



Resolution # 04-046-RP

**RESOLUTION OF THE TRIBAL BUSINESS COUNCIL OF  
THE THREE AFFILIATED TRIBES OF THE  
FORT BERTHOLD RESERVATION APPROVING LOAN AND PLEDGE OF  
REVENUES AND PERSONAL PROPERTY OF FOUR BEARS CASINO & LODGE  
AND RELATED FACILITIES**

- 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 an Amended Gaming Compact dated September 29, 2001, between the Tribe and the State of North Dakota (the "Compact"), the Tribe engages in class III gaming within the meaning of the Indian Regulatory Act of 1988, as amended; and
- WHEREAS,** Pursuant to authorization from the Tribal Business Council, in May 2002 the Tribe borrowed \$15,620,000 from Marshall Investments Corporation ("Marshall"), as lender, bearing a current interest rate of 7.85% (the "Taxable 2002 Loan"), secured by a pledge of certain gaming-related revenues ("Pledged Revenues") pursuant to a Depository Agreement between the Tribe and First National Bank & Trust Co. of Williston (as amended or supplemented, the "Depository Agreement"); and
- WHEREAS,** Under the terms of the Taxable 2002 Loan, among other things, the Tribe is required to maintain in a certain interest account related to the Three Affiliated Tribes Economic Recovery Fund created under Public Law 102-575 (entitled "Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act) an amount at least equal to all scheduled debt service due on all tribal debt having a claim against interest in such account (the "Interest Retention Requirement"); and
- WHEREAS,** The Tribal Business Council has determined that it is desirable to refinance the Taxable 2002 Loan upon significantly lower interest rates and to eliminate the Interest Retention Requirement to permit greater financial flexibility; and
- WHEREAS,** The Tribal Council has been advised that it is desirable to purchase certain new equipment (the "New Equipment") for use at the Four Bears Casino & Lodge

owned and operated by the Tribe on its reservation (together with related facilities, the "Casino Facilities"); and

**WHEREAS,** Marshall has submitted the following proposal (the "Financing Proposal") to arrange a loan (the "Loan") to repay the Taxable 2002 Loan and finance costs of the New Equipment and transaction costs:

- (i) the amount of the Loan would (i) be in a total amount of approximately \$15,836,944; (ii) bear fixed interest at the market rate then prevailing at closing (currently 6.10%), and (iii) require principal to be repaid in approximately 60 monthly payments of principal and interest based upon a 180 month amortization schedule; the terms of the Loan would be set forth in a loan agreement (the "Loan Agreement"), and the Tribe's obligation to pay principal and interest on the Loan would be evidenced by one or more promissory notes (collectively, the "Note");
- (ii) the payment obligation of the Tribe under the Loan would be secured by a pledge of Pledged Revenues pursuant to the Depository Agreement and a security interest in personal property of the Casino Facilities to be created pursuant to a security agreement (the "Security Agreement");

**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 proposed actions described above are in the public interest and promote the welfare of the Tribe.
- 1.2 The Tribal Business Council hereby approves the Loan and the terms of Financing Proposal, including the irrevocable pledge of pledged revenues and the security interest in personal property of the Casino Facilities, and the Tribe's execution, delivery and performance of a Loan Agreement, Note, a Security Agreement, and all other agreements, instruments or other documents reasonably necessary to effect the Financing Proposal (the "Loan Documents") all in such forms as shall be approved by 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 Documents by an Authorized Representative.
- 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 Loan; so long such provisions substantially comply with the terms set forth in EXHIBIT A attached hereto, including those related to:

- 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 Loan 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 that are in conflict with 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.

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 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 suite 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 assets pledged to secure the Loan. 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 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.

**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 constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 8th day of April, 2004; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 8th day of April     , 2004.

  
Secretary, Tribal Business Council

ATTEST:

\_\_\_\_\_  
Tex G. Hall  
Chairman, Tribal Business Council