

**RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION
AUTHORIZING AND PROVIDING FOR: (1) THE ISSUANCE OF AN
INSTALLMENT PROMISSORY NOTE IN THE PRINCIPAL AMOUNT UP TO
\$2,000,000.00 TO FINANCE THE PURCHASE OF LAND, (2) THE
GIVING OF SECURITY, (3) THE COLLECTION, HANDLING AND
DISPOSITION OF REVENUES FROM THE LAND TO BE PURCHASED
AND (4) RELATED ACTIONS AND MATTERS.**

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 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, The Tribal Business Council of the Three Affiliated Tribes is authorized by the terms of that constitution of acquire lands or interests therein in the name of the Tribal government; and

WHEREAS, The Tribal Business Council, although authorized to do so by the constitution, shall not be required to mortgage or to otherwise hypothecate any tribal lands as a condition for this loan from the Farmers Home Administration; and

WHEREAS, The Tribal Business Council wishes to acquire the interests in approximately 15,000 acres of land located within the exterior boundaries of the Fort Berthold Reservation for the use of and the improvement of the economic standing of the Tribe or its members but does not have adequate uncommitted funds for such acquisition; and

WHEREAS, In order to acquire this land, the Tribal Business Council is authorized and empowered, for and in the name of the Tribe, to apply to the Farmers Home Administration of the United States Department of Agriculture (hereinafter referred to as the "Government") for financial assistance; to cause the execution and delivery of promissory note or notes or other evidence of indebtedness or other appropriate security instrument, to secure any loan or loans made, or insured, by the Government; to comply with any requirements, terms or conditions prescribed by the Government or by Government regulations; and to pay, extend or renew any such indebtedness; and to execute contracts or enter into

agreements and, without limitation, to take any and all other actions as may be necessary, incidental, or appropriate to finance acquisition of the land or interests therein in behalf of the Tribe;

NOW, THEREFORE, BE IT RESOLVED, That the Tribal Business Council of the Three Affiliated Tribes has determined as follows:

Section 1. (Determination of Council) It is necessary to defray all or a portion of the costs of acquiring the land or interests therein by obtaining a loan to be made or insured by the Government in accordance with applicable provisions of the Consolidated Farm and Rural Development Act and Public Law 91-229, it being determined that the Tribe is unable to obtain sufficient credit elsewhere to finance the acquisition taking into consideration prevailing private and cooperative rates and terms currently available.

Section 2. (Amount and terms of Loan) The Tribe shall borrow \$1,000,000.00 at five (5) percent interest or less per annum and issue as evidence thereof an installment promissory note in the form prescribed by the Government for the full principal amount of the loan. The note shall be signed by the Tribal Chairman and attested by the Tribal Treasurer and the corporate or other seal of the Tribe affixed thereto, and shall bear interest from its date, which shall be the date of loan closing, at a rate prescribed by the Government in its approval of the loan, but not to exceed five (5) percent per annum. The security instruments shall be in such form and contain the terms and conditions required by the Government.

Section 3. (Pledge of Revenue) The indebtedness hereby authorized shall be payable from the gross income and revenue derived from the operation of the tribal land purchased from these loan funds, a portion of which is sufficient to pay the principal and interest as an when the same shall become due is hereby pledged and shall be set aside for that purpose. The Tribal Comptroller is hereby authorized and directed to ensure that the operation of the Tribal Land Purchase and Utilization Plan (hereinafter referred to as the "Plan") results in lease income or other revenues sufficient to maintain the Debt Service account and the Debt Reserve account at the required levels. The Comptroller is further authorized and directed, in conjunction with the Administrator of the Natural Resources Department and the Natural Resources Committee, to make such modifications to the Plan as is necessary to achieve and maintain this result.

Section 4. (Pledge of Additional Security) This section of FmHA Instruction 442.11, Exhibit B, is not applicable in its entirety for this loan.

Section 5. (Protection and Disposition of Funds) The Tribal Treasurer shall be custodian of all loan funds of the Tribe and all revenue pledged for repayment of the loan. All loan funds shall be deposited in accordance with Subpart A of Part 1902. The Treasurer shall execute a fidelity bond on the positions of Chairman and Treasurer in an amount not less than \$1,000,000.00 with a surety company approved by the Government. The United States of America shall be named as a co-obligee in such bond, and the amount thereof shall not be reduced without the prior written consent of the Government.

The Tribal Comptroller is hereby authorized and directed to have established the following accounts at the financial institution of the Tribe into which proceeds of the note, the revenues from the land, and any other income pledged for repayment shall be deposited, which accounts shall be continually maintained, except as otherwise provided, so long as the indebtedness hereby authorized remains unpaid:

A. Land Acquisition Account. The proceeds of the loan hereby authorized shall be deposited in the Land Acquisition Account which shall be established as a "supervised bank account" as required by the Government. If funds in this account exceed \$100,000.00, it shall be secured by the financial institution in advance in accordance with U.S. Treasury Department Circular No. 176. When all land acquisition costs have been paid in full, any balance remaining in the Land Acquisition Account shall be applied as a refund on the loan and the Land Acquisition Account shall be closed.

B. Debt Service Account. All assigned revenues shall be deposited in the Debt Service Account until there is an amount equal to the next annual installment to become due plus any delinquencies and payments are made to the Reserve Account. The Debt Service Account will be used for making annual installment payments on the loan, payments for any delinquencies that might occur, and payments to the Reserve Account, the Administrative Costs Account and the Land Improvement Account.

C. Reserve Account. Out of the funds in the Debt Service Account, there shall be transferred annually to the Reserve Account the sum of \$_____ (1/10 of an annual payment of principal and interest) until there is accumulated in this fund the sum of \$_____ (one annual installment of principal and interest), after which no further transfers need be made to said account except that transfers shall be made to replace any withdrawals from this account. Funds in the Reserve Account shall be used only for the purpose of making payments of principal and interest in the event the amount in the Debt Service Account is insufficient to meet such payment.

D. Administrative Costs Account. After the requirements of the above referenced accounts are met, all subsequent revenues shall be paid to this Administrative Costs Account in an amount which shall be determined each Fiscal Year by the Natural Resources Department as approved by the Natural Resources Committee based upon an annual budget concurred by the Comptroller. Funds in this account shall be used for the payment of the costs incurred in the administration of the Tribal Land Acquisition and Leasing Programs.

E. Land Improvement Account. All revenues in excess of the amounts necessary to service the abovementioned accounts shall be paid to the Land Improvement Account. Funds in this account shall be used for the improvement and/or development of the lands acquired by the Tribe under this loan authority, or for additional land purchases.

Section 6. (Other covenants and Agreements of the Tribe) The Tribal covenants and agrees that, so long as the indebtedness hereby authorized remains unpaid, the Tribe will:

A. Comply with applicable Federal and Tribal laws and regulations and maintain the land in good condition.

B. Impose and collect such rates and charges that gross revenues will be sufficient at all times for the maintenance of the land and the funding of the Debt Service and Reserve Accounts.

C. Cause to be levied and collected, subject to Tribal jurisdictional authority and Tribal ordinances being adopted in the future, such as taxes or assessments as may be necessary to maintain the land in good condition, meet payments of the loan, and make the deposits required by Section 5 B and C, if for any reason gross revenues are insufficient.

D. Maintain complete books and records relating to the operation and maintenance of the land and its financial affairs and will cause such books and records to be audited annually at the end of each fiscal year in accordance with OMB Circular A-128 a copy of which is attached and is hereby made a part of this Resolution. At all reasonable times, the Government shall have the right to inspect the land and to inspect and copy the records, accounts, and data of the Tribe relating thereto as authorized by the Freedom of Information Act. OMB Circular A-128 meets the remaining requirements of FHA Instruction 442.11, Exhibit B. Section 6D.

E. Maintain such insurance coverage as may be required by the Government.

F. Not borrow any money from any source or enter into any contract or agreement or incur any other liabilities in connection with making improvements to the land (exclusive of normal maintenance) without obtaining the prior written consent of the Government.

G. Not cause or permit any voluntary dissolution of its organization; merge or consolidate with any other organization; dispose of, transfer, or convey its title to any land or any part thereof or interest therein by sale, mortgage, lease or other encumbrance, with obtaining the prior written consent of the Government.

H. Not Modify or amend its Constitution in any way that would effect the Government's security without the written consent of the Government.

Section 7. (Security Instruments) In order to secure the payment of the principal and interest of the note and any related obligations of the Tribe to the Government, the Chairman and the Treasurer of the Tribal Business Council are hereby authorized and directed to execute and deliver an assignment of revenues from the lands purchases with the funds from this authorized note for the Tribe. The security instrument (assignment) shall give the Government the lien on Tribal revenues from the

lands purchased with the funds from this authorized note, and said officials are authorized and directed to acquire such subordination agreements as are necessary to achieve the required priority.

However, revenues utilized for Administration Costs per Section 5-D or Land Improvement Costs per Section 5-E of this Resolution shall not render this Tribe liable for any future recupement and/or repayment of revenues so utilized in the event gross revenues in the future are insufficient to meet the terms of this note at that time.

Section 8. (Refinancing) If any time it shall appear to the Government that the Tribe is able to refinance the loan in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the Tribe will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take such action as may be required in connection with such refinancing loan.

Section 9. (Waiver of Immunity) In order to secure the payment of the principal and interest of the note and any related obligations, the Tribe hereby waives, for the benefit of the Government, any immunity from suit or liability which it may possess except that this waiver shall not extend to the acquiring of any judgment, lien, or attachment upon the property of the Tribe other than property specifically pledged to the Government in connection with this loan provided that, if no real estate is mortgaged to the Government, this waiver shall extend to acquiring of judgment, lien, or attachment on the income from real estate purchased with the loan herein authorized.

Section 10. (Resolution a Contract) The provisions of this Resolution constitute a contract between the Tribe and the Government so long as the loan made or insured by the Government remains unpaid.

Section 11. This Resolution shall take effect and be in force immediately.

BE IT FURTHER RESOLVED, That the Tribal Business Council also approves the submission of a Farmers Home Administration (FmHA) Community Facilities Loan Application for Phase II of the Fort Berthold Community College.

Resolution #92-058-JJR

C E R T I F I C A T I O N

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 Regular Meeting thereof duly called, noticed, convened, and held on the 18th day of May, 1992; 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.

Dated the 18th day of May, 1992.

John J. Rabbithead Jr
Secretary, Tribal Business Council

ATTEST:

Walter S. Weehin
Chairman, Tribal Business Council