



**RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION**

A Resolution entitled, "Approving Interim Loan and Assignment of Trust income as Security

- WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and
- WHEREAS,** The Constitution of the Three Affiliated Tribes (the "Tribe") generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribe and of the enrolled members thereof; and
- WHEREAS,** Article VI, Section 5(c) of the Constitution of the Tribe specifically authorizes and empowers the Tribal Business Council of the Tribe to administer the funds within the exclusive control of the Tribe and to make expenditures from available tribal funds for public purposes of the Tribe; and
- WHEREAS,** In accordance with Public Law 102-575, entitled "Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act," as amended (the "Act"), income from the Recovery Fund therein defined ("Trust Income") is permitted to be paid to the Tribe for educational, social welfare, economic development and other programs, subject to the approval of the Secretary; and
- WHEREAS,** The Tribe has determined that it would be in the best interests of the Tribe and its enrolled members to borrow funds of approximately \$2,753,000 (the "Interim Loan") on an interim short-term basis to finance certain capital costs associated with the remodeling and construction of an expansion to the Mandaree Public School building located on the Tribe's reservation, together with related costs of issuance, all in anticipation of a long-term tax-exempt refinancing expected to be arranged by MM&S Investments Corporation (the "Servicer"); and
- WHEREAS,** The Tribe has determined that payment of principal and interest on the Interim Loan should be secured by an assignment of Trust Income in an amount sufficient to pay the Interim Loan, plus interest thereon; and
- WHEREAS,** The Tribe has determined that the contemplated uses of the funds to be borrowed under the Interim Loan are within the stated purposes for which Trust Income may be used in accordance with the Act; and
- WHEREAS,** The Interim Loan is expected to be structured approximately as follows: 1) the principal amount of will be approximately \$2,753,000; 2) interest rate will be 7.60%; 3) interest only will be paid monthly for one year, followed by 24 monthly payments of principal plus interest payable in a fixed monthly payment sufficient to fully repay all principal by the 36th month after the date of the loan, 4) the Interim Loan may be repaid without penalty at any time after appropriate notice; 5) the terms of the Interim Loan will be set forth in an Interim Loan Agreement (the "Loan Agreement") between the Tribe, the Servicer as servicer

and agent for the certain lenders (the "Lenders"), 6) the obligation to pay principal and interest on the Interim Loan will be evidenced by promissory notes of the Tribe payable to the Lenders (the "Notes"); 6) the Interim Loan and payments under the Notes will be secured by a pledge and assignment of Trust Income to sufficient to pay scheduled monthly payments on the Interim Loan pursuant to a Pledge and Assignment Agreement between the Tribe, the Servicer and the Office of Trust Fund Management, approved by the Bureau of Indian Affairs (the "Assignment"); 7) under the Loan Agreement, the Tribe will have the right to prepay each monthly payment of principal or interest due on the Interim Loan fifteen days in advance to avoid using Trust Income for payment of the Interim Loan; and 8) a security interest in the Trust Income will be recorded by the filing of financing statements; and

WHEREAS, This Tribal Business Council has been advised that in order to receive the Loan in accordance with the foregoing, the Tribe is required to agree to various legal provisions (the "Legal Provisions") that provide for (a) a limited waiver of the Tribe's sovereign immunity substantially in the form previously approved by the Tribal Council for other loans with respect to suits or other legal actions or proceedings arising because of disputes related to the Interim Loan; (b) consent by the Tribe to apply the laws of a given jurisdiction in the interpretation of the foregoing documents; and (c) a method of arbitration for the resolution of disputes.

NOW, THEREFORE, BE IT RESOLVED, That the Tribal Business Council hereby provides as follows:

Section 1. Approval and Authorizations

- 1.1 The Tribal Business Council hereby determines that the foregoing proposed actions are in the public interest and promote the welfare of the Tribe, and the Tribal Business Council hereby approves the proposed actions.
- 1.2 This Tribal Business Council hereby approves the Tribe's execution, delivery and performance of the Loan Agreement, the Notes, and the Assignment in the forms previously provided to legal counsel for the tribe, with such modifications thereof as shall be approved as necessary or convenient by an Authorized Representative defined below, together with such related documents as may be necessary or convenient and approved by legal counsel for the Tribe (collectively, the "Loan Documents"), which approvals shall be deemed conclusively given upon the execution of the applicable Loan Document by an Authorized Representative.
- 1.3 The following persons as the Chairman, Secretary, Treasurer, together with any other person who under the law of the Tribe is permitted to act on behalf of the Tribal Business Council in the event of the absence or incapacity of the Chairman, Secretary or Treasurer (each, an "Authorized Representative"), is hereby authorized and directed to execute the Loan Documents and other documents authorized hereby on behalf of the Tribe and to take such actions as are required or desirable to effect the purposes of this Resolution.

<u>Name</u>	<u>Title</u>
1. Tex G. Hall	Chairman
2. Austin Gillette	Treasurer
3. Marcus Wells, Jr.	Secretary

Section 2. Limited Waiver of Sovereign Immunity; Jurisdiction and other Legal Provisions. All Legal Provisions in the Loan Documents are hereby approved; more specifically and expressly:

- 2.1 The choice of laws, limited waivers of sovereign immunity and exhaustion of tribal remedies and obligations to arbitrate to be contained in the Loan Documents are hereby approved; provided that limited waiver of sovereign immunity shall be substantially in the form attached hereto as Exhibit A.
- 2.2 The Tribe is hereby authorized to submit disputes arising in connection with the Loan to arbitration with the force and effect as provided for in the Loan Documents.
- 2.3 Each of the Loan Documents shall be governed by such laws as are provided therefor in such instruments.

Section 3. Determination. The Tribal Council hereby determines that no laws, ordinances, resolutions or other actions of the Tribal Council or any of the agencies or instrumentalities of the Tribe, either written or established by custom or tradition: (a) prohibit the Tribal Council from approving the matters herein approved or the execution, delivery or performance of any Loan Documents; or (b) create any obligation of the Tribal Council to submit these matters for approval of or consent from any officer, body, agency or instrumentality of the Tribe, or any vote by members of the Tribe.

Section 4. Effect of this Resolution. So long as any amounts are owing or performance on the part of the Tribe is due or unperformed under a Loan Documents, (a) the provisions of this Resolution shall constitute the law of the Tribe and may be relied on by the Lender, and its successors, assigns and participants, (b) the provisions of this Resolution shall constitute the terms of an agreement and contract between the Tribe and the Servicer and the Lenders (each, a "Benefited Party"), and (c) any rescission, amendment or modification of this Resolution in any manner that may result in an adverse effect to a Benefited Party without the written consent of the Benefited Party that is or may be so affected, shall constitute a breach of the Loan Agreement.

Section 5. Miscellaneous Matters.

- 5.1 Any resolutions or other actions of the Tribe, or any of its officers, employees, or agents, either written or established by tradition that are in conflict with or inconsistent with the terms of this Resolution or any provision set forth in a Loan Document are hereby to such extent repealed and annulled. This Resolution shall supersede any prior or currently existing resolutions or other actions of the Tribe, or any of its officers, employees or agents, subdivisions, agencies or instrumentalities that are contrary to the actions authorized or contemplated herein or in a Loan Document.
- 5.2 If any provision of this Resolution or the application of any provision of this Resolution



EXHIBIT A
CERTAIN LEGAL PROVISIONS

0.1. **Governing Law and Construction**. The Loan Documents shall be governed by, and construed in accordance with the laws of the Tribe, provided that in the absence of applicable Tribal law, the substantive laws of the State of North Dakota and applicable federal law shall govern. Whenever possible, each provision of the Loan Documents and any other statement, instrument or transaction contemplated hereby or thereby or relating hereto or thereto shall be interpreted in such manner as to be effective and valid under such applicable law, but, if any provision of the Loan Documents or any other statement, instrument or transaction contemplated hereby or thereby or relating hereto or thereto shall be held to be prohibited or invalid under such applicable law, such provision shall be ineffective only of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Loan Documents or any other statement, instrument or transaction contemplated hereby or thereby or relating hereto or thereto. The parties shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with a valid provision the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provision. The provisions of this Section are irrevocable and may not be rescinded, revoked or amended without the prior written consent of the Lender. The Tribe acknowledges the Lender has relied upon them in entering into the Loan Documents.

0.2. **Limited Waiver of Sovereign Immunity**. Nothing in this Loan Agreement shall be deemed to be a waiver of the Borrower's sovereign immunity from suit, except to the extent that the Borrower hereby provides a limited waiver of its sovereign immunity and consents to be sued should an action be commenced to determine and enforce the obligations of the parties under any Loan Document; and provided further that the Borrower's consent to suit is only as to arbitration and to court action initiated consistent with the Loan Documents, and provided further, provided that no recourse for the enforcement of remedies for a breach of the Note or this Loan Agreement shall be available except as against Assignment Payments. The Borrower expressly submits to and consents to the jurisdiction of the Tribal Court of The Three Affiliated Tribes of the Fort Berthold Reservation in the first instance and, after seeking relief in such Tribal Court, to the United States District Court for the District of North Dakota in connection with any injunctive relief sought prior to arbitration, or to give effect to any relief ordered or award obtained in any arbitration proceeding.

0.3. **Arbitration**. Any dispute, claim or controversy arising out of or relating to this Loan Agreement or any Loan Document, or the breach thereof, or the making of this Loan Agreement or any Loan Document, including claims of fraud in the inducement (hereinafter referred to as the "Financing Disputes"), shall be settled by arbitration under the rules of commercial arbitration of the American Arbitration Association (the "AAA") and Title 9 of the U.S. Code, as modified by this Section.

Any party may, by written notice to the other parties after such a controversy has arisen hereunder, appoint one arbitrator. The other parties to the controversy shall, by written notice, within twenty (20) days after the receipt of such notice by the first party, appoint a second arbitrator, and in default of such appointment the first arbitrator appointed shall be the sole arbitrator. When two (2) arbitrators have been appointed as hereinabove provided, they shall, if possible, agree on a third arbitrator who shall be appointed by written notice signed by both of them within thirty (30) days thereafter with a copy mailed to each party hereto within ten (10) days after such appointment; provided that if the two arbitrators cannot agree upon a third, they

shall apply to the AAA for such appointment.

No arbitrator shall be related to or affiliated with, or shall have represented in a legal capacity any party hereto. The arbitrators shall apply the governing law specified in Section 8.25, and shall follow such rules of discovery and evidence as the United States District Court for the State of North Dakota would apply. Within sixty (60) days of commencement of the arbitration actions, and after receiving evidence and hearing witnesses, if any, the arbitrators shall render their award, accompanied by findings of fact and a statement of reasons for the decision. The arbitrators shall have the authority to award in connection with a Financing Dispute any remedy or relief that a court of competent jurisdiction could order or grant, including, without limitation, equitable remedies, specific performance of any obligation created under this Loan Agreement, the issuance of an injunction. The award of the majority of the arbitrators shall be conclusive and binding upon the parties. Any award rendered therein may be entered in and/or enforced in the United States District Court of the State of North Dakota (or any federal appellate court), or if such court shall not have jurisdiction or shall otherwise fail to timely act in the Tribal Court of the Borrower, or if such Tribal Court shall not have jurisdiction or shall otherwise fail to timely act, in any other court having jurisdiction being convened in the State of North Dakota. Any review of the arbitration decision and award shall be limited to enforcement of the decision and award and the findings of the arbitrator(s) shall not be re-litigated. The parties further acknowledge and agree that any party may apply to the Tribal Court of the Borrower in the first instance and, after seeking relief from such Tribal Court, to the United States District Court for the State of North Dakota, and seek injunctive relief so as to maintain the status quo until such time as the arbitration award is rendered or the controversy is otherwise resolved. Each of the parties hereby agrees that this arbitration provision is valid and enforceable and therefore waives any defense or assertion to the contrary.

is held to be invalid, the remainder of the Resolution shall not be affected.

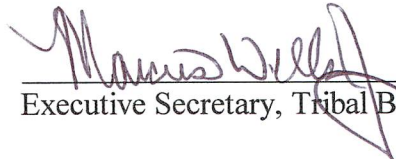
5.3 This Resolution shall become effective as of the date and time of its passage and approval by the Tribal Council

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitutes a quorum, 6 were present at a Regular Meeting thereof duly called, convened, and held on the 12th day of September; that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 6 members, 0 members opposed, 0 abstained, 0 not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman Voting. [] Not Voting.

Dated this 12th day of September, 2002



Executive Secretary, Tribal Business Council

ATTEST:



Chairman, Tribal Business Council