

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL  
(Authorizing the Tohono O'odham Nation's Chairperson 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. 07-411**

1 **WHEREAS, the Tohono O'odham Farming Authority ("TOFA") is the Tohono O'odham Nation's**  
2 **("Nation's") 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, in 2004, after evaluating various financing options to sustain farming operations, and**  
8 **after consulting with the Chairwoman and Treasurer of the Nation, TOFA selected the**  
9 **Bank of America ("BoFA") as the best qualified lender to provide a Revolving Line of**  
10 **Credit of \$4 Million and a Term Loan of \$1.5 Million as the best alternative to improve**  
11 **the financial 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 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 TOFA and 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 related**  
23 **collateral,**

24 **(4) Environmental Indemnity Agreement to indemnify BoFA from farming impacts on**  
25 **the environment, and**

26 **(b) authorized the Chairwoman of the Nation to execute a Security Agreement-Pledge**  
27 **by the Nation pledging interest income on the SAWRSA Trust Account to secure**  
28 **payment of TOFA's Revolving Line of Credit and Term Loan; and**

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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 No. 05-**  
4 **233 (Delegating to the Nation's Chairwoman Authority Over the Tohono O'odham**  
5 **Farming 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, by Resolution No. 06-410 (June 28, 2006), the Tohono O'odham Legislative Council**  
20 **approved amendments to the Financing Documents to:**

21 **(1) increase the revolving line of credit to \$7.3 Million,**

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

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

25 **(4) limit the scope on the use of the loan proceeds to (a) equipment purchases, (b)**  
26 **operations, and (c) to make scheduled payments on the revolving line of credit or**  
27 **term loan; and**

28 **WHEREAS, due to the impending maturity date of the Business Loan Agreement on July 1, 2007**  
29 **combined with the ongoing need for financing to fund operations and crop**  
30 **production, it is critical that TOFA continue to receive this financing in a timely**

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1                   manner so that it can continue its operations, crop production, and maintain its  
2                   relationships with its vendors; and

3 **WHEREAS, in order to continue the TOFA financing past July 1, 2007, BofA has proposed execution**  
4 **of the following Amended Financing Documents:**

- 5                   **(1) Second Amended and Restated Security Agreement -- Pledge,**  
6                   **(2) Security Agreement-Pledge -- Third Modification Agreement Acknowledgement**  
7                   **and Approval, and**  
8                   **(3) Revolving Line of Credit Third Modification Agreement, which further extends the**  
9                   **Availability Period to July 1, 2008; and**

10 **WHEREAS, the Second Amended and Restated Security Agreement-Pledge and Security**  
11 **Agreement-Pledge--Acknowledgement and Approval to be executed between the BofA**  
12 **and the Nation on behalf of TOFA is necessary to:**

- 13                   **(1) pledge interest income from the SAWRSA Trust Account in the amount of \$9.5**  
14                   **Million during the loan period, and**  
15                   **(2) acknowledge and approve the debt between TOFA and BofA; and**

16 **WHEREAS, TOFA requests that the Tohono O'odham Legislative Council approve the limited**  
17 **waiver of TOFA's sovereign immunity necessary to execute the Revolving Line of Credit**  
18 **Third Modification Agreement between TOFA and BofA.**

19 **NOW, THEREFORE, BE IT RESOLVED THAT the Tohono O'odham Legislative Council hereby:**

- 20                   **(1) Grants the limited waiver of TOFA sovereign immunity necessary to implement the**  
21 **dispute resolution remedies provided for in Sections 15 and 16 of the Second**  
22 **Amended and Restated Security Agreement -- Pledge, as required by subparagraph**  
23 **9.2.2(A) of TOFA's Second Restated Plan of Operation, and authorizes TOFA to enter**  
24 **into the Revolving Line of Credit Third Modification Agreement substantially in the**  
25 **form attached hereto, and any instrument or agreement required under that**  
26 **Agreement, and authorizes the Chairperson of the Nation, on behalf of TOFA, to**  
27 **execute and deliver the Revolving Line of Credit Third Modification Agreement to**  
28 **the BofA.**  
29                   **(2) Grants the limited waiver of the Nation's sovereign immunity necessary to**  
30 **implement the dispute resolution remedies provided for in Sections 15 and 16 of**

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1 the Second Amended and Restated Security Agreement -- Pledge, and authorizes  
2 the Chairperson of the Nation to execute and deliver the Second Amended and  
3 Restated Security Agreement -- Pledge and the Security Agreement-Pledge--Third  
4 Modification Agreement, Acknowledgement and Approval, substantially in the  
5 form attached hereto, in order to pledge \$9.5 Million of the interest earned on the  
6 SAWRSA Trust Account held by the Bank of America to secure performance of  
7 TOFA's Revolving Line of Credit and Term Loan with the Bank of America.  
8 (3) Authorizes the Chairperson of the Nation to execute such further documents as  
9 may be reasonably necessary to implement the intent of this resolution.

10 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 18<sup>TH</sup>. Day  
11 of JUNE, 2007 at a meeting at which a quorum was present with a vote of 1,574.2 FOR; 222.35  
12 AGAINST; 737.95 NOT VOTING; and [05] ABSENT, pursuant to the powers vested in the Council by  
13 Section 1 (d)(2)&1(e) 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).

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18  
19 TOHONO O'ODHAM LEGISLATIVE COUNCIL

20  
21  
22 Felicia Munez for  
23 Verlon M. Jose, Legislative Chairman

24  
25 20 day of June, 2007

26  
27 ATTEST:

28  
29 Lucille Lopez  
30  
31 Lucille Lopez, Acting Legislative Secretary

32  
33 18 day of June, 2007.

34  
35 Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham  
36 Nation on the 20 day of June, 2007 at 9:01 o'clock, a.M.,  
37 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective  
38 upon his approval or upon his failure to either approve or disapprove it within 48 hours of  
39 submittal.

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**TOHONO O'ODHAM LEGISLATIVE COUNCIL**

*Felicia Muey for*  
**Verlon M. Jose, Legislative Chairman**

**APPROVED**

on the 21 day of June, 2007

**DISAPPROVED**

at 6:32 o'clock, P.M.

*Ned Norris, Jr.*  
**NED NORRIS, JR., CHAIRMAN**  
**TOHONO O'ODHAM NATION**

Returned to the Legislative Secretary on the 22 day of

June, 2007, at 9:25 o'clock, A.M.

*Lucille Lopez*  
**Lucille Lopez, Acting Legislative Secretary**

**ACTION: AUTHORIZING THE TOHONO O'ODHAM NATION'S CHAIRPERSON 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 FRANCES CONDE**

**SECOND: COUNCILWOMAN LORRAINE EILER**

**DATE: JUNE 18, 2007**

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
<b>BABOQUIVARI</b> <b>316.9</b>	1. FRANCES MIGUEL (Roberta Harvey)	158.45	X			X
	2. FRANCES G. ANTONE ( )	158.45	X			
<b>CHUKUT KUK</b> <b>264.8</b>	1. ETHEL GARCIA ( )	132.40	X			
	2. VERLON M. JOSE ( )	132.40	X			X
<b>GU ACHI</b> <b>227.9</b>	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	113.95			X	
	2. CYNTHIA E. MANUEL ( )	113.95			X	X
<b>GU VO</b> <b>199.2</b>	1. GRACE MANUEL ( )	99.60	X			
	2. MICHAEL FLORES ( )	99.60	X			X
<b>HICKIWAN</b> <b>172.0</b>	1. MICHELLE ORTEGA ** ( )	86.00	X			
	2. SANDRA ORTEGA ( )	86.00	X			
<b>PISINEMO</b> <b>182.4</b>	1. CHESTER ANTONE ( )	91.20	X			
	2. GERALD FAYUANT ( )	91.20			X	
<b>SAN LUCY</b> <b>181.1</b>	1. LORRAINE EILER ( )	90.55	X			
	2. GLORIA RAMIREZ ( )	90.55	X			
<b>SAN XAVIER</b> <b>196.5</b>	1. FELICIA NUÑEZ (Adam P. Andrews)	98.25			X	
	2. OLIVIA VILLEGAS-LISTON ** (Eileen A. Estrada-Lopez)	98.25			X	
<b>SCHUK TOAK</b> <b>154.6</b>	1. FRANCES B. CONDE (Frederick Jose)	77.30	X			
	2. (VACANT) ( )	77.30	X			
<b>SELLS</b> <b>444.7</b>	1. KIMBERLY LISTO ( )	222.35			X	
	2. EVELYN B. JUAN MANUEL ( )	222.35		X		
<b>SIF OIDAK</b> <b>194.4</b>	1. WAVALENE ROMERO ( )	97.20	X			
	2. MARY LOPEZ ( )	97.20	X			X
<b>TOTAL</b>		<b>2,534.5</b>	<b>1,574.2</b>	<b>222.35</b>	<b>737.95</b>	<b>[05</b>

\*\*PASSED VOTES