

**Memorandum of Understanding
between
The Oglala Sioux Tribe
and
The South Dakota Secretary of State**

This Memorandum of Understanding is made and entered into with a reference date of July 30, 2015, between the Office of the Secretary of State of the State of South Dakota ("State") whose address is 500 E. Capitol, Pierre, South Dakota 57501-5070, (hereinafter the "Office of the Secretary" or "Secretary"), and The Oglala Sioux Tribe, whose address is POB 2070, Pine Ridge, SD 57770, (hereinafter the "Tribe"). The Effective Time of this Memorandum of Understanding is set forth in Section 6 below (Duration).

PURPOSE OF AGREEMENT

WHEREAS, the Office of the Secretary is the designated Uniform Commercial Code ("UCC") central filing office for the State of South Dakota ("State") for the filing of financing statements, assignments, continuations, amendments, partial releases and terminations of UCC documents for which central filing is required, as well as the place of filing for effective financing statements (EFS) under the Federal Food Security Act of 1985 (7 U.S.C. §1631); and

WHEREAS, the Tribe has enacted The Oglala Sioux Tribe Secured Transactions Act, Part 9 of Chapter 44 of the Oglala Sioux Tribe Law and Order Code (hereinafter the "Tribal Act") which is consistent with Article 9 of the Uniform Commercial Code as adopted by the State of South Dakota in 2000, SDCL Chapter 57A-9, and any subsequent amendments thereto; and

WHEREAS, the Tribe wishes to provide a central filing system for lenders to perfect a security

interest in personal property collateral that arise under the Tribal Act and the Tribe also wishes to make electronic filing available to all lenders; and

WHEREAS, the Office of the Secretary has agreed to serve as the location and administrator for lenders to perfect a security interest in personal property collateral that arise under the Tribal Act; and

WHEREAS, both the Office of the Secretary and the Tribe acknowledge that it is imperative that the laws, regulations and administrative rules of the State of South Dakota and the Tribe are identical in all respects as they pertain specifically to filing.

IN FURTHERANCE THEREOF, the Office of the Secretary and the Tribe agree that the Office of the Secretary shall serve as the central filing office for security interest filings that arise under the Tribal Act, pursuant to the terms and conditions set forth herein.

RESPONSIBILITIES OF TRIBE

1. The Tribe agrees to keep on its books a secured transactions law consistent with UCC Revised Article 9, as adopted by the State of South Dakota, currently found at SDCL 57A-9 and ARSD 5:04:04, with the exception noted herein for fixture filings and other local filings which are excluded from the Tribal Act under Section 44-9-501(a) thereof.
2. The Tribe agrees to adopt verbatim and incorporate by reference into the Tribal Act reference/citation to the State's Part 5 of Article 9, currently found at SDCL 57A-9 as well as any statutory amendments enacted by the State of South Dakota's Legislature to such Part.

3. The Tribe agrees to adopt verbatim and incorporate by reference into the Tribal Act reference to applicable state administrative filing rules or regulations as they pertain to the administration of the central filing system and any requirements thereto, currently found at ARSD 5:04:04, as well as any amendments adopted by the Secretary to such rules or regulations.

RESPONSIBILITIES OF OFFICE OF SECRETARY

4. (a) The Office of the Secretary agrees to be the designated central filing office for purposes of receiving filings under the Tribal Act, in the same manner as it performs these filing duties under the State's Article 9, and make available the option of electronic filing under the same terms and conditions electronic filing is available to lenders who file under state law. The parties agree that the duties undertaken by the Secretary pursuant to this Agreement are ministerial in nature; and the parties further agree that all filings made under the Tribal Act with the Secretary pursuant to this Agreement are tribal records and property of the Tribe.

(b) The parties agree that the purpose of sections 1, 2 and 3 above is to require that both state and tribal Article 9 law, specifically including filing requirements and fees, will always be identical so that any lender who wishes to perfect a security interest under either state or tribal law or both, will be dealing with identical rules concerning filing requirements and fees.

(c) For fixture filings and other local filings the parties acknowledge that under state law and the Tribal Act Section 44-9-501(a), there are two types of UCC filings that are not centrally filed with the Secretary as the "Filing Office" under the Tribal Act and this Agreement. The first involves filings where the collateral is timber to be cut, or minerals, including oil and gas, or accounts subject to SDCL 57A-9-103(5) and/or "As-extracted collateral" under Tribal Act Section 44-9-106(6). The second involves a fixture filing under SDCL 57A-9-313 and/or Tribal Act Section 44-9-319 where the

collateral is goods which are, or are to become, fixtures. In these events the lender must file in the office of the Register of Deeds in the County where a mortgage on the real estate involved would be filed or recorded in order to perfect a security interest in the collateral (e.g., Oglala Lakota County, Bennett County, Jackson County or Martin County). The parties recognize that "local" or "fixture" filings made under tribal law may relate to, or touch upon, land held in trust by the United States of America for the Tribe or a member thereof. Consequently, the legal validity of such filings is subject to 25 U.S.C. Section 483a. Because of the unique nature of "trust" land, the parties recognize that "fixture" or "local" filings that describe or relate to Indian "trust" land may require approval or some other action by the United States in order to be effective. Persons seeking to make a filing, including a fixture filing, that may encumber Indian trust land must file in the Bureau of Indian Affairs Land Titles and Records Office under 25 C.F.R. Section 150.3. The Secretary's agreement to act as the filing office for any tribal filings pursuant to this Agreement shall in no way be inferred as a substantive representation regarding the validity of such filings.

5. The Office of the Secretary agrees that it will provide timely notice to the tribal representative designated pursuant to section 19 below (Notices) of any anticipated and final amendments to the State's Article 9, and applicable administrative rules or regulations.

DURATION

6. This Memorandum of Understanding shall be effective for seven (7) years commencing on the latest date on which this document is signed by the parties (the "Effective Time"), and may be renewed thereafter for additional seven (7) year periods until terminated pursuant to Section 7 (Termination Without Cause), Section 8 (Termination Due to Lack of SD Legislative Authority), or Section 9 (Termination For Cause).

TERMINATION

7. This Memorandum of Understanding may be terminated by either party hereto without cause upon 90 days' written notice, such 90-day period commencing upon receipt of the notice. Such 90-day period may be modified upon mutual agreement of the parties set forth in writing.

8. Notwithstanding the provisions of the above paragraphs, the obligations of the Office of the Secretary under this Memorandum of Understanding depend upon the continued legislative authority under State law to operate the central filing system and perform the duties and services contemplated herein. This Memorandum of Understanding will be terminated if the Legislature of the State removes the Office of the Secretary's authority or fails to appropriate funds or grant expenditure authority sufficient to cover the costs and expenses necessary to carry out the duties hereunder. If sufficient funds or expenditures authority is not available, whether through lack of appropriations by the State Legislature or otherwise, the Secretary shall provide written notice on or about April 1 or upon the completion of the then current session of the South Dakota Legislature, whichever is later, of the pending lack of authority or insufficiency of funds, and the termination of the Agreement will become effective June 30 of the year in which notice was given or the effective date of the legislation, whichever is earlier.

9. This Memorandum of Understanding may be terminated upon 30 days' written notice by any party upon the substantial failure by the other party to fulfill its obligations hereunder. The defaulting party shall have 30 calendar days from receipt of notice to cure such default. If such default is not timely cured, termination shall be effective 30 days after receipt of the initial notice by the defaulting party. The failure of a party to enforce strict performance hereof as to any covenant, promise, term, condition or representation contained herein, shall not operate as a waiver of the right of that party to thereafter require such strict performance.

10. The Office of the Secretary agrees to continue to perform its duties hereunder during any notice period, up to and including the date of termination. After the date of termination, the Office of the Secretary is unconditionally relieved from any and all duties, responsibilities and obligations hereunder, with the exception of the preservation and disposition of records pursuant to Section 11 (Records).

RECORD PRESERVATION AND DISPOSITION UPON TERMINATION

11. The Office of the Secretary agrees to preserve all filings received on behalf of the Tribe under this Memorandum of Understanding in exactly the same manner as it preserves UCC filings received under state law. If during the term of this Memorandum of Understanding the Office of the Secretary in any manner upgrades or otherwise changes the method of preservation of the UCC filings under State law, the Office of the Secretary agrees to perform the same upgrades and changes as to tribal filings. In the event of termination of this Memorandum of Understanding, the Office of the Secretary agrees at the Tribe's sole option to deliver all records then currently maintained hereunder or to continue to preserve the tribal records in exactly the same manner as it would preserve similar state records for the requisite period then in effect. In addition, the Office of the Secretary agrees to provide to the Tribe, at the Tribe's expense, copies of any magnetically stored tribal records together with both print-out and digital copies of such tribal records as are then available in electronic form. Tribe agrees to pay the actual costs of providing such records.

COURT APPEARANCE BY SECRETARY

12. The Secretary, or designee, agrees to respond to subpoenas issued by the Tribal Court of the

Oglala Sioux Tribe for the purpose of giving testimony relative to authentication of tribal records maintained by the Office of the Secretary hereunder. The Tribe agrees to guarantee that the reasonable expenses incurred by the Office of the Secretary in such cases are paid. Expenses shall be deemed reasonable if they are comparable to those paid in the event the Secretary, or designee, were appearing in state or federal court under similar circumstances.

13. The Tribe agrees that copies of UCC tribal records under this Memorandum of Understanding that are certified by the Secretary, or designee, as true copies shall be admissible as evidence in tribal court without further foundation, in order to minimize employee appearances in tribal court to authenticate records maintained by the Secretary under this Agreement. The Tribe agrees to include in the Tribal Act adopted pursuant to this Agreement provisions substantially similar to the rules of evidence found as SDCL 19-17-5 and SDCL 19-18-5, that allows copies of UCC tribal records under this Memorandum of Understanding certified by the Secretary or a designated employee as true copies to be admissible as evidence in tribal court without further foundation.

FILING FEES

14. The Tribe agrees that the Office of the Secretary, as compensation for the duties performed hereunder, may collect and retain all filing and related fees for filings under the Tribal Act. The Office of the Secretary agrees that such fees shall be the same as those required under State law. The Tribe agrees to enact as part of the Tribal Act adopted pursuant to this Agreement provisions as are necessary to establish that lenders, including the Tribe, pay the same fees for UCC filings, searches, copies and other services provided by the Secretary concerning the tribal UCC filing system, that state lenders would pay to the Secretary for similar services under state law and ARSD 5:04:04.

SOVEREIGN IMMUNITY

15. Nothing in this Memorandum of Understanding shall be construed as a waiver of sovereign immunity of either the Tribe or the State. In addition, this Agreement may not be used in Court by either party for any purposes other than litigation, if any, concerning the terms and conditions of this Agreement.

NO LIABILITY FOR PERFORMANCE

16. The Tribe agrees that it will not bring any legal action or claim against the Secretary arising out of or in any way connected with the Secretary's performance of the services set forth hereunder. The Tribe agrees to include as part of the Tribal Act adopted pursuant to this Agreement a provision making the Secretary immune from suit in tribal court for action arising out of or in any way connected to the Secretary's performance of the services set forth in this Agreement. Furthermore, the Tribe agrees to hold the Secretary harmless and defend the Secretary from any and all third party claims arising out of or in any way connected with the Secretary's performance of the services set forth hereunder; provided, however, that nothing herein requires the Tribe to hold the Secretary harmless from third party claims arising solely from the errors or omissions of the Secretary.

GENERAL PROVISIONS

17. This Memorandum of Understanding ("Memorandum" or "Agreement"), or any part thereof, shall not be assigned, transferred, or disposed of to any person, firm, corporation, or other entity. This Agreement may not be amended or modified except in writing, and which writing shall be signed by the Secretary and the Tribe's authorized designee. This Agreement and the covenants

herein contained shall inure to the benefit of and be obligatory upon the legal representatives, agents, employees, successors in interests, and assigns of the respective parties hereto. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the State, the Secretary, the Tribe, or their respective agencies, officers, or employees.

18. The Secretary recognizes that SDCL Ch. 1-24 governing joint powers agreements bind the Secretary in the execution of this Agreement and that the Secretary has the power which the Secretary purports to exercise under this Agreement on behalf of the Tribe. The parties declare that no separate government entity as contemplated in SDCL 1-24-4 is being created to implement this Agreement and that the cooperative undertaking herein described shall be administered by the Secretary on behalf of the Office of the Secretary and by the President of the Tribe for and on behalf of the Tribe and their authorized designees as contemplated in SDCL 1-24-5. Upon final execution, copies of this Agreement will be filed by the Office of the Secretary in accordance with SDCL 1-24-6.1, provided that the failure of the Office of the Secretary to make such filing shall not affect the validity of this Agreement.
19. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Secretary of State on behalf of the Office of the Secretary, and by and to the President of the Tribe, on behalf of the Tribe, or such authorized designees as either party may from time to time designate in writing. Notices and communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.
20. (a) The Tribe represents that it has the necessary power and authority to enter into this

Agreement, and has taken all proper action, including adoption of an Ordinance and/or Resolution of the Tribal Council approving this Agreement and authorizing the execution, delivery and performance of its obligations hereunder. A copy of such Ordinance and/or Resolution is attached hereto and by this reference incorporated herein.

(b) The Secretary represents that it has the necessary power and authority to enter into this Agreement, and has taken all proper action, approving this Agreement and authorizing the execution, delivery and performance of its obligations hereunder.

(c) By letter dated March 13, 2008 the U.S. Department of the Interior, Bureau of Indian Affairs, Office of Field Solicitor ("BIA") is indicated that no BIA approval is necessary for the effectiveness of this Agreement, that the BIA did not sign this Agreement and reminding lenders who wish to encumber Indian trust land that additional filings may be required with the BIA Land Titles and Records Office under 25 C.F.R. Section 150.3. A copy of the BIA's March 13, 2008 letter concerning this matter may be obtained from the BIA or from the Tribe.

INTENDING TO BE BOUND, each party hereto has executed this Memorandum of Understanding, through its duly authorized representative(s), on the dates set forth below.

THE OGLALA SIOUX TRIBE

Date: July 30, 2015

By: 
John Yellow Bird Steele

Its: President

THE STATE OF SOUTH DAKOTA,
OFFICE OF THE SECRETARY OF STATE

Date: July 30, 2015

By: 
Shantel Krebs

Its: Secretary of State