

## **TITLE 10 - ECONOMIC DEVELOPMENT**

### **CHAPTER 2 - COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION**

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**TITLE 10 – ECONOMIC DEVELOPMENT**

**CHAPTER 2 – COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION**

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**CHARTER  
COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION  
OF  
THE TOHONO O'ODHAM NATION**

**ARTICLE I**

**ESTABLISHMENT**

The COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION OF THE TOHONO O'ODHAM NATION (the "CDFI") is hereby established as an enterprise of the Tohono O'odham Nation pursuant to Article VI, Section 1(e) of the Nation's Constitution. The CDFI shall have and may exercise all those powers set forth herein.

**ARTICLE II**

**DEFINITIONS**

2.1. The term "Board" means the CDFI Board established under Section V of this Charter.

2.2. The term "CDFI" means the COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION OF THE TOHONO O'ODHAM NATION established under this Charter.

2.3. The term "Constitution" means the Constitution of the Tohono O'odham Nation adopted by qualified voters of the Tohono O'odham Nation and approved by the Secretary of the Interior on March 6, 1986 pursuant to section 16 of the Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. § 476).

2.4. The term "District" means one of eleven districts of the Nation as provided in Article IX of the Constitution.

2.5. The term "EDA" means the Economic Development Authority of the Tohono O'odham Nation.

2.6. The term "Legislative Council" means the Tohono O'odham Council, in which the legislative powers of the Nation are vested pursuant to Articles IV, V and VI of the Constitution.

2.7. The term "Nation" means the Tohono O'odham Nation, a federally recognized Indian tribe, organized under the Constitution.

2.8. The term "Tribal Employment Rights Ordinance" means the Papago Employment Rights Ordinance, Ord. No. 01-85, as such ordinance may be amended by the Legislative Council of the Tohono O'odham Nation.

## ARTICLE III

### PLACE OF BUSINESS

The principal place of business and principal office of the CDFI shall be at such a location within the Nation as the Board may designate. CDFI may also have offices at such other places as the Board may from time to time direct and as the operation of CDFI may require.

## ARTICLE IV

### PURPOSES

The CDFI is organized as an exercise by the Nation of rights of self-government under the Constitution and as one means to achieve economic self-sufficiency and in accordance with applicable federal law regarding the establishment and operations of community development financial institutions. The CDFI has the following primary purposes: to provide, in arms-length transactions, to Districts, tribal enterprises and other Indian preference businesses and members of the Nation, financial products, development services and loans for community and economic development projects within the Tohono O'odham Nation. The CDFI would be eligible to seek funding from the Community Development Financial Institutions Fund established as a wholly owned federal government corporation by the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. § 4701 *et seq.*), designed to facilitate the flow of lending and investment capital to distressed communities and to individuals who have been unable to take full advantage of the financial services industry as provided in 12 CFR Part 1805.

## ARTICLE V

### THE BOARD

#### 5.1. Voting Membership

5.1.1. Composition. The Board shall consist of five Directors.

5.1.2. Appointment. Directors shall be nominated by the Chairperson of the Nation and confirmed by the Legislative Council.

5.1.3. Qualifications. Directors shall have the following qualifications:

5.1.3.1. Each Director shall have sufficient experience in business, economic development or lending to make a positive contribution to the work of the Board;

5.1.3.2. Not less than three of the Directors shall be members of the Nation;

5.1.3.3. Not less than two of the Directors shall have banking, lending or financial experience;

5.1.4. Ineligibility Criteria. Employees of the CDFI, EDA and the Economic Development Department of the Tohono O’odham Nation and elected officials of the Nation or of Districts of the Nation shall be ineligible to be appointed as Directors.

5.1.5. Initial Board. Notwithstanding Subsection 5.1.3, the initial Board shall be comprised of the following members of the Board of the EDA:

5.1.5.1. Joan Timeche,

5.1.5.2. Christina Pereira,

5.1.5.3. Fernando Valentine,

5.1.5.4. Philip L. Miguel, and

5.1.5.5. Juan Lopez

who shall each serve for a term of six (6) months.

5.1.6. Term. With the exception of the initial Board, Directors shall serve staggered terms. At the end of the six (6) month period described in Subsection 5.1.5, the Chairman shall nominate and the Legislative Council shall appoint five (5) Directors, two (2) who shall serve one (1)-year terms, one of whom shall be a director of the EDA Board, two (2) who shall serve two (2)-year terms, one of whom shall be a director of the EDA Board, and one who shall serve a three (3)-year term. Thereafter, all terms shall be for three (3)-year terms. Directors shall be eligible for reappointment upon expiration of their terms of office. Each Director shall hold office until his or her successor has been appointed and qualified.

## 5.2. Removal, Resignation and Vacancies.

5.2.1. Removal. A Director may be removed by the Chairperson of the Nation if (a) the Chairperson, in his or her discretion, determines that the best interest of the Nation shall be served by such removal and (b) such removal does not adversely impact on the ability of the CDFI to operate in accordance with the federal regulatory and/or contractual requirements applicable to the establishment and operation of a community development financial institution.

5.2.2. Resignation. A Director may resign at any time by giving written notice to the Chairperson of the Board and to the Chairperson of the Nation. Resignations shall become effective at the time specified in said notice, or if no time is specified, on the date of receipt. Any Director who fails to attend three (3) consecutive properly called and noticed meetings of the Board or who fails to attend two-thirds (2/3) of all Board meetings properly noticed in any fiscal year shall, unless excused from attendance for a justifiable cause, be considered to have resigned his/her appointment.

The Chairperson of the Board shall promptly notify the Chairperson of the Nation concerning any such resignation.

5.2.3. Vacancies. Any vacancy on the Board because of death, resignation, removal or other cause shall be filled for the unexpired portion of the term in the manner prescribed herein for appointment of Directors.

5.3. Meetings of the Board

5.3.1. Regular, Annual and Special Meetings. Regular meetings of the Board shall be held at least once during each fiscal quarter. The Board shall designate the month and day of the annual meeting, which shall be recognized thereafter. The annual meeting shall be considered one of the Board's regular quarterly meetings. Special meetings of the Board may be held upon notice given by the Chairperson of the Board or by two (2) Directors.

5.3.2. Notice. Notice of meetings stating the time, date, place and agenda shall be given in writing to each Director and officer of the Board by mailing (or by electronic communication including facsimile or electronic mail) such notice not less than ten (10) days nor more than thirty (30) days prior to the meeting, excluding the day of the meeting, provided that special meetings may be called upon no less than forty-eight (48) hours notice. Notice may be waived in writing by a Director entitled to such notice; attendance of a Director at a Board meeting shall constitute waiver of notice.

5.3.3. Quorum; Board Action. The presence at any meeting of three (3) Directors shall constitute a quorum of the Board for transaction of any business. Any Board Member may request attendance and be present by teleconference if the Board Member is unable to attend the meeting in person, and the phone system at the location of the meeting has teleconferencing capability. The act of a majority of the Directors present and voting at a meeting at which a quorum is present shall be the act of the Board. The vote shall be duly recorded in the written minutes of the Board. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized by a written resolution commencing with the caption "Unanimous Consent in Lieu of Meeting" and is approved of and signed by all of the Board Members entitled to vote. Any act taken without a meeting and approved of and signed by less than all of the Board Members is not an act of the Board and has no effect.

5.3.4. Rules. The Board may adopt such rules as it may determinate necessary for the orderly conduct of its business.

5.3.5. Minutes. The Secretary shall make arrangement for the recording of the minutes of the Board's meeting. Copies of the minutes of each meeting shall be kept on file in the office of the CDFI and shall be available for inspection at all reasonable times by the Directors, officers of the CDFI, the Chairperson of the Nation, the Chairperson of the Legislative Council, the Chairperson of the Commerce Committee of the Legislative Council or any person designated by such Chairpersons in writing.

5.3.6. Expenses. Directors shall be reimbursed for reasonable expenses incurred in attending meetings and performing duties incident to their positions. The Directors will be paid a stipend for attendance at meetings of the Board and performing duties incident to their positions. The amount of the stipend will be at the rate adopted by vote of the Board.

#### 5.4. Powers and Duties

The Board shall exercise all powers and responsibilities consistent with the best interests of the Nation, in accordance with federal law applicable to the establishment and operation of a community development financial institution and within the limits of responsible business judgment. Subject to the foregoing, the provisions of Section I of this Charter and other applicable law, the Board shall have the authority to exercise the following powers and duties:

5.4.1. Establish general policies for the organization, management and operation of the CDFI consistent with the requirements of the Community Development Financial Institutions Program of the United States (12 U.S.C. 4703; 12 C.F.R. Part 1805).

5.4.2. Oversee the operation of the CDFI and exercise the powers set forth below without previous authorization or subsequent approval (except as otherwise provided).

5.4.3. Establish and maintain effective operating and fiscal policies for the CDFI, including loan policies. Loan policies shall be established in accordance with the notice and comment requirements of Section 5.5 of this Charter.

5.4.4. Approve a strategic plan, annual operating plans, and annual organizational charts.

5.4.5. Select, supervise and direct the Chief Executive Officer of the CDFI, based on the description of duties for the position formally adopted by the Board.

5.4.6. Utilize, improve, maintain, operate and manage, in the ordinary course of the business, all interests in real property held by the CDFI. Provided, however, that any acquisition of real property or the encumbrance of that real property, including leasehold interests, shall be subject to the prior approval of the Legislative Council. Provided further that subject to federal and other applicable law, with the prior approval of the Legislative Council to encumbrance and foreclosure policies and procedures of real property and in accordance with such policies and procedures, the CDFI may encumber and foreclose on real property of its borrowers.

5.4.7. Acquire, hold, own, manage, operate, exchange, deal in and dispose of all CDFI personal property in the ordinary course of business.

5.4.8. Subject to the terms of Section IX (below), pledge or grant security interests in the CDFI's personal property, cash, accounts receivable and other assets of the CDFI as collateral for any contractual obligation.

5.4.9. Acquire, hold, own, use, license, and lease, any interest in and to inventions, improvements, patents, licenses, formulas, privileges, processes, copyrights, trade names, trademarks and all applications therefor, provided that all such acquisitions shall be taken in the name of the Nation.

5.4.10. Enter into, make, perform and carry out or cancel and rescind, contracts for any lawful purpose pertaining to the CDFI's business; provided, however that no contract or other transaction between the CDFI and any of the Directors, officers or employees of the CDFI or an elected officer or employee of the Nation or any District, or between the CDFI and any corporation, partnership, firm or other legal entity in which one or more of the foregoing persons has a financial interest, directly or indirectly, shall be valid for any purpose, unless the entire interest of such persons is fully disclosed to the Board and the proposed contract or transaction is approved, ratified or confirmed by the affirmative vote of a majority of the entire Board who have no interest in the transaction.

5.4.11. Apply for and receive grants in support of the purposes of the CDFI.

5.4.12. Borrow funds, subject to the express limitations that the CDFI shall not incur obligations in excess of its ability to pay. The Nation shall not be liable for the debts or obligations of the CDFI.

5.4.13. Designate and approve all depositories used for the deposit of funds of the CDFI.

5.4.14. Elect officers, appoint agents, and select independent auditors, independent legal counsel, management companies and other advisors and consultants as may be needed from time to time by the CDFI, define their duties and fix their compensation.

5.4.15. Confer with the Economic Development Department of the Tohono O'odham Nation and the EDA from time to time for the purposes of coordination and consistency of practices.

5.4.16. Approve annual CDFI budgets and operating plans prior to the commencement of each fiscal year.

5.4.17. Make annual reports regarding the CDFI's operations, finances and budget to the Chairpersons of the Nation, the Chairperson of the Legislative Council and the Chairperson of the Commerce Committee of the Legislative Council within 45 days of the close of the CDFI's fiscal year.

5.4.18. Recommend amendment or revision of this Charter to the Legislative Council whenever deemed appropriate to improve the operation and management of the CDFI.

5.4.19. Have and exercise all other powers necessary, proper, advisable or incidental to effect any or all of the powers and responsibilities of the CDFI.

5.5. Loan Policy Notice and Comment. Prior to promulgating a final loan policy, the CDFI shall publish the policy in proposed form. The proposed loan policy shall be provided directly to the Chairperson of the Nation, all members of the Legislative Council, the Office of the Attorney General, the office of each District Chairperson and, upon written request, to any other interested person or interested office or agency of the Nation. The proposed loan policy shall be accompanied by a notice stating that the CDFI will accept written comments for a period of sixty (60) days following the date of publication. As provided in this section, “publish” shall mean publication in a newspaper of general circulation within the Nation and posting in each of the Nation’s District offices. In the event of significant public interest with respect to a loan policy, the CDFI may hold one or more public hearings prior to finalizing a loan policy. Notice of a public hearing shall be given as set forth above, and in addition shall be mailed directly to any person submitting comments on the proposed loan policy and providing a mailing address. The CDFI shall review all comments received by the close of the comment period including all comments made during public hearings, prior to finalizing the loan policy.

## ARTICLE VI

### OFFICERS AND KEY EMPLOYEES

#### 6.1. Officers, Powers and Duties

6.1.1. Chairperson. The Chairperson of the Board shall be a Director and shall preside at all meetings of the Board at which s/he is present. The Chairperson shall sign any instruments which have been authorized by the CDFI to be executed on behalf of the CDFI, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or this Charter to some other officer or agent of the CDFI, or shall be required by law to be otherwise signed or executed. The Chairperson shall perform all duties incident to the office of Chairperson of the Board and such other duties as may be prescribed by the Board from time to time.

6.1.2. Vice Chairperson. The Vice Chairperson of the CDFI shall be a Director. The Vice Chairperson shall, in the absence of the Chairperson or in the event of his or her inability or refusal to act, perform the duties of the Chairperson, and when so acting shall have all the powers and be subject to all the restrictions which pertain to the Chairperson.

6.1.3. Secretary. The Secretary of the CDFI may, but need not be a Director and shall be responsible for:

6.1.3.1. Keeping the minutes of the meetings of the CDFI Board in books and/or tapes provided for that purpose;

6.1.3.2. Seeing that all notices are duly given in accordance with the provisions of this Charter;

6.1.3.3. The safekeeping of the books and records of the CDFI;

6.1.3.4. Keeping on file at all times a complete copy of this Charter and all amendments thereto; and

6.1.3.5. In general performing all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Board.

6.1.4. Other Officers. The Board may appoint such other officers (who need not be Directors) as it deems necessary. Such officers shall perform such duties as from time to time may be assigned to them by the Board.

6.1.5. Election; Term of Office; Initial Officers.

6.1.5.1. Election. The officers shall be chosen annually by the Board at its annual meeting.

6.1.5.2. Term of Office. Each officer shall hold office until his or her successor is chosen and approved, or until his or her death, or until s/he shall have resigned, or shall have been removed in the matter provided herein.

6.1.5.3. Initial Officers. As soon as practicable, the initial Board shall meet and choose officers who shall serve during the 6-month term of the initial Board and until such time as the Chairperson of the Nation appoints Directors in accordance with Subsection 5.1.6.

6.1.6. Removal; Resignation; Vacancies.

6.1.6.1. Removal. Any officer elected by the Board may be removed by the Board at any time, with or without cause.

6.1.6.2. Resignation. Any officer may resign at any time by giving written notice to the Chairperson of the Board. Resignations shall become effective at the time specified in said notice, or if no time is specified, on the date of receipt.

6.1.6.3. Vacancies. Any vacancy in any office because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term in the manner prescribed herein.

6.2. Chief Executive Officer; Initial Chief Executive Officer.

6.2.1. Chief Executive Officer. The Board shall hire an employee who shall act as chief executive officer of the CDFI. The Chief Executive Officer shall have primary responsibility for managing the CDFI and its business activities and shall be knowledgeable in such operations. The Chief Executive Officer shall have the following general duties and responsibilities:

6.2.1.1. Execute the general policies formulated by the Board and organize the operation of the CDFI.

6.2.1.2. Prepare and carry out annual operating plans and budgets, recommend policies, and propose changes to improve CDFI operations.

6.2.1.3. Have full authority and control over all employees of the CDFI, and be responsible for the performance of staff in respect to all matters including compliance with polices and procedures approved by the Board, conformance to budgets, employee relations, advancement and training.

6.2.1.4. Render regular reports to the Board.

6.2.1.5. Perform such other duties as assigned.

6.2.2. Initial Chief Executive Officer. The initial Chief Executive Officer shall be the Chief Operating Officer of the EDA. The Chief Operating Officer shall serve in this capacity until such time as the Board has named a permanent Chief Executive Officer.

## ARTICLE VII

### OPERATIONS

7.1. Fiscal Year. The fiscal year of the CDFI shall start October 1 and end September 30 of the following calendar year. The Board may change the CDFI fiscal year upon notification to the Chairpersons of the Nation and Legislative Council.

7.2. Contracts. Except as otherwise provided in this Charter, the Board may authorize any officer(s), or any agent(s), to enter into any contract or execute and deliver any instruments in the name and on behalf of the CDFI, and such authority may be general or confined to specific instances.

7.3. Checks; Drafts; and Other Financial Instruments. All checks, drafts, or other orders for the payment of money, and all notes, bonds, or other evidences of indebtedness issued in the name of the CDFI shall be signed by such officer(s), agent(s), or employee(s) of the CDFI and in such manner as shall from time to time be determined by resolution of the Board.

7.4. Deposits. All funds of the CDFI, except cash on hand, shall be deposited from time to time to the credit of the CDFI in such financial institutions as the Board may select.

7.5. Accounting. An appropriate accounting system shall be established and installed in conformity with generally accepted accounting principles. The accounting system shall insure the availability of information as may be necessary to comply with all applicable operational requirements of the CDFI.

7.6. Records; Inspection; Audits. The books and records of the CDFI, including current financial and operating statements, shall be kept on file in the office of the CDFI and shall be available for inspection at all reasonable times by Directors of the Board, officers, the Chairperson of the Nation, Chairperson of the Legislative Council or any other employee or official of the Nation designated by such Chairpersons in writing. The accounts and records of the CDFI shall be audited by an independent certified public accountant at the close of each fiscal year. A copy of the final audit report shall be provided to the Chairperson of the Nation, the Chairperson of the Legislative Council and the Chairperson of the Commerce Committee of the Legislative Council.

7.7. Budgets. A budget of the CDFI for each year shall be prepared for approval by the Board prior to the commencement of the subsequent fiscal year. The budget shall include a profit and loss projection, a cash-flow projection and a budget for capital expenditures. In the event that the budget is not approved prior to commencement of the subsequent fiscal year and until such budget has been approved, expenditures may be made for normal operations at the same rate as the previous year. The Chief Executive Officer shall be responsible for compliance with the budgets and will provide the Board with a comparison of actual results against the budget for each quarter. Amendments to the budget may be made with the approval of the Board.

7.8. Operating Plan. An operating plan shall be submitted annually to accompany the budget. The operating plan will describe the general manner of the CDFI's operation for the subsequent year. Any changes from the previous year will be described and discussed.

7.9. Insurance. The CDFI shall maintain appropriate liability and property insurance for its operations and facilities sufficient to protect the interests of the CDFI and the Nation. Such policies shall designate the Nation as an additional named insured. The CDFI shall maintain workers' compensation insurance, unemployment compensation insurance, fidelity bond or employee theft and dishonesty insurance covering the Directors, officers, and employees who handle funds or property, and such other forms of insurance as the Board deems appropriate.

7.10. Indemnification. In the event that a Director of the Board or former Director of the Board, or an officer or employee of CDFI or former officer or employee of CDFI request indemnification in connection with the defense of a civil action, suit or proceeding in which s/he is made a party by reason of being, or having been such officer, employee or Director, including reasonable costs of settlement of any such action, suit or

proceeding, the Board, other than Directors involved in the matter or controversy, shall meet and determine by a majority that it is in the best interest of the CDFI and the Nation that such indemnification be made and that such officer, employee or Director was not guilty of gross negligence, willful misconduct or other conduct beyond the scope of his or her duties. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such officer, employee or Director may have. Upon an affirmative vote by a majority of the Directors, the CDFI shall indemnify for reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any civil action, suit or proceeding in which s/he is made a party by reason of being, or having been such officer, employee or Director, including reasonable costs of settlement of any such action, suit or proceeding except in relation to matters as to which s/he shall be adjudged in such action, suit or proceeding to be liable for gross negligence, willful misconduct in the performance of duty, or otherwise acting beyond the scope of his or her duties.

7.11. Indian Preference in Employment and Contracting. The CDFI shall comply with all provisions of the Tribal Employment Rights Ordinance, including the following requirements, subject to any amendment thereto:.

7.11.1. The CDFI shall give preference to qualified Indians, with first preference to local Indians, in all hiring, promotion, training, layoffs, and all other aspects of employment; and

7.11.2. The CDFI, when awarding contracts in the amount of \$5,000 or more for supplies, services, labor and materials in which the majority of work will occur within the Nation, shall give preference in contracting to qualified entities certified by the Tohono O'odham Employment Rights Commission as 51% or more Indian owned and controlled, with first preference to qualified entities that are 51% or more owned and controlled by local Indians.

## **ARTICLE VIII**

### **EQUITY INVESTMENTS; CAPITAL EXPENDITURES; DISTRIBUTIONS**

8.1. Equity Investments by the EDA and the Nation. The EDA shall contribute equity capital to the CDFI at its start, and the Nation may do so from time to time in the future. Equity contributions shall be shown on the accounting records of the CDFI.

8.2. Capital Expenditures. The CDFI is authorized to make capital expenditures, and to create a sinking fund for capital expenditures including but not limited to equipment acquisitions, new construction and remodeling for its place of business.

8.3. Distributions. The CDFI is authorized to retain its earnings, in order to self finance its growth.

## ARTICLE IX

### IMMUNITY FROM SUIT

9.1. CDFI Immune from Suit. The CDFI is a separate entity of the Nation and is established for the benefit of the Nation. As such, it has the same immunity from suit as the Nation possesses. Notwithstanding, the fact that the CDFI is immune from suit, the CDFI is hereby expressly granted the right to sue in its own name, and a limited right to be sued in its own name as more fully set out below. The CDFI is not immune from suits, actions or proceedings initiated by the Nation or its regulatory agencies and departments. Nothing in this Section IX or Charter shall be construed as a waiver of or limitation on the sovereign immunity of the Nation.

9.2. Limited Waiver of Immunity. The CDFI may be sued in the Courts of the Nation and only in the following limited circumstances:

9.2.1. Claims within Insurance Coverage. With respect to claims against the CDFI for any personal injury or property damage, the amount and nature of which are within the express coverage of a policy of insurance procured and maintained pursuant to Subsection 5.9 of this Charter, as acknowledged by the insurer under such policy, the CDFI's immunity is waived to the lesser of the extent of such coverage or \$1,000,000, provided that any judgment, order or award may only be satisfied pursuant to:

9.2.1.1. the express provisions of the policy(ies) of insurance which are in effect at the time of each such judgment, order or award; and

9.2.1.2. an action, if necessary, brought by the prevailing party against the insurer under such policy.

9.2.2. Contract Claims

9.2.2.1. With respect to claims against the CDFI (i) arising out of any written contract to which the CDFI is a party, and (ii) the amount and nature of which are not within the express coverage of a policy of insurance procured and maintained pursuant to Subsection 5.9 of this Charter, as acknowledged by the insurer under such policy, the CDFI's immunity is waived to the lesser of the amount of the CDFI's payment obligation under the contract or \$500,000.

9.2.2.2. The CDFI's immunity from execution on any judgment, award or order is hereby waived only with respect to a pledge of, or security interest in, the CDFI's personal property, cash, accounts receivable and other assets (exclusive of any leasehold interest) granted by the CDFI as collateral for any payment obligations under such contract, provided that:

Execution on any such collateral shall be limited to that amount which, when added to amounts received from other sources in satisfaction of such judgment, award or order, does not exceed \$500,000.

Execution on any such collateral shall be solely by judicial process pursuant to a judgment, order or award of a court of competent jurisdiction.

For purposes of applying the provisions of this Subsection 9.2.2, all contracts entered into which the same party on the same subject matter shall be deemed to be one contract.

9.2.3. Suit Brought in CDFI's Name. All claims arising out of CDFI's operations shall be brought against the CDFI directly and in the name of the CDFI. Directors, officers, agents and employees of the CDFI, when acting within the scope of their authority, are immune from suit.

9.3. Section Strictly Construed. Except as otherwise expressly provided in this Section IX, nothing contained in this Charter shall be interpreted or construed as:

9.3.1. A waiver of the sovereign immunity of the CDFI beyond the limits set forth in this Section IX;

9.3.2. A waiver of sovereign immunity of the CDFI from the imposition in any judgment, order or award of interest prior or subsequent to judgment, attorney fees, court costs, civil penalties or punitive, double, treble, incidental or consequential damages;

9.3.3. A waiver of the sovereign immunity of the CDFI from a levy on any judgment, or a lien, attachment, execution or other judicial or non-judicial process upon the assets of the CDFI; or

9.3.4. Creating any liability for the Nation with respect to any claims or other obligations asserted against the CDFI or arising out of its operations.

The Legislative Council retains the power to prospectively modify this limited waiver of the CDFI's immunity either generally or with respect to particular circumstances.

9.4. No Limitation on Federal Government. Nothing in this section IX or other provisions of the Charter shall be interpreted or construed as a limitation on the rights or remedies available to the federal government under federal or other applicable laws.

## ARTICLE X

### DISSOLUTION AND LIQUIDATION

10.1. Dissolution by the Legislative Council. The CDFI can only be dissolved by action of the Legislative Council and pursuant to a plan of dissolution approved by the Legislative Council. Dissolution proceedings shall be initiated by the adoption of a Resolution by the Legislative Council expressing the Legislative Council's intent to dissolve the CDFI. The CDFI shall continue in existence during dissolution proceedings to permit the winding up of the CDFI's affairs.

10.2. Powers and Duties of the Board.

10.2.1. Within 60 days after the date the Legislative Council adopts the Resolution prescribed in Subsection 10.1, or such other period of time as may be fixed in such Resolution, the Board shall submit a plan of dissolution for review and approval by the Legislative Council. The plan of dissolution shall include an anticipated timeframe for execution of the plan and provide the following:

10.2.1.1. The form and procedure for giving notice of the intent to dissolve to every known creditor of the CDFI;

10.2.1.2. An identification of CDFI cash and accounts receivable and steps for collecting such assets;

10.2.1.3. An inventory of all CDFI personal property and other assets identifying which, if any, of the CDFI's personal property is to be distributed to the Nation in kind, and the methods for disposition of all other assets;

10.2.1.4. An identification of the CDFI liabilities and obligations, including equity contributions and steps for satisfying or discharging such debts and obligations, including equity contributions;

10.2.1.5. An identification of uncollected or unasserted claims and liabilities of the CDFI and steps for making adequate provisions for such claims;

10.2.1.6. Steps for identifying and distributing to the Nation the remainder of the CDFI's assets either in cash or in kind after all claims have been satisfied or otherwise provided for; and

10.2.1.7. Any other acts required to liquidate the CDFI's assets and wind up its business.

10.2.2. The CDFI, during dissolution proceedings, shall have only those powers and duties that are authorized in an approved plan of dissolution and are necessary to wind up the CDFI's business.

10.3. Notice of Dissolution. The Board shall notify the Chairpersons of the Nation and the Legislative Council in writing when, in accordance with an approved plan of dissolution, all debts liabilities and obligations of the CDFI have been paid and discharged, or adequate provisions have been made therefor, and all remaining property and assets of the CDFI have been distributed.

10.4. Dissolution. The CDFI shall be dissolved upon formal acceptance of the notice of dissolution by the Legislative Council, and this Charter shall be repealed.

## **ARTICLE XI**

### **STATUTORY AGENT**

11.1. The Secretary of the Board of the CDFI is hereby appointed the lawful agent of the CDFI upon whom service of any process, notice, or demand required or permitted by law to be served on the CDFI may be served, and which, who so served, shall be the lawful personal service on the CDFI; the Board of Directors of the CDFI may revoke this appointment and appoint another resident of the Nation as such agent by filing the name and address of such appointee with the Secretary of the Legislative Council.

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL  
(Adopting the Charter for the Community Development Financial Institution of  
the Tohono O'odham Nation)**

**RESOLUTION NO. 04-103**

1 **WHEREAS, the Legislative Council of the Tohono O'odham Nation adopted the Economic**  
2 **Development Plan of the Nation by means of Resolution No. 2000-13; and**

3 **WHEREAS, the adopted Economic Development Plan provided for establishment of a community**  
4 **development financial institution ("CDFI"); and**

5 **WHEREAS, the Economic Development Authority of the Tohono O'odham Nation ("EDA") was the**  
6 **initial applicant for CDFI technical assistance funds, to prepare a charter for a**  
7 **community development financial institution to be called the Community**  
8 **Development Financial Institution of the Tohono O'odham Nation, and to otherwise**  
9 **take such actions as are necessary and appropriate to creating a CDFI within the**  
10 **Tohono O'odham Nation; and**

11 **WHEREAS, the U.S. Treasury has advised EDA that an additional \$150,000 is available for**  
12 **technical assistance and operational funds by a CDFI duly organized and validly**  
13 **existing; and**

14 **WHEREAS, EDA has prepared a Charter for the CDFI and recommends approval of the Charter**  
15 **by the Legislative Council as evidenced by Board Resolution.**

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

17 **1. The Legislative Council of the Tohono O'odham Nation adopts the charter for the**  
18 **Community Development Financial Institution of the Tohono O'odham Nation,**  
19 **substantially in the form attached hereto, and authorizes its formation as a**  
20 **separate entity of the Tohono O'odham Nation pursuant to Article VI, Section 1(e)**  
21 **of the constitution of the Tohono O'odham Nation.**

22 **2. On the effective date of this Resolution the Community Development Financial**  
23 **Institution of the Tohono O'odham Nation shall be duly organized and validly**  
24 **existing under the laws of the Tohono O'odham Nation.**

25 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 23<sup>RD</sup>. Day**  
26 **of MARCH, 2004 at a meeting at which a quorum was present with a vote of 1,974.9 FOR; 336.6**  
27 **AGAINST; 318.2 NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by**  
28 **Section 1 (e) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the**  
29 **Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant**  
30 **Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June**  
31 **18, 1934 (48 Stat. 984).**

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RESOLUTION NO. 04-103

(Adopting the Charter for the Community Development Financial Institution of the Tohono O'odham Nation)

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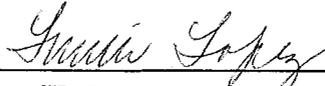
TOHONO O'ODHAM LEGISLATIVE COUNCIL



Dennis Ramon, Legislative Chairman

24<sup>th</sup> day of March, 2004

ATTEST:



Lucille Lopez, Acting Legislative Secretary

23<sup>rd</sup> day of March, 2004.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'odham Nation on the 24<sup>th</sup> day of March, 2004 at 11:05 o'clock, A.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon her approval or upon her failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL



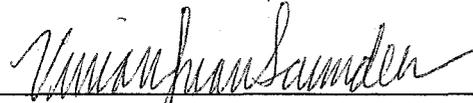
Dennis Ramon, Legislative Chairman

APPROVED

on the 25 day of March, 2004

DISAPPROVED

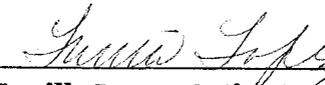
at 3:48 o'clock, P.M.



VIVIAN JUAN SAUNDERS, CHAIRWOMAN  
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 25<sup>th</sup> day of

March, 2004, at 4:09 o'clock, P.M.



Lucille Lopez, Acting Legislative Secretary