

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL  
(Directing Payoff of 2020 Loans between the Tohono O'odham Farming Authority, as  
Borrower, and Bank of America, N.A., as Lender, and Requiring Repayment to Nation)**

**RESOLUTION NO. 22-109**

1 **WHEREAS,** the Tohono O'odham Legislative Council is authorized to "consult, negotiate and  
2 conclude agreements and contracts on behalf of the Tohono O'odham Nation,"  
3 "manage any funds within the exclusive control of the Tohono O'odham Nation,  
4 including proceeds derived from lands and resources of the Tohono O'odham  
5 Nation, and to appropriate these funds for the benefit of the nation and its  
6 members," and "authorize, charter and regulate public or private corporations  
7 and associations" (Constitution of the Tohono O'odham Nation, Article VI, Section  
8 1(f) , 1(d)(2), and 1(e)); and

9 **WHEREAS,** the Nation has established the Tohono O'odham Farming Authority ("TOFA") as a  
10 for-profit Nation's enterprise to "foster, encourage and promote the economic  
11 development and general welfare of the Tohono O'odham Nation and its  
12 members by utilization of the agricultural resources of the Nation" (TOFA Second  
13 Restated Plan of Operation, 2 T.O.C. Chapter 1, Section 3.1.1.); and

14 **WHEREAS,** TOFA is currently authorized to operate the San Lucy, Schuk Toak, and Vaiva Vo  
15 Farms on behalf of the Nation; and

16 **WHEREAS,** the Nation's sovereign immunity, which extends to the Nation's districts,  
17 enterprises, entities and the officials, employees, and agents thereof, cannot be  
18 waived except by a resolution or other official action of the Tohono O'odham  
19 Legislative Council expressly waiving, or authorizing a waiver of, sovereign  
20 immunity (1 T.O.C. Chapter 2, Section 2101); and

21 **WHEREAS,** by Resolution No. 20-028, the Tohono O'odham Legislative Council approved a  
22 loan transaction by and between Bank of America, N.A. ("Lender") and TOFA (also  
23 referred to herein as "Borrower") (i) amending and restating a 2013 revolving line  
24 of credit in the maximum available principal amount of Six Million and No/100  
25 Dollars (\$6,000,000.00) (the "TOFA Line of Credit"), and (ii) providing TOFA a term  
26 loan in the principal amount of Three Million and No/100 Dollars (\$3,000,000.00)  
27 (the "TOFA Term Loan", which together with the TOFA Line of Credit are  
28 collectively referred to herein as the "2020 TOFA Loans"), as evidenced by that  
29 certain Loan Agreement by and between Lender and Borrower, dated January 27,  
30 2020 (the "2020 Loan Agreement"); and

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1 **WHEREAS,** as evidenced by the Security Agreement (Multiple Use) by and between Lender  
2 and Borrower, dated January 27, 2020 (the “Security Agreement”), the payments  
3 and performances due under the 2020 Loan Agreement are secured by, among  
4 other things, (a) Borrower's grant to Lender of a security interest in and lien on (i)  
5 all inventory, including all materials, work in process and finished goods, and (ii)  
6 all machinery, furniture, fixtures and other equipment of every type now owned  
7 or hereafter acquired by the Borrower (excluding any property of the Borrower in  
8 which the John Deere Co., or its affiliates, has a security interest, or any property  
9 subsequently purchased by the Borrower from and financed by John Deere Co.)  
10 (collectively, the “TOFA Collateral”); and

11 **WHEREAS,** as a condition of the 2020 TOFA Loans, the Nation entered into a Pledge Agreement  
12 securing the 2020 TOFA Loans with the Nation’s SAWRSA TRUST account  
13 maintained with the Lender (the “2020 Pledge Agreement, which together with  
14 the 2020 TOFA Loan Agreement, the 2020 Security Agreement and other related  
15 loan documents executed in connection therewith, are collectively referred to  
16 herein as the “2020 TOFA Loan Documents”); and

17 **WHEREAS,** by Resolution No. 20-028, the Tohono O’odham Legislative Council approved the  
18 limited waiver of TOFA's sovereign immunity, as set forth in the 2020 TOFA Loan  
19 Documents; and

20 **WHEREAS,** the 2020 Pledge Agreement included a limited waiver of the Nation’s sovereign  
21 immunity in favor of Lender to allow the 2020 TOFA Pledge Agreement to be  
22 enforced in accordance with its terms and secured the payment of TOFA's  
23 indebtedness to the Lender, including all debts, obligations or liabilities to  
24 Lender; and

25 **WHEREAS,** the maturity date of the 2020 TOFA Loans is January 1, 2022; and

26 **WHEREAS,** on February 3, 2022, proposed Legislative Council resolutions approving a 6-  
27 month extension of the 2020 TOFA Loans, and extending the maturity date of the  
28 2020 TOFA Loans to July 1, 2022, were defeated; and

29 **WHEREAS,** the amounts under the 2020 TOFA Loans are due and payable in full, together with  
30 accrued interest and fees, by April 1, 2022; however, TOFA is unable to make the  
31 payments to Lender; and

32 **WHEREAS,** it is in the Nation’s best interests to satisfy its obligations under the Pledge  
33 Agreement from the Nation’s general fund pursuant to the 2020 TOFA Loan Payoff

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1                    **Plan, which is incorporated by this reference and shall not be reported or**  
2                    **disclosed, rather than from the Nation's SAWRSA TRUST; and**

3 **WHEREAS, the Legislative Council Agricultural and Natural Resources, Budget and Finance,**  
4 **and Water Resources Committees therefore recommend that the Legislative**  
5 **Council appropriate amounts from the Nation's general fund in accordance with**  
6 **the 2020 TOFA Loan Payoff Plan and direct the Nation's treasurer to transfer such**  
7 **funds to Lender on March 14, 2022 to satisfy the Nation's obligations under the**  
8 **Pledge Agreement and allow TOFA to cancel the 2020 TOFA Loans.**

9 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council appropriates**  
10 **amounts from the Nation's general fund in accordance with the 2020 TOFA Loan**  
11 **Payoff Plan, which is hereby approved, and directs the Nation's treasurer to**  
12 **transfer such funds to Lender on or about March 14, 2022 to satisfy the Nation's**  
13 **obligations under the Pledge Agreement; provided that TOFA furnishes the**  
14 **documentation required by Lender to close the 2020 TOFA Loans.**

15 **BE IT FURTHER RESOLVED by the Tohono O'odham Legislative Council that, pursuant to 2 T.O.C.**  
16 **Chapter 1, Section 7.3, funds appropriated by this Resolution are deemed**  
17 **advanced to the Tohono O'odham Farming Authority, shall be considered as a**  
18 **loan from the Nation, and shall be repayable as prescribed by a repayment**  
19 **agreement approved by subsequent Legislative Council resolution.**

20 **BE IT FURTHER RESOLVED that the Tohono O'odham Legislative Council directs the**  
21 **Agricultural and Natural Resources and Budget and Finance Committees, in**  
22 **consultation with the Nation's treasurer and TOFA Board, to provide the**  
23 **Legislative Council with a proposed repayment agreement and initial plan for**  
24 **evaluating TOFA's operations and finances during the April 2022 Legislative**  
25 **Council general session.**

26 **BE IT FURTHER RESOLVED that, pending a complete evaluation of TOFA's operations and**  
27 **finances, the Legislative Council designates the Nation's treasurer as an**  
28 **authorized representative of the Tohono O'odham Nation with authority to**  
29 **request and inspect all books and records of the Authority, including but not**  
30 **limited to current financial and operating statements.**

31 **BE IT FINALLY RESOLVED that the Tohono O'odham Legislative Council authorizes and directs**  
32 **the Nation's chairperson and treasurer or other designated official to take all**  
33 **actions necessary to implement this Resolution.**

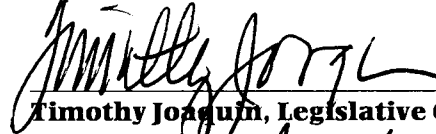
**RESOLUTION NO. 22-109**

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1 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 11<sup>TH</sup>  
2 day of MARCH, 2022 at a meeting at which a quorum was present with a vote of 3,109.7 FOR; 108.3  
3 AGAINST; [01] NOT VOTING; and -0- ABSENT, pursuant to the powers vested in the Council by,  
4 Article VI, Section 1(f), 1(d)(2), and 1(e) of the Constitution of the Tohono O'odham Nation,  
5 adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy  
6 Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the  
7 Act of June 18, 1934 (48 Stat.984).

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9 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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13 Timothy Joaquin, Legislative Chairman

14 14 day of March, 2022

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17 ATTEST:

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20 Evonne Wilson, Legislative Secretary

21 14 day of March, 2022

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24 Said Resolution was submitted for approval to the office of the Chairman of the Tohono  
25 O'odham Nation on the 14 day of March, 2022 at 4:50 o'clock, P .m.,  
26 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become  
27 effective upon his approval or upon his failure to either approve or disapprove it within 48  
28 hours of submittal.

29  
30 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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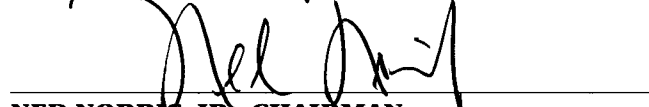
34 Timothy Joaquin, Legislative Chairman

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38  APPROVED

39 on the 15 day of March, 2022

40  DISAPPROVED

41 at 4:50 o'clock, P .m.

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

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1 Returned to the Legislative Secretary on the 15 day of

2 March, 2022, at 4:58 o'clock, 1 .m.

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5 Evonne Wilson

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7 **Evonne Wilson, Legislative Secretary**

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**ACTION: DIRECTING PAYOFF OF 2020 LOANS BETWEEN THE TOHONO O'ODHAM FARMING AUTHORITY, AS BORROWER, AND BANK OF AMERICA, N.A., AS LENDER, AND REQUIRING REPAYMENT TO NATION**

**Moved: COUNCILWOMAN JANICE FELIX**

**SECOND: COUNCILWOMAN MARLAKAY HENRY**

**DATE: MARCH 11, 2022**

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 245.6	1. MARY LOPEZ (Ann M. Garcia)	122.8	X			
	2. LUCINDA ALLEN (Francis Homewytewa)	122.8	X			
SELLS 556.5	1. ARTHUR WILSON ( )	278.25	X		X	
	2. EVELYN JUAN-MANUEL (Arvada Liston)	278.25	X			
SCHUK TOAK 190.5	1. TERESA F. DONAHUE (Alberta Espinoza)	95.25	X			
	2. DELISA M. RAMON (Sharon A. Francisco)	95.25	X			
SAN XAVIER 242.6	1. DANIEL L.A. PRESTON III (Racheal Vilson-Stoner)	121.3	X			
	2. JANICE FELIX (Adam P. Andrews)	121.3	X			
SAN LUCY 243.8	1. JANA MONTANA (Lorraine M. Eiler)	121.9	X			
	2. ROGER MANUEL (Christina Andrews)	121.9	X			
PISINEMO 232.7	1. MARIETTA MARTIN ( )	116.35	X			
	2. EDWARD D. MANUEL (Monica Morgan)	116.35	X			
HICKIWAN 216.6	1. LOUIS R. LOPEZ ( )	108.3		X		
	2. SANDRA D. ORTEGA ( <i>Absent</i> ) (Delma M. Garcia) ( <i>Present</i> )	108.3	X			
GU VO 270.7	1. GRACE MANUEL ( )	135.35	X			
	2. CYNTHIA SAAVEDRA (Dallas Lewis)	135.35	X			
GU ACHI 278.5	1. TIMOTHY L. JOAQUIN ( )	139.25	X			
	2. VICTORIA HOBBS (Tonya L. Joaquin)	139.25	X			
CHUKUT KUK 351.6	1. MARLAKAY HENRY (Billman Lopez)	175.8	X			
	2. VIVIAN JUAN-SAUNDERS (Cornelius Antone)	175.8	X			
BABOQUIVARI 388.9	1. ALBERTA J. RAY (Frances G. Antone)	194.45	X			
	2. LEANDER MASE (Francine Schooling)	194.45	X			
<b>TOTAL</b>		<b>3,218.0</b>	<b>3,109.7</b>	<b>108.3</b>	<b>[01]</b>	<b>-0-</b>