



Resolution #04-117-RP

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

*A resolution entitled "Disbursement of funds from the interest earnings from the Economic Recovery Fund of the Equitable Compensation Act in the Event of Default of the Tribe on loans obtained from Marshall Investments Corporation".*

**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 Tribes 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 Economic Recovery Fund therein defined ("Trust Interest or 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 from time to time borrowed funds from the Marshall Investments Corporation in accordance with various documents executed by the Tribe and authorized by previous Resolutions (collectively, the "Loan Documents"), and also, in connection with these prior financings of the Tribe, and as part of the Loan Documents, executed a certain Collection and Reserve Account Agreement dated June 27, 2003 (as amended from time to time, the "Reserve Agreement"), between the Tribe and First National Bank and Trust Co. of Williston (the "Lenders' Agent"), pursuant to which each financing covered by the Reserve Agreement is secured by a reserve account (a "Reserve Account"), with the anticipation that any amounts withdrawn from the Reserve Account for monthly debt service would be restored by a deposit of Trust Income assigned by the Tribe; and

**WHEREAS,** Management of the Economic Recovery Fund and the interest earnings from that fund is presently conducted by the Office of the Special Trustee, acting through the Office of Trust Funds Management, and is a "tribal trust account" as defined in Title 25 of the Code of Federal Regulations (CFR), Part 115 and is therefore subject to the regulations found in Part 115; and



**WHEREAS,** The regulations of Part 115 require, in 25 CFR Section 115.813, (a copy of which is attached) that in the event trust funds, including Trust Income, are completely or partially invested in securities or a security that have not matured, and the Tribe wishes to withdraw Trust Income from the “tribal trust account” that may require the sale of a security or securities that have not matured, a resolution of the Tribe must be in place in order for funds to be withdrawn, with said resolution to state that the Tribe understands and acknowledges that if the funds it wishes to withdraw are taken from the “tribal trust account”; (1) the Tribe may incur a penalty when the security is sold; and (2) that the security may lose value if it is sold prior to maturity; and

**WHEREAS,** The Tribe understands that the word “penalty” as used in the regulations and as used above may mean, among other things, an amount of interest already accrued may not be received by the Tribe if a certificate of deposit is sold before maturity; and that the words “may lose value” may mean, among other things, the actual amount received for the security at the time of sale may be less than the face value of the security (the value of the security at maturity); and

**WHEREAS,** The Tribe also understands that in the event of the necessity of a sale of any security held in the “Tribal Trust Account” before maturity, the Office of Special Trustee will consult with the Tribe with the goal of ensuring that there is a minimum of loss of income resulting from such sale; and

**WHEREAS,** To date concerning any of the previous loans with Marshall Investment Corporation, the Tribe has not been in a condition of default and therefore the event described in the preceding paragraph has never occurred and no such resolution as required by 25 CFR Section 115.813 has ever been required of the Tribe by the Office of Special Trustee or the Office of Trust Funds Management that manages the funds; and

**WHEREAS,** The Tribe has been advised by the Office of Special Trustee that such an event described by Section 115.813 could occur in relation to any of its outstanding loans secured by Trust Income from its “tribal trust account”, and therefore the Tribe understands that the passage of this resolution acknowledging that possibility and authorizing the withdrawal of Trust Income in the event the conditions described in Section 115.813 occur is necessary to preserve the current status of the outstanding loans with Marshall Investment Corporation, which are all in good standing; and further, such resolution is in the best interests of the Tribe; and

**NOW THEREFORE BE IT RESOLVED,** that the Tribal Business Council of the Three Affiliated Tribes, acting on behalf of the Tribe, hereby approves the withdrawal of funds from the “tribal trust account” for Trust Income that is managed on the Tribe’s behalf by the Office of Special Trustee if withdrawal is required under the Loan Documents, even if such withdrawal requires a sale of securities credited to the account, with the Tribal Business Council acknowledging that if any such security is sold (1) the Tribe may incur a penalty when the security is sold; and (2) the security may lose value if it is sold prior to maturity, with the understanding that the Office of Special Trustee will consult with the Tribe with



the goal of ensuring that there is a minimum of loss of income resulting from such sale;  
and

**NOW THEREFORE BE IT FURTHER RESOLVED**, that the Tribal Business Council of the Three Affiliated Tribes, acting on behalf of the Tribe, understands that the approval hereby granted applies to all loans between the Marshall Investments Corporation and the Three Affiliated Tribes previously entered into in which any Trust Income, as defined in this Resolution and in the Loan Documents, has been irrevocably pledged in order to secure a loan, and that this approval does not affect any other right, privilege or obligation available to the parties or covenants made by the Three Affiliated Tribes pursuant to the Loan Documents.

**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 29 day of June, 2004; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman  Voting.  Not Voting.

Dated this 29 day of June, 2004.

Randy Phelan  
Secretary, Randy Phelan  
Tribal Business Council

ATTEST:  
Tex G. Hall  
Chairman, Tex G. Hall  
Tribal Business Council