

Joint Sovereign Filing System

Memorandum of Understanding between

THE OGLALA SIOUX TRIBE

and

Office of the Secretary of State of the State of South Dakota

This Memorandum of Understanding is made and entered into this ___ day of 2007, between the Office of the Secretary of State of the State of South Dakota (“State”) whose address is _____, (hereinafter the “Office of the Secretary” or “Secretary”), and The Oglala Sioux Tribe, whose address is POB _____, Pine Ridge, SD 57770, (hereinafter the “Tribe”).

PURPOSE OF AGREEMENT

WHEREAS, the Office of the Secretary is the designated UCC central filing office for the State of South Dakota 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 (hereinafter the “Tribal Act”) which is consistent in its core principles with Article 9 of the Uniform Commercial Code as revised by the National Conference of Commissioners on Uniform State Laws in 1999 and as adopted by the State of South Dakota in [year], 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

WHEREAS, the Office of the Secretary wishes 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 in its core principles with UCC Revised Article 9, as adopted by the State of South Dakota.

2. The Tribe agrees to adopt verbatim and incorporate by reference into the Tribal Act reference/citation to State's Part 5 of Article 9, as well as any statutory amendments by the State of South Dakota's Legislature to such Part.
3. The Tribe agrees to adopt verbatim and incorporate by reference into tribal law reference to applicable state administrative filing rules or regulations as they pertain to the administration of the central filing system and any requirements thereto, as well as any amendments to such rules or regulations.

RESPONSIBILITIES OF OFFICE OF SECRETARY

4. 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.
5. The Office of the Secretary agrees that it will provide to the designated tribal representative/s on a timely basis notice 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 one (1) year commencing on the latest date on which this document is signed, and may be renewed thereafter for additional one (1) year periods until terminated pursuant to Paragraph 7 or Paragraph 9.

TERMINATION

7. This Memorandum of Understanding may be terminated by either party hereto without cause upon 90 days' written notice sent by U.S. mail, first class, postage prepaid to the other party at the address set forth in the introductory paragraph, 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.
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.

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 Paragraph 11.

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 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 his 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 reimburse the reasonable expenses incurred by the Office of the Secretary in such cases. Expenses shall be deemed reasonable if they are comparable to those paid in the event the Secretary or his designee were appearing in state or federal court under similar circumstances.
13. The Tribe agrees that copies of tribal records under this Memorandum of Understanding that are certified by the Secretary or his designee as true copies shall be admissible as evidence in tribal court without further foundation, and notwithstanding any tribal law of evidence that may be inconsistent with this provision.

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.

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 .

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. 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.

ASSIGNMENTS; AMENDMENTS

- 17. This Memorandum of Understanding, 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.

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: _____, 2007

By: _____
Its: _____

By: _____
Its: _____

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

Date: _____, 2007

By: _____
Its: _____

By: _____
Its: _____