

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving Amendment No. 1 to the Loan Agreement between the Tohono O'odham
Farming Authority, as Borrower, and Bank of America, N.A., as Lender)

DEFEATED
RESOLUTION NO. 22-041

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 (Constitution of the Tohono O'odham Nation, Article VI, Section 1(f)); and
4 **WHEREAS,** the Tohono O'odham Farming Authority ("TOFA") is the Tohono O'odham Nation's
5 ("Nation") enterprise authorized to operate the San Lucy, Schuk Toak, and Vaiva
6 Vo Farms on behalf of the Nation; and
7 **WHEREAS,** TOFA is responsible for promoting the economic development and general
8 welfare of the Nation and its members by profitably developing the agricultural
9 resources of the Nation, pursuant to Paragraph 3.1 of TOFA's Second Restated
10 Plan of Operation (2 Tohono O'odham Code Chapter 1); and
11 **WHEREAS,** the Nation's sovereign immunity, which extends to the Nation's districts,
12 enterprises, entities and the officials, employees, and agents thereof, cannot be
13 waived except by a resolution or other official action of the Tohono O'odham
14 Legislative Council expressly waiving, or authorizing a waiver of, sovereign
15 immunity (Section 2101, 1 Tohono O'odham Code Chapter 2); and
16 **WHEREAS,** by Resolution No. 20-028, the Tohono O'odham Legislative Council approved a
17 loan transaction by and between Bank of America, N.A. ("Lender") and TOFA (also
18 referred to herein as "Borrower") (i) amending and restating a 2013 line of credit
19 in the maximum available principal amount of Six Million and No/100 Dollars
20 (\$6,000,000.00) (the "TOFA Line of Credit"), and (ii) providing TOFA a term loan in
21 the principal amount of Three Million and No/100 Dollars (\$3,000,000.00) (the
22 "TOFA Term Loan", which together with the TOFA Line of Credit are collectively
23 referred to herein as the "2020 TOFA Loans"), as evidenced by that certain Loan
24 Agreement by and between Lender and Borrower, dated January 27, 2020 (the
25 "2020 Loan Agreement"); and
26 **WHEREAS,** as evidenced by the Security Agreement ("Multiple Use") by and between Lender
27 and Borrower, dated January 27, 2020 (the "Security Agreement"), the payments
28 and performances due under the 2020 Loan Agreement are secured by, among
29 other things, (a) Borrower's grant to Lender of a security interest in and lien on (i)
30 all inventory, including all materials, work in process and finished goods, and (ii)
31 all machinery, furniture, fixtures and other equipment of every type now owned
32 or hereafter acquired by the Borrower (excluding any property of the Borrower in

1 **which the John Deere Co., or its affiliates, has a security interest, or any property**
2 **subsequently purchased by the Borrower from and financed by John Deere Co.)**
3 **(collectively, the "TOFA Collateral"); and**

4 **WHEREAS,** **as a condition of the 2020 TOFA Loans, the Nation entered into a Pledge Agreement**
5 **securing the 2020 TOFA Loans with the Nation's account (Account No. 1067506**
6 **TON-SAWRSA TRUST) maintained with the Lender (the "2020 Pledge Agreement,**
7 **which together with the 2020 TOFA Loan Agreement, the 2020 Security Agreement**
8 **and other related loan documents executed in connection therewith, are**
9 **collectively referred to herein as the "2020 TOFA Loan Documents"); and**

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

13 **WHEREAS,** **the 2020 Pledge Agreement included a limited waiver of the Nation's sovereign**
14 **immunity in favor of Lender to allow the 2020 TOFA Pledge Agreement to be**
15 **enforced in accordance with its terms; and**

16 **WHEREAS,** **the 2020 TOFA Loan Documents generally require the arbitration of any disputes;**
17 **and**

18 **WHEREAS;** **the Nation has not enacted a version of the Uniform Commercial Code, an**
19 **arbitration act, or similar laws of the sort that typically would govern complex**
20 **commercial transactions of the nature contemplated in the 2020 TOFA Loan**
21 **Documents, nor do the Nation's Constitution, laws, or customs address the**
22 **interpretation and enforcement of transactions such as those contemplated in**
23 **the 2020 TOFA Loan Documents; and**

24 **WHEREAS,** **Lender conditioned its willingness to provide the 2020 TOFA Loans on having the**
25 **2020 TOFA Loan Documents interpreted and enforced under the substantive**
26 **provisions of Arizona law, including applicable provisions of Arizona's version of**
27 **the Uniform Commercial Code, so the Lender could be assured that the 2020 TOFA**
28 **Loan Documents will be interpreted and enforced in accordance with their**
29 **terms; and**

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

31 **WHEREAS,** **due to the ongoing need for financing to fund TOFA operations, crop production,**
32 **infrastructure improvements and repairs, TOFA has negotiated with Lender a 6-**
33 **month extension of the 2020 TOFA Loans, extending the maturity date of the 2020**
34 **TOFA Loans to July 1, 2022, while TOFA works on securing financing from a new**
35 **lender; and**

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WHEREAS, on January 13, 2022, the TOFA Board enacted a Resolution (a) approving an Amendment No. 1 to Loan Agreement (“Amendment 1”) extending the maturity date of the 2020 TOFA Loans to July 1, 2022, (b) reaffirming TOFA’s respective obligations and enforceability against TOFA of the terms and conditions as set forth in the 2020 TOFA Loan Documents, (c) approving the governing law and dispute resolution provisions of Amendment No. 1, as incorporated therein from the 2020 TOFA Loan Agreement, which includes TOFA’s limited waiver of sovereign immunity, subject to the Nation’s Legislative Council authorizing and approving the limited waiver of TOFA’s sovereign immunity, and (d) reaffirming TOFA’s grant to the Lender of a first priority lien, covering the TOFA Collateral, as defined in the Loan Agreement, and the security interests granted by TOFA pursuant to the 2020 TOFA Loan Documents to secure TOFA’s obligations under the 2020 TOFA Loan Documents (the TOFA Board Resolution is attached hereto as Attachment I); and

WHEREAS, the Agricultural and Natural Resources, Budget and Finance, and Water Resources Committees of the Legislative Council reviewed: (a) Amendment No. 1 extending the maturity date of the 2020 TOFA Loans to July 1, 2022, (b) the Nation’s limited waiver of sovereign immunity in favor of Lender to allow the 2020 Pledge Agreement to be enforced in accordance with its terms, (c) TOFA’s limited waiver of sovereign immunity to allow TOFA to enter into the Amendment No. 1 with Lender, to allow Amendment No. 1 and the 2020 TOFA Loan Documents to be enforced in accordance with their terms; and (d) the Nation’s obligations under the 2020 Pledge Agreement and the enforceability of the terms and conditions set forth in the 2020 Pledge Agreement and the Agricultural and Natural Resources and Water Resources Committees recommend approval; and

WHEREAS, the Nation’s best interests will be served by (a) TOFA extending its financing with Lender for 6 months, in accordance with the terms of Amendment No. 1 and the 2020 TOFA Loan Documents, with those agreements being able to be enforced in accordance with their terms; (2) the Nation reaffirming the security interest granted by the Nation in the Pledge Agreement securing the 2020 TOFA Loans; and (3) the Nation granting the requested limited waivers of sovereign immunity in favor of Lender; and

1 **WHEREAS,** capitalized terms used in this Resolution and its Exhibits, but not defined in this
2 Resolution or the Exhibits, have the meanings set forth in the 2020 TOFA Loan
3 Documents.

4 **NOW, THEREFORE, BE IT RESOLVED** that the Tohono O'odham Legislative Council approves and
5 authorizes the following:

- 6 1. **Extension of 2020 TOFA Loans.** The Nation consents to Amendment No. 1 to
7 the TOFA Loan Agreement, extending the maturity dates of the 2020 TOFA
8 Loans by six months to July 1, 2022, and affirms that the 2020 TOFA Loan
9 Documents are valid, binding and enforceable.
- 10 2. **Limited Waiver of TOFA's Immunity.** The Nation grants an extension of the
11 limited waiver of TOFA's sovereign immunity in favor of Lender to enable
12 TOFA to enter into the Amendment No. 1 to the 2020 TOFA Loan Agreement.
- 13 3. **Reaffirmation of the 2020 Pledge Agreement.** The Nation reaffirms its
14 obligations under the 2020 Pledge Agreement and reaffirms the
15 enforceability of the terms and conditions as set forth in the 2020 TOFA
16 Pledge Agreement. The Nation's Chairman is authorized to execute a
17 Consent and Reaffirmation of Pledgor to Amendment No. 1 to the 2020
18 TOFA Loan Agreement and to deliver it to Lender on behalf of the Nation,
19 along with any and all other documents, certificates, financing
20 statements, consents, representations, and warranties required in
21 connection with the 2020 Pledge Agreement or the 2020 TOFA Loan
22 Documents, and to take all other actions consistent with this Resolution
23 and necessary to allow TOFA to consummate the extensions of the 2020
24 TOFA Loans with Lender. No further approval, consent, notice, or filing
25 will be required as a matter of Federal law or the Nation's law for the
26 Nation's Chairman to execute and deliver the Consent and Reaffirmation
27 of Pledgor or other documents, certificates, financing statements,
28 consents, representations, and warranties required in connection with
29 the 2020 Pledge Agreement, the 2020 TOFA Loans and/or the 2020 TOFA
30 Loan Documents.
- 31 4. **Limited Waiver of the Nation's Immunity.** In connection with the
32 Amendment No. 1 and the 2020 Pledge Agreement, the Nation grants an
33 extension of the Nation's limited waiver of sovereign immunity from suit
34 or action in favor of Lender on the terms set forth in the Amendment No. 1

1 and the 2020 Pledge Agreement to allow the 2020 Pledge Agreement to be
2 enforced in accordance with its terms.

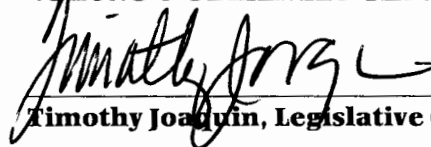
3 5. The Nation agrees that this Resolution relates solely to the Amendment No.
4 1 and the 2020 TOFA Loan Documents and does not in any manner affect
5 any borrowing heretofore or hereafter made under any other financing
6 arrangement, and that this Resolution shall not serve to revoke or alter
7 any resolutions previously delivered by Nation to Lender and shall not
8 (unless specifically otherwise provided) be revoked by any Resolutions
9 subsequently delivered to Lender relating to other financing
10 arrangements between Lender, the Nation and/or TOFA.

11 6. The Nation agrees that all actions heretofore taken, and all documents
12 heretofore executed by the Authorized Officer in connection with the
13 foregoing Resolutions, are hereby ratified, confirmed, and adopted as the
14 acts and deeds of the Nation and/or TOFA, as the case may be, as of the
15 effective date of this Resolution.

16 **BE IT FINALLY RESOLVED** that the Tohono O'odham Legislative Council, notwithstanding 2
17 Tohono O'odham Code Chapter 1, authorizes an independent contractor who is
18 selected and supervised by the Nation's treasurer, and who shall have access to
19 all TOFA personnel, property, records, and accounts, to assess TOFA's finances
20 and operations, and to report directly to the Agricultural and Natural Resources
21 Committee and Legislative Council, and to provide a written report no later than
22 May 1, 2022.

23 The foregoing Resolution was defeated by the Tohono O'odham Legislative Council on the 03RD
24 day of FEBRUARY, 2021 at a meeting at which a quorum was present with a vote of 1,386.05 FOR;
25 1,831.95 AGAINST; -0- NOT VOTING and [02] ABSENT, pursuant to the powers vested in the
26 Council by Article VI, Section 1(f) of the Constitution of the Tohono O'odham Nation, adopted by
27 the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant
28 Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June
29 18, 1934 (48 Stat.984).

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32 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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36 Timothy Joaquin, Legislative Chairman

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39 14 day of March, 2020
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(Approving Amendment No. 1 to the Loan Agreement between the Tohono O'odham Farming Authority, as Borrower, and Bank of America, N.A., as Lender)

Page 6 of 6

ATTEST:



Evonne Wilson, Legislative Secretary

11 day of March, 2020

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**DEFEATED
RESOLUTION NO. 22-041**

ACTION: APPROVING AMENDMENT NO. 1 TO THE LOAN AGREEMENT BETWEEN THE TOHONO O'ODHAM FARMING AUTHORITY, AS BORROWER, AND BANK OF AMERICA, N.A., AS LENDER

MOVED: COUNCILMAN DANIEL L.A. PRESTON III

SECOND: COUNCILWOMAN GRACE MANUEL

DATE: FEBRUARY 03, 2022

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 245.6	1. MARY LOPEZ (Ann M. Garcia)	122.8	X			X
	2. LUCINDA ALLEN (Francis Homewytewa)	122.8	X			
SELLS 556.5	1. ARTHUR WILSON ()	278.25		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. MANUAL (Monica Morgan)	116.35	X			
HICKIWAN 216.6	1. LOUIS R. LOPEZ ()	108.3	X			X
	2. SANDRA D. ORTEGA (Absent) (Delma M. Garcia) (Present)	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		
TOTAL		3,218.0	1,386.05	1,831.95	-0-	[02]