

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Authorizing the Chairwoman 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. 05-649

- 1 **WHEREAS, by Resolution No. 04-460 (September 22, 2004), the Tohono O'odham Legislative**
2 **Council approved the limited waivers of sovereign immunity in the financing**
3 **agreements between the Tohono O'odham Farming Authority ("TOFA") and Bank of**
4 **America ("B of A"), which included a Business Loan Agreement (Revolving Line of**
5 **Credit and Term Loan) providing a \$4 million revolving line of credit and a \$1.5**
6 **million term loan, a Secured Promissory Note-Term Loan for the \$1.5 million term**
7 **loan, a Security Agreement-Agricultural Credit covering farm products and related**
8 **collateral of the Tohono O'odham Farming Authority, and an Environmental**
9 **Indemnity Agreement ("Financing Documents"), and authorized the Chairwoman of**
10 **the Tohono O'odham Nation to execute a Security Agreement-Pledge by the Tohono**
11 **O'odham Nation pledging interest earnings on the SAWRSA Trust account of the**
12 **Nation held by the B of A to secure payment of TOFA's revolving line of credit and term**
13 **loan; and**
- 14 **WHEREAS, TOFA's Management Board executed the documents in early October, 2004; and**
- 15 **WHEREAS, TOFA has utilized approximately \$3.98 million of the revolving line of credit since**
16 **October, 2004 to finance its crop production and operations; and**
- 17 **WHEREAS, TOFA's cotton harvest begins on October 17, 2005 and continues until the last week**
18 **in December 2005; and**
- 19 **WHEREAS, the sale of TOFA's cotton begins in late November, 2005 and continues until**
20 **approximately April, 2006; and**
- 21 **WHEREAS, approximately 85%-90% of TOFA's annual revenue is generated through cotton sales;**
22 **and**
- 23 **WHEREAS, TOFA requires additional financing in the amount of \$2.5 million to fund its**
24 **continuing operations and harvest its cotton crop; and**
- 25 **WHEREAS, it is critical that TOFA receive this additional financing as soon as possible so that it**
26 **can harvest its cotton crop, continue its operations, and maintain its relationships**
27 **with its vendors; and**
- 28 **WHEREAS, TOFA has initiated negotiations with Bank of America extending the Availability**

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1 **Period, as defined in Section 1.A.1.1(b) of the Business Loan Agreement (Revolving**
2 **Line of Credit and Term Loan) to July 1, 2006; and**

3 **WHEREAS, the line of credit would not be increased during the maturity extension period; and**

4 **WHEREAS, B of A has requested amendments to the Security Agreement-Pledge that will amend**
5 **paragraph 2 under Section 2(i) to provide that the Tohono O'odham Nation agrees to**
6 **maintain SAWRSA Interest pledge in an amount not less than \$6 million during the**
7 **term of TOFA's loans with B of A; and**

8 **WHEREAS, on May 6, 2005, the Tohono O'odham Legislative Council adopted Resolution 05-233**
9 **(Delegating to the Nation's Chairwoman Authority Over the Tohono O'odham**
10 **Farming Authority); and**

11 **WHEREAS, any projected and/or actual loss carryforward must be addressed by the Nation**
12 **through appropriations measures prior to entering into negotiations with Bank of**
13 **America; and**

14 **WHEREAS, on September 15, 2005, Chairwoman Vivian Juan-Saunders assumed the authority of**
15 **the TOFA Management Board pursuant to Memorandum from Vivian Juan-Saunders,**
16 **Chairwoman, to All TOFA Employees regarding Recent Decisions Involving TOFA.**

17 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby**
18 **approves:**

- 19 **1. As required by subparagraph 9.2.2(A) of the TOFA's Second Restated Plan of**
20 **Operation, the Legislative Council of the Tohono O'odham Nation approves the**
21 **limited waivers of sovereign immunity in the amended Financing Documents**
22 **described above and to be negotiated between TOFA and B of A.**
- 23 **2. The maturity date on the TOFA Line of Credit with Bank of America will be**
24 **extended through July 1, 2006.**
- 25 **3. The TOFA Line of Credit with Bank of America shall not be increased during the**
26 **proposed maturity extension period and maintain SAWRSA Interest pledge in an**
27 **amount not less than \$6 million during the term of TOFA's loans.**
- 28 **4. The Chairwoman of the Tohono O'odham Nation is authorized on behalf of the**
29 **Nation to negotiate and execute amendments to the Security Agreement-Pledge**
30 **on the terms described above.**

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(Authorizing the Chairwoman 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)

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The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 24TH Day of OCTOBER, 2005 at a meeting at which a quorum was present with a vote of 1,320.35 FOR; 927.35 AGAINST; 193.1 NOT VOTING; and [05] ABSENT, pursuant to the powers vested in the Council by Section 2 (c) of Article VII 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

Evelyn B. Juan Manuel, Legislative Chairwoman

26th day of October, 2005

ATTEST:

Lucille Lopez, Acting Legislative Secretary

26th day of October, 2005.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'Odham Nation on the 26th day of October, 2005 at 1:52 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Evelyn B. Juan Manuel, Legislative Chairwoman

APPROVED

on the 26 day of October, 2005

DISAPPROVED

at 4:55 o'clock, P.M.

VIVIAN JUAN-SAUNDERS, CHAIRWOMAN
TOHONO O'ODHAM NATION

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Returned to the Legislative Secretary on the 27th day of

October, 2005, at 8:59 o'clock, A.M.

Lucille Lopez
Lucille Lopez, Acting Legislative Secretary

ACTION: AUTHORIZING THE CHAIRWOMAN 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 GLORIA RAMIREZ

SECOND: COUNCILWOMAN FRANCES CONDE

DATE: OCTOBER 24, 2005

| DISTRICT | LEGISLATIVE REPRESENTATIVES | # OF VOTES | FOR | AGAINST | NOT VOTING | ABSENT |
|-----------------------------|--|-----------------|-----------------|---------------|--------------|-------------|
| BABOQUIVARI 310.8 | 1. FRANCES MIGUEL () | 155.40 | X | | | |
| | 2. FRANCES G. ANTONE (Lucilda J. Valenzuela (Norris)) | 155.40 | | X | | |
| CHUKUT KUK 258.7 | 1. ETHEL GARCIA () | 129.35 | X | | | |
| | 2. VERLON M. JOSE (David Garcia) | 129.35 | | X | | |
| GU ACHI 221.6 | 1. TIMOTHY L. JOAQUIN (Jonas Robles) | 110.80 | | X | | |
| | 2. CYNTHIA E. MANUEL (Louis L. Johnson) | 110.80 | | X | | X |
| GU VO 193.1 | 1. RAYMOND VICTOR () | 96.55 | | | X | |
| | 2. MICHAEL FLORES (Grace Manuel) | 96.55 | | | X | X |
| HICKIWAN 167.4 | 1. DELMA GARCIA (Mary E. Sam) | 83.70 | X | | | |
| | 2. SANDRA ORTEGA () | 83.70 | X | | | X |
| PISINEMO 171.8 | 1. BARBARA SALVICIO** () | 85.90 | X | | | |
| | 2. GERALD FAYUANT () | 85.90 | X | | | |
| SAN LUCY 169.0 | 1. JOHN W. LAWSON, SR. () | 84.50 | X | | | |
| | 2. GLORIA RAMIREZ () | 84.50 | X | | | |
| SAN XAVIER 193.8 | 1. FELICIA NUÑEZ () | 96.90 | X | | | |
| | 2. OLIVIA VILLEGAS-LISTON** () | 96.90 | X | | | |
| SCHUK TOAK 146.9 | 1. FRANCES B. CONDE () | 73.45 | X | | | |
| | 2. PHYLLIS JUAN () | 73.45 | X | | | X |
| SELLS 421.0 | 1. DENNIS E. JOSE** () | 210.50 | | X | | |
| | 2. EVELYN B. JUAN MANUEL () | 210.50 | | X | | |
| SIF OIDAK 186.7 | 1. WVALENE SAUNDERS) (Isidro Lopez) | 93.35 | X | | | X |
| | 2. DARLENE ANDREW (Rita Martinez) | 93.35 | X | | | |
| TOTAL | | 2,440.80 | 1,320.35 | 927.35 | 193.1 | [05] |

**PASSED VOTES