



Resolution # 04-158 RP

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

**A Resolution entitled, "Authorization from the Three Affiliated Tribes to Guarantee a Loan From Lakeside State Bank to the Fort Berthold Community College"**

**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,** The Fort Berthold Community College is chartered and sponsored by the Tribe as a postsecondary educational institution that primarily assists Tribal members to obtain postsecondary educational opportunities in a reservation setting and is a vital part of the educational efforts of the Tribe; and

**WHEREAS,** The Tribal Business Council pursuant to Resolution No. 04-24-RP, agreed to guarantee a loan to FBCC from Lakeside State Bank and the Bank of North Dakota in the amount of \$750,000.00; and

**WHEREAS,** The FBCC is negotiating a \$550,000.00 line of credit from Lakeside State Bank and FBCC and Lakeside State Bank is again requesting that the Tribal Business Council provide the Bank with a general guarantee for this line of credit; and

**WHEREAS,** The College has determined that the approximate terms of the loan with the local bank of Lakeside State Bank will be as follows: The principal amount of the line of credit will be up to \$ 550,000.00 and repayment will be from the proceeds of the FBCC's Bureau of Indian Affairs-TCCC-ISC operating funds which is approximately \$1.2 million and the line of credit maturity date will be March 1, 2005 or when the FBCC's FY 2005 BIA TCCC funds become available; and

**WHEREAS,** The Tribe has determined, after careful review with appropriate officials of FBCC and legal counsel for the Tribe, that the FBCC line of credit and the Tribal loan guarantee are in the best interests of the Tribe and its members and will serve to stabilize the financial condition of FBCC, allowing it to continue to provide quality postsecondary educational opportunities for Tribal members well into the future; and

**WHEREAS,** The terms of the line of credit will require a limited waiver of sovereign immunity by the Tribe in favor of Lakeside State Bank, in substantially the form as previously provided to Lakeside State Bank under the previous loan guaranteed by the Tribe, which form is attached hereto, subject to review by the legal counsel for the Tribe, with said limited waiver of sovereign immunity being limited to the remedies specified in the loan documents and in an amount not to exceed the amount of the loan outstanding at such time as such waiver would be necessary to apply in order for the bank to collect the loan; and

**WHEREAS,** The Tribe has determined that the waiver of sovereign immunity in the form as attached hereto, subject to review by legal counsel for the Tribe, is in the best interests of the Tribe.

**NOW THEREFORE BE IT RESOLVED,** that the Three Affiliated Tribes, acting through its duly elected and authorized Tribal Business Council, hereby approves a guarantee to be issued in favor of Lakeside State Bank of New Town, N.D. of a line of credit up to \$ 550,000.00 for the benefit of FBCC provided; that the Chairman of the Tribe and any one of the other three officers of the Tribe shall approve any and all draws on the line of credit prior to FBCC drawing down on the line of credit and the approval of the Chairman and any one of the other three officers of the Tribe shall also be required to approve FBCC annual budget to insure repayment of the line of credit; and


**NOW THEREFORE BE IT FURTHER RESOLVED,** that the Three Affiliated Tribes, acting through its duly elected and authorized Tribal Business Council, hereby approves the limited waiver of sovereign immunity in substantially the form as attached hereto as Exhibit A, subject to review by legal counsel for the Tribe; and

**NOW THEREFORE BE IT FINALLY RESOLVED** that the Tribal Business Council hereby authorizes the Chairman, Vice-Chairman, Secretary or Treasurer, or such other person who is authorized pursuant to the Tribal Constitution and By-laws to act on their behalf, to execute any and all documents necessary for the completion of the loan to FBCC by the Tribe, and to submit, if necessary, any part or all of the loan agreement documents to the Department of Interior for approval.

#### 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 Executive Committee of the Tribal Business Council is composed of \_\_\_\_\_ members of whom \_\_\_\_\_ constitute a quorum, \_\_\_\_\_ were present at a \_\_\_\_\_ Meeting thereof duly called, noticed, convened, and held on the \_\_\_\_\_ day of August, 2004; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of \_\_\_\_\_ members, \_\_\_\_\_ members opposed, \_\_\_\_\_ members abstained, \_\_\_\_\_ not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this \_\_\_\_\_ day of August \_\_\_\_\_, 2004.

  
\_\_\_\_\_  
Randy Phelan, Executive Secretary  
Tribal Business Council  
MHA NATION

ATTEST:

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

**EXHIBIT A**  
**CERTAIN LEGAL PROVISIONS OF LOAN**

**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 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 Limited Waiver of Sovereign Immunity 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 this Limited Waiver of Sovereign Immunity and Loan Documents. The Tribe expressly submits to and consents to the jurisdictions 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 proceedings.

This Limited Waiver of Sovereign Immunity is intended to allow Lakeside State Bank and the Bank of North Dakota to recover any amounts due and owing under the Loan Documents upon the unlikely event of default on the Promissory Note by Fort Berthold Community College. The Limited Waiver of Sovereign Immunity shall be strictly limited to allow Lakeside State Bank and the Bank of North Dakota to recover said amounts in the event of default.

**0.3. Arbitration.** Any dispute, claim or controversy arising out of or relating to his 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 this 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.

**0.4. Term and Modifications to Loan Documents.** This Limited Waiver of Sovereign Immunity shall be effective for the term of the loan and shall automatically expire upon full satisfaction of the terms of the Promissory Note. This Limited Waiver of Sovereign Immunity is also conditioned upon the approval by the Tribal Business Council of any amendments to the Loan Documents. Any amendments to the Loan Documents made without the approval of the Tribal Business Council shall cause automatic revocation of this Limited Waiver of Sovereign Immunity.

ACKNOWLEDGED AND AGREED:

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Tex G. Hall, Chairman  
Three Affiliated Tribes

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Date