

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Authorizing the Tohono O'odham Nation's 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. 06-410

- 1 **WHEREAS, the Tohono O'odham Farming Authority ("TOFA") is the Tohono O'odham Nation's**
2 **("Nation") enterprise authorized to operate the San Lucy, Schuk Toak, and Vaiva Vo**
3 **Farms on behalf of the Nation; and**
- 4 **WHEREAS, TOFA is responsible for promoting the economic development and general welfare of**
5 **the Nation and its members by profitably developing the agricultural resources of the**
6 **Nation pursuant to Paragraph 3.1, of TOFA's Second Restated Plan of Operation; and**
- 7 **WHEREAS, after evaluating various financing options to sustain farming operations, and after**
8 **consulting with the Chairwoman and Treasurer of the Nation, TOFA selected the Bank**
9 **of America as the best qualified lender to provide a Revolving Line of Credit of \$4**
10 **Million and a Term Loan of \$1.5 Million as the best alternative to improve the financial**
11 **condition of the farming operation; and**
- 12 **WHEREAS, the Tohono O'odham Legislative Council must approve waivers of sovereign immunity,**
13 **both for the Nation and enterprises chartered pursuant to the laws of the Nation, such**
14 **as the TOFA; and**
- 15 **WHEREAS, by Resolution No. 04-460 (September 22, 2004), the Tohono O'odham Legislative**
16 **Council:**
- 17 **(a) approved the limited waivers of sovereign immunity in the Financing Documents**
18 **between the TOFA and Bank of America ("BofA"), which are listed below:**
- 19 **(1) Business Loan Agreement for the \$4 Million Revolving Line of Credit and \$1.5**
20 **Million Term Loan,**
- 21 **(2) Secured Promissory Note for the \$1.5 Million Term Loan,**
- 22 **(3) Security Agreement-Agricultural Credit placing liens on farm products and**
23 **related collateral,**
- 24 **(4) Environmental Indemnity Agreement to indemnify BofA from farming impacts**
25 **on the environment, and**
- 26 **(b) authorized the Chairwoman of the Nation to execute a Security Agreement-Pledge**
27 **by the Nation which pledges interest income in the SAWRSA Trust Account to**
28 **secure payment of TOFA's Revolving Line of Credit and Term Loan; and**

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(Authorizing the Tohono O'odham Nation's 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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1 **WHEREAS, TOFA's Management Board executed the Financing Documents in early October, 2004;**
2 **and**

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

6 **WHEREAS, due to the impending maturity date of the Business Loan Agreement on December 31,**
7 **2005 combined with the ongoing need for financing to fund operations and crop**
8 **production, TOFA initiated negotiations with BofA to amend the Financing Documents**
9 **to extend the Availability Period to July 1, 2006 to provide financing for FY2006**
10 **operations and crop production; and**

11 **WHEREAS, by Resolution No. 05-649 (October 26, 2005), the Tohono O'odham Legislative Council**
12 **approved amendments to the Financing Documents to extend the Availability Period,**
13 **as defined in Sections 1.A.1.1(b) of the Business Loan Agreement, to July 1, 2006; and**

14 **WHEREAS, during the pendency of the TOFA-BofA transaction, TOFA required emergency funding**
15 **to continue farming operations and crop production, and pursuant to Resolution No.**
16 **05-650 (October 26, 2005) the Tohono O'odham Legislative Council authorized the**
17 **Nation to approve a \$2.5 Million Emergency Loan to TOFA funded from the SAWRSA**
18 **Trust Account for operations and cotton harvesting; and**

19 **WHEREAS, due to the impending maturity date of the Business Loan Agreement on July 1, 2006**
20 **combined with the ongoing need for financing to fund operations and crop**
21 **production, it is critical that TOFA receive this additional financing as soon as possible**
22 **so that it can continue its operations, crop production, and maintain its relationships**
23 **with its vendors; and**

24 **WHEREAS, TOFA has initiated negotiations with BofA to increase the Revolving Line of Credit and**
25 **to refinance the Term Loan; and**

26 **WHEREAS, in order to accommodate TOFA's requested increases, BofA has proposed**
27 **amendments to the following Financing Documents:**

- 28 **(1) Business Loan Agreement,**
29 **(2) Security Amendment-Pledge,**

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1 **(3) Security Agreement-Pledge: Acknowledgment and Assent Agreement, and**

2 **(4) Secured Promissory Note; and**

3 **WHEREAS, the Business Loan Agreement to be executed between TOFA and BofA will be amended,**
4 **to:**

5 **(1) increase the Revolving Line of Credit to \$7.3 Million,**

6 **(2) extend the Availability Period to use the loan proceeds from December 31, 2005 to**
7 **July 1, 2007,**

8 **(3) extend the maturity date of the Business Loan Agreement to July 1, 2007, and**

9 **(4) limit the scope on the use of the loan proceeds to (a) equipment purchases, (b)**
10 **operations, and (c) scheduled payments on the Revolving line of Credit or term**
11 **loan; and**

12 **WHEREAS, the Security Agreement-Pledge and Security Agreement-Pledge: Acknowledgment and**
13 **Assent Agreement to be executed between the BofA and the Nation on behalf of TOFA**
14 **to guarantee payment of the TOFA loans requires amendment, to:**

15 **(1) pledge interest income from the SAWRSA Trust Account in the amount of \$9.6**
16 **Million during the loan period, and**

17 **(2) acknowledge and approve the debt between TOFA and BofA; and**

18 **WHEREAS, the Secured Promissory Note-Term Loan to be executed by the TOFA and BofA to secure**
19 **payment of the Term Loan requires amendment, to refinance the debt secured by the**
20 **Note in the amount of \$1.176 Million to be amortized within the original maturity date**
21 **of September 30, 2009; and**

22 **WHEREAS, TOFA requests that the Nation's Legislative Council approve the limited waivers of**
23 **TOFA's sovereign immunity in the amendments to the Financing Documents between**
24 **the TOFA and BofA.**

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

26 **1. The Legislative Council of the Tohono O'odham Nation approves the limited**
27 **waivers of sovereign immunity in the Amended Financing Documents described**
28 **herein between the TOFA and the BofA as required by subparagraph 9.2.2(A) of the**
29 **TOFA's Second Restated Plan of Operation and authorizes TOFA to enter into the**
30 **Amended Financing Documents described herein.**

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1 2. The Chairwoman of the Tohono O'odham Nation is authorized on behalf of the
2 Nation to enter into the Security Agreement-Pledge: First Amended and Restated
3 on the terms and conditions and in the form of the Security Agreement-Pledge:
4 First Amended and Restated, attached as an Exhibit hereto, in order to pledge the
5 interest earned on the SAWRSA Trust Account held by the Bank of America to
6 secure performance of TOFA's Revolving Line of Credit and Term Loan with the
7 Bank of America including a limited waiver of the Nation's sovereign immunity in
8 order to enforce the obligation of the Nation under the Security Agreement-Pledge:
9 First Amended and Restated.

10 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 20TH Day
11 of JUNE, 2006 at a meeting at which a quorum was present with a vote of 1,346.2 FOR; 501.3
12 AGAINST; 425.9 NOT VOTING; and 167.4[06] ABSENT, pursuant to the powers vested in the Council
13 by Section 1 (d)(2) & (f) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by
14 the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant
15 Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June
16 18, 1934 (48 Stat. 984).

17 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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21 Evelyn B. Juan Manuel, Legislative Chairwoman

22 27th day of June, 2006

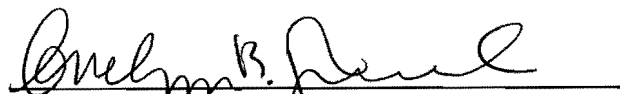
25 ATTEST:

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28 _____
29 Lucille Lopez, Acting Legislative Secretary

30 20 day of June, 2006.

33 Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono
34 O'Odham Nation on the 27th day of June, 2006 at 8:47 o'clock, A.M.,
35 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective
36 upon her approval or upon her failure to either approve or disapprove it within 48 hours of
37 submittal.

38 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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41 _____
42 Evelyn B. Juan Manuel, Legislative Chairwoman

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APPROVED

on the 28 day of June, 2006

DISAPPROVED

at 10:34 o'clock, A.M.

Vivian Juan Saunders
VIVIAN JUAN-SAUNDERS, CHAIRWOMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 28 day of

June, 2006, at 10:40 o'clock, A.M.

Lucille Lopez
Lucille Lopez, Acting Legislative Secretary

ACTION: AUTHORIZING THE TOHONO O'ODHAM NATION'S 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 DARLENE ANDREW **SECOND:** COUNCILWOMAN MARLENE SARAFICIO-JUAN

DATE: JUNE 20, 2006

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 310.8	1. FRANCES MIGUEL (Vernon J. Smith)	155.40	X			
	2. FRANCES G. ANTONE(Absent) (Lucilda J. Valenzuela (Norris))(Present)	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		
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
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 (Eileen A. Estrada-Lopez)	96.90		X		
SCHUK TOAK 146.9	1. FRANCES B. CONDE ()	73.45			X	X
	2. PHYLLIS JUAN ()	73.45			X	
SELLS 421.0	1. MARLENE SARAFICIO-JUAN ()	210.50	X			
	2. EVELYN B. JUAN MANUEL (Kimberly Listo)	210.50	X			X
SIF OIDAK 186.7	1. WAVALENE SAUNDERS (Isidro Lopez)	93.35	X			X
	2. DARLENE ANDREW (Rita Martinez)	93.35	X			
TOTAL		2,440.80	1,346.2	501.3	425.9	167.4 [06]

**PASSED VOTES