

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

A Resolution entitled "Land Lease between Fort Berthold Housing Authority and the Three Affiliated Tribes for Housing Project ND-5-31"

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 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 Tribes and of the enrolled members thereof; and

WHEREAS, It has been determined that it is in the best interest of the Tribe to lease land to the Fort Berthold Housing Authority for the purpose of constructing multiple apartment buildings their appurtenances in Mandaree, North Dakota, and

NOW, THEREFORE, BE IT RESOLVED, The Three Affiliated Tribes' Tribal Business Council approves a lease for real property located in Mandaree, McKenzie County described as follows: W2SE4NE4SE4 of Section 11, T149N., R94W., Fifth Principal Meridian, McKenzie County, State of North Dakota, containing 5.0 acres, more or less, for a term of fifty (50) years (25USC ss4211); said lease is for the purpose of constructing multiple apartment buildings and their appurtenances under Project ND-5-31, with financing provided by HUD under an Indian Housing Block Grant and a loan from USDA; and

BE IT FURTHER RESOLVED, Said lease to be signed by the Chairman and Secretary of the Three Affiliated Tribes or designated representatives.

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

TRIBAL LEASE

THIS LEASE, made and entered into this 1st day of June, 2003, by and between the **Three Affiliated Tribes** hereinafter called the "**LESSOR**", and the **Fort Berthold Housing Authority P. O. Box 310, New Town, North Dakota**, hereinafter called the "**LESSEE**", in accordance with existing laws and regulations (25 CFR 162) which by reference are made a part hereof, and subject to the approval of the Secretary of the Interior or his duly authorized representative acting under delegated authority.

WITNESSETH:

The parties hereto mentioned do covenant and agree as follows:

- 1) **PREMISES.** The Lessor hereby leases to the Lessee the following real property located in Mandaree, McKenzie County, State of North Dakota, described as follows: Allotment Number T696A-C

W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$,
Section 11, T149N, R94W
5.0 acres more or less

- 2) **USE OF PREMISES.** The premises shall be used for the purpose of constructing multiple apartment buildings and their appurtenances, known as Project ND-5-31 (the "Housing Project"), and for such other purposes, not inconsistent with the foregoing as may be approved by the Lessor, with the financial assistance from an Indian Housing Block Grant provided by the U.S. Department of Housing and Urban Development hereafter called HUD, and a loan from the U.S. Department of Agriculture hereafter called USDA.
- 3) **TERM.** Lessee shall have and hold the described premises for a term of fifty 50 years (see 25 U.S.C. ss 4211) beginning on the date of approval by the Secretary. This lease may not be terminated by either or both parties during the term provided herein if and so long as the lease and/or any improvements on the leased premises, or any interest therein are mortgaged or pledged or encumbered by HUD or USDA or their successors as security for any loan pursuant to an authorized encumbrance instrument in connection with and operation of said Housing project unless the lenders or their successors consent in writing to such termination as agreed upon by the Lessor and Lessee.
- 4) **CONSIDERATION FOR LEASE.** Under 25 CFR 162.5, the Lessor has the right to grant a lease to Lessee for nominal remuneration if premises are to be used for housing purposes: therefore, Lessor requires no lease payments for the term of the lease due to other valuable consideration which is construction of housing units for Lessor's membership. When the completed lease is submitted to the Bureau of Indian Affairs for approval, it shall be accompanied by a Ten Dollar (\$10.00) lease preparation fee. It is agreed that there shall be no adjustment of these terms in the event that any part of the leased premises is taken by condemnation for highway or other public purposes. It is further agreed that this lease or any part thereof including this paragraph shall not be construed to prejudice the rights or impair the prosecution of any claim of the Lessee arising out of such condemnation proceeding.

- 5) **MORTGAGE.** The Lessor consents to the Lessee's granting a mortgage on its leasehold interest to the United States of America acting through the Rural Housing Service, United States Department of Agriculture (USDA), for the purpose of improvement of the leased premises.
- 6) **SUBLEASES.** The Lessee is authorized to make subleases of its leasehold interests in connection with the construction, development and operation of the Housing Project subject to the limitations of term and other conditions or limitations of this lease. During the term of any sublease, should the sublessee become an owner of the subleased land it is hereby agreed that merger of interest shall not occur.
- 7) **ASSIGNMENTS.** This lease shall not be assigned in whole or part without the prior written consent of the Lessor or the Secretary and the lenders, during the period that the lenders have a financial interest in the project, provided that the Lessee may assign this lease or deliver possession of the premises to the United States of America without substantial breach of any financial assistance contract between the Lessee and the United States.
- 8) **IMPROVEMENTS.** All improvements shall remain the property of the Lessee, sublessee or assignee until the expiration of the lease. All such improvements shall become the property of the Lessor at the expiration of termination of the lease.
- 9) **INSURANCE.** Lessee agrees to obtain and maintain for owners, landlords and tenants public liability insurance excluding property damage at no cost to and in amounts acceptable to the Lessor, HUD and USDA, the lenders: it is understood and agreed that the term "owners" includes both the United States and the Lessor. The Lessee and its assigns shall hold the Lessor and the United States harmless from any claim of whatsoever nature arising out of the use or occupancy of the leased or subleased premises.
- 10) **RELINQUISHMENT OF SUPERVISION BY THE SECRETARY.** Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease: however, such termination shall not serve to abrogate the lease. The owners of the land the lenders and the Lessee shall be notified by the Secretary of any such change in the status of the land.
- 11) **SHARE OF BENEFIT FROM LEASE.** No member of Congress or any delegate thereto or any resident Assistant Secretary for Indian Affairs shall be admitted to any share or part of this lease or to any benefit that may arise herefrom.
- 12) **VIOLATIONS OF LEASE.** It is understood and agreed that violations of this lease shall be acted upon in accordance with the regulations in 25 CFR 162.
- 13) **QUIET ENJOYMENT.** Lessor agrees to defend the title of the leased premises and also especially agrees that Lessee and its tenants shall peaceable and quietly hold enjoy and occupy the leased premises for the duration of this lease without any hindrance, interruption, ejection or molestation by Lessor or by any other person or persons whomsoever.
- 14) **SURRENDER OF POSSESSION.** Upon the expiration or other termination date of this lease the Lessee, Sublessee or assignee shall without further action by Lessor remove themselves from and surrender to the Lessor complete and peaceable possession of the premises. No further occupancy or use rights are implied or granted by the provisions of this lease.
- 15) **UNLAWFUL CONDUCT.** The Lessee agrees not to use or cause to be used any part of said premises for any unlawful conduct or purposes.

- 16) **ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS.** No assent expressed or implied to any breach of any of the Lessee covenants shall be deemed to be a waiver of any succeeding breach of any covenants.
- 17) **UPON WHOM BINDING.** It is understood and agreed that the covenants and agreements hereinbefore mentioned shall extend to and be binding upon the heirs assigns successors executors and administrators of the parties of this lease. While the leased premises are in trust or restricted status all of the Lessee's obligations under this lease and the obligations of its sureties are to the United States as well as to the Lessor.
- 18) **ENCUMBRANCE.** The parties recognize the right of the USDA customer (the Lessee) in the event of default or inability to continue with the Lease or the USDA loan to transfer the leasehold subject to the USDA mortgage to an eligible transferee with an assumption of the USDA debt. Lessee, may without consent of Lessor or approval of the Secretary, mortgage, pledge or otherwise encumber the lease or improvements on the leased premises as may be necessary and appropriate under a Federal financial assistance contract between the Lessee and HUD or USDA, the lenders. Provided that Lessee shall not, without prior written consent of the Lessor and Secretary and written approval of HUD, USDA or other lenders, mortgage, pledge or encumber this lease or any interest in this lease or improvements on the leased premises when a prior existing mortgage, pledge or encumbrance is in force with HUD or USDA the above lenders or any other lender under an authorized encumbrance. The lenders shall not be prohibited from taking the necessary foreclosure or other action provided in the encumbrance instrument except for the following options:

***OPTIONS:** (A) In the event a default by the Lessee under an authorized encumbrance remains uncured for ninety (90) days, Lessor shall have the first right of refusal to acquire the Lessee's interest under the encumbrance upon (a) payment of all sums then in arrears and (b) or entering into any assumption of the encumbrance. Said right of first refusal may be exercised at any time within thirty (30) days after notice in writing from the lender of the Lessee's default, which notice shall be given before the lender invokes any other remedies provided under the encumbrance instrument or by law and shall be exercised by notice in writing from the Lessor to the Lessee and lender: provided however, that the Lessee shall have fifteen (15) days from the date of the latter notice to cure the default. The estate acquired by the Three Affiliated Tribes shall remain subordinate to any valid and subsisting mortgage or other security instrument as long as this lease and/or any improvements on the premises or any interest therein are encumbered or otherwise pledged as security for any loan.*

(B) If a sale or foreclosure under the USDA mortgage occurs and the USDA is the purchaser or if USDA accepts a voluntary conveyance of the leasehold in lieu of foreclosure or if the Lessee abandons the leasehold interest the Lessor shall have the right of first refusal subject to the following terms and conditions:

- 1. USDA shall notify the Lessor in writing of the availability of the leasehold interest.*
- 2. The Lessor's right of first refusal must be exercised within thirty (30) days of the notice in writing from USDA of the availability of the leasehold interest by paying USDA all sums then in arrears and executing any documents necessary to assume the Lessee's obligation to USDA.*
- 3. If the Lessor fails or refuses to exercise its right of first refusal as set forth above USDA may:*

- a.) Assign the leasehold without the approval of the Secretary of the Interior or the consent of the other parties: provided, however, that the assignee accepts in writing to be bound by all the terms and conditions of the Lease: or
- b.) Sell the leasehold interest for cash or by credit sale secured with a mortgage: provided, however, that the purchaser accepts and agrees in writing to be bound by all the terms and conditions of the Lease.

(C) If a sale or foreclosure under the USDA mortgage occurs and the purchaser is a party other than USDA the Secretary must approve the assignment and the purchaser will be bound by the terms of the Lease and will assume in writing all the obligations thereunder. The parties agree that the USDA customer shall be liable for unpaid rentals or other charges, which may have accrued at the time USDA acquires possession of the property or title to the leasehold. Any unpaid rentals or other charges that accrue during the period in which USDA possesses or owns the leasehold shall be the liability of the USDA.

- 19) **MINERALS.** Lessor excepts and reserves to itself its successors and its assigns all oil, gas, coal and minerals whatsoever already found or which may hereafter be found upon or under the premises with the right to prospect for mine and remove the same. Lessor agrees not to exercise or allow others to exercise its rights to enter upon the surface of the premises or use within a depth of 200 feet, the subsurface of the premises, provided, however, that the Lessor shall have the rights to explore, develop and extract minerals from the premises by operations carried on from adjoining lands.
- 20) **DEVELOPMENT.** If no part of the Housing Project which is the subject of this lease has been substantially developed within three (3) years of the effective date of this lease or if the Natural Resources Department of the Three Affiliated Tribes determines that the leased land cannot be properly developed for homesites the lease shall become null and void. The Natural Resources Department shall give thirty (30) days notice to Lessor, HUD, USDA and any other holder of a security interest in the Housing Project prior to such nullification becoming effective.
- 21) **DEFINITIONS.** "Secretary" as used in this lease means the Secretary of the Interior or his duly authorized representative acting under delegated authority.

In witness whereof, the parties hereto have set their signatures on the date first written.

LESSOR: THREE AFFILIATED TRIBES

BY: *[Signature]*
 CHAIRMAN, THREE AFFILIATED TRIBES
 TRIBAL BUSINESS COUNCIL

9-11-03
 DATE

BY: *[Signature]*
 SECRETARY, THREE AFFILIATED TRIBES
 TRIBAL BUSINESS COUNCIL

09-11-03
 DATE

LESSEE: FORT BERTHOLD HOUSING AUTHORITY

**BY: CHAIRMAN, BOARD OF COMMISSIONERS
FORT BERTHOLD HOUSING AUTHORITY**

DATE

**BY: EXECUTIVE DIRECTOR
FORT BERTHOLD HOUSING AUTHORITY**

DATE

**APPROVAL: U.S. DEPARTMENT OF INTERIOR
Bureau of Indian Affairs**

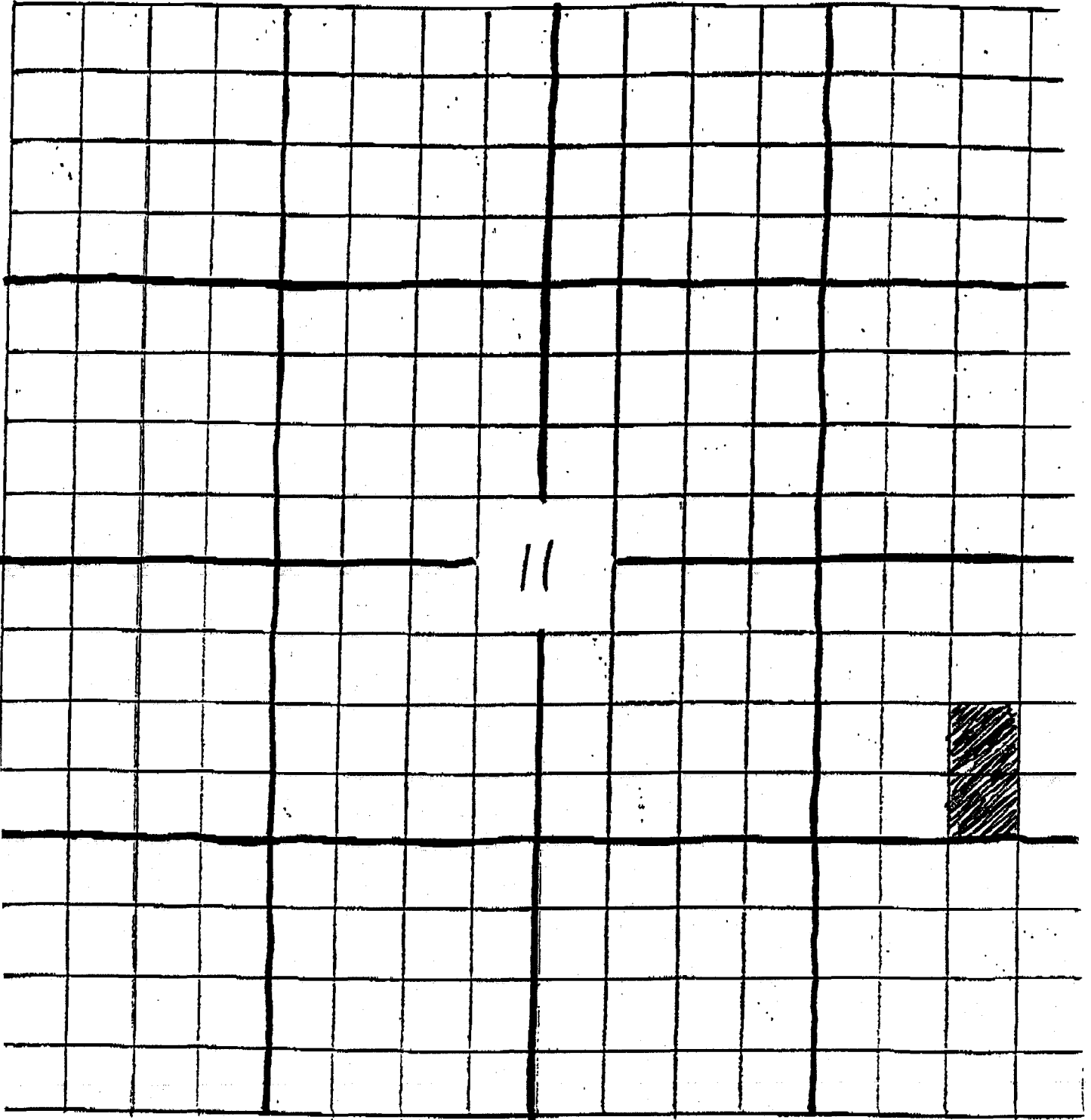
BY: SUPERINTENDENT, FORT BERTHOLD AGENCY

DATE

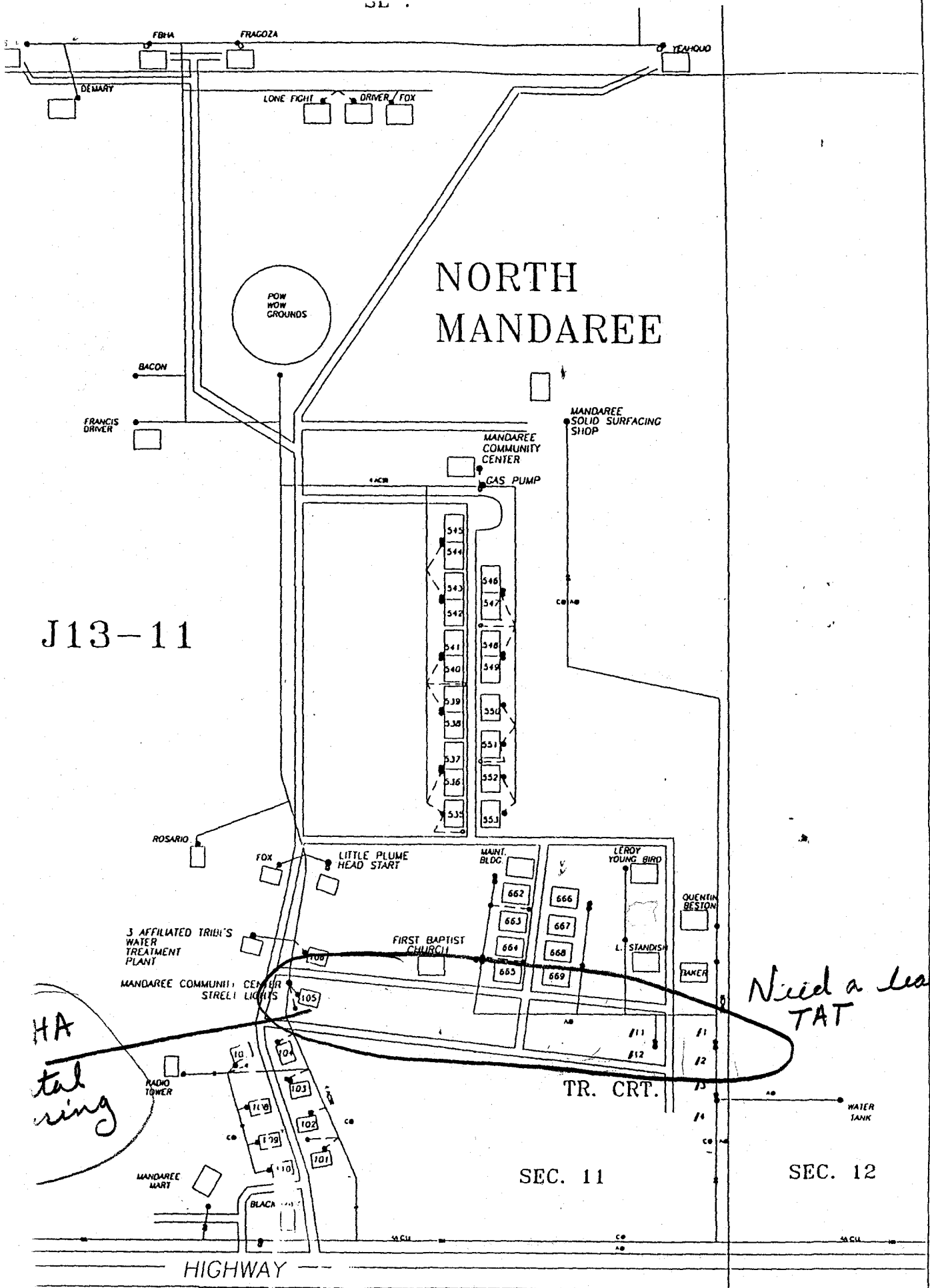
**CONCURRENCE AS TO FORM:
U.S. Department of Agriculture**

**BY:
Title:**

DATE



ALLOTMENT # T096A-C
DESCRIPTION W¹/₂ SE¹/₄ NE¹/₄ SE¹/₄, Section 11 T149 N
OWNER R 94 W T.A.T.
INFORMATION 5.0 Acres more or less



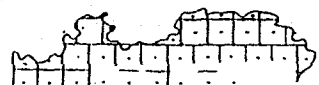
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Need a lease for TAT

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McKENZIE



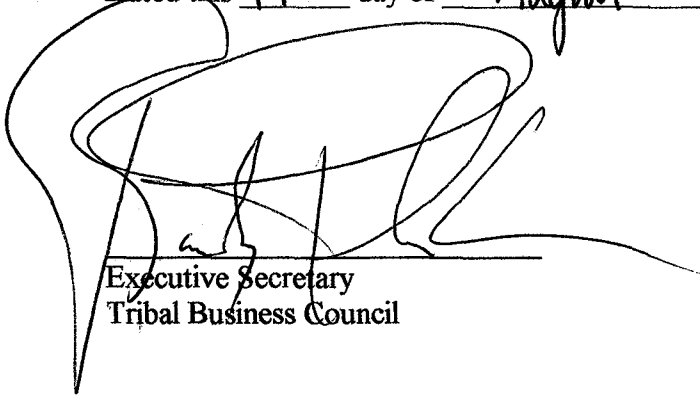
NORTH

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, _____ were present at a Regular Meeting, thereof duly called, noticed, convened and held on the 14th day of August, 2003; that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of _____ members, _____ members opposed, _____ members abstained, _____ members not voting and that said Resolution has not been rescinded or amended in any way.


Chairman: (voting) (not voting)

Dated this 14th day of August, 2003.



Executive Secretary
Tribal Business Council

ATTEST:



Chairman, Tex G. Hall
Tribal Business Council