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Resolution #99- 40-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,** Pursuant to Section 16 of the Indian Reorganization Act the Three Affiliated Tribes (the "Tribe") has adopted a Constitution and By-laws which 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 its members, and Article VI, Sections 5(b) and 5(c) of which specifically authorize the Tribal Business Council to do business; and
- WHEREAS,** The Tribal Business Council is authorized by Article VI, Section 5(c) of the Constitution to administer any 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 Three Affiliated Tribes now owns gaming facilities in which Class III gaming is conducted pursuant to a Tribal state gaming compact approved by the Secretary of Interior and pursuant to the Indian Gaming Regulatory Act [P.L. 100-497, 25 U.S.C. __ 2701 et seq.]; and
- WHEREAS,** The Tribe's gaming facilities are operated under the name of 4 Bears Casino and Lodge, (the "Casino") and were previously managed by Bruce H. Lien Co. pursuant to a disputed Management Contract; and
- WHEREAS,** The Tribal Business Council has approved in Resolution No. 97-027-DSB a Loan, Promissory Note, Financing Statement and other financial documents dated February 10, 1997, (the "Loan" or "Loan Agreement") in the amount of \$9,500,000 with Miller Schroeder Investments Corporation (hereinafter "Miller Schroeder") by which it obtained financing to fund the buyout of Bruce H. Lien Co. pursuant to the settlement agreement between the Tribe and Bruce H. Lien Co. executed September 27, 1996, and approved by the Tribal Business Council in Resolution No 96-196-DSB; and
- WHEREAS,** The Tribe, through the Casino, has made payments to Miller Schroeder of principal and interest on the Loan on a regular monthly basis since April, 1997, through December, 1998; and
- WHEREAS,** As a result of a downturn in Casino revenues during the winter of 1998-1999, the Casino and the Three Affiliated Tribes Gaming Enterprise Board (the "Board") which manages the Casino, applied to Miller Schroeder for a deferment of principal payments only for a period of three months, from the January, 1999 payment through the March, 1999 payment, and Miller Schroeder has agreed to the deferment by letter, provided certain conditions are met; and

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- WHEREAS,** The Chairman of the Three Affiliated Tribes has also agreed to the deferment and the conditions as required by Miller Schroeder, which conditions include the following: 1) That after operating expenses are met, the Casino first make payments to the Deferred Principal Payment Account until the deferred payments, totaling \$572,806.51, are paid in full; and 2) That after the Deferred Principal Payments have been repaid, the Casino pay funds into a Mandatory Debt Service Reserve Account until the fund reaches \$558,000 (that being the amount of three payments to Miller Schroeder of principal owing on the Loan under the terms of the Loan Agreement); and
- WHEREAS,** Miller Schroeder has proposed, for the approval by the Tribal Business Council, a Deferral and Forbearance Agreement, as attached hereto, containing the terms of the three month forbearance of the principal payments of the Loan; and
- WHEREAS,** The Tribal Business Council has determined, and approved in Resolution No. 97-027-DSB, that in the event that the revenues specifically pledged to repay this indebtedness are insufficient, in recognition of the Tribe's obligation, the Tribal Business Council will cure any deficiency; and
- WHEREAS,** The Deferral and Forbearance Agreement require that the Tribe to execute a limited waiver of sovereign immunity, limited to the extent necessary to enforce the terms of the Deferral and Forbearance Agreement; and
- WHEREAS,** The Tribal Business Council has determined that it is in the best interests of the Tribe to enter into the attached Deferral and Forbearance Agreement and to agree to the limited waiver of sovereign immunity contained therein, because the agreement will allow the survival of the 4 Bears Casino and Lodge and prevent a condition of default on the original Loan from occurring;
- NOW, THEREFORE, BE IT RESOLVED,** That the form, terms and provisions of that certain Deferral and Forbearance Agreement, with accompanying attachments, as attached hereto, between the Tribe and Miller Schroeder Investments Corporation, a Minnesota corporation, ("Miller Schroeder"); in which the Tribe agrees, among other things, 1) That after operating expenses are met, the Casino first make payments to the Deferred Principal Payment Account until the deferred payments, totaling \$572,806.51, are paid in full; and 2) That after the Deferred Principal Payments have been repaid, the Casino pay funds into a Mandatory Debt Service Reserve Account until the fund reaches \$558,000 (that being the amount of three payments to Miller Schroeder of principal owing on the Loan under the terms of the Loan Agreement), in the form as reviewed by the undersigned and the Tribe's performance of its obligations under the Deferral and Forbearance Agreement, be, and hereby is, in all respects, approved; and
- NOW, THEREFORE, BE IT FURTHER RESOLVED,** That the Chairman and the Treasurer of the Three Affiliated Tribes Tribal Business Council be, and hereby are, authorized and empowered to execute and deliver said Deferral and Forbearance Agreement in the name and on behalf of the Tribe, in the form as attached,, and that the signature of any one of the above-named officers shall be sufficient to bind the Tribe; and

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NOW, THEREFORE, BE IT FURTHER RESOLVED, That the foregoing resolutions shall be effective as of the date of these resolutions and shall remain in full force and effect thereafter and may be relied upon by Miller Schroeder, its assigns and participants, thereafter until such entities have received written notification from the Tribe of rescission of such authority; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, That after consultation with legal counsel who explained the ramifications of waiving sovereign immunity, the Tribal Business Council, on behalf of the Tribe, hereby expressly waives the Tribe's sovereign immunity from suit, and consents to jurisdiction, as provided for in the Deferral and Forbearance Agreement, with attachments; and

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, 5 were present at a Special Meeting thereof duly called, noticed, convened, and held on the 2nd day of April, 1999; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 5 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 this 2nd day of April, 1999.

Dayton Spotted Bear
Dayton Spotted Bear
Secretary, Tribal Business Council

ATTEST:

Tex G. Hall
Tex G. Hall
Chairman, Tribal Business Council