

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Authorizing the Chairman of the Tohono O'odham Nation to Negotiate and Execute**  
**the Tohono O'odham Farming Authority and Bank of America Loan Documents on**  
**Behalf of TOFA and the Nation)**

**RESOLUTION NO. 13-422**

1 **WHEREAS, the Tohono O'odham Farming Authority ("TOFA") is the Tohono O'odham**  
2 **Nation's ("Nation's") enterprise authorized to operate the San Lucy, Schuk Toak,**  
3 **and Vaiva Vo Farms on behalf of the Nation; and**

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

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

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

17 **WHEREAS, by Resolution No. 04-460, the Tohono O'odham Legislative 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**  
21 **\$1.5 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**  
24 **and related collateral,**  
25 **(4) Environmental Indemnity Agreement to indemnify BofA from farming**  
26 **impacts on the environment,**

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

30 **WHEREAS, TOFA's Management Board executed the Financing Documents in early October,**  
31 **2004; and**

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1 **WHEREAS, on May 6, 2005, the Tohono O'odham Legislative Council adopted Resolution 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**  
5 **December 31, 2005 combined with the ongoing need for financing to fund**  
6 **operations and crop production, TOFA initiated negotiations with BofA to**  
7 **amend the Financing Documents to extend the Availability Period to July 1, 2006**  
8 **to provide financing for FY2006 operations and crop production; and**

9 **WHEREAS, by Resolution No. 05-649, the Tohono O'odham Legislative Council approved**  
10 **amendments to the Financing Documents to extend the Availability Period to**  
11 **July 1, 2006; and**

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

17 **WHEREAS, by Resolution No. 06-410, the Tohono O'odham Legislative Council approved**  
18 **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,**  
21 **2005 to July 1, 2007,**  
22 **(3) extend the maturity date of the Business Loan Agreement to July 1, 2007, and**  
23 **(4) limit the scope on the use of the loan proceeds to (a) equipment purchases,**  
24 **(b) operations, and (c) to make scheduled payments on the revolving line of**  
25 **credit or 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**  
28 **the 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**  
30 **further amendments to the Financing Documents to extend the Availability**  
31 **Period and the maturity date of the Business Loan Agreement to July 1, 2009,**  
32 **which amendments reduce the amount of the Revolving Line of Credit from \$7.3**  
33 **Million to \$6.0 Million; and**

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

5 **WHEREAS, by Resolution No. 10-253 the Tohono O'odham Legislative Council approved**  
6 **further amendments to the Financing Documents to extend the Availability**  
7 **Period and the maturity date of the Business Loan Agreement to July 1, 2011,**  
8 **with the amount of the Revolving Line of Credit staying at \$6.0 Million; and**

9 **WHEREAS, by Resolution No. 11-276 the Tohono O'odham Legislative Council approved**  
10 **further amendments to the Financing Documents to extend the Availability**  
11 **Period and the maturity date of the Business Loan Agreement for two years to**  
12 **July 1, 2013, with the amount of the Revolving Line of Credit staying at \$6.0**  
13 **Million; and**

14 **WHEREAS, due to the termination of the Business Loan Agreement on July 1, 2013 combined**  
15 **with the ongoing need for bank financing for agricultural purposes,**  
16 **maintenance or replacement of agricultural structures, and other working**  
17 **capital purposes of TOFA, it is critical that TOFA continue to receive this**  
18 **financing in a timely manner so that is can continue its operations, crop**  
19 **production, and maintain its relationships with its vendors; and**

20 **WHEREAS, in order to continue the TOFA revolving line of credit financing past July 1, 2013,**  
21 **BofA has proposed execution of the following Loan Documents, which supersede**  
22 **the prior Business Loan Agreement and other financing documents, for a loan**  
23 **for a two year period of time:**

24 **(1) Loan Agreement between BofA and TOFA, which extends a revolving line of**  
25 **credit facility in the amount of \$6,000,000 until July 1, 2015;**

26 **(2) Acknowledgement and Approval between BofA and the Nation and**  
27 **acknowledged by TOFA;**

28 **(3) Pledge Agreement between BofA and the Nation;**

29 **(4) Security Agreement between BofA, the Nation, and TOFA;**

30 **(5) Closing Certificate of Borrower executed by TOFA;**

31 **(6) Resolution of TOFA executed by TOFA; and**

32 **WHEREAS, TOFA has requested that the Tohono O'odham Legislative Council approve the**  
33 **limited waiver of TOFA's sovereign immunity necessary to execute the Loan**

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1                   **Agreement, the Security Agreement, and the Closing Certificate of Borrower**  
2                   **between TOFA and BofA.**

3 **NOW, THEREFORE, BE IT RESOLVED THAT the Tohono O'odham Legislative Council,**  
4                   **notwithstanding any contrary provision in TOFA's Second Restated Plan of**  
5                   **Operation, hereby:**

- 6                   **1. Grants the limited waiver of TOFA sovereign immunity necessary to**  
7                   **implement the dispute resolution remedies and indemnification provisions**  
8                   **in Sections 11.10, 11.19 and 11.22 of the Loan Agreement and Section 8 of the**  
9                   **Security Agreement, as required by subparagraph 9.2.2(A) of TOFA's Second**  
10                   **Restated Plan of Operation. This limited waiver of sovereign immunity**  
11                   **consents to suit or actions or arbitration enforcement in the Nation's**  
12                   **Judicial Court or in federal court, arising out of or related to the Loan**  
13                   **Agreement or the Loan Documents only to the extent of the principal sum**  
14                   **owing by TOFA to the BofA, plus any interest accrued or accruing on that sum**  
15                   **and any costs or fees owed by TOFA to the BofA under the Loan Documents,**  
16                   **including attorneys' fees.**
- 17                   **2. Authorizes TOFA to enter into the Loan Agreement with a termination date of**  
18                   **July 1, 2015, the Security Agreement, and the Closing Certificate of Borrower,**  
19                   **in substantially the form attached hereto, and any instrument or agreement**  
20                   **required under the Loan Agreement, and authorizes the Chairman of the**  
21                   **Nation, on behalf of TOFA, to execute and deliver the documents to the BofA.**
- 22                   **3. Grants the limited waiver of the Nation's sovereign immunity necessary to**  
23                   **implement the dispute resolution remedies and indemnification provisions**  
24                   **in Section 16 and 17 of the Pledge Agreement, Section 8 of the Security**  
25                   **Agreement, and Section 22 of the Acknowledgement and Approval document.**  
26                   **This limited waiver of sovereign immunity consents to suit or actions or**  
27                   **arbitration enforcement in the Nation's Judicial Court or in federal court,**  
28                   **arising out of or related to the Loan Agreement the Loan Documents only to**  
29                   **the extent of the principal sum owing by TOFA to the BofA, plus any interest**  
30                   **accrued or accruing on that sum and any costs or fees owed by TOFA to the**  
31                   **BofA under the Loan Documents, including attorneys' fees.**
- 32                   **4. Authorizes the Chairman of the Nation to execute and deliver the Pledge**  
33                   **Agreement, the Security Agreement, and the Acknowledgement and Approval**  
34                   **document each with a termination date of July 1, 2015, in substantially the**

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1 form attached hereto, in order to pledge the SAWRSA Trust Account held by  
2 the Bank of America in the amount necessary to secure the TOFA  
3 indebtedness in the Loan Agreement.

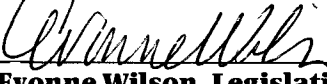
4 5. Authorizes the Chairman of the Nation to execute such further documents as  
5 may be reasonably necessary to implement the intent of this resolution.

6 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 11<sup>TH</sup>  
7 day of OCTOBER, 2013 at a meeting at which a quorum was present with a vote of 2,722.3  
8 FOR; 224.2 AGAINST; -0- NOT VOTING; and [03] ABSENT, pursuant to the powers vested in the  
9 Council by Article VI, Section 1 (d)(2) and 1(e) of the Constitution of the Tohono O'odham  
10 Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the  
11 Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to  
12 Section 16 of the Act of June 18, 1934 (48 Stat.984).

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15 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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18 Timothy Joaquin, Legislative Chairman  
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20 14 day of October, 2013

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25 ATTEST:

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28 Evonne Wilson, Legislative Secretary  
29  
30 14 day of October, 2013

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32 Said Resolution was submitted for approval to the office of the Chairman of the Tohono  
33 O'odham Nation on the 14 day of October, 2013 at 5:02 o'clock, P .m.,  
34 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become  
35 effective upon his approval or upon his failure to either approve or disapprove it within 48  
36 hours of submittal.

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39 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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42 Timothy Joaquin, Legislative Chairman  
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**APPROVED**

on the 15 day of October, 2013

**DISAPPROVED**

at 9:50 o'clock, A.m.

W. Noel M. Romero, Chairman  
**NED NORRIS, JR., CHAIRMAN**  
**TOHONO O'ODHAM NATION**

**Returned to the Legislative Secretary on the 15 day of**

October, 2013, at 11:07 o'clock, A.m.

Evonne Wilson  
**Evonne Wilson, Legislative Secretary**