JOINT POWERS AGREEMENT
BETWEEN
SOUTH DAKOTA SECRETARY OF STATE
AND
CHEYENNE RIVER SIOUX TRIBE

This Agreement is made and entered into on this ____ day of July, 2000, between the Office of the Secretary of State of the State of South Dakota whose address is State Capitol Building, 500 E. Capitol, Pierre, South Dakota 57501-5070 (the "Secretary"), pursuant to the authority provided in SDCL Ch. 1-24, and the Cheyenne River Sioux Tribe, whose address is P.O. Box 590, Eagle Butte, South Dakota 57625, (the "Tribe").

PURPOSE OF AGREEMENT

The State of South Dakota adopted Article 9 of the Uniform Commercial Code (the "UCC") at SDCL ch. 57A-9. Since 1974, the Office of the Secretary has been the designated UCC central filing office 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 filing place for effective financing statements (EFS) under the Federal Food Security Act 1985, since 1987.

In addition, the Secretary has developed a system which will allow all filings with the Secretary under SDCL Ch. 57A-9 to be made electronically. This system will be implemented on or about July 1, 2000.

The Tribe, as part of its economic development efforts within the Cheyenne River Reservation (located in Dewey and Ziebach counties in South Dakota), wishes to provide a central filing system for lenders attempting to perfect a security interest in collateral under the tribal version of Article 9 of the UCC. The Tribe also wishes to make electronic filing available to all lenders, including itself when acting in the capacity as a lender.

ATTACHMENT 1

To assist the Tribe in its efforts, the Secretary has agreed to serve as the central filing office for UCC filings by lenders perfecting security interests under tribal law and when the system is implemented to offer electronic filing to tribal lenders.[]

Consequently, the purpose of this Agreement is to set forth the terms and conditions under which the Secretary will act as the Tribe's official central filing office for UCC filings made under tribal law, thereby allowing the Tribe to promote economic development on its reservation by making available a UCC filing system identical for all practical purposes (with the exception for fixture filings and other local filings noted herein) to the South Dakota central filing system. The terms and conditions are set forth as follows:

1. Responsibilities of the Tribe.

The Tribe agrees to enact, within thirty (30) days of the approval of this Agreement by the Tribal Council and the appropriate authorities of the Bureau of Indian Affairs, a tribal ordinance (the "Ordinance") adopting verbatim South Dakota's current version of Article 9 of the UCC (currently found at SDCL 57A-9 and ARSD 5:04:02), with the exception noted herein for fixture filings and other local filings **as well as the exception for existing tribal law noted herein**. The Tribe further agrees to provide in the Ordinance **adopting the said Article 9,** that any statutory amendments by the South Dakota Legislature and administrative rules amendments by the Secretary will become effective as tribal law, to the extent the amendments are not inconsistent with the exceptions described herein, at the same time and in the same manner as they become effective under State law without further action by the tribal council. The parties agree that the purpose of this paragraph is to require that both state and tribal substantive 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 the identical substantive and procedural rules, including filing requirements and fees, with the [] exception regarding fixture filings and other local filings **as well as the exception for existing tribal law noted herein**.

The tribal version of Article 9 of the Uniform Commercial Code (hereafter "UCC") adopted pursuant to this Agreement, shall not supplant, but, rather, is to be construed in light of the Tribal statutes existing at the time of the enactment of the UCC which govern foreclosures and repossessions of real and personal property within the exterior reservation boundaries. Act of March 2, 1889, § 4 (25 Stat. 888). These statutes include:

A. Motor Vehicle Repossession Code, March 1, 1994.

B. Leasehold Mortgage Foreclosure Code, February 12, 1996.

C. Law and Order Code, §§ 10-1-1 (Foreclosure of Secured Obligations - Self Help Remedies Eliminated); Title X Chapter II (Actions to Recover Possession of Real Property); Title X Chapter III (Cancellation of Assignments or Other Privileges Granted by the Tribe), Revised in 1978.

D. Landlord - Tenant Code, February 12, 1996.

These documents are attached hereto and incorporated herein by reference as if fully set forth herein.

For fixture filings and other local filings the parties acknowledge that under state law, there are two types of UCC filings that are not filed centrally filed with the Secretary. 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). The second involves a fixture filing under SDCL 57A-9-313 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 where a mortgage on the real estate involved would be filed or recorded in order to perfect a security interest in the collateral.

The parties further acknowledge that there is no equivalent to the Register of Deeds under tribal law to receive such "local" filings. The Secretary agrees to act as the designated filing office for the filing of local and fixture filings under the tribal UCC system. The Tribe agrees to enact as part of its Ordinance above described a requirement that all tribal local and fixture filings will be made with the Secretary.

The parties recognize that "local" or "fixture" filings made under tribal law may relate to or touch upon land held in trust by the USA for the Tribe or a member thereof. Consequently, the legal validity of such filings may be grounded in large part in federal law. Because of the unique nature of "trust" land, the parties recognize that "fixture" or "local" filings that describe or relate to "trust" land may require approval or some other action by the United States in order to be effective.

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.

2. Responsibilities of the Secretary.

The Secretary agrees to be designated as the official central filing office for the purposes of receiving filings under the Tribe's version of Article 9 of the UCC enacted pursuant to this Agreement. The Secretary agrees to perform the duties of the Tribe's central filing office for filings (including tribal local or fixture filings) under the Tribe's version of Article 9 of the UCC in the same manner as the Secretary performs these filing duties under the State's version of Article 9 of the UCC, SDCL Ch. 57A-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 Secretary has no obligation to determine the validity of any filing. The parties further agree that all filings made under tribal law with the Secretary pursuant to this Agreement are tribal records and property of the Tribe.

3. Duration.

Prior to this Agreement going into effect, the Tribe will obtain authorization and approval for this Agreement by the Tribal Council and by the appropriate authority of the Bureau of Indian Affairs and will enact all of the provisions required to be in the Ordinance described in this Agreement. The initial term of this Agreement will be five years commencing from the date of this Agreement. The Agreement will continue thereafter for additional five-year periods until the Agreement is terminated under the termination paragraph below.

4. Termination.

A. This Agreement may be terminated by either party without cause upon 90 days written notice sent by US mail, first class, postage pre-paid to the other party at the address set forth in the introductory paragraph. This Agreement shall be terminated ninety days after receipt of the notice, unless the Tribe and the Secretary mutually agree otherwise in writing prior to the expiration of the 90-day notice.

B. Notwithstanding the provisions of the above paragraphs, the obligations of the Secretary under this Agreement depend upon the continued legislative authority to operate under state law the central filing system and perform the duties and services contemplated under this Agreement and the continued availability of appropriated funds and expenditure authority from the South Dakota Legislature for the purposes contemplated herein. The Agreement will be terminated if the Legislature removes the Secretary's authority or fails to appropriate funds or grant expenditure authority to the Secretary sufficient to cover the costs and expenses for this

Agreement. If sufficient funds or expenditure authority is not available, whether through the 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 which ever 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.

C. This Agreement may be terminated, in whole or in part, by any party in the event of the substantial failure by the other party to fulfill its obligations under this Agreement. No such termination may be effected unless the terminating party gives written notice of intent to terminate to the other party. The defaulting party will have thirty (30) calendar days from the receipt of the notice to cure the alleged default.

D. If the default is not cured in a timely manner, the Agreement shall be terminated effective thirty days from the receipt of the notice. 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.

E. The Secretary agrees to continue to perform the duties required of the Secretary under this Agreement during any notice period, up to and including the date of termination. After the date of termination, the Secretary is unconditionally relieved from any and all duties, responsibilities and obligations associated with this Agreement, with the exception of the disposition or records pursuant to Paragraph 5 below.

5. Record preservation and disposition upon termination.

The Secretary agrees to preserve all filings received on behalf of the Tribe under this Agreement in exactly the same manner as the Secretary preserves UCC filings received under state law. If during the term of this Agreement, the Secretary upgrades equipment or in any manner changes the method of preservation of the UCC filings under state law, the Secretary agrees to perform the same upgrades and changes as to tribal filings.

In the event of termination of this Agreement, the Secretary agrees at the Tribe's sole option to deliver all records then currently maintained under this Agreement or to continue to preserve the tribal records in exactly the same manner as the Secretary would preserve similar state records for the requisite period then in effect (currently five years). In addition, 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. The Secretary will only require the Tribe to pay the Secretary's actual cost of providing such records.

6. Tribe as Lender.

The parties recognize that the Tribe may from time to time become a lender and wish to file financing statements and otherwise access the tribal records in the Secretary's office electronically. For that purpose, the Tribe agrees establish a prepaid deposit account with the Secretary (in the same fashion as other lenders), and capitalize that account. The Tribe hereby authorizes the Secretary to make the appropriate deductions from the Tribe's prepaid deposit account as the Secretary would do with other lenders accessing the system. In the event that there are not sufficient funds in the prepaid deposit account to pay for the required filing fees or other charges, the Secretary may refuse the filing or refuse to perform the services. The parties

recognize that the Tribe in that respect, is being treated exactly in the same fashion as the Secretary would treat any other state or tribal lender. See SDCL 57A-9-403.

7. Court appearances by Secretary.

The Secretary agrees to respond, through designated office employees, to subpoenas issued by the Cheyenne River Sioux Tribal Court for the purpose of giving testimony therein relative to authentication of tribal records maintained by the Secretary under this Agreement or other relevant testimony. The Tribe agrees to guarantee that the expenses of employees of the Secretary subpoenaed to testify are paid. The Secretary agrees that those expenses will never be greater than comparable fees and expenses which would be paid in the event the Secretary's employees were appearing in state or federal court under similar circumstances.

8. Adoption of certified copy ordinance.

In order to minimize employee appearances in tribal court to authenticate records maintained by the Secretary under this Agreement, Tribe agrees to include in the Ordinance 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 tribal records certified by the Secretary or a designated employee as true copies to be admissible as evidence in tribal court without further foundation.

9. Adoption of Filing Fee Ordinance.

The Secretary and Tribe agree that the Secretary, as compensation for the duties performed under this Agreement, may collect and retain the fees the Tribe requires to be paid for UCC filings and related services fees. The Tribe agrees to enact as part of the Ordinance 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 5:04:02. The Tribe specifically agrees to pay the same fees when the Tribe acts as the lender as any other lender would be required to pay and if the Tribe accesses the system electronically, the Secretary may deduct those fees from the account established in Section 6 of this Agreement.

10. Sovereign immunity.

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

11. Joint Powers Agreement.

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.

12. Agreements Concerning Liability Issues.

The Tribes agrees to include as part of the Ordinance adopted pursuant to this Agreement a provision making the Secretary immune from suit in tribal court for actions arising out of or in any way connected to the Secretary's performance of the services set forth in this Agreement.

The Tribe further 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 to the Secretary's performance of the services set forth in this Agreement as the Tribe's UCC filing office, 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.

13. General.

a. This Agreement, or any part thereof, or the benefits to be received hereunder, shall not be assigned, transferred, or disposed of to any person, firm, corporation, or other entity. This Agreement may not be modified or amended except in writing, which shall be expressly identified as part of this Agreement, and which writing shall be signed by the Secretary and the Tribe or their authorized designee.

b. The parties declare that no separate governmental 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 and **the Tribal Secretary** for the Tribe and their authorized designees as contemplated in SDCL 1-24-5.

c. 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.

d. Upon final execution, copies of this Agreement will be filed in accordance with SDCL 1-24-6.1.

CHEYENNE RIVER SIOUX TRIBE

BY: _____ Date _____
Gregg J. Bourland, C.R.S.T Tribal Chairman

SOUTH DAKOTA OFFICE OF THE SECRETARY OF State Of South Dakota

BY: _____ Date 11-16-01
Joyce Hazeltine, South Dakota Secretary of State