of**  
25 **the farming operation and because the TOFA-Bank of America loans will greatly**  
26 **enhance the opportunity for the farming operation to become financially successful**  
27 **and self-sustaining; and**
- 28 **WHEREAS, the Management Board on September 1, 2004 adopted a resolution authorizing**

**RESOLUTION NO. 04-460**

**(Approving TOFA-Bank of America Financing Documents and Authorizing a Pledge of Interest Income from the SAWRSA Trust Account to Support the TOFA-Bank of America Loans)**

**Page 2 of 4**

1 approval of the TOFA-Bank of America Financing Documents, requesting the Tohono  
2 O'odham Nation Legislative Council to approve TOFA's sovereign immunity waiver in  
3 the Financing Documents, and respectfully requesting that the Tohono O'odham  
4 Nation Legislative Council approve a pledge agreement between the Nation and Bank  
5 of America in which the Nation pledges the interest earned on the SAWRSA Trust  
6 account as credit support for the TOFA-B of A loan, all in the form and on the terms  
7 of the following Financing Documents, attached hereto as Exhibits:

- 8 (1) A Business Loan Agreement (Revolving Line of Credit and Term Loan) between  
9 TOFA and B of A providing a \$4 million revolving line of credit and a \$1.5  
10 million term loan;  
11 (2) A Secured Promissory Note - Term Loan for the \$1.5 million term loan;  
12 (3) A Security Agreement-Agricultural Credit covering farm products and related  
13 collateral of the Tohono O'odham Farming Authority;  
14 (4) A Security Agreement-Pledge by the Tohono O'odham Nation pledging interest  
15 earnings on the SAWRSA Trust account of the Nation held by the B of A to secure  
16 payment of TOFA's revolving line of credit and term loan; and  
17 (5) An Environmental Indemnity Agreement by TOFA.

18 **WHEREAS, the Chairwoman and Treasurer of the Nation support the request by TOFA for the**  
19 **Pledge Agreement by the Nation as a means of enhancing the financial success of the**  
20 **TOFA farming operation consistent with the financial goals and financial**  
21 **management policies of the Nation; and**

22 **WHEREAS, the Financing Documents include a waiver of TOFA's sovereign immunity for**  
23 **enforcement of TOFA's obligations under the Financing Documents; and**

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

27 **WHEREAS, it is in the best interest of TOFA and the Tohono O'odham Nation for TOFA to enter**  
28 **into the Financing Documents and for the Tohono O'odham Nation to approve the**  
29 **limited waivers of sovereign immunity contained in the Financing Documents; and**

30 **WHEREAS, it is in the best interest of the Tohono O'odham Nation to enter into a Pledge**

**RESOLUTION NO. 04-460**

**(Approving TOFA-Bank of America Financing Documents and Authorizing a Pledge of Interest Income from the SAWRSA Trust Account to Support the TOFA-Bank of America Loans)**

**Page 3 of 4**

1                   **Agreement with the Bank of America under which the Nation would pledge the**  
2                   **interest earned on the Nation's SAWRSA Trust Account in order to provide credit**  
3                   **support for the Bank of America-TOFA loans.**

4 **NOW, THEREFORE, BE IT RESOLVED THAT:**

- 5                   **1. That the Legislative Council of the Tohono O'odham Nation approves the**  
6                   **limited waivers of sovereign immunity in the Financing Documents between**  
7                   **the Tohono O'odham Farming Authority and the Bank of America as required**  
8                   **by subparagraph 9.2.2(A) of the TOFA's Second Restated Plan of Operation, and**  
9                   **authorizes TOFA to enter into the Financing Documents; and**  
10                  **2. The Chairwoman of the Tohono O'odham Nation is authorized on behalf of the**  
11                  **Nation to enter into a Pledge Agreement on the terms and conditions and in the**  
12                  **form of the Pledge Agreement attached as an Exhibit hereto in order to pledge**  
13                  **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 and Term Loan with**  
15                  **the Bank of America including a limited waiver of the Nation's sovereign**  
16                  **immunity in order to enforce the obligations of the Nation under the Pledge**  
17                  **Agreement.**

18 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 16<sup>TH</sup> Day**  
19 **of SEPTEMBER, 2004 at a meeting at which a quorum was present with a vote of 1,979.45 FOR; 469.4**  
20 **AGAINST; 180.85 NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by**  
21 **Section 1 (d)(2) and (f) of Article VI 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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29 **Isidro Lopez, Legislative Chairman**

30  
31 22<sup>nd</sup> day of September, 2004

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34 **ATTEST:**

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37 **Rosita N. Ruiz, Legislative Secretary**

38  
39 22 day of September, 2004.


**RESOLUTION NO. 04-460**

**(Approving TOFA-Bank of America Financing Documents and Authorizing a Pledge of Interest Income from the SAWRSA Trust Account to Support the TOFA-Bank of America Loans)**

**Page 4 of 4**

1 Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono  
2 O'Odham Nation on the 20<sup>th</sup> day of September, 2004 at 4:36 o'clock,  
3 P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become  
4 effective upon her approval or upon her failure to either approve or disapprove it within 48 hours  
5 of submittal.  
6

7 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**


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9   
10 *for* **Isidro Lopez, Legislative Chairman**

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14  APPROVED

on the 27 day of September, 2004

15  
16  DISAPPROVED

at 2:25 o'clock, P.M.

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20 **VIVIAN JUAN-SAUNDERS, CHAIRWOMAN**  
21 **TOHONO O'ODHAM NATION**

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25 Returned to the Legislative Secretary on the 27 day of

26  
27 September, 2004, at 3:32 o'clock, P.M.

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31 **Rosita N. Ruiz, Legislative Secretary**

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**ACTION: APPROVING TOFA-BANK OF AMERICA FINANCING DOCUMENTS AND AUTHORIZING A PLEDGE OF INTEREST INCOME FROM THE SAWRSA TRUST ACCOUNT TO SUPPORT THE TOFA-BANK OF AMERICA LOANS**

**MOVED: COUNCILWOMAN FRANCES MIGUEL**

**SECOND: COUNCILWOMAN FRANCES ANTONE**

**DATE: SEPTEMBER 16, 2004**

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
<b>SIF OIDAK</b> <b>192.6</b>	1. ISIDRO LOPEZ (Nicholas Jose)	96.30	X			
	2. DARLENE ANDREW (Rita Martinez)	96.30	X			
<b>SELLS</b> <b>465.6</b>	1. DENNIS E. JOSE ( )	232.80	X			
	2. EVELYN JUAN ( )	232.80	X			
<b>SCHUK TOAK</b> <b>176.1</b>	1. FRANCES B. CONDE ( )	88.05	X			
	2. PHYLLIS JUAN ( )	88.05	X			
<b>SAN XAVIER</b> <b>215.4</b>	1. FELICIA NUÑEZ (Olivia Liston-Villegas)	107.70		X		
	2. DENNIS RAMON (Eleanor Hunter)	107.70		X		X
<b>SAN LUCY</b> <b>166.3</b>	1. JOHN W. LAWSON, SR. ( )	83.15		X		
	2. GLORIA RAMIREZ ( )	83.15		X		
<b>PISINEMO</b> <b>175.4</b>	1. BARBARA SALVICIO ( )	87.70		X		
	2. PATRICIA CRUZ ( )	87.70	X			
<b>HICKIWAN</b> <b>170.3</b>	1. DELMA GARCIA (Mary E. Sam)	85.15	X			
	2. SANDRA ORTEGA ( )	85.15			X	
<b>GU VO</b> <b>191.4</b>	1. RAYMOND VICTOR ( )	95.70	X			
	2. MICHAEL FLORES (Willard Manuel)	95.70			X	
<b>GU ACHI</b> <b>253.6</b>	1. TIMOTHY L. JOAQUIN (Jonas Robles)	126.80	X			
	2. JEROME JOAQUIN (Roberta Picard)	126.80	X			
<b>CHUKUT KUK</b> <b>258.9</b>	1. KENNETH WILLIAMS (Juanita Homer)	129.45	X			
	2. VERLON M. JOSE (David Garcia)	129.45	X			X
<b>BABOQUIVARI</b> <b>364.1</b>	1. FRANCES MIGUEL ( Lucilda Norris-Valenzuela )	182.05	X			
	2. FRANCES G. ANTONE ( )	182.05	X			
<b>TOTAL</b>		<b>2,629.7</b>	<b>1,979.45</b>	<b>469.4</b>	<b>180.85</b>	<b>[02]</b>

**\*\*PASSED VOTES**