



**RESOLUTION OF THE TRIBAL BUSINESS COUNCIL OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION**

A Resolution entitled "Approval of Loans with Marshall Group, Withdrawal of trust fund moneys for reserve fund, and assignment of trust fund interest as security"

WHEREAS, This Nation has 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"), interest from the Recovery Fund therein defined ("Trust Interest") 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 Tribal Business Council has determined that it would be in the best interests of the Tribe to borrow approximately \$14,000,000 for purposes permitted to be funded from Trust Interest under the Act to (i) refinance prior interim loans to the Tribe arranged by Marshall Investments Corporation ("Marshall") that are presently secured by or intended to be paid from Trust Interest, (ii) finance other Tribal working capital and capital projects, and (iii) pay costs associated with such financing (the "Financing"); and

WHEREAS, The Tribal Business Council has determined that to the extent legally permitted, and consistent with the intended uses of the loan proceeds, the Tribe should borrow in a manner permitting the interest to be excluded from gross income for federal income tax purposes in order to reduce the borrowing costs of the Tribe; and

WHEREAS, The Tribal Business has determined that to further reduce borrowing costs, the Financing should be structured as a general obligation of the Tribe, with Trust Interest pledged to secure the Financing or with a grant of authorization to the lenders of to apply to the Office of Trust Fund Management for payment of principal and interest due, but only in an amount each year that does not exceed the scheduled principal and interest due; and

WHEREAS, Marshall originally submitted a proposal to arrange the Financing, and now has submitted a revised proposal for consideration by the Tribal Business Council (the "Financing Proposal");

WHEREAS, Under the Financing Proposal, the Financing would be structured to include both a taxable and a tax exempt loan (the "Loans") totaling up to approximately \$14,000,000 in aggregate principal amount, and including the following terms:

(i) for the portion of the Financing bearing taxable interest (expected be approximately \$8,000,000 in principal), a seven-year Loan bearing interest at the annual interest rate of 6.875% (to the extent consistent with prevailing market conditions), with principal being amortized over a fifteen year term and a lump sum of remaining principal (balloon payment) being due at maturity; and

(ii) for the portion of the Financing bearing tax exempt interest, a seven-year Loan bearing interest at the annual interest rate of 5.125% (to the extent consistent with prevailing market conditions), with principal being amortized over a fifteen year term and a balloon payment being due at maturity; and

(iii) a servicing fee would be payable to Marshall in an amount equal to 1/8th % of the outstanding balance of the Loans, that will be deducted from interest payable on the Loans; and

(iv) the payment obligation of the Tribe for each of the Loans would be evidenced by a separate promissory note of the Tribe payable to Marshall as the "Lender"; and

(v) in addition to the pledge of the Tribe's full faith and credit, Trust Interest (as and when received, or to the extent available with respect to the Taxable Loan, while held by the OTFM in an interest account (the "Trust Interest Account")) would be pledged by a written agreement (the "Assignment Agreement") to secure scheduled annual debt service on the Loans (exclusive of any balloon payments or any accelerated payments because of a default); and

(vi) because the terms of the Loans will not restrict withdrawal of amounts by the Tribe from the Trust Interest Account, to ensure timely payment from Trust Interest of scheduled amounts due on the Loans, a debt service reserve fund equal to two month's debt service would be created and held by a bank (the "Debt Service Reserve Fund") to secure the Loans, with amounts will be withdrawn only to pay the last payment due on the applicable Loan or to pay a regularly scheduled payment on a Loan if the Tribe otherwise fails to make such payments; amounts in the debt service reserve fund would be funded by amounts withdrawn from the Trust Interest Account (the "Debt Service Reserve Deposit"), the expected amount to be withdrawn is presently estimated to be

as a loan for the benefit of the Mandaree School District that is proposed to be incurred simultaneously with the Loans); and

(vii) upon the closing of the Loans all or a portion of the proceeds of the Loans may be advanced into one or more escrow account to be held by Marshall, any affiliate of Marshall or a third party financial institution or trustee, with funds to be disbursed from the escrow account under customary conditions; and

NOW, THEREFORE, BE IT RESOLVED, by the Tribal Business Council of the Three Affiliated Tribes 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.
- 1.2 The Tribal Business Council hereby approves the Financing Proposal and the Tribe's execution, delivery and performance of all loan agreements, notes, Assignment Agreements and any related documents reasonably necessary to effect the Loans (the "Loan Documents") in such forms as are approved by the an Authorized Representative (defined below) and legal counsel for the Tribe, which approvals shall be deemed to have been conclusively given upon the execution of the Loan Document by an Authorized Representative. The Tribal Business Council also authorizes withdrawal of the Debt Service Reserve Deposit from the Trust Income Account for credit to the Debt Service Reserve Fund.
- 1.3 The Chairman, Secretary, and Treasurer of the Tribe, together with any other person who under the laws of the Tribe are permitted to act on behalf of the Tribe in the event of the absence or incapacity of the Chairman, Secretary or Treasurer (each, an "Authorized Representative") are hereby authorized and directed to execute the Loan Documents, and to execute such other documents and take such actions as are required or desirable to effect the purposes of this Resolution.

Section 2. Limited Waiver of Sovereign Immunity; Jurisdiction and Arbitration. Provisions in the Loan Documents relating to the following matters are hereby expressly authorized, approved and adopted as the law of the Tribe with respect to the Loans; so long such provisions substantially comply with the terms set forth in Exhibit A attached hereto:

- 2.1 The choice of governing laws, the limited waivers of sovereign immunity, the consents to jurisdiction and waivers of the doctrines of abstention and exhaustion of tribal remedies; and
- 2.2 The obligation to resolve disputes related to the Loans by binding arbitration.

Section 3. Miscellaneous Matters.

- 3.1 Any resolutions or other actions of the Tribal Business Council or of the Tribal Executive Committee, including any prior resolutions regarding the Loans that are in conflict with



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 Tribe's sovereign immunity from suit, except to the extent that the Tribe 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 Tribe'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 and Trust Interest. The Tribe expressly submits to and consents to the court jurisdictions as described in Section 8.27, including as provided in such Section 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 or 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 Tribal Court, or if such court shall not have jurisdiction or shall otherwise fail to timely act 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 any other court of competent jurisdiction. 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 Tribe 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.

or inconsistent with the terms of this Resolution are hereby to such extent repealed and annulled. This Resolution shall supersede any prior or currently existing resolutions or other actions of the Tribal Business Council or Tribal Executive Committee that are contrary to the actions authorized or contemplated herein or in a Loan Document.

3.2 If any provision of this Resolution or the application of any provision of this Resolution is held to be invalid, the remainder of the Resolution shall not be affected.

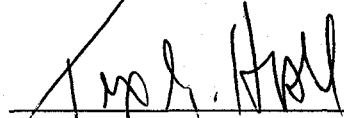
CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 6 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 16th day of May, 2003, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.


Chairman [] Voting. [] Not Voting.

Dated this 16th day of May, 2003.

ATTEST:



Tex G. Hall, Chairman
Tribal Business Council



Mervin Packineau, Acting Executive Secretary
Tribal Business Council