



Resolution No. _____-RP

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

A Resolution entitled "Approval of Financing with Marshall Investments Corporation for New Casino Operated by Tribe"

WHEREAS, This Nation has accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

WHEREAS, LSA and Associates has located financing with the Marshall Investments Corporation for the construction and equipping of the casino contemplated by the Participating Lease that will allow the Participating Lease to become effective, under its terms, and will permit designs to be developed and construction to begin, and which will not involve any kind of general obligation or other commitment on the part of the Tribe to repay the loan between LSA and Associates and Marshall Investments Corporation, other than that the Tribe will be required to continue to operate the Class III gaming enterprise on the Site during the duration of the loan agreement; and

WHEREAS, In order for financing to be completed, the Tribe must agree to the Financing Terms for the construction of the casino in so far as they require the Tribe to establish an escrow account, similar to that previously established for other Marshall Investments Corporation loans, into which all proceeds from the new casino operations will be placed, and from which the lease payment will be made, and from which payment will be made towards the construction loan and other equipment loans will before profits from the casino are made available to the Tribe; and

WHEREAS, It is understood by the Tribe that the Financing Terms for the loan will be similar to those of other Marshall Investments Corporation loans with the Three Affiliated Tribes, and the amount borrowed may be up to \$10 million, with an interest rate of approximately 7%, but it is also understood by the Tribe that the loan terms themselves are not subject to the approval of the Tribe, except as mentioned in this Resolution; and

WHEREAS, The anticipated casino operation is expected to generate additional income to the Three Affiliated Tribes without affecting the profits generated by the existing casino operations of the Tribe; and

WHEREAS, The Three Affiliated Tribes will be responsible for payment of all utilities on Site I (Leased Premises as defined in the Participating Lease) during the period of the lease, and

- WHEREAS,** The Three Affiliated Tribes will confine their commercial and for-profit enterprise on Site I (Leased Premises as defined in the Participating Lease) to gaming activities only, and
- WHEREAS,** Pursuant to the terms of the Participating Lease, the Tribe must approve the plans and specifications of the building or buildings to be located on the Site I premises, and that includes approval of the architect, with the further understanding that Indian preference shall be applied to the selection of the general contractor and subcontractors for construction of the gaming facilities, which shall include if possible a guaranteed maximum price for construction, and further provided that all normal performance and completion requirements are met by the general contractor and all subcontractors; and
- WHEREAS,** Under separate agreement between LSA and Associates and the Tribe, the Tribe and as contemplated by the Participating Lease Agreement, the Tribe shall have the right to buy out LSA and Associates interest in the Leased Premises at any time after at least five years following the official opening of the gaming operations, which buyout shall be based on a rate of 60% of the net income to LSA and Associates times the number of remaining years of the lease in an amount not less than \$7 million, which is the estimated value of the premises, without regard to any amounts already paid on the outstanding debt of LSA and Associates, and an assumption by the Tribe of any remaining debt owed by LSA and Associates at the time of the buy-out; and
- WHEREAS,** The terms of the Financing Documents shall include a provision that all funds shall be distributed through an appropriate escrow agent, with documentation for all disbursements, including the approval, as appropriate for construction costs, of an inspecting architect or engineer for each disbursement; and
- WHEREAS,** Because the proceeds from the contemplated casino operations are owned by the Tribe, the Tribe must agree to a limited waiver of sovereign immunity in order for the Marshall Investments Corporation to be able to enforce the terms of the loan agreement with LSA and Associates, as is set forth in Exhibit A, attached hereto; and
- WHEREAS,** The sovereign immunity waiver as set forth in Exhibit A, as well as the contemplated loan documents that involve the Tribe have been reviewed by the Tribal legal department and for the reasons set forth above and in the resolution of the Tribe approving the Participating Lease, are in the best interests of the Tribe.

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 Terms, in so far as they require Tribal approval, and the Tribe's execution, delivery and performance of all Loan Documents, Assignment Agreements and any other 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.
- 1.3 The Chairman, Secretary, or Treasurer of the Tribe, individually or together with any other person who under the laws of the Tribe are permitted to act on behalf of the Tribe, (each, an "Authorized Representative") are hereby authorized and directed to execute the Loan Documents, and to execute such other documents, including the buy-out agreement 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 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.

NOW THEREFORE BE IT FURTHER RESOLVED that the Chairman or other Tribal officers as designated by the Chairman are hereby authorized to execute and enter into any other documents other than those mentioned above associated with the development of the casino operations referenced in this Resolution, including any

necessary permits, applications or other matters that may be required to authorize commencement of the casino operations referenced in this Resolution, and are also authorized to execute and enter into any additional agreements with Lake Sakakawea and Associates as may be necessary to effectuate this Resolution; and

NOW THEREFORE BE IT FINALLY RESOLVED that the Project Coordinator for the Tribe in this gaming venture shall be the Tribal Business Council representative for the Twin Buttes Segment or his designee; and for the purposes of this Resolution the designee as acting Project Coordinator shall be the Chief Executive Officer of MHA Enterprises, Inc.

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, _____ were present at a _____ Meeting thereof duly called, noticed, convened and held on the ___ day of _____, 2004, 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 _____ day of _____, 2004.

ATTEST:

Chairman, Tex G. Hall
Tribal Business Council

Executive Secretary, Randy Phelan
Tribal Business Council

EXHIBIT A

CERTAIN LEGAL PROVISIONS

0.1. Governing Law and Construction. The Loan Documents applicable to the Tribe 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 Documents; 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. The Tribe expressly submits to and consents to the court jurisdictions as described in _____, 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 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.