



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

*A Resolution entitled, "Resolution of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation Approving General Obligation Bridge Loan, an Assignment of Trust Fund Interest as Security for the Loan, Withdrawal of Interest from Trust Fund and Related Transactions, and Acknowledging Risks Associated with Liquidation of Investments"*

**(2007 Bridge Loan from Marshall Financial Group, LLC)**

**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; and

**WHEREAS,** Public Law 102-575, entitled "Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act," as amended (the "Act"), established the "Three Affiliated Tribes Economic Trust Fund" (the "Trust Fund") in the United States Treasury; under the Act, the United States Secretary of the Interior (the "Secretary") is required to deposit the interest that accrues on deposits to the Trust Fund ("Trust Interest") in a separate account in the United States Treasury (the "Trust Interest Account"); and such interest is declared to be available, without fiscal year limitation, for use by the Secretary to make payments to the Tribe for educational, social welfare, economic development, and other programs, subject to the approval of the Secretary; provided that no part of the principal of the Trust Fund is available for making such payments, and no part of any moneys in the Trust Fund may be distributed to any member of the Tribe on a per capita basis; the Office of the Special Trustee for American Indians within the federal Department of the Interior ("OST") is charged with overseeing the Trust Fund, and the Office of Trust Fund Management ("OTFM") is charged with investing amounts in the Trust Fund and the Trust Interest Account; and

**WHEREAS,** the Tribe anticipates receiving payments in the near future from JT Enegery, LLC and Dakota 3, LLC under oil leases entered or to be entered into with respect to lands of the Tribe (the "Oil Lease Payments"); and



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**WHEREAS,** the Tribal Business Council has determined it to be desirable to obtain a bridge loan in advance of the Tribe's receipt of the Oil Lease Payments; and

**WHEREAS,** the Tribal Business Council has received a proposal that Marshall Financial Group, LLC, or its successors, assigns, affiliates or participants (the "Lender") would make a loan (the "Bridge Loan") to the Tribe in the approximate amount of up to \$7,300,000 to (i) repay an approximate \$1,055,000 loan from Security State Bank, (ii) fund the Reserve Account discussed below, (iii) pay costs associated with such loan, and (iv) costs associated with education, social welfare, economic development or other programs of the Tribe, and; and

**WHEREAS,** the Bridge Loan is proposed be structured approximately as follows, the definitive terms to be set forth or incorporated into a loan agreement between the Tribe and the Lender (the "Loan Agreement"); and

(i) interest would accrue at a variable rate equal to the prime rate as reported by the Wall Street Journal, from time to time, plus .75%, payable on January 1, 2008, and the first day of each calendar month thereafter; and

(ii) all principal on the loan would be due approximately one year after closing on the Bridge Loan, subject to earlier mandatory payment on the date or dates and to the extent the Tribe received amounts for Oil Lease Payments; and

(iii) the payment obligations of the Tribe with respect to the Bridge Loan would be evidenced by a promissory note of the Tribe payable to the Lender (the "Note"); and

(v) the Loan would be secured by a pledge of the Tribe's full faith and credit, except that enforcement of the Loan as against certain Protected Assets would not be permitted; "Protected Assets" means (i) the Tribe's casino facilities as defined in a certain Depository Agreement dated as of May 28, 2002, between the Tribe, First National Bank & Trust Co. of Williston, and Marshall Investments Corporation concerning the collection of casino revenues, as wells as any other casino property leased by or on behalf of the Tribe (the "Leased Casino"), (ii) all revenues of the Casino Facilities Enterprise as defined in that Depository Agreement and all revenues of any Leased Casino, (iii) all lands held in trust by the United States for the Tribe, and (iv) any money or other property of the Tribe not permitted to be applied to the payment of amounts due in respect of the Loan because of federal or state law; and



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**WHEREAS,** to reduce borrowing costs, the Bridge Loan is proposed be secured by a pledge of Trust Interest and with a grant of authorization to the Lender to apply to the OST or OTFM, as applicable, for payment of principal and interest on the Bridge Loan, but only in an amount each year that does not exceed the scheduled principal and interest due; subject to the following terms:

(i) as further security for the Bridge Loan, the Lender would be a "Reserve Secured Lender" and the loan would be created as a "Reserve Secured Obligation" as such terms are defined in a certain Collection and Reserve Account Agreement dated June 27, 2003, as amended by a First Amendment to Collection and Reserve Account Agreement dated as of April 9, 2004, entered into by Marshall Investments Corporation, the Tribe and First National Bank and Trust Co. of Williston, acting as the "Lenders' Agent" (as supplemented, amended, restated or replaced from time to time, including by a certain supplement to be entered into in connection with the Loan between the Lender, Tribe and Lenders' Agent, the "Reserve Agreement");

(ii) pursuant to the Reserve Agreement:

(A) a reserve account would be established with the Lender's Agent to secure only the Loan (the "Reserve Account") funded by a portion of the proceeds of the Loan in an amount equal to the "Reserve Account Requirement" therein defined (twice the largest scheduled monthly payment of principal and interest on the Loan assuming a constant interest rate equal to the initial interest rate on the loan, but exclusive of amounts due at maturity);;

(B) no later than the 15 calendar days before the end of each calendar month, the Lender would be required to deliver to the Lenders' Agent and the Chairman and Chief Financial Officer of the Tribe (which may occur by telephonic facsimile) a written notice setting forth the scheduled monthly debt service or maturity amount next due and payable, including servicing fees;

(C) on the 5th calendar day before each monthly payment date, the Tribe would be required to pay to the Lenders' Agent by wire transfer the scheduled monthly debt service or the maturity amount, as applicable, due on such payment date with respect to the Loan, with each such payment being credited to a "Collection Account" created by the Lender's Agent with respect to the Loan; for purposes of computing interest due on the principal balance of the Loan, no such payment to the Lenders' Agent would be



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deemed to have paid the Loan until the applicable payment date; provided that if Lenders' Agent does not receive a wire transfer of immediately available funds for any scheduled monthly debt service or a maturity amount (for which the Lender has provided notice in accordance herewith) by the end of the 4th calendar day preceding the applicable monthly payment date, the Lenders' Agent would be required to immediately give notice to Tribe and the Lender by telephone or telephonic facsimile, confirmed by mailed written notice; and

(D) on the monthly payment date, the Lender's Agent would be required to wire transfer amounts in the Collection Account to the Lender; provided that if amounts in the Collection Account are insufficient to pay scheduled monthly debt service, the Lenders' Agent would be required to withdraw amounts from the Reserve Account to fund such deficiency to remit to the Lender; at maturity, the Lender's Agent would remit to the Lender all amounts in the Reserve Account to pay amounts due on the Loan; and

(E) in accordance with a Supplement to the Collection and Reserve Account Agreement to be executed in connection with the Loan, on each date that a withdrawal from the Reserve Account occurs, the Lenders' Agent would be required to submit to the Tribe a written notice by overnight or next business day delivery stating that if the Tribe does not restore the amount withdrawn within 5 days, the Lender's Agent will request such restoration to be funded from Assigned Trust Interest (defined below); and

(F) the Tribe would also enter into an assignment agreement between the Tribe, Lender and Lender's Agent (the "Assignment Agreement"), pursuant to which (A) the Tribe would agree to secure its obligation to restore the withdrawal from the Reserve by pledging and assigning Trust Interest received by the OST from amounts in the Trust Fund after receipt of the related Reserve Restoration Request from ("Assigned Trust Interest"); provided, however, in no event shall Trust Interest withdrawn in any year ever exceed the scheduled annual principal and interest payments due on the Loan in such year; and (B) if amounts in the Reserve Account for the Loan are withdrawn to pay any scheduled monthly debt service due on the Loan, the Lender's Agent will be irrevocably authorized to request the OST to pay to



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Lender's Agent an amount of Assigned Trust Interest sufficient to restore the withdrawal (a "Restoration Payment Request"); and

(iii) in the Loan Agreement, the Tribe will agree to use its best efforts to have the OST promptly (A) consent to the Assignment Agreement and the transfer of Assigned Interest to the extent necessary to restore amounts drawn from the Debt Service Reserve Fund upon receiving a certain written request from Lenders' Agent, and (B) enter into an agreement with the Tribe (the "Instructions and Agreement for Payments"), pursuant to which the Tribe would irrevocably instruct the OST to comply with Restoration Payment Requests submitted by Lenders' Agent, regardless of any change in the membership of the Tribal Business Council or any law of the Tribe;

(iv) the Tribe would also agree to complete, execute and submit to the BIA and the OST such instruments or documents required for irrevocably effectuating all withdrawals of Assigned Trust Interest requested pursuant to a Restoration Payment Request, including federal form 1034 (the "Withdrawal Documents"); and

**WHEREAS,** the Tribe has been advised that the Trust Interest Account 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, that in the event trust funds, including Trust Interest, are completely or partially invested in securities or a security that have not matured, and the Tribe wishes to withdraw Trust Interest 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 Trust Interest Account before maturity, the OST will consult



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

**WHEREAS**, the Tribe has been advised by the OST that such an event described by Section 115.813 of Part 115 of Title 25 of the Code of Federal Regulations could occur in relation to the Loan if a Reserve Restoration Request is honored; and

**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 terms of the Loan substantially as described above, the application of the proceeds of the Loan in compliance Act, the Tribe's execution, delivery and performance of the Loan Agreement, the Note, the Assignment Agreement, a supplement to the Reserve Agreement providing for the Lender's Agent to give additional notice to the Tribe before seeking to withdraw amounts from the Trust Interest Account, the Instructions and Agreement for Payments and any related documents reasonably necessary to effect the Loan (the "Loan Documents"), all 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, 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 to execute the Loan Documents and all Withdrawal Documents and such other related documents and to take such other actions as are required or desirable to effect the purposes of this Resolution.
- 1.4 The withdrawal of amounts from the Trust Interest Account in accordance with the terms of the Loan Document is hereby irrevocably approved, 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 (but with the understanding that the OST will consult with the Tribe with the goal of ensuring that there is a minimum of loss of income resulting from such sale).



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### 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:

- 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 regarding the Loan 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.
- 3.3 None of Tribe or any agency, instrumentality, component, enterprise or entity owned or controlled, directly or indirectly, by the Tribe, (each, together with the successors and assigns of each, a "Tribal Party") shall ever be permitted to adopt or take any resolutions or other action that has the effect of impairing any contractual rights of any third party under any of the Loan Documents or any agreements, documents or certificates related to the Loan Documents or the Withdrawal Documents (collectively, the "Financing Documents"), and any such resolution or action to the contrary shall be void and of no effect; and if any future Tribal Party should ever allow any such resolution or other action, Tribal Business Council recognizes that such impairment may result in an event of default under the Financing Documents. Upon execution and delivery of any Financing Document to which the Tribe is a party as herein authorized, the Financing Document shall become a valid and binding obligation of the Tribe, enforceable in accordance with its terms, and the provisions thereof shall constitute the law of the Tribe.



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 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 Document; 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 as against Protected Assets. The Tribe expressly submits to and consents to the court jurisdictions as described in Section 8.27, 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, or any other court of competent jurisdiction, 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





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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, or any other court of competent jurisdiction, 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.

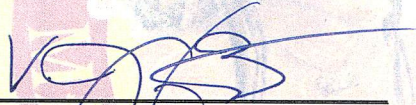



**CERTIFICATION**

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, 6 were present at a Special Meeting thereof duly called, noticed, convened, and held on the October 26, 2007; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman [] Voting. [] Not voting.

Dated this 26<sup>th</sup> day of October, 2007.

  
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Tribal Secretary, V. Judy Brugh  
Tribal Business Council  
Three Affiliated Tribes

**ATTEST:**  
  
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Tribal Chairman, Marcus Wells, Jr.  
Tribal Business Council  
Three Affiliated Tribes

