

**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. 10-253

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**
23 **related collateral.**
- 24 **4. Environmental Indemnity Agreement to indemnify BofA from farming impacts**
25 **on the environment.**

26 **and 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**

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

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1 **WHEREAS, on May 6, 2005, the Tohono O'odham Legislative Council adopted Resolution No. 05-**
2 **233 (Delegating to the Nation's Chairwoman Authority Over the Tohono O'odham**
3 **Farming Authority); and**

4 **WHEREAS, due to the impending maturity date of the Business Loan Agreement on December 31,**
5 **2005 combined with the ongoing need for financing to fund operations and crop**
6 **production, TOFA initiated negotiations with BofA to amend the Financing Documents**
7 **to extend the Availability Period to July 1, 2006 to provide financing for FY2006**
8 **operations and crop production; and**

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

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

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

- 19 **(1) Increase the revolving line of credit to \$7.3 Million,**
20 **(2) Extend the Availability Period to use the loan proceeds from December 31, 2005 to**
21 **July 1, 2007.**
22 **(3) Extend the maturity date of the Business Loan Agreement to July 1, 2007.**
23 **(4) Limit the scope on the use of the loan proceeds (a) equipment purchases, (b)**
24 **operations, and (c) to make scheduled payments on the revolving line of credit or**
25 **term loan; and**

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

29 **WHEREAS, by Resolution No. 08-406, the Tohono O'odham Legislative Council approved further**
30 **amendments to the Financing Documents to extend the Availability Period and the**
31 **maturity date of the Business Loan Agreement to July 1, 2009, which amendments**
32 **reduce the amount of the Revolving Line of Credit from \$7.3 Million to \$6.0 Million;**

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1 **and**

2 **WHEREAS, by Resolution No. 09-370 the Tohono O'odham Legislative Council approved further**
3 **amendments to the Financing Documents to extend the Availability Period and the**
4 **maturity date of the Business Loan Agreement to July 1, 2010, with the amount of the**
5 **Revolving Line of Credit staying at \$6.0 Million; and**

6 **WHEREAS, due to the impending maturity date of the Business Loan Agreement on July 1, 2010**
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, 2010, BofA has proposed execution**
12 **of the following Amended Financing Documents:**

- 13 **(1) Fourth Amended and Restated Security Agreement -- Pledge.**
14 **(2) Acknowledgement and Approval of Revolving Line of Credit Sixth Modification**
15 **Agreement and Fourth Amended and Restated Security Agreement -- Pledge.**
16 **(3) Revolving Line of Credit Sixth Modification Agreement, which further extends the**
17 **Availability Period to July 1, 2011; and**

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

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

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

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Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 1st day of July, 2010 at 3:26 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

Felicia Muniz for
Verlon M. Jose, Legislative Chairman

APPROVED

on the 1 day of July, 2010

DISAPPROVED

at 3:32 o'clock P.M.

NED NORRIS, JR., CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 1 day of

July, 2010, at 3:45 o'clock, P.M.

Evonne Wilson
Evonne Wilson, Legislative Secretary

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 LINDA PARLEY

DATE: JUNE 24, 2010

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 198.7	1. WAVALENE ROMERO (Nicholas Jose)	99.35			X	
	2. MARY LOPEZ ()	99.35			X	X
SELLS 449.6	1. KIMBERLY LISTO ()	224.80	X			
	2. EVELYN B. JUAN MANUEL ()	224.80	X			
SCHUK TOAK 159.0	1. FRANCES B. CONDE (Fredrick Jose)	79.50	X			
	2. LINDA PARLEY (Agnes Joaquin)	79.50	X			
SAN XAVIER 204.7	1. FELICIA NUÑEZ ()	102.35		X		X
	2. OLIVIA VILLEGAS-LISTON (Eugene Enis)	102.35		X		
SAN LUCY 187.1	1. LORRAINE EILER ()	93.55				X
	2. GLORIA RAMIREZ ()	93.55				X
PISINEMO 184.5	1. CHESTER ANTONE <i>(Absent)</i> (Tony Murrietta) <i>(Present)</i>	92.25	X			
	2. EDWARD MANUEL (Gerald Fayuant)	92.25	X			
HICKIWAN 174.5	1. MICHELLE ORTEGA ()	87.25	X			
	2. SANDRA ORTEGA ()	87.25	X			
GU VO 206.3	1. GRACE MANUEL ()	103.15	X			X
	2. PAMELA ANGHILL (Angela Ortiz)	103.15	X			
GU ACHI 230.1	1. TIMOTHY L. JOAQUIN ()	115.05	X			
	2. CYNTHIA E. MANUEL ()	115.05	X			X
CHUKUT KUK 277.0	1. ETHEL GARCIA (Sara Mae Williams)	138.50	X			
	2. VERLON M. JOSE ()	138.50	X			
BABOQUIVARI 324.0	1. FRANCES MIGUEL <i>(Absent)</i> (Roberta Harvey) <i>(Present)</i>	162.0	X			
	2. FRANCES G. ANTONE <i>(Absent)</i> (Vernon Smith) <i>(Present)</i>	162.0	X			
TOTAL		2,595.50	2,005.0	204.70	198.70 [01]	187.10 [06]