

See also
R# 96-250-DSB.

msb

Resolution No. 97- 12-DSB

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

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 passed Resolution No. 96-250-DSB, without the Governmental Lease Purchase Agreement having been properly submitted, and accompanying authorizing Resolution, to the Legal Department of the Three Affiliated Tribes for prior appropriate legal review; and

WHEREAS, The Lease requires the signature of the Tribe's legal counsel on a form entitled, "*Opinion of Lessee's Counsel*," which, in part, states that the *lease is a legal, valid and binding obligation of the Lessee, enforceable in accordance with its terms*, and the signing of said form authorizing the Lease Agreement, in its present form, would fail the ethical standards of professional attorneys in the representation of their client, to wit: the Tribal Business Council of the Three Affiliated Tribes; and

WHEREAS, Resolution No. 96-250-DSB, in its present form, does not conform to prevailing federal Indian law principles with respect to governmental immunity from suit and is not based on sound legal advice; to wit: (i) The lease provides for an open-ended waiver of immunity from suit; (ii) The waiver of sovereign immunity is not express and was not contained in Resolution No. 96-250-DSB; and (iii) The lease requires the Governing Body of the Three Affiliated Tribes to submit to the application of state law and to the jurisdiction of the state courts; and

WHEREAS, The Three Affiliated Tribes, as Lessee, is a sovereign, governmental Nation of the Mandan, Hidatsa & Arikara Tribes and, as such, has a judicial system and has adopted a Code of Laws pertaining to the present Governmental Lease Agreement; including possessing such inherent sovereign attributes as immunity from suit; and

WHEREAS, The Code of Laws of the Three Affiliated Tribes shall govern the interpretation and enforcement of the terms and conditions of the Lease Purchase Agreement between Lessor and Lessee. (A true and correct photostatic copy of the Governmental Lease Purchase Agreement is attached and incorporated herein identified as "*Attachment A*"); and

WHEREAS, The Lessor and Lessee agree that the interpretation and enforcement of the Governmental Lease Purchase Agreement, identified in the preceding paragraph, shall be subject to the jurisdiction of the Fort Berthold District Court; and

WHEREAS, Resolution No. 96-250-DSB, shall be supplemented with the correct financial information, to wit:

The difference between the pay-off of the trade (\$38,540.89), and the new equipment (\$29,434.00), shall be financed by the dealer for a period of not less than (5) years, no prepayment penalties, and 6.7% interest on the unpaid balance; and

NOW, THEREFORE, BE IT RESOLVED, That the Tribal Business Council of the Three Affiliated Tribes hereby grants a limited waiver of immunity from suit in the event the Tribe defaults on the Governmental Lease Purchase Agreement between Deere Credit, Inc. (Lessor) and the Three Affiliated Tribes (Lessee), and that such default remedies shall be governed by the Code of Laws of the Three Affiliated Tribes, providing for the recovery of property in dispute, as contained in the Repossession Statute.

BE IT FURTHER RESOLVED, That any disputes over the terms and conditions of the Lease Purchase Agreement shall be resolved in the Fort Berthold District Court of the Three Affiliated Tribes.

BE IT FURTHER RESOLVED, That the corrected financial information contained in the last "**WHEREAS**" provision identified hereinabove shall supersede the sixth (6th) "**WHEREAS**" paragraph contained in Resolution No. 96-250-DSB.

BE IT FURTHER RESOLVED, That the remaining provisions of Resolution No. 96-250-DST, shall remain as duly enacted on the 18th day of December, 1996, by the Tribal Business Council of the Three Affiliated Tribes, and that this Resolution # 97-12-DSB, shall serve as a supplement to Resolution No. 96-250-DSB, possessing the full force and effect of law.

CERTIFICATION

I, 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 16th day of January, 1997; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 16th day of January, 1997.

Daylon Spotted Bear
Secretary, Tribal Business Council

ATTEST:



Chairman, Tribal Business Council