

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Authorizing the Tohono O'odham Nation's Chairman 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. 08-406

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**
3 **Vo Farms on behalf of the Nation; and**

4 **WHEREAS, TOFA is responsible for promoting the economic development and general welfare**
5 **of the Nation and its members by profitably developing the agricultural resources**
6 **of the Nation, pursuant to Paragraph 3.1 of TOFA's Second Restated Plan of**
7 **Operation; and**

8 **WHEREAS, in 2004, after evaluating various financing options to sustain farming operations,**
9 **and after consulting with the Chairwoman and Treasurer of the Nation, TOFA**
10 **selected the Bank of America ("BofA") as the best qualified lender to provide a**
11 **Revolving Line of Credit of \$4 Million and a Term Loan of \$1.5 Million as the best**
12 **alternative to improve the financial condition of the farming operation; and**

13 **WHEREAS, the Tohono O'odham Legislative Council must approve waivers of sovereign**
14 **immunity, both for the Nation and enterprises chartered pursuant to the laws of the**
15 **Nation, such as TOFA; and**

16 **WHEREAS, by Resolution No. 04-460 (September 22, 2004), the Tohono O'odham Legislative**
17 **Council:**

18 **(a) approved the limited waivers of sovereign immunity in the Financing**
19 **Documents between TOFA and BofA, which are listed below:**

- 20 **1. Business Loan Agreement for the \$4 Million Revolving Line of Credit and \$1.5**
21 **Million Term Loan.**
- 22 **2. Secured Promissory Note for the \$1.5 Million Term Loan**
- 23 **3. Security Agreement-Agricultural Credit placing liens on farm products and**
24 **related collateral.**
- 25 **4. Environmental Indemnity Agreement to indemnify BofA from farming impacts**
26 **on the environment,**

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1 **and authorized the Chairwoman of the Nation to execute a Security Agreement-**
2 **Pledge by the Nation pledging interest income on the SAWRSA Trust Account to**
3 **secure payment of TOFA's Revolving Line of Credit and Term Loan; and**

4 **WHEREAS, TOFA's Management Board executed the Financing Documents in early October,**
5 **2004; and**

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

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

14 **WHEREAS, by Resolution No. 05-649 (October 26, 2005), the Tohono O'odham Legislative Council**
15 **approved amendments to the Financing Documents to extend the Availability**
16 **Period, as defined in Sections 1.A.1.1(b) of the Business Loan Agreement, to July 1,**
17 **2006; and**

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

23 **WHEREAS, by Resolution No. 06-410 (June 28, 2006), the Tohono O'odham Legislative Council**
24 **approved amendments to the Financing Documents to:**

- 25 **(1) increase the revolving line of credit to \$7.3 Million,**
26 **(2) extend the Availability Period to use the loan proceeds from December 31, 2005**
27 **to July 1, 2007,**
28 **(3) extend the maturity date of the Business Loan Agreement to July 1, 2007, and**
29 **(4) limit the scope on the use of the loan proceeds (a) equipment purchases, (b)**

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1 **operations, and (c) to make scheduled payments on the revolving line of credit**
2 **or term loan; and**

3 **WHEREAS, by Resolution No. 07-411, the Tohono O'odham Legislative Council approved**
4 **amendments to the Financing Documents to extend the Availability Period and the**
5 **maturity date of the Business Loan Agreement to July 1, 2008; and**

6 **WHEREAS, due to the impending maturity date of the Business Loan Agreement on July 1, 2008**
7 **combined with the ongoing need for financing to fund operations and crop**
8 **production, it is critical that TOFA continue to receive this financing in a timely**
9 **manner so that it can continue its operations, crop production, and maintain its**
10 **relationships with its vendors; and**

11 **WHEREAS, in order to continue the TOFA financing past July 1, 2008, BofA has proposed**
12 **execution of the following Amended Financing Documents:**

- 13 **(1) Third Amended and Restated Security Agreement -- Pledge,**
14 **(2) Security Agreement-Pledge -- Fourth Modification Agreement**
15 **Acknowledgement and Approval, and**
16 **(3) Revolving Line of Credit Fourth Modification Agreement, which further extends**
17 **the Availability Period to July 1, 2009; and**

18 **WHEREAS, the Third Amended and Restated Security Agreement-Pledge and Security**
19 **Agreement-Pledge--Acknowledgement and Approval to be executed between the**
20 **BofA and the Nation on behalf of TOFA is necessary to:**

- 21 **1. pledge interest income from the SAWRSA Trust Account in the amount of \$9.5**
22 **Million during the loan period, and**
23 **2. acknowledge and approve the debt between TOFA and BofA; and**

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

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

- 28 **1. Grants the limited waiver of TOFA sovereign immunity necessary to implement**
29 **the dispute resolution remedies provided for in Sections 15 and 16 of the Third**

ACTION: AUTHORIZING THE TOHONO O'ODHAM NATION'S CHAIRMAN 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 30, 2008

| DISTRICT | LEGISLATIVE REPRESENTATIVES | # OF VOTES | FOR | AGAINST | NOT VOTING | ABSENT |
|------------------------------|--|----------------|----------------|------------|--------------|-------------|
| BABOQUIVARI 316.9 | 1. FRANCES MIGUEL (Roberta Harvey) | 158.45 | X | | | |
| | 2. FRANCES G. ANTONE (Vernon Smith) | 158.45 | X | | | |
| CHUKUT KUK 264.8 | 1. ETHEL GARCIA () | 132.40 | X | | | |
| | 2. VERLON M. JOSE () | 132.40 | X | | | |
| GU ACHI 227.9 | 1. TIMOTHY L. JOAQUIN (Louis L. Johnson) | 113.95 | X | | | |
| | 2. CYNTHIA E. MANUEL () | 113.95 | X | | | |
| GU VO 199.2 | 1. GRACE MANUEL () | 99.60 | X | | | |
| | 2. RAYMOND VICTOR () | 99.60 | X | | | |
| HICKIWAN 172.0 | 1. MICHELLE ORTEGA () | 86.00 | X | | | |
| | 2. SANDRA ORTEGA () | 86.00 | X | | | X |
| PISINEMO 182.4 | 1. CHESTER ANTONE (Tony Murrietta) | 91.20 | X | | | |
| | 2. GERALD FAYUANT () | 91.20 | X | | | |
| SAN LUCY 181.1 | 1. LORRAINE EILER () | 90.55 | X | | | |
| | 2. GLORIA RAMIREZ () | 90.55 | X | | | |
| SAN XAVIER 196.5 | 1. FELICIA NUÑEZ (Adam P. Andrews) | 98.25 | X | | | |
| | 2. OLIVIA VILLEGAS-LISTON (Eileen A. Estrada-Lopez) | 98.25 | X | | | |
| SCHUK TOAK 154.6 | 1. FRANCES B. CONDE (Fredrick Jose) | 77.30 | X | | | |
| | 2. PHYLLIS CACHORA (Agnes Joaquin) | 77.30 | X | | | |
| SELLS 444.7 | 1. KIMBERLY LISTO () | 222.35 | | | X | X |
| | 2. EVELYN B. JUAN MANUEL () | 222.35 | | | X | |
| SIF Oidak 194.4 | 1. WAVALENE SAUNDERS () | 97.20 | X | | | |
| | 2. MARY LOPEZ () | 97.20 | X | | | |
| TOTAL | | 2,534.5 | 2,089.8 | -0- | 444.7 | [02] |

****PASSED VOTES**