

**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,** Pursuant to Resolution No. 96-213-DSB, the Tribal Business Council established the powers and duties of a Board of Directors for the Tribe's gaming enterprise, which is to be known as the Three Affiliated Tribes Gaming Enterprise Board; and
- WHEREAS,** Pursuant to Resolution No. 96-213-DSB, the Tribal Business Council established a five (5) member Tribal Gaming Enterprise Board and established the initial terms of office for the members, with two members serving three (3) year terms, two members serving two year terms, and one member serving a one (1) year term; and
- WHEREAS,** It is the intention of the Tribe that each member of the Three Affiliated Tribes Gaming Enterprise Board shall be afforded Directors and Officers insurance coverage, which will indemnify each and every member of the Board against all liability they may incur as a result of actions they may take as members of the Board of Directors acting in good faith, within the limits of the policy; and
- WHEREAS,** It is a requirement of the Director's and Officer's insurance coverage that the Tribe agrees to generally indemnify each member of the Tribal Gaming Enterprise Board for costs and any liability they may incur as a result of their actions while acting in good faith on the Board, it being understood that such indemnification is usually limited by an appropriate indemnification law, and in this case the Tribe desires to adopt the attached indemnification rule, along with certain limitations to that rule; and
- WHEREAS,** The limitations to the general indemnification rule will be as follows: 1) Each Board member will be indemnified for liability imposed on the Board member in relation to the performance of their duties as Board members of the Tribal Gaming Enterprise Board up to the amount of \$1,000,000 for each separate occurrence causing liability, and 2) Each Board member will be indemnified for any and all reasonable out-of-pocket legal expenses, including attorneys fees, associated with any lawsuit brought by a third party against any Board member in relation to the performance of his or her duties as a Board member.
- WHEREAS,** That the Board of Directors of the Tribal Gaming Enterprise Board should be free from political influence in their management of the gaming enterprise; and

WHEREAS, It is important that the Board of Directors of the Tribal gaming enterprise be allowed to begin its duties as soon as possible, so as to allow the Tribe to be fully prepared to begin management of the gaming enterprise at the time of closing of the settlement agreement; and

NOW, THEREFORE, BE IT RESOLVED, that this resolution shall replace Resolution 97-16-EH; and

THEREFORE BE IT FURTHER RESOLVED that this resolution shall replace Resolution 96-213-DSB; and

THEREFORE BE IT FURTHER RESOLVED, That the Board of Directors of the Tribal Gaming Enterprise Board shall have the authority to sign checks and all other necessary documents of the Tribe's gaming enterprises, including the Four Bears Casino and Lodge, the convenience store, RV park and other enterprises; and

THEREFORE BE IT FURTHER RESOLVED, That the Tribal Business Council of the Three Affiliated Tribes hereby creates a Board of Directors to have management authority over the Tribal gaming enterprise as follows:

1. Name.

The name of the Board of Directors shall be the Three Affiliated Tribes Gaming Enterprise Board.

2. Composition.

The Board of Directors shall be composed of seven (7) individuals, who shall not be members of the Tribal Business Council and a majority of whom shall be Tribal members. Each segment or the segment's council member shall be entitled to select one member, and the Chairman shall select one member. Should any member selected be a tribal employee, for each meeting attended during office hours the employee shall take leave without pay. The Chairman of the Tribal Business Council or his or her designee, who shall also be a member of the Tribal Business Council, shall serve as an ex officio, non-voting member of the Board of Directors.

3. Qualifications. Each member of the Board of Directors shall:

- (1) Have significant business or gaming management experience, significant education in the area of business or gaming management, or both;
- (2) Shall possess a reputation for sound business judgment, and be someone whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest or effective regulation of the Tribal gaming enterprise, and whose presence will not create or enhance the dangers of unsuitable, unfair, or

illegal practices, methods and activities in the conduct of gaming at the Tribal gaming enterprise;

(3) Shall be able to withstand a background investigation similar to that required of primary management officials (as that term is used in the Indian Gaming Regulatory Act, 25 U.S.C. Section 2701 et seq.) of the Tribal gaming enterprise;

(4) Shall be willing to accept the responsibility of overall management of the Tribal gaming enterprise and exercise such responsibility without regard for political or tribal affiliation or influence;

(5) Shall have the necessary time to devote several hours per week to the duties of being a member of the Three Affiliated Tribes Gaming Enterprise Board and shall be compensated at the rate of \$200.00 per meeting.

4. Duties and Powers

(1) Overall responsibility for the management of the Tribal gaming enterprise;

(2) Shall review and approve all changes in status of primary management officials, as those terms are used by the Tribal Gaming Commission, and officials who manage non-gaming activities, such as the lodge; such changes in status to include, but not be limited to, termination, lay-off, transfer, demotion, probation or promotion;

(3) Shall review and approve all operations manuals, including those developed for accounting, personnel, internal controls, general operations, security, maintenance, table games, gaming devices, and any other manual of general application to a department or departments within the gaming enterprise;

(4) Shall review and approve all departmental budgets of the Tribal gaming enterprise, including any budgets prepared for new or improved facilities or gaming activities, and shall ensure that budgets are followed within reasonable limits;

(5) Shall be responsible for insuring the installation of generally accepted accounting procedures ("GAAP") which will adequately protect the interests of the Three Affiliated Tribes in the operation of the Tribal gaming enterprise;

(6) With the assistance of the Tribal Business Council, shall be responsible for the conduct and submission to the appropriate authorities of any audit of the Tribal gaming enterprise required by the Tribal-state gaming compact, the Indian Gaming Regulatory Act, or other applicable Federal, state or Tribal law or regulation;

- (7) With the assistance of the Tribal Business Council, shall provide overall direction and guidance to the design, development and implementation of major improvements and additions to the Tribal gaming facilities;
- (8) Shall assist in the process of developing a sound organizational structure;
- (9) Shall assist in ensuring the enforcement of all Federal, state and Tribal laws and regulations applicable to the Tribal gaming enterprise, including, but not limited to, the Tribal Gaming Code and the Tribal Employment Rights Ordinance, and shall assist and cooperate as needed and appropriate with all regulatory agencies or other entities, including, but not limited to, the State Attorney General's office, the National Indian Gaming Commission, the Tribal Gaming Commission, the Tribal Employment Rights Commission, and the Tribal Business Council;
- (10) Shall assist primary management officials in encouraging and training all employees to foster a friendly but professional relationship with all patrons of the gaming and related establishments;
- (11) Shall have the power to employ such consultants and other personnel as may be necessary to assist the Board of Directors in carrying out its duties, consistent with an overall budget approved by the Tribal Business Council;
- (12) Shall have the right and responsibility to be informed as to major legislative initiatives affecting the gaming industry, major trends in the gaming industry and other matters affecting overall management of the Tribal gaming enterprise;
- (13) Shall provide detailed and timely reports, no less than monthly, to the Tribal Business Council as to all aspects of the Tribal gaming enterprise, including, but not limited to, financial statements summarizing the cash position of the gaming enterprise, net profits or losses, and all significant financial transactions of the gaming enterprise;
- (14) Shall consider appeals from personnel decisions made under the authority and with the approval of the general manager according to such policies and procedures as the Board of Directors may develop;
- (15) Shall consult as necessary with Tribal legal counsel on matters requiring legal review; and
- (16) Shall have direct supervision over the general manager, and shall have the authority to evaluate the general manager's position on a quarterly basis the first year, and every six months thereafter;

(17) Shall have the right to seek amendments to this Resolution as the Board of Directors deems necessary to carry out the responsibilities of this Resolution.

5. Term of Office.

Each director appointed shall serve a three year term, except for those persons appointed to the initial Board of Directors. Of the seven members appointed to the initial Board of Directors, one shall serve a one year term, who shall be the Chairman's appointee, three shall serve a two year term, and three shall serve a three year term. Such terms shall be determined among the initial Board of Directors by the Tribal Business Council at the time of appointment. Each person appointed may serve no more than two three year terms in succession.

6. Removal, Resignation and Replacement of Directors.

(1) Removal. No director shall be involuntarily removed except by the Tribal Business Council for cause, following reasonable notice for an opportunity to be heard before the Tribal Business Council by the director subject to removal. A two-thirds majority of the entire Tribal Business Council shall be necessary for removal. Cause shall include, but not be limited to: failure or inability to perform the duties of a director, actions which threaten or compromise the security, integrity or profitability of the Tribal gaming enterprise, disruptive behavior acting in his or her capacity as a director, or results of a background investigation which show that the director fails to meet the standards of the National Indian Gaming Commission, the Tribal Gaming Commission, or the State of North Dakota for primary management officials.

(2) Resignation, Replacement and Completion of Term. Any director who submits a resignation, becomes incapacitated or is otherwise unable to perform the duties as a director, or whose term has expired shall be replaced by the segment or by the Tribal Business Council representative from that segment, or, in the case of the appointment made by the Chairman, by the Chairman, within ten (10) business days of the vacancy.

7. Organization.

(1) No person appointed to the Board of Directors shall be expected to exercise his or her duties as a Board member unless and until the Tribal Business Council has provided liability insurance in an amount acceptable in the gaming industry to cover the activities of each Board member in his or her official capacity (Directors & Officers and Errors & Omissions coverage).

(2) The initial Board of Directors as appointed by the Tribal Business Council shall meet to organize itself within 30 days of their appointment, and shall meet no less than monthly thereafter, and at such other times as may be needed.

(3) The Board of Directors shall elect a Chairman and such other officers as the Board deems necessary.

(4) The meetings of the Board of Directors shall be closed. It shall be the responsibility of the Tribal Business Council, with the advice of the Board of Directors and the general manager of the Tribal gaming enterprise, to determine what information about the Tribal gaming enterprise shall be made available to Tribal members or the public.

(5) In no event shall information about the Tribal gaming enterprise be released to Tribal members or to the public by the Board of Directors or the Tribal Business Council which would compromise the security, integrity and profitability of the Tribal gaming enterprise. Information about the Tribal gaming enterprise obtained by members of the Board of Directors not otherwise available to the public is to be treated as strictly confidential. Unauthorized release of confidential information about the Tribal gaming enterprise by any member of the Board of Directors shall be cause for immediate removal.

THEREFORE BE IT FURTHER RESOLVED, That each member of the Three Affiliated Tribes Gaming Enterprise Board shall be afforded Directors and Officers insurance coverage, which will indemnify each and every member of the Board against all liability they may incur as a result of actions they may take as a member of the Board of Directors acting in good faith, within the limits of the policy; and

THEREFORE BE IT FURTHER RESOLVED, That for the specific purpose of providing a general indemnification to members of the Three Affiliated Tribes Gaming Enterprise Board, the Tribal Business Council of the Three Affiliated Tribes hereby adopts the attached indemnification rule, whose purposes are to make it plain that the Three Affiliated Tribes will indemnify board members of the Three Affiliated Tribes Gaming Enterprise Board according to the limitations set forth in the rule, along with the following additional limits on such general indemnification: 1) Each Board member will be indemnified for liability imposed on the Board member in relation to the performance of his or her duties as a Board member of the Tribal Gaming Enterprise Board up to the amount of \$1,000,000 for each separate occurrence causing liability, and 2) Each Board member will be indemnified for any and all reasonable out-of-pocket legal expenses, including attorneys fees, associated with any lawsuit brought by a third party against any Board member in relation to the performance of his or her duties as a Board member; and

THEREFORE BE IT FURTHER RESOLVED, That the Tribal Business Council of the Three Affiliated Tribes hereby agrees to indemnify the members of the Board of Directors in accordance with the attached indemnification rule, as limited above; and

THEREFORE BE IT FURTHER RESOLVED, that this resolution may not be amended, rescinded, revoked, or otherwise be made ineffective in whole or in part by any action of the Tribal

**Indemnification of the Board Members
of the Three Affiliated Tribes Gaming Enterprise Board: Rule**

1. For purposes of this rule, the terms defined in this subsection have the meanings given them.
 - a. "Board" means the "Three Affiliated Tribes Gaming Enterprise Board of Directors" as created by Three Affiliated Tribes Resolution No. 97-51 or any successor Board thereto.
 - b. "Official capacity" means:
 - (1) With respect to a director, the position of director the Board;
 - (2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the Board or the Enterprise; and
 - (3) With respect to a director, officer, or employee of the Board who, while a director, officer, or employee of the Board, is or was serving at the request of the Three Affiliated Tribes or whose duties in that position involve or involved service as a director, governor, officer, manager, partner, trustee, or employee of another organization or employee benefit plan, the position of that person as a director, governor, officer, manager, partner, trustee, or employee, as the case may be, of the other organization or employee benefit plan.
 - c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the Board or the Three Affiliated Tribes.
 - d. "Enterprise" means the Three Affiliated Tribes gaming enterprise, which comprises the gaming and related facilities owned and operated by the Three Affiliated Tribes.
 - e. "Tribe" means the Three Affiliated Tribes means the federally recognized Tribes composed of the Mandan, Hidatsa and Arikara Nations as are located on the Fort Berthold Indian Reservation and as are governed by a Tribal Business Council pursuant to a Tribal Constitution and a Tribal code of laws.
2. Subject to subsection 5, the Tribe shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines including excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the

proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

- a. Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines including excise taxes assessed against the person with respect to an enrollee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omission;
 - b. Acted in good faith;
 - c. Received no improper personal benefit;
 - d. In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and
 - e. In the case of acts or omissions occurring in the official capacity described in paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that the conduct was in the best interests of the Board or the Enterprise, or in the case of acts or omissions occurring in the official capacity described in paragraph 3 of subdivision b of subsection 1, reasonably believed that the conduct was not opposed to the best interests of the Board or the Enterprise. If the person's acts or omissions complained of in the proceeding related to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the Board or the Enterprise if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.
3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in subsection 2.
 4. Subject to subsection 5, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the Tribe, to payment or reimbursement by the Tribe of reasonable expenses, including attorneys' fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:
 - a. Upon receipt by the Tribe of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in subsection 2 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the

Indemnification of Gaming Enterprise Board members

Page 3 of 4

Tribe, if it is ultimately determined that the criteria for indemnification have not been satisfied; and

- b. After a determination that the facts then known to those making the determination would not preclude indemnification under this section.

The written undertaking required by subdivision a is an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.

5. The laws of the Tribe either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsections 2, 3, and 4 including monetary limits on indemnification or advances for expenses, so long as the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring prior to the effective date of the Tribal law or ordinance, or the date of adoption of such a law or ordinance establishing the prohibition or limit on indemnification or advances.
6. This section does not require, or limit the ability of, the Tribe, the Board or the Enterprise to reimburse expenses, including attorneys' fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.
7. All determinations whether indemnification of a person is required because the criteria provided in subsection 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 must be made:
 - a. By the Tribe by a majority of a quorum of the Tribal Business Council;
 - b. If an adverse determination is made under subdivision a, or under subsection 8, or if no determination is made under subdivision a, or under subsection 8, within sixty days after:
 - (1) The later to occur of the termination of a proceeding or a written request for indemnification to the corporation; or
 - (2) A request for an advance of expenses, as the case may be, by the Tribal Court or any other court of appropriate jurisdiction, which may be the same court in

which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires.

The person seeking indemnification or payment or reimbursement of expenses pursuant to this subdivision has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

8. With respect to a person who is not, and who was not at the time of the acts or omissions complained of in the proceedings, a director, officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the Board or the Enterprise, the determination whether indemnification of this person is required because the criteria set forth in subsection 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 may be made by an annually appointed committee of the board, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.
9. The Tribe or the Board may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the Tribe or the Board would have been required to indemnify the person against the liability under the provisions of this section.
10. Nothing in this section may be construed to limit the power of the Tribe or the Board to indemnify other persons by contract or otherwise.

Business Council or any individual member thereof except upon approval of two-thirds of the entire Council.

THEREFORE BE IT FURTHER RESOLVED, that should this resolution be amended, rescinded, revoked or otherwise be made ineffective in whole or in part by any action of the Tribal Business Council or any individual member thereof taken with approval of less than two-thirds of the entire Council, any member of the Board of Directors of the Tribal Gaming Enterprise, or any other Tribal member, may immediately bring an action in the Tribal District Court to obtain a preliminary injunction against any such action taking effect.

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 3rd day of March, 1997, that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 5 members, 1 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 3rd day of March, 1997.

Daylon Spotted Bear
Secretary, Tribal Business Council

ATTEST:

Annin Dillotte
for/Chairman, Tribal Business Council