

TITLE ONE

PROBATE AND GUARDIANSHIP

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1-1-1. JURISDICTION. The Rosebud Sioux Tribal Court shall have the authority to appoint Executors and Administrators, to determine heirs, determine the validity of Wills, and to probate and distribute the estates and Wills of any member of the Rosebud Sioux Tribe with respect to property located on the reservation which is outside of the jurisdiction of the Bureau of Indian Affairs. The Tribal Court shall also exercise such functions over restricted or trust lands in the jurisdiction of the Bureau of Indian Affairs to the greatest extent allowed by law.

1-1-2. APPLICABILITY OF OTHER LAWS. It is recognized by this Code that the Department of the interior is obligated by

current federal law to distribute trust real estate pursuant to the laws of descent and distribution of the State of South Dakota. So that consistency can be maintained for the benefit of the Rosebud Sioux Tribe, the Rosebud Tribal Court will admit for probate any Will which is valid as a Last Will and Testament under the appropriate provisions of the Code of Federal Regulations for trust real estate upon the Rosebud Reservation, or, which would be valid under the laws of the State of South Dakota. For decedent's estates where no Will is admitted to probate, the Tribal Court shall apply the rules of descent and distribution then in effect for the State of South Dakota and as applied by the Department of the Interior for trust real estate.

1-1-3. EVIDENCE OF DEATH. A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the jurisdiction where a death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.

A person who is absent for a continuous period of seven years during which time he has not been heard from and whose absence cannot be satisfactorily explained after diligent search and inquiry into his whereabouts is presumed to be dead. His death is presumed to have occurred at the end of the seven year period unless there is sufficient evidence for determining that death occurred at some other time.

1-1-4. RECORDS. The Clerk of the Tribal Court shall keep a file for each decedent's estate of all the documents filed with the Court pursuant to this chapter.

1-1-5. OATH. Except as otherwise provided in this Code, every document filed with the Clerk pursuant to this probate chapter shall be deemed to include an oath to the effect that the representations are true to the best knowledge, information and belief of the person subscribing and signing the document. The penalties for perjury shall follow deliberate falsifications of such documents.

1-1-6. NOTICES. Whenever notice of a hearing on any petition or other probate document or matter is required and except for specific notice requirements otherwise provided, proper notice of the time and place of any hearing to be given to any interested

person or his attorney shall be given as follows:

(1) By mailing a true copy of said notice together with the supporting documents at least 10 days prior to the time fixed for hearing by first class mail addressed to the person to be notified or his attorney at the last known post office address given for either or at his last known office or place of residence, or

(2) By delivering a true copy thereof to the person to be notified at least 10 days prior to the date fixed for hearing.

(3) If the address or identity of any such person is not known and cannot be the exercise of reasonable diligence be ascertained, notice shall be given by posting a copy of such notice in at least three conspicuous public places on the reservation for at least 10 days prior to the time fixed for hearing. Such three conspicuous places shall be fixed by the Tribal Council for the purpose of posting probate notices.

Proof of the giving of such notice shall be made by affidavit by the person accomplishing the posting or mailing or personal service and shall be filed with the Court at or prior to the time fixed for hearing.

1-1-7. RENUNCIATION OF

INHERITANCE. Any person who is an heir, devisee, legatee, or beneficiary under a testamentary instrument or under the laws of intestate succession may renounce in whole or in part his inheritance or interest by filing with the Court a written instrument verified under oath at any time prior to the entry of a decree of distribution. Upon such proper renouncement, the interest renounced passes as if the person renouncing it predeceased the decedent.

1-1-8. EFFECT OF DIVORCE, ANNULMENT, OR DECREE OF

SEPARATION. Any person who is divorced from a decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless by virtue of a subsequent remarriage he is married to the decedent at the time of death. A decree of separation which does not terminate the marital status of the husband and wife shall not be considered a divorce for inheritance purposes.

1-1-9. DISQUALIFICATIONS OF

WILLFUL SLAYER. Any surviving spouse, heir, devisee, surviving joint tenant,

beneficiary of a bond, life insurance policy, or other testamentary device who criminally and intentionally kills the decedent is not entitled to any benefit under a Will or under this probate code or any other law of the Rosebud Sioux Tribe regarding decedent's estate, and the estate of such decedent will pass as if the killer had predeceased the decedent.

A final judgment of conviction of an offense containing the elements of criminal or intentional killing is conclusive for the purpose of this section. In the absence of a conviction, the Court may determine by a preponderance of the evidence whether the killing was criminal and intentional for purposes of this section.

1-1-10. PETITION FOR APPOINTMENT OF ADMINISTRATOR OR EXECUTOR.

Whenever any member of the Rosebud Sioux Tribe dies with or without a Will leaving property on the Reservation which is subject to the jurisdiction of the Rosebud Sioux Tribal Court, any person claiming to be an heir of the decedent or a creditor of the decedent may petition the Court for appointment of an Administrator or Executor of the decedent's estate and for admission to probate of any instrument purporting to be the Last Will and Testament of the decedent and for distribution of the property. The Petitioner shall state the names and last known addresses of all persons known to the Petitioner who may be heirs, devisees, or legatees of the decedent; shall request that a hearing date be fixed on the question of appointment of an Administrator or Executor of the estate; shall request that notice to creditors be given; shall establish the interest of the petitioner in the estate; shall submit with the petition the purported instrument alleged to be the Last Will and Testament of the deceased, and shall request that notice of hearing be given.

Upon receipt of such petition, the Court shall fix a time and place for hearing and shall order that all persons named in the petition be given notice as provided by this chapter.

1-1-11. PRIORITIES OF APPOINTMENT.

The following persons, legally competent, shall be afforded priority in order of their listing for appointment as Administrator or Executor.

- (1) Any person nominated in the Last Will and Testament of the deceased.
- (2) The surviving spouse.
- (3) Children in descending order of age.

- (4) Other blood relatives in the order of their closeness of relationship.
- (5) Any other adult Tribal member who is a creditor of the deceased.
- (6) Any other adult Tribal member.

1-1-12. DUTIES OF ADMINISTRATOR OR EXECUTOR. The duties of the Administrator or Executor shall be to take possession of all property of the deceased subject to this chapter and within one month after his appointment make an inventory and within one month after his appointment make an inventory and appraisal of such property and file the original with the Court and mail copies thereof to all persons named in the petition.

Such Administrator or Executor shall within 60 days investigate and attempt to determine and file with the Court a report listing all of the known relatives of the decedent and heirs and devisees who, in the opinion of the Executor or Administrator, are entitled to distribution of the decedent's estate.

The Executor or Administrator shall give notice to creditors as provided elsewhere in this chapter, and upon completion of the notice to creditors, shall report to the Court on the amount and nature of each creditor's claim and recommend to the Court with reference to each claim whether or not the same should be allowed and paid.

The Executor and Administrator shall prosecute and defend all actions by and against the estate and shall have the authority to institute actions for the purpose of recovering assets of the decedent's estate. In addition, the Executor or Administrator shall submit accountings to the Court in accordance with this chapter, and upon the completion of his duties, shall distribute the estate in accordance with any Order of the Court.

The Administrator or Executor shall file a bond in an amount set by the Court to insure his faithful and honest performance of his duties as Administrator with such sureties as the Court may require. Said bond may be waived by the Court with the consent of the persons entitled to distribution of the decedent's estate or if waived by the decedent's Will.

1-1-13. OATH AND LETTERS OF APPOINTMENT. Upon his appointment as Administrator or Executor, the person

appointed shall take an oath subscribed in open Court to the effect that he will faithfully and honestly perform the duties of the Administrator or Executor. Upon taking of such oath and filing of the bond, if any, the Administrator or Executor shall be granted Letters of Administration or Letters Testamentary as proof of his appointment.

1-1-14. NOTICE TO CREDITORS. The Administrator or Executor of the estate shall cause notice to creditors to be posted in at least three conspicuous places on the Reservation at the places designated by the Tribal Court. Said notice shall state that an Administrator or Executor has been appointed for the estate of the decedent and that any person claiming to be a creditor of the decedent shall have 90 days from the date of the first posting of said notice to present their claim to the Clerk of the Tribal Court and that only those claims which are timely presented shall be paid by the state. Notice of mailing as otherwise provided by this chapter shall also be given to any creditor actually known to be such by the Administrator or Executor. No creditor who holds security interest in any asset of the decedent's estate shall be required to file a claim in order to be paid.

1-1-15. PRIORITY OF PAYMENT OF DEMANDS AGAINST ESTATE. Where any lien for any demand or claim exists by virtue of a mortgage, pledge, attachment, judgment or execution levy, such lien shall have preference according to its priority to the extent of such demand on any specific property upon which such lien shall have attached.

Otherwise, all demands against the estate of any deceased person must be paid in the following order:

- (1) The expenses of administration;
- (2) Funeral expenses including the reasonable cost of a burial lot and a reasonable sum for the marker on the grave;
- (3) The expenses of last illness;
- (4) Any debt that may be due by the decedent personally to servants and employees for services rendered within 60 days preceeding the decedent's death;
- (5) Debts having preference by the laws of the United States;
- (6) All other claims.

If the estate is insufficient to pay all of the debts of any one class, each creditor must be paid prorata in proportion to his claim, and

no creditor of any class shall receive payment until all of those of the preceeding class are paid in full.

If the Executor or Administrator disputes the amount of any claim filed against the estate, he shall report the same to the Court who shall fix a time and place for hearing on the validity of such claim, and notice as provided by this chapter shall be given to the creditor or claimant. At the time and place fixed for hearing, the Court shall determine the extent and validity of the claim and shall enter an appropriate Order, either allowing or discarding said claim.

1-1-16. ACCOUNTING. After the time for filing claims has expired and the Administrator or Executor has resolved all of the pending claims and after the Administrator or Executor has marshalled all of the assets of the estate and has performed such other duties as may been required of him by this code or by any Order of the Court, and in any event, within one year after his appointment and annually thereafter, such Administrator or Executor shall render an accounting to the Court for its approval of all receipts and disbursements from the estate showing the present status of the estate and whether or not the same is ready for distribution and also showing the computation of any attorney's or Administrator's or Executor's fees involved for which approval for payment is requested. True copies of the accounting shall be sent to all interested persons named in the petition or otherwise by Order of the Court. If any interested person requests a hearing on said accounting, the Court shall fix a time and place for hearing the same, and the Administrator shall cause notice to be given as required by this chapter. If the accounting is for a final accounting and the Administrator or Executor claims that the estate is available for distribution, such notice and hearing shall be given automatically. In the event the accounting is approved, the Court shall thereupon enter a decree of distribution directing the Executor or Administrator to distribute the property to the persons entitled thereto, spelling out in said decree the details of such distribution. Upon completion of the distribution and compliance with the decree, the Executor or Administrator shall present evidence to the Court of the completion of his duties and shall thereupon be discharged by Order of the Court and his bond released.

1-1-17. DISTRIBUTION OF PROPERTY IF NO TAKER. If there is no person available to take all or any portion of the decedent's estate, then the property shall pass to the Rosebud Sioux Tribe.

1-1-18. STATUS OF HEIRS. No person is disqualified to take as an heir because he or any person through whom he claims is not a member of the Rosebud Sioux Tribe or because he does not live on the Reservation.

1-1-19. DEBTS OWED TO THE DECEDENT. No debt owed to decedent is charged against the share of any person except the debtor.

1-1-20. ATTORNEY'S FEES AND FEES FOR EXECUTOR OR ADMINISTRATOR. An Administrator or Executor may upon approval of the Court receive a fee of not more than 3% of the value of the gross estate or the sum of \$100 whichever is greater, to be paid from the estate prior to the final distribution, which fees are only paid once.

An attorney who represents the Administrator or Executor for such purpose may, with the approval of the Court, be paid the same fee as the Administrator or Executor.

1-1-21. REOPENING OF ESTATES. Any estate may be reopened whenever necessary to dispose of decedent's property discovered after the estate has been closed or to make other necessary corrections.

1-1-22. RULE OF INTERPRETATION. In any question arising under the provisions of this probate code, the Tribal Court shall apply the general principles of probate as announced in the statutory rules of the State of South Dakota except where such rules conflict with specific enactments of this code or other enactments of the Tribal Code.

CHAPTER 2 - GUARDIANSHIP

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1-2-1. GUARDIANSHIP DEFINED. A guardian is a person appointed to take care of the person or property of another. The person over whom or over whose property a guardian is appointed is called a ward. A general guardian is the guardian of the person or of all property of the ward within this state or of both. Every-other is a special guardian. A guardian ad litem is a person appointed to represent the interests of any minor or incompetent in any lawsuit or matter pending before any Court. Guardian ad litem shall be appointed pursuant to Rule 17 (c) of the Rules of Civil Procedure. All other guardians shall be appointed as provided by this chapter.

1-2-2. AUTHORITY TO APPOINT GUARDIAN. The Rosebud Sioux Tribal Court shall have authority in its discretion to appoint guardians for persons or for property of persons who are minors or incompetent by reason of physical or mental illness or deficiency, advanced age, or chronic use of drugs or alcohol, or for recipient of public assistance where it is found that such recipient is wasteful and unable to manage the receipt and disbursement of assistance payments so as to substantially accomplish the purpose for which such assistance is given. The Tribal Court's authority may be exercised only over Tribal members or children of Tribal members which property is within the jurisdiction of the Tribal Court. These powers may be exercised either by the adult or juvenile divisions of the Tribal Court.

1-2-3. PETITION FOR GUARDIANSHIP. Guardianship proceedings shall be initiated by the filing of a petition by any interested person on behalf of a minor alleged incompetent or by a minor himself if over the age of 14 years or by a Court upon its own motion. The petition shall set forth the name

of the Petitioner and the Petitioner's relationship to the minor or alleged incompetent. It shall list all known immediate relatives of the minor or incompetent and their last known address, relationships, and ages and shall list all property of the minor or incompetent, both real and personal, known to the Petitioner. The Petition shall list in detail the present conditions and circumstances which demonstrate the need for appointment of a guardian and shall request that letters of guardianship be issued to the Petitioner or some other suitable person. The Petition shall state whether a Will exists which nominates any person as guardian. The Petition shall be verified.

1-2-4. NOTICE AND HEARING. Upon receipt of a verified Petition, the Tribal Court shall fix a time and place for the hearing. The Clerk of Courts shall cause notice of said hearing to be given to all the interested persons listed in the Petition by mailing to said persons at their last known post office addressed by first class mail a true and correct copy of the Court's order fixing the hearing together with a copy of the Petition on file, which mailing shall be accomplished not less than seven days prior to the date fixed for hearing. At the time fixed for hearing, the Court shall examine the Petition and Petitioner and hear all evidence relative to whether or not a guardian shall be appointed; determine if any person nominated by a Will is available and consents to act; determine if the proposed ward is sufficient age or mental capacity to make an intelligent decision regarding a preference and given due consideration to the proposed ward's preference of a guardian, setting forth the scope of the guardian's authority, whether or not security for his performance will be required, and the duration of such appointment. If the Petitioner for guardianship is for an incompetent, the Court shall make the same inquiries as noted above, and in addition, shall attempt to secure the best evidence available including medical records so that the Court is satisfied by clear and convincing evidence that the person allegedly incompetent is not presently able to handle his property or affairs.

1-2-5. QUALIFICATIONS OF GUARDIANSHIP. Any adult person of the age of 21 years or older and subject to the jurisdiction of the Tribal Court may serve as guardian. In appointment of the guardian, the first preference shall be given to those

persons named in the Will of a deceased parent. Next preference shall be given to relatives of the ward in the order of closeness of the relationship with due consideration being given to any person with whom a minor shall have been living at the time of the guardianship hearing. Due consideration should also be given to any person preferred by a minor if he is old enough to make an intelligent decision in that regard. In all cases the Court shall be finally guided by the best interests of the minor or incompetent in selecting a guardian.

1-2-6. SECURITY OF GUARDIAN. The Court shall, unless the Court finds that no need exists therefore, require a guardian to provide security in the form of a bond or otherwise to assure the faithful performance of the guardian's duties. Any surety of any such security will be deemed to have consented to the jurisdiction of the Rosebud Sioux Tribal Court for the purpose of action against such surety.

1-2-7. LETTERS OF GUARDIANSHIP. Any guardian appointed by the Court shall be required to take an oath the effect that he will faithfully perform his duties as guardian. Upon taking the oath and filing with the Court such security as may have been required, the guardian shall be issued Letters of Guardianship under the seal of the Tribal Court. Any limitation of the guardian's authority shall be set forth on the Letters of Guardianship.

1-2-8. INVENTORY AND APPRAISAL. Within 45 days after the appointment of a general guardian or guardian of property, the guardian shall prepare and submit to the Court an inventory and appraisal of the assets of the estate. The appraisal shall be made by at least one disinterested person who shall certify under oath to the appraisal and may be awarded reasonable compensation for his services upon application to the Court by the guardian and approval of the same by the Court.

1-2-9. ANNUAL ACCOUNTING. Any guardian of an estate shall submit an annual accounting of the receipts and disbursements of estate funds and estate assets on the first anniversary date of his appointment as guardian and annually thereafter, which account shall be verified under oath by the guardian and shall contain an accounting of all additions to and withdrawals of the estate assets, and upon request of the Court shall be accompanied by

supporting cancelled checks, vouchers, receipts, statements, or books of record.

1-2-10. COMPENSATION OF GUARDIAN. No guardian shall receive any compensation for acting as such without prior approval of the Court. The Court shall approve for payment unto a guardian reasonable fees which fees should not annually exceed 10% of estates of \$1,000 or less, 5% of estates of more than \$1,000 but not more than \$5,000 and 2½% of estates in excess of \$5,000.

1-2-11. POWERS OF GUARDIANS. Every guardian appointed for the person and estate of a minor or incompetent shall have the care and management of said estate until the guardian is legally discharged. The relationship of guardian and ward is a confidential one requiring the fidelity and obligation arising from trusts as is prescribed by the law generally on the subject.

1-2-12. SALE OF PROPERTY. No guardian has the authority to sell assets of the guardianship estate without prior permission of the Court unless such property is ordinarily traded on a day to day basis in a recognized market, for example, grain and livestock. The Court shall grant approval for sale of guardianship assets when the Court finds that such sale is in the best interests of the estate and when the Court also finds that the method of sale is reasonably likely to obtain the best price for the estate.

1-2-13. ACTIONS AGAINST THE GUARDIAN. A guardian shall derive no personal benefit except as authorized by this chapter from the management of the estate of his ward and shall be civilly liable to the ward for any losses to the estate attributable to a breach of the guardian's duties. Any action to enforce such liability brought by the ward or by a subsequently appointed guardian on behalf of the ward within two years after the appointment of a new guardian or the removal of the incompetency or the arriving at the age of the majority of the ward.

1-2-14. DISCHARGE OF GUARDIAN. Every guardian appointed by this chapter shall serve until discharged by the Court. A guardian of a minor not otherwise incompetent or the minor himself may petition the Court within one year after the date the minor reaches the age of majority to have the guardian discharged and the estate

turned over to the minor. The Court may grant such discharge ex parte upon the receipt of sufficient competent evidence that the minor has reached the age of majority unless it appears to the Court that the minor is otherwise incompetent, in which case the Court will order a hearing with notice to make a determination of competency. Any person who has had guardian appointed for reasons of incompetency or such guardian or a relative of such incompetent person may petition the Court for a determination of this restoration to competency and for discharge of the guardian. Upon receipt of such petition, the Court shall order notice of hearing to be given by mailing or otherwise, and after such notice, the Court shall receive evidence as to the current status of the ward's competency. If it be found that the ward is of sound mind and capable of taking care of himself and his property, the guardianship shall be terminated. If it be found that the ward is of sound mind and capable of taking care of himself and his property, the guardianship shall be terminated. If the Court finds otherwise, the guardianship shall be continued.

1-2-15. GUARDIANSHIP RECORDS. The Clerk of the Tribal Court shall keep a separate permanent file for each guardianship proceeding and shall file all papers relevant thereto.

1-2-16. GUARDIANSHIP AND TRUST PROPERTY. The Tribal Court is hereby authorized to appoint guardians pursuant to this chapter for minors or incompetents for the purpose of dealing in trust property. In addition to abiding by the procedures of this chapter, such guardian shall also be required to abide by the appropriate federal rules and regulations regarding the sale and handling of trust property.

1-2-17. TEMPORARY GUARDIANSHIP. The Tribal court shall have the authority to grant emergency orders for guardianship and custody when the Court is satisfied that a true emergency exists by virtue of a sworn affidavit establishing the facts to the satisfaction of the Court. Such Orders will be good for not more than 10 days. Within such 10 days, the Court shall order and fix a date for hearing upon the question of whether a more permanent type of guardianship or custody arrangement should be invoked.

1-2-18. REMOVAL OF GUARDIANS. Any guardian may be removed by the Tribal Court for any of the following reasons:

- (1) For breach of his trust;
 - (2) For continued failure to perform his duties;
 - (3) For incapacity to perform his duties;
 - (4) For gross immorality;
 - (5) For having an interest adverse to the faithful performance of his duties;
 - (6) For removal from the jurisdiction of this Court;
 - (7) In the case of a guardian of property, for insolvency; or
 - (8) When it is no longer proper that the ward should be under guardianship.
- A guardian may also resign with the permission of the Court.

1-2-19. NOTICE FOR REMOVAL OF GUARDIAN. Whenever it is called to the attention of the Court by a Petition from an interested person or upon the Court's own motion that grounds for removal of a guardian exists, or in the event that the guardian has failed to render an accounting or perform other duties as ordered by the Court, the Tribal Court may, upon such notice to the guardian as the Court may require, remove the guardian and compel him to surrender the estate of the ward to the persons found to be lawfully entitled thereto.

TITLE TWO

DOMESTIC RELATIONS

CHAPTER 1 – DIVORCE AND SEPARATE MAINTENANCE

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2-1-1. TERMINATION OF MARRIAGE. A valid marriage is terminated only

- (1) By the death of one of the parties; or
- (2) By the judgment of a Court of competent jurisdiction decreeing a divorce of the parties. The effect of such decree is to restore the parties to the state of unmarried person.

2-1-2. GROUNDS OF DIVORCE. Divorces shall be granted for only the following reasons:

- (1) Adultery
- (2) Extreme cruelty
- (3) Willful desertion
- (4) Willful neglect
- (5) Habitual intemperance

- (6) Conviction of felony
- (7) Irreconcilable differences

2-1-3. EXTREME CRUELTY DEFINED.

Extreme Cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other by one party to the marriage.

2-1-4. WILLFUL DESERTION DEFINED.

Willful Desertion is the voluntary separation of one of the married parties from the other with the intent to desert. Persistent unreasonable refusal to have reasonable matrimonial intercourse as husband and wife is desertion. The unjustified or unreasonable refusal of either party to dwell in the same house with the other party is desertion. Departure or absence of one party from the family dwelling caused by cruelty or threats of bodily harm from which danger could be reasonably apprehended from the other is not desertion by the absent party, but it is desertion by the party causing the cruelty or making the threats. Separation by agreement is not desertion. However, such circumstances could ripen into desertion. For example, if one of the parties offered to return for the purpose of attempting reconciliation and such offer was refused, such refusal could constitute desertion.

2-1-5. WILLFUL NEGLECT DEFINED.

Willful Neglect is the willful failure of the husband to provide for his wife the common necessities of life, he having the ability to do so. It is also the husband's failure to do so by reason of idleness or dissipation of extravagance.

2-1-6. HABITUAL INTEMPERANCE

DEFINED. Habitual Intemperance is the state of alcoholism or that degree of intemperance by the use of alcohol beverages or controlled drugs or substances which disqualifies the person a significant portion of the time from properly attending to business or which would reasonably inflict a course of significant mental anguish upon the innocent party.

2-1-6.1. IRRECONCILABLE

DIFFERENCES DEFINED. Irreconcilable Differences as used in this Chapter is that state of relationship between the parties to a marriage when differences of opinion or conflict have developed between the parties which cannot be resolved other than by a termination of the marriage.

2-1-7. TIME PERIOD FOR CERTAIN GROUNDS. Willful Desertion, Willful Neglect, or Habitual Intemperance must continue for either one year or since the inception of the marriage before either is a ground for divorce.

2-1-8. CHRONIC ILLNESS. In the case of incurable chronic mental illness of either spouse having existed for two years or more, while under confinement by order of a court of record or a Board of Mental Illness as provided by law, the Court may in its discretion grant a divorce.

2-1-9. RESIDENTIAL REQUIREMENTS. The Plaintiff in an action for divorce must at the time the action is commenced be a resident of the reservation of the Rosebud Sioux Tribe and remain a resident throughout the proceeding until the decree of divorce is entered. Further, one of the parties to the marriage must be a member of the Rosebud Sioux Tribe.

2-1-10. WAITING PERIOD BEFORE TRIAL OF DIVORCE. No action for divorce shall be heard, tried, or determined by the Court until at least sixty days have elapsed from the completed service of the Plaintiff's Summons and Complaint therein. During said waiting period, the Court may issue all Orders reasonably necessary to provide in the Court's discretion for alimony, temporary child support, restraining orders for protection of the parties and their property and temporary custody of children during the waiting period and subsequently until the decree is entered or the action is dismissed. This section shall not be construed to prohibit the taking of depositions or other discovery prior to the hearing or trial.

2-1-11. ALIMONY PENDING DECREE. While an action for divorce is pending, the Court may, in its discretion, require one spouse to pay as alimony any money necessary to support the other spouse or the children of the parties or to prosecute or defend the action.

2-1-12. DECREE OF SEPARATE MAINTENANCE AUTHORIZED. Although a judgment of divorce is denied, the Court may in an action for divorce provide for maintenance of a spouse and the children of the parties or any of them by the other spouse.

2-1-13. ACTION FOR SEPARATE MAINTENANCE. An action for separate maintenance may be maintained without respect for a divorce upon any grounds which would be grounds for a divorce. In such cases the Court shall have the same powers with regard to alimony, support and temporary orders as if the action were for divorce. An action for separate maintenance shall be pursued in the identical manner as an action for divorce.

2-1-14. ALLOWANCE FOR SUPPORT WHEN DECREE ENTERED. Where a divorce or separate maintenance is granted, the Court may compel one party to make such suitable allowance to the other party for support during the life of the other party or for a shorter period as the Court may deem just, having due regard to circumstances of the parties represented. The Court may from time to time modify its Orders in these respects.

2-1-15. SECURITY FOR PAYMENTS. The Courts may require a spouse to give security for providing maintenance or making any payments for support, alimony, or property division required under the provisions of this chapter. The Court may enforce the same by the appointment of a receiver or by other reasonable remedies. When a spouse has a separate estate sufficient to give that spouse proper support, the Court may in its discretion withhold any allowance to that spouse out of the separate property of the other spouse.

2-1-16. SUPPORT PAYMENTS TO CLERK OF COURTS OR SOCIAL SERVICES. If a Decree of Divorce or separate maintenance awards child support payments the Court may order the same to be paid through the Clerk of Courts. The Clerk shall forthwith disburse the money received to the party entitled thereto. Upon receipt of written notice of assignment of support obligations to the State of South Dakota or other social services agency, the Clerk shall pay the support payments to the appropriate department of social services so long as the assignment remains in existence. The Clerk of Courts shall maintain adequate records in the original divorce file so that proof will exist of the payments due and the history of payments made and disbursements to either the spouse or the department of social services.

2-1-17. PROPERTY DIVISION. In a decree of divorce or separate maintenance, the Court shall have full power to make an equitable division of the property belonging to either party or both parties whether the title to such property is in the name of the husband or the wife. In making such division of the property, the Court shall have due regard for the equity and circumstances of the parties and the contributions by each at the time of the marriage. The degree of fault by each of the parties should not be a significant factor in determining property division. However, maintenance of children may be considered by the Court in awarding property.

2-1-18. NOTIFICATION OF CHILD PROVISIONS AUTHORIZED. In any action for divorce or separate maintenance, the Court may before or after entry of decree enter such Orders regarding the custody, care, and education of the children of the marriage as may to the court be in the best interests of the children including modification of child support payments and may at any time vacate or modify the same. Fault shall not be considered in determining custody of children except as may be relevant to the fitness of either parent in determining the best interests of the children.

2-1-19. PRIOR NAME RETURNED TO WOMAN. During any action for divorce, the woman involved in the proceeding may request and have her maiden name restored to her or such other name as she legally used prior to her marriage to the other party to the divorce in the discretion of the Court.

2-1-20. REPORT OF DIVORCES TO STATE HEALTH DEPARTMENT. The Clerk of the Tribal Court shall report information of each divorce decree filed in the office of the clerk on forms prescribed and furnished by the South Dakota Department of Health.

2-1-21. VISITATION RIGHTS FOR GRANDPARENTS. The Tribal Court may grant grandparents reasonable rights of visitation with their grandchildren with or without petition of the grandparents if it is in the best interests of the grandchildren. The grandparents of the child may petition the Tribal Court for grandchild visitation rights if the parents of the child are divorced or legally separated, or an action for divorce or separate maintenance has been commenced

by one of the parents of the child, or if the parent of the child who is the child of the grandparent is dead. The Tribal Court may grant a petition for grandchild visitation rights only upon finding that such visitation is in the best interests of the child. Petitions for visitation by grandparents may be denied by the Court in circumstances where the child has been placed for adoption with a person other than the child's stepparent or grandparent.

CHAPTER 2 – ADOPTION

- 2-2-1. Authority Of The Court
- 2-2-2. Age of Child and Adoptive Parent
- 2-2-3. Status Of Children Born To Unmarried Women
- 2-2-4. Consent
- 2-2-5. Consent Of Parents
- 2-2-6. Multiple Adoptions
- 2-2-7. Ecagwaya or Traditional Adoption
- 2-2-8. Waiting Period
- 2-2-9. Petition For Adoption
- 2-2-10. Investigation Of Petition
- 2-2-11. Notice Of Hearing
- 2-2-12. Service By Publication
- 2-2-13. Appearances
- 2-2-14. Examination and Findings By The Court
- 2-2-15. Enrollment Not Affected

2-2-1. AUTHORITY OF THE COURT. The Rosebud Juvenile Court shall have the authority to hear any Petition for adoption involving any Indian child whose domicile or actual residence is within the exterior boundaries of the Rosebud Sioux Tribe or within Indian Country within the original boundaries of the Rosebud Sioux Tribe Reservation, or where jurisdiction is conferred upon the Tribal court by the Federal Indian Child Welfare Act Public Law 95-608.

2-2-2. AGE OF CHILD AND ADOPTIVE PARENT. Any child under the age of 18 years may be adopted by any adult pursuant to the provisions of this Code if the proposed adoptive parent is at least ten years older than the child to be adopted.

2-2-3. STATUS OF CHILDREN BORN TO UNMARRIED WOMEN. If the natural father of the child born to an unmarried women publicly acknowledges said child as his own and received said child into his own family and authorizes or allows his name to be

place upon the birth certificate of the child as the father of the child, he thereby becomes the father of said child for all purposes as if he had been married to the mother of said child at the time of the birth of said child. No further proceedings are necessary to be instituted pursuant to this Chapter to establish said person as the legitimate father of said child.

2-2-4. CONSENT. If the child to be adopted is the age of 12 years or more, the written consent of said child is necessary to its adoption.

2-2-5. CONSENT OF PARENTS. No child can be adopted without consent of both of the natural parents, if living, provided that in the following cases consent shall not be necessary:

(1) From any parent whose paternal rights have been judicially determined and terminated, provided that such terminations shall be final on appeal or that the time for such an appeal shall have expired; or

(2) From any parent who has been adjudged by a Court of competent jurisdiction to be mentally incompetent or mentally ill; or

(3) From any parent who has abandoned his or her child for a consecutive period in excess of one year from the date of filing of the Petition of adoption.

2-2-6. MULTIPLE ADOPTIONS. The adoption of two or more children by the same adopting parent or parents may be included in one proceeding provided that a separate Order of Adoption shall be entered and filed by the Court as to each child adopted.

2-2-7. ECAGWAYA OR TRADITIONAL ADOPTION. Means according to Tribal custom, the placement of a child by his natural parent(s) with another family but without any Court involvement. After a period of two years in the care of another family, the Court, upon petition of the adoptive parents, will recognize that the adoptive parents in a custom or traditional adoption have certain rights over a child even through parental rights of the natural parents have never been terminated. Traditional adoption must be attested to by two reliable witnesses. The Court, in its discretion, on a case by case basis, shall resolve any questions that arise over the respective rights of the natural parent(s) and the adoptive parent(s) in a custom adoption. The decision of the Court shall be based on the best interests of the child and on

recognition of where the child's sense of family is. Ecagwaya is to raise or to take in as if the child is a biological child.

2-2-8. WAITING PERIOD. No Petition for adoption shall be granted and approved until the child shall have lived within the proposed adoptive home for a period of at least six months prior to the entry of the Order of Adoption.

2-2-9. PETITION FOR ADOPTION. A Petition for adoption shall be filed with the Tribal Clerk of Courts and shall include the following information:

(1) The name, address, residence, birth date, social security number, and race of the person or persons requesting adoption

(2) The name, address, birth date, race, and residence of the child to be adopted

(3) The length of time that the child to be adopted has been living in the proposed adoptive home

(4) The name, address, residence, birth date, and race if known of the natural mother and natural father of the child to be adopted

(5) A statement as to whether or not one or both of the natural parents of the child to be adopted have consented to the proposed adoption, and if so, the written documents indicating the consent should be attached to the Petition

(6) If the consent of one or both of the natural parents has not been obtained, a statement shall be included in the Petition as to why the consent is not necessary and allege facts in support of that position

(7) A full description and statement of value of all property owned or possessed by the child to be adopted, and

(8) A statement by the proposed adoptive parent or parents that they will treat said child in all respects as if said child were their natural child.

2-2-10. INVESTIGATION OF PETITION. Upon receipt of a Petition for adoption pursuant to this Code, the Clerk shall notify the appropriate Tribal judge who shall enter an Order directed to the Bureau of Indian Affairs or Tribal Social Services Department or a State Division of Social Services or some other competent agency or person appointed by the Court to make careful and thorough investigation of the Petition and the proposed adoptive home and adoptive parents and natural parents and report his findings to the Court in writing including therein a recommendation as to whether or not the adoption should or should not be granted.

2-2-11. NOTICE OF HEARING. Upon receipt of the Petition for adoption and the investigation and recommendation, the Court shall fix the time and place for hearing the Petition for adoption which shall be in written form and which shall state that the parental rights of said child held by any natural parents will be terminated if the Petition for adoption is granted. The notice shall also state the time, date, and place of the hearing and that the natural parents may attend the hearing and show cause if any exists why such adoption should not be granted. A copy of the Petition for adoption and Order for Hearing shall be personally served upon the proposed adoptive parents and upon the natural parents personally at least ten days before the date fixed for hearing. Proof of regular service required by this Section shall be made of record by the Affidavit of the person completing service or by a service return of a process server.

2-2-12. SERVICE BY PUBLICATION. In the event that personal service as required by the above Section is not possible because the person to be served cannot be located after a reasonably diligent attempt to locate said person or because one of the natural parents cannot be identified, such facts and circumstances shall be set forth in an Affidavit presented to the Court. If the Court is satisfied that a reasonable effort has been made to locate and identify the person to be served and that such reasonable effort has been unsuccessful, the Court may enter an Order authorizing service by publication or posting. Service by publication or posting shall be done by a posting a copy of the Notice of Hearing at the post office serving the community of the person's last known residence on the reservation or by publication of said notice of hearing in a legal newspaper designated by the Tribal Council for such purposes at least 10 days prior to the date fixed for hearing. A copy of the Notice of Hearing shall also be posted in the Tribal Courthouse and in at least one conspicuous place in the Tribal Building in Rosebud, South Dakota. In either case, a copy of the Notice and Petition shall be mailed to said person at his last known post office address by first class mail so that the same can be forwarded. The fact of completed service shall be made to appear by affidavit of the person having posted or mailed the notices and by Affidavit of Publication from the legal newspaper if publication was ordered by the Court.

2-2-13. APPEARANCES. At the time fixed for hearing the Petition for adoption, the proposed adoptive parent, the child to be adopted, and any spouse of the proposed adoptive parent must appear before the Court and execute consents to the adoption. The natural parents may appear at said hearing for the purpose of either consenting to the adoption or resisting the adoption if the Petition alleges that the adoption should take place without their consent pursuant to Section 2-2-5 of this Code. All persons except the proposed adoptive child and the proposed adoptive parents may enter their appearances through Power of Attorney. Also at the time of hearing the Petition for adoption, the proposed adoptive parents must execute an agreement with the Court that said parent shall treat the child to be adopted in all respects as a natural and lawful child should be treated.

2-2-14. EXAMINATION AND FINDINGS BY THE COURT. The Court shall examine all persons appearing at the hearing on the Petition for adoption and satisfy himself from such examination, and such reports as he may have received, including recommendations, that the child is suitable for adoption and that the proposed adoptive parent is financially and morally qualified to provide the care and training of said child and that all the requirements by law have been met, including notices, and that the interests of the child will be promoted by the adoption. If the Court so finds, he must enter Findings of Fact in writing and make an Order of Adoption, including a declaration that said child henceforth shall be the adopted child of the person petitioning for adoption and shall be regarded and treated in all respects as the natural child of such person. Said Order shall also include the adoptive name, date of birth, sex, color, or race and place of birth of the adoptive child and the name, date of birth, citizenship, residence, race, birthplace, and occupation of the adoptive parent or parents. Such child when adopted pursuant to this Chapter may take the family name of the adoptive parents. After the approval of the adoption, the adoptive child and the adoptive parent shall maintain towards each other the legal relationship of parent and child and shall have such rights and responsibilities as are ordinarily present in such relationship. The natural parents of such adopted child are from the time of the adoption relieved of all parental responsibility in relationship to said child and shall have no rights with regard to said child except in case where a natural

parent consents to the adoption of such child by the natural parent's spouse and where the natural parent and the adoptive parent are maintaining a husband-wife relationship and the child is residing in the same home.

2-2-15. ENROLLMENT NOT AFFECTED.

The fact of adoption shall not in any manner effect the adoptive child's qualifications and right to be enrolled in the Rosebud Sioux Tribe. However, such enrollment shall be based upon the child's natural parents.

CHAPTER 3 – PROTECTION FROM ADULT ABUSE

- 2-3-1. Definition
- 2-3-2. Jurisdiction
- 2-3-3. Petition For Relief
- 2-3-4. Assistance In Filing Petition-Extension-Hearing-Costs and Attorney Fees
- 2-3-5. Scope Of Protection Order
- 2-3-6. Statement Of Penalty For Violation Included In Protection Order
- 2-3-7. Protection Order Not To Affect Title To Real Property
- 2-3-8. Execution Of Bond Not Required
- 2-3-9. Duration Of Protection Order-Modification
- 2-3-10. Copies Of Protection Order To Be Issued
- 2-3-11. Penalty For Violation Of Order or A Consent Agreement-Civil Contempt
- 2-3-12. Arrest for Violation
- 2-3-13. Arrestee To Answer Change Of Contempt Hearing Bond-Notification To Protected Party
- 2-3-14. Leaving Residence, Necessary Force Not To Effect Right To Relief

2-3-1. DEFINITION. For the purpose of this chapter, the following terms shall have the following meanings, unless the context clearly indicated otherwise:

A. "Abuse" means inflicting or attempting to inflict physical injury on an adult by other than accidental means, physical restraint, or malicious damage to the personal property of the abused party;

B. "Adult" means any person eighteen (18) years of age or older or who is otherwise emancipated;

C. "Court" means the Rosebud Sioux Tribal Court;

D. "Family or household member" means spouse, persons living with spouses, persons related by blood or marriage, and other persons jointly residing in the same dwelling unit who are eighteen (18) years of age or older, or who are emancipated;

E. "Petitioner" means person alleging abuse in a petition for order of protection;

F. "Respondent" means person alleged to have abused another in a petition for order of protection.

2-3-2. JURISDICTION. This ordinance shall be construed to invoke the civil jurisdiction of the Rosebud Sioux Tribal Courts over Indian and Non-Indian persons subject to the Court jurisdiction. The jurisdiction of the Court shall remain in effect until such time as a complaint for divorce is filed and the Court orders the dissolution or modification of any order of protection.

2-3-3. PETITION FOR RELIEF. Any and all who have been subjected to or threatened to abuse by a present adult family or household member may seek relief under this chapter by filing a sworn petition alleging such abuse by the Respondent.

2-3-4. ASSISTANCE IN FILING PETITION-EXTENSION-HEARING-COST AND ATTORNEY FEES. Upon the filing of a petition under this chapter, the Court may immediately, for good cause shown, issue an ex parte order of protection. An immediate and present danger of abuse to the Petitioner shall constitute good cause for purpose of this section. With ten (10) days of service of such an order on the Respondent under this Chapter, a hearing shall be held, at which time the Court shall either dissolve any ex parte order which has been issued, or shall, if the Petitioner has providing the allegation of abuse by preponderance of the evidence, extend the order of protection for a definite period of time not to exceed one (1) year. Any ex parte order protection shall be in effect until the time of hearing. If no ex parte order of protection has been issued as of the time of hearing, and the Petitioner has proved the allegation of abuse by a preponderance of the evidence, the Court may at the time, issue an order of protection for a definite period of time not to exceed one (1) year. The Court shall cause a copy of the petition and notice of the date set for hearing on such petition, as well as copy of any ex parte order of protection, to be served upon the Respondent at least five (5) days prior to such hearing. Such notice shall advise the Respondent that he may be represented by

counsel. If the Court, after the hearing, issues or extends an order of protection, Petitioner's Court costs and attorney's fees shall be assessed against the Respondent.

2-3-5. SCOPE OF PROTECTION ORDER.

Any order of protection granted under this chapter to protect the Petitioner from abuse may include, but is not limited to:

- (1) Directing the Respondent to refrain from abusing or threatening to abuse the Petitioner;
- (2) Granting the Petitioner possession of the residence or household to the exclusion of the Respondent by evicting the Respondent, by restricting possession to Petitioner or by both;
- (3) Directing the Respondent to provide suitable housing for the Petitioner when the Respondent is the sole owner or lessee of the residence or household;
- (4) Awarding temporary custody of, or establishing temporary visitation rights with regard to any minor children born to or adopted by the parties; or
- (5) Awarding final support to the Petitioner and such persons as the Respondent has the duty to support. Relief granted pursuant to paragraphs (2) through (5) of this section shall be ordered only after the Petitioner or Respondent have been given an opportunity to be heard by the Court.

2-3-6. STATEMENT OF PENALTY FOR VIOLATION INCLUDED IN PROTECTION ORDER.

An order of protection issued under this chapter shall include the statement of the maximum penalty which may be imposed pursuant to 2-3-11 for violating such order.

2-3-7. PROTECTION ORDER NOT TO AFFECT TITLE TO REAL PROPERTY. No order of protection made under this chapter shall in any manner affect title to any real property.

2-3-8. EXECUTION OF BOND NOT REQUIRED. The Court shall not require the execution of a bond by the Petitioner to issue any order of protection under this chapter.

2-3-9. DURATION OF PROTECTION ORDER-MODIFICATION. All orders of protection shall be effective for a fixed period of time, not to exceed one (1) year. The Court may modify its order at any time upon subsequent motion filed by either party together with an affidavit showing a change

of circumstances sufficient to warrant the modification.

2-3-10. COPIES OF PROTECTION ORDER TO BE ISSUED. A copy of any order of protection granted under this chapter shall be issued to the Petitioner, the Respondent, and all tribal law enforcement agencies.

2-3-11. PENALTY FOR VIOLATION OF ORDER OR A CONSENT AGREEMENT-CIVIL CONTEMPT. Upon violation of the order of protection or a Court approved consent agreement, the Court may hold the Respondent in civil contempt and punish him in accordance with the law.

2-3-12. ARREST FOR VIOLATION OF PROTECTION ORDER-ARREST WITHOUT WARRANT.

- A.** An arrest for violation of an order of protection issued pursuant to this chapter may be with or without warrant. Any law enforcement officer may arrest the Respondent without a warrant if
- (1) The officer has proper jurisdiction over the area in which the moving party resides;
 - (2) The Officer has reasonable cause to believe the Respondent has violated or is in violation of an order of protection and;
 - (3) The officer has verified whether an order of protection is in effect against the Respondent. If necessary, the police officer may verify the existence of an order of protection by telephone or radio communication with an appropriate law enforcement department.
- B.** No ex parte order of protection can be enforced under this section until the Respondent has been served with the order of protection or otherwise has acquired actual knowledge thereof.

2-3-13. ARRESTEE TO ANSWER CHANGE OF CONTEMPT HEARING BOND-NOTIFICATION TO PROTECTED PARTY. A person arrested pursuant to this chapter shall be brought before the Court or a magistrate within forty eight (48) hours to answer a charge of contempt for violation of the order of protection and the Court or magistrate shall:

- (1) Set a time certain for a hearing on the alleged violation of the order of protection within seventy two (72) hours after arrest, unless extended by the Court on the motion of the arrest person;

(2) Set a reasonable bond pending the hearing on the alleged violation of the order of protection; and

(3) Notify the person who has procured the order of protection and direct the party to show cause why a contempt order should be issued.

2-3-14. LEAVING RESIDENCE, NECESSARY FORCE NOT TO EFFECT RIGHT TO RELIEF.

A. The Petitioner's right to relief under this chapter shall not be affected by Petitioner's leaving the residence or household to avoid abuse.

B. The Petitioner's right to relief under this Chapter shall not be affected by use of such physical force against the Respondent as is reasonably believed to be necessary to defend the Petitioner or another from imminent physical injury or abuse.

CHAPTER 4 – MARRIAGE OF TRIBAL MEMBERS

- 2-4-1. Jurisdiction
- 2-4-2. Marriage By Tribal customs
- 2-4-3. Access To Tribal Courts
- 2-4-4. Effect Of Prior Enactments

2-4-1. JURSDICTION. The Rosebud Sioux Tribe hereby assumes jurisdiction over matters of marriage between tribal members. Nothing herein shall, however, impede the power of the Tribe and Tribal Courts to recognize marriages validity entered into under the laws of other jurisdictions.

2-4-2. MARRIAGE BY TRIBAL CUSTOMS. The Rosebud Sioux Tribe and its courts shall recognize the sanctity and validity of marriage by tribal custom and traditional practice, without requirements of oath, affirmation or ceremony or involvement of religious or civil authority. Under traditional practice, and the meaning of this section, such marriage and legal recognition thereof shall require only mutual commitment and prolonged cohabitation along with actual or implied recognition of the same by the parties and their families.

2-4-3. ACCESS TO TRIBAL COURTS. The remedy and procedure of declaratory judgment shall be available in the Rosebud Sioux Tribal Court for purposed of determining the validity and existence of marital relationships as provided under the terms of this chapter. Nothing herein shall

limit the power of the court to also rule on the validity of marriages in other proceedings, including but not limited to probate proceedings. The Tribal Court is also empowered to perform civil ceremonies of marriage under such rules and procedures as adopted by the Chief Judge of the Rosebud Sioux Tribal Court.

2-4-4. EFFECT OF PRIOR ENACTMENTS. Any prior resolutions, ordinances, pronouncements, or decrees set forth by this governing body or any authority whatsoever which is contrary to the terms of this chapter, is now and always was void as being inconsistent with the practices of the Rosebud Sioux People.

TITLE THREE

JUVENILES

CHAPTER 1 – GENERAL PROVISIONS

3-1-1.	Purpose and Construction
3-1-2.	Definitions
3-1-3.	Procedures Established
3-1-4.	Jurisdiction
3-1-5.	Powers and Duties
3-1-6.	Judges
3-1-7.	Other Officer Appointments, Salaries and Duties
3-1-8.	Court

3-1-1. PURPOSE AND CONSTRUCTION.

It is the purpose of this Juvenile Code to provide each child coming before the Tribal Juvenile court such care, guidance and control, preferably in his own home as will serve his welfare and the best interests of the Rosebud Sioux Tribe of the Rosebud Reservation; to preserve and strengthen family ties; to preserve and strengthen the child's cultural and Tribal identity; to secure for any child removed from his home that care, guidance, and control as nearly equivalent to that which he should have been given by his parents to help him develop into a responsible will-adjusted adult; to improve any conditions or home environment which may be contributing to his delinquency; and at the same time, to protect the peace and security of the community and its individual residents from juvenile violence or law breaking.

3-1-2. DEFINITIONS.

1. "Abused Child" a child found to be suffering abuse of a physical, emotional, nutritional, sexual or exploitive nature. The following serve as guidelines to the Court dependent upon proof of parental and/or legal guardianship action which has resulted in serious harm to the child.

(1) A Physically Abused Child is one found to be in one or more of the following situations:

- (a) Beatings;
- (b) Unusual or inappropriate punishments (does the punishment fit the crime);
- (c) A child with multiple injuries; and/or
- (d) A child who is knocked unconscious by a parent or guardian.

(2) An Emotionally Abused Child is one found to be in one or more of the following situations, dependant upon proof of parental or legal guardian action which has resulted in serious harm to the child.

(a) A child whose parents fail to love, listen, guide or pay attention to;

(b) A child who receives no moral, spiritual, or intellectual instruction from his parents;

(c) A child who is separated or isolated from other members of the family (locked in locked out);

(d) A rejected child;

(e) A child whose parents have unrealistic expectations for him;

(f) A child whose parents or others verbally harass, tease, swear at and/or ridicule him;

(g) A child whose parents have failed to provide the child's basic needs for food, shelter and clothing;

(h) A child whose health is endangered by exposure to alcohol, drugs, tobacco; and/or

(i) A child whose home life-style is dangerous (e.g., excessive drinking, excessive numbers of people in the house, no food, etc.).

(3) A sexually Abused Child is one who is found to be in one or more of the following situations, dependent of proof of parent/legal guardian action which has resulted in serious harm to the child:

(a) An unconsenting minor involved in sexual activity with an adult;

(b) Any child (boy or girl) under age of sixteen (16) who is involved in sexual with an adult (male or female);

(c) Any child forced to perform sexual services in exchange for debts or favors; and/or

(d) Any unconsenting child who is forced to perform sexual acts by other minors.

(4) A Nutritionally Abused Child is one found to be in one or more of the following situations:

(a) A child whose parents provide inadequate or inappropriate foods (e.g., alcohol, excessive junk foods, etc.); and/or

(b) A child whose parents misuse the benefits intended for the child including selling or squandering food stamps, commodities, or BIA grocery orders.

2. "Act" means the Indian Child Welfare Act, Public Law 95-608.

3. "Adjudication" means a finding by the Court, stated in decree, that the facts alleged in the petition have been proven.

4. "Adult" means any person who has reached his /her eighteenth (18) birthdays.

5. "BIA" means Bureau of Indian Affairs.

6. "Child" means minor who is enrolled in or eligible for enrollment in the Rosebud Sioux Tribe, or any other Indian on the Reservation, who is less than eighteen (18) years of age, or any person still subject to the continuing jurisdiction of the Tribal Juvenile Court.

7. "Child Custody Proceeding" means any voluntary or involuntary administrative or judicial action which may result in the removal (temporary or permanent) of a child from its parent(s), the child being an enrolled member of the Rosebud Sioux Tribe (or eligible for enrollment) or who lives within or near the original boundaries of the Rosebud Indian Reservation.

8. "Minor in Need of Care" is a child found to be in one or more of the following situations:

- (1) A child who is habitually truant;
- (2) A child who violates the curfew;
- (3) A child who is unmanageable to parental control or is incorrigible;
- (4) A child who is found to be that described in subsections 1, 12, 13, and 26 of this section;
- (5) A child who is a habitual runaway; and/or
- (6) A child who habitually so departs himself so as to injure or endanger the health or well-being of himself or others.

9. "Child Placement Agency" means any agency licensed by the Tribe or the State of South Dakota to receive for placement or adoption; the Administration of the Child Welfare, the BIA Branch of Social Services, the South Dakota Department of Social Services, or any agency receiving children for placement or adoption in another State, which agency is licensed or approved as required by law.

10. "Community Expert Witness" means an individual recognized by the Juvenile Judge of the Rosebud Sioux Tribal Court as an expert in Tribal customs as they pertain to family organization and child rearing practices.

11. "Court" means the Tribal Juvenile Court of the Rosebud Sioux Tribe unless the Tribal Court or some other Court is clearly intended.

12. "Delinquent Child" means any child under the age of eighteen (18) years within the jurisdiction of the Court who violated any of the offenses enumerated in the Rosebud Sioux Tribe Law and Order Code.

13. "Dependent Child" is a child found to be in one or more of the following situations:

- (1) A child who is homeless or destitute or without proper support or care; and/or

- (2) A child who lacks proper care by reasons of the mental or physical condition of the parents(s), guardian, or custodian.

14. "Deprivation of Custody" means transfer of legal custody by the Court from a parent or parents or a previous custodian to another person, agency, or institution.

15. "Detention" means the temporary care in the Juvenile Center of children who require secure custody, in physical restricting facilities pending Court disposition or transfer to another jurisdiction.

16. "Diversion" means any informal probationary status whose focus is to help a juvenile keep out of trouble without formal Court action. Diversion covers any juvenile brought before the Court because of his own misconduct but not formally adjudicated.

17. "Extended Family" means any person related by blood or marriage to the family or any individual who is viewed by the family as a relative or in accordance with customs of the Rosebud Sioux Tribe. In situations where the relationship is not formally established by blood or marriage, the relationship must be attested to by two (2) reliable witnesses.

18. "Foster Care" means the placement of a child with another family for a temporary period of time.

19. "Guardian" means the guardian of the person and not a guardian of property or estate.

20. "Guardian Ad Litem" means an individual appointed by the Court to represent the best interests of the child in an advocate role.

21. "Guardian of the Person" includes, among other things, the authority to consent to marriage to enlistment in the armed forces, and to consent to major medical, surgical, or psychiatric treatment.

22. "Judge" means the Juvenile Judge of the Rosebud Sioux Tribe.

23. "Lay Expert Witness" means an individual without extensive professional training, but who does have extensive experience in the delivery of child and family services to the Rosebud Sioux Tribe community.

24. "Legal Custody" means subject to any limitations which may be imposed by the Juvenile Court, a relationship embodying the following rights and duties:

- (1) The rights to physical custody of a child:
 - (a) Temporary Custody;
 - (b) Permanent Custody;
 - (c) Change of Custody;
 - (d) Child Support; and/or
 - (e) Visitation Rights.

(2) The right and duty to protect, train, discipline and financially support a child

(3) The duty to provide a child with food, clothing, shelter, education, and ordinary medical care

(4) The right to determine where and with whom a child shall live

(5) The right, in an emergency, to authorize surgery or other extraordinary care.

25. "Minor Parent" means any parent under age eighteen (18).

26. "Neglected Child" is a child found to be in one or more of the following situations:

(1) A child whose parent(s), guardian, or custodian fail or refuse to provide necessary subsistence, education, or medical care, or any other care necessary for his health and well-being while capable of doing so;

(2) A child who lacks adequate parental control by reasons of the fault or habits of his parent(s), guardian, or custodian;

(3) A child under ten (10) years of age who is left without competent supervision overnight for other than emergency reasons;

(4) A child exposed to physically dangerous situations as a result of parental negligence;

(5) A child, under ten (10) years of age who is left alone or unsupervised in a car while its parent is in a bar;

(6) A child, under eighteen (18) years of age who accompanies its parent(s) into a bar where he is unsupervised or uncared for;

(7) A child left with an irresponsible babysitter (e.g., babysitter is intoxicated, too young, etc.);

(8) A child under eighteen (18) years of age is allowed access to alcoholic beverages and/or drugs;

(9) A child under twelve (12) years of age or under and has more than ten (10) unexcused absences from school in one quarter;

(10) A child who is not dressed adequately for weather conditions;

(11) A child who is allowed to be out and unsupervised after curfew.

27. "Open Adoption" means those adoptive placements made through the Court when most, but not all parental rights, have been terminated. Open adoption allows the Court to insure that an older child who has established bonds of affection with its natural parents, while at the same time become part of another family.

28. "Qualified Expert Witness" means a professional person having a substantial educational background in the area of his or her specialty and extensive knowledge of the prevailing social and cultural standards and

child rearing practices of the Rosebud Sioux Tribe.

29. "Probation" means legal status of a child created by Court Order following an adjudication based on a violation of the Law and Order Code of the Rosebud Sioux Tribe, where the child is permitted to remain in its home under prescribed conditions and under supervision by a probation officer designated by the Court subject to return to Court for violation of any of the conditions prescribed.

30. "Protective Supervision" means legal status created by Court Order following adjudication of neglect or dependency where the child is permitted to remain in its own home, and supervision and assistance to correct the neglect or dependency is provided by the Child Protection Program or other agency designated by the Court.

31. "Residual Parental Rights and Duties" means those rights and duties remaining with the parents after legal custody or guardianship, or both, have been vested in another person or agency, including but not limited to, the responsibility for support, the right to consent to adoption, the right to determine the child's religious affiliation, and the right to reasonable visitation, unless restricted by the Court. If no guardian has been appointed, residual parental rights and duties are, the right to consent to marriage, to enlistment in the Armed Forces, and consent to major medical, surgical, or psychiatric treatment.

32. "Standard Adoption" means those adoptive placements occurring after all parental rights and obligations have been terminated by the Court.

33. "Termination of Parental Rights" means permanent elimination of all parental duties, including residual parental rights and duties by Court Order, unless otherwise decreed by the Court. The Court may, in its discretion, terminate parental rights while at the same time restricting adoptive placement to a family willing to allow the child continued contact with their natural parents.

34. "Parents" means any biological parent(s) of any Indian child or person who has lawfully adopted an Indian child, including ecagwaya placement.

35. "Shelter" means the temporary care of children in foster care families or foster group care facilities pending Court disposition or transfer to another jurisdiction.

36. "State" means the State of South Dakota.

37. "Tribe" means the Rosebud Sioux Tribe.

38. "Reservation" means the Rosebud Indian Reservation, as established by the Treaty of 1867".

3-1-3. PROCEDURES ESTABLISHED. All procedures and provisions established herein, shall be construed and applied so as to provide due process of law to both children and adults subject to this Juvenile Code:

(1) Due process shall include the right to legal representation in accordance with the Tribal Code.

(2) Due process in any proceeding for termination about appeal in accordance with the Tribal Code.

3-1-4. JURISDICTION.

A. Original Jurisdiction. Except as otherwise specifically provided, the Juvenile Court shall have original jurisdiction over any Indian child domiciled or residing upon or found upon the Reservation, or who has been transferred to the Juvenile Court under the Indian Child Welfare Act, and over all persons having care, custody, or control of such children in the following situations:

(1) Concerning any child who has violated any Tribal, local, or municipal ordinance, within the jurisdiction of the Rosebud Sioux Tribe

(2) Concerning any child who is neglected or dependent child, as defined elsewhere in this Code;

(3) Concerning any child who:

(a) Being subject to compulsory school attendance, is habitually truant from school, or is defiant or persistent efforts by parents or school authorities; or

(b) Habitually disobeys the reasonable and lawful demands of his parent(s), guardian, or other custodian and is ungovernable and beyond their control to such an extent as to clearly endanger his own welfare or the welfare of others;

(c) Violated the curfew provision of this code.

(4) Proceedings to terminate the legal parent-child relationship including terminations of residual parental rights and duties;

(5) For the judicial consent to marriage, employment, or enlistment of a child into the Armed Forces, and to emergency medical or surgical treatment of the child who is under the custody of the Court;

(6) The Juvenile Court shall also have original jurisdiction of the following proceedings which shall be governed by the laws relating thereto without regard to the other provisions of this Juvenile Code:

(a) Proceedings for the adoption of a child;

(b) Proceedings for the commitment of a mentally retarded or mentally ill child;

(c) All proceedings to determine the custody of or to appoint a legal guardian or custodian of the person if a child;

(d) All proceedings to determine visitation rights and child support actions

(e) All proceedings for contributing to the delinquency of a minor

(7) All definitions elsewhere in this Juvenile Code shall apply to any non-Indian under the age of eighteen (18) years who may be within the jurisdiction of the Tribe.

B. Transfer of Cases. If, during the pendency of a criminal or quasi-criminal proceeding in the Tribal Court, including a preliminary hearing, it shall be ascertained that the person charged was less than eighteen (18) years of age at the time of committing the alleged offense, the Court shall transfer the case to the Tribal Juvenile Court, together with all the papers, documents, and transcripts of any testimony connected therewith. The Tribal Court shall order the person to be taken forthwith to the Tribal Juvenile Court or to the Juvenile Center, or shall release him to the custody of his parent(s) or guardian or other person legally responsible for him, to be brought before the Tribal Juvenile Court at a time designated by it. The Juvenile Court shall then proceed as provided herein.

C. Transfer. Exercise of jurisdiction over a child on probation or under protective supervision, or of a child who is otherwise under the continuing jurisdiction of the Court, may be transferred by the Court to a Court of another jurisdiction if the Court consents; or to any Court with proper jurisdiction over the child in a pending action.

D. Felony Cases. If the petition in the case of a child fourteen (14) years of age or older alleges that he committed an act which would constitute a felony or a serious misdemeanor if committed by an adult, and if the Court, after full investigation and hearing, finds that it would be contrary to the best interests of the child or of the public, or of the Tribe, to retain jurisdiction, the Court may enter an Order certifying to that effect, and directing that the child be held for criminal proceedings in the Tribal Court. The provisions of this Juvenile Code relating to Court procedures in children's cases shall, to the extent they are pertinent, be applicable to such hearings held under this Section.

E. Jurisdiction over Adults.

(1) In any criminal case in which the offense is one designated for the protection

of children, and such the Tribal Court certifies the case to the Juvenile Court for disposition, in such cases, trial of the adult in Juvenile Court shall be handled according to the Rosebud Sioux Tribal rules of Criminal Procedure, and the Court may sentence the convicted adult in any manner available to the Tribal Court. Certification of such cases shall occur only when it is made to appear to the Tribal Court that some interest of the Juvenile Court in a matter pending before it will be served.

(2) In any case in which a child has come within the jurisdiction of the Juvenile Court, that Court shall have authority to exercise jurisdiction over adults to the extent necessary or reasonably believed to be necessary to make a proper disposition of each case, including authority to punish for content committed either in or out of the Court's presence.

F. Continuance of Jurisdiction.

Jurisdiction obtained by the Court of a child through adjudication under the Juvenile Code shall continue for the purposes of this Code, until he becomes eighteen (18) years of age, unless terminated prior thereto. The Court, may at its discretion, continue jurisdiction after eighteen (18) years of age when such continuances best serves the interests of both the child and the Tribe.

G. Termination of Jurisdiction. The continuing jurisdiction of the Court shall terminate:

(1) Upon order of the Court which may be made at any time; or

(2) Upon transfer of proceeding in felony cases under this Juvenile Code. The continuing jurisdiction of the Court is not terminated by marriage; or

(3) Upon the child's eighteenth (18) years of age or older who is under the continuing jurisdiction of the Juvenile Code pursuant to this Code violates any Tribal, Federal, State or local law, the Tribal Juvenile Court shall have concurrent jurisdiction of the Court having jurisdiction of the new offense.

H. Jurisdiction Provided Under the Indian Child Welfare Act.

(1) Policy: It is the policy of the Indian Child Welfare Act to maintain the relationship between Indian children and the Tribal and cultural communities which they were born or to which they are otherwise tied. The Rosebud Sioux Tribe, through this Juvenile Code, commits itself to assuming jurisdiction over all those Indian children, members of or eligible for enrollment in the Tribe, who are involved in custody proceedings outside the territorial jurisdiction of the Juvenile Court;

and for whom a return to the jurisdiction of the Tribe is appropriate

(2) Notice of Hearing to the Rosebud Sioux Tribe: Whenever an involuntary child custody proceeding is initiated which may result in the removal (permanent or temporary) of a child (who is a member of or eligible for enrollment in the Rosebud Sioux Tribe) from his parent(s) or guardian, or Indian custodian, the petitioners shall notify the Juvenile Court Judge of the Rosebud Sioux Tribe by registered mail with return receipt requested.

(3) Guidelines to the Court for Acceptance or Refusal of Transfer Under the Indian Child Welfare Act:

(a) Reasons for Accepting Transfer:

- (i) Child has strong ties with Reservation and/or extended family;
- (ii) Eligible for enrollment or is enrolled in the Rosebud Sioux Tribe;
- (iii) Child has recently moved from the Reservation;
- (iv) Child has been abandoned;
- (v) Parents requested that child be returned and raised on the Reservation;
- (vi) Child desires to return to the Reservation;
- (vii) Child's on-reservation family is stable and strong;
- (viii) The reservation has resources available to meet the needs of the child.

(b) Reasons for Refusing Transfer:

- (i) Child is of mixed marriage where primary family ties and/or identity are with the non-member;
- (ii) Child is old enough to reason and does not want to return to the Reservation;
- (iii) Child has no ties with the Reservation;
- (iv) Child has multiple problems for which there are not possible on-reservation programs or resources;
- (v) When either parent contests the transfer;
- (vi) Child not eligible for enrollment or enrolled.

3-1-5. POWERS AND DUTIES.

A. Powers and Duties of the Tribal Court – the Tribal Juvenile Court shall have the same power and duties as provided for other Tribal Courts in this Law and Order Code.

3-1-6. JUDGES.

A. Rules and Regulations. All rules and regulations pertaining to Judges in the Rosebud Sioux Tribal Law and Order Code

shall be applicable to the Judge of the Juvenile Court.

B. Cooperation with Other Agencies.

The Judge of the Tribal Juvenile Court may cooperate with the Federal Government in any program for training personnel employed or preparing for employment in the Tribal Juvenile Court, and may receive and expend funds from Federal or State sources or from private donations for such purposes. The Judge of the Tribal Juvenile Court may contract with public or non-profit institutions of higher learning for the training of such personnel; may conduct short-term training courses of its own, and may hire experts on a temporary basis for such purpose; and may cooperate with Federal and State agencies in personnel training programs.

C. Placement of Children.

(1) In making any decisions to place children in homes or institutions other than with one or both of the natural parents of the child; the Court shall, in all cases in which such action would not obviously be contrary to the child's best interest, determine whether or not there are relatives, friends, or other persons living on the Reservation who would be willing and able to provide a suitable temporary or permanent living environment for the child. The Court shall give considerations to and due regard for Tribal or family customs relative to the raising of children and shall endeavor to place all children requiring such in homes with cultural backgrounds similar to that which the child would have enjoyed if properly raised by its natural parent(s)

(2) In order to enable the Court to place children in a manner consistent with the foregoing subsection, whenever possible, the Court shall utilize the Indian Child Welfare Act as its principle guideline in the recruitment of Indian families suitable for child placements and willing to accept and care for children placed on either a permanent or temporary basis, or both. The Court shall, if necessary, determine the fitness of a home into which a child is placed, at or immediately prior to the time such placement is made.

(3) The Judge may contract, on behalf of the Tribe, with agencies or departments of the Federal Government, or with agencies or departments of the State of South Dakota or of other States, for the care and placement of children whose status is adjudicated under this code.

3-1-7. OTHER OFFICER APPOINTMENTS, SALARIES AND DUTIES. The Juvenile Judge with advice

from the Court Administrator shall appoint such Children's Court Counselors, Presenting Officers, Probation Officers and Clerks as may be required to carry out the work of the Court.

A. Children's Court Counselor.

(1) The Court Counselor must have an educational background and/or prior experience in the field of delivering social services to youth;

(2) The Court Counselor must have an educational background and/or prior experience in the field of delivering social services to youth;

(3) The Court Counselor shall not be employed as or perform the duties of a Prosecutor, Presenting Officer or Law Enforcement Official;

(4) The Court Counselor shall not testify against a minor in any proceeding under this Code or any adjudicatory proceedings;

(5) Duties:

(a) Make investigations as provided in this Code or as designated by the Court, including but not limited to, Post-Preliminary Investigations and Recommendations and Social Studies;

(b) Make reports to the Court as provided in this Code or as directed by the Court including, but not limited to, Predispositional Reports and Pretermination Reports;

(c) Conduct Informal Adjustment Hearings and Informal Reviews;

(d) Place a minor in detention or shelter care as provided in this Code; and

(e) Perform such other duties in connection with the care, custody or transportation of minors as the Courts may require.

B. Presenting Officer.

(1) The Presenting Officer's qualifications shall be the same as the qualifications for the official who acts as Prosecutor for the Tribal Court;

(2) Duties:

(a) File Petitions with the Court as provided in this Code;

(b) Represent the Tribe in all proceedings under this Code; and

(c) Perform such other duties as the Court may order

C. Clerk of Court. Duties for this office are the same for the Juvenile Court as prescribed under the Tribal Code for the Tribal Court.

D. Compensation. The Compensation and terms of employment of all employees in the Tribal Juvenile Court shall be fixed by the policies of the Tribal Council and Administration.

3-1-8. COURT.

A. Sessions. Court sessions shall be held within the Reservation at the Tribal Court and at such times as the Judge shall direct.

B. Court Facilities. Suitable Courtrooms shall be provided by the Judicial Committee of the Tribal Council for the hearing of cases, and office space, equipment, and supplies for the use of the Judge, officers and employees of the Court.

CHAPTER 2 – ADULTS

- 3-2-1. Procedures Applicable
- 3-2-2. Consent To Jurisdiction By Persons Living Off The Reservation

3-2-1. PROCEDURES APPLICABLE.

Except when specific procedures are otherwise specified in this Juvenile code, all matters concerning adults or the rights of any adult which come before the Juvenile Court need not be handled according to procedure established for the Tribal Court, but may be handled in an informal manner as in juvenile cases, provided however, that the Court shall see to it that due process standards are observed.

3-2-2. CONSENT TO JURISDICTION BY PERSONS LIVING OFF THE

RESERVATION. Any adult living off the Reservation who obtains custody of a child from the Juvenile Court either personally or as the result of an association with an agency or institution to which such placement has been awarded, shall be deemed to have consented to the jurisdiction of the Rosebud Sioux Tribal Juvenile Court for all purposes or actions in any way related to such custody of the child subject thereto. In every placement through the Court, both custody and on-going jurisdiction shall remain with the Juvenile Court of the Tribe.

CHAPTER 3 – PROCEDURE

- 3-3-1. Rules Of Procedure
- 3-3-2. Commencement Of Actions
- 3-3-3. Petitions-Consent
- 3-3-4. Verification Of Petition
- 3-3-5. Petition
- 3-3-6. Examinations
- 3-3-7. Petitions-Dismissal
- 3-3-8. Professional and Tribal Attorneys

- 3-3-9. Summons-When Required
- 3-3-10. Summons-Content-Requirements
- 3-3-11. Summons-Other Persons
- 3-3-12. Immediate Custody Of Child
- 3-3-13. Emergency Custody Of Child - **Amendment**
- 3-3-14. Emergency Medical Treatment
- 3-3-15. Compulsory Attendance Of Witnesses
- 3-3-16. Manner Of Service-By Whom Served
- 3-3-17. Substituted Service-Jurisdiction
- 3-3-18. Service-Time Required
- 3-3-19. Search and Seizure Warrants
- 3-3-20. Investigation and Hearings
- 3-3-21. Arrest and Detention Of Children - **Amendment**
- 3-3-22. Disposition Of Cases
- 3-3-23. Judgments and Orders
- 3-3-24. Support Of Children
- 3-3-25. Appeals
- 3-3-26. Miscellaneous

3-3-1. RULES OF PROCEDURES. The rules and forms governing practice and procedures and policies shall be adopted and followed in the Tribal Juvenile Court, subject to the approval of the Tribal Court. Copies of such rules and forms shall be made available for public inspection by the Clerk of the Juvenile Court.

3-3-2. COMMENCEMENT OF ACTIONS.

(1) Except as otherwise provided hereafter, proceedings in children’s cases before the Juvenile court are commenced by petition. All proceedings in Juvenile Court shall be closed to the public

(2) In the case violation of motor vehicle or boating laws or ordinances, fish and game laws and ordinances, a petition shall not e required. This issuance of a traffic or other citation or summons shall be sufficient to invoke the jurisdiction of the Juvenile Court. Unless the Court shall otherwise order, no preliminary investigation shall be required in such cases

(3) Whenever the Court is petitioned by a police officer or any other person alleging that a child is or appears to be within the Court’s jurisdiction, the Clerk of Court shall notify the probation officer or other designated person who shall make a preliminary inquiry to determine whether the interests of the public, the Tribe, or the child require that further action be taken. The report on the preliminary investigation shall

be filed with the Court without unnecessary delay

(4) The Court may, by rule, provide that police reports or reports by other social services related agencies having contact with or custody or supervision over a child, may be filed with the Court in lieu of a preliminary investigation; in which case, further preliminary investigation as provided herein shall not be required unless otherwise specifically ordered

(5) As an alternative to filing a petition, the Court may, with the assistance of the Court Counselor or other designated individuals, make such non-judicial or informal adjustments of the case as is practicable without a petition and proceedings thereunder. Such adjustments shall be made only in cases in which the facts are admitted and established prima facie jurisdiction in the Tribal Juvenile Court, and further provided, that consent is obtained from the parent(s) or other custodians and also from the child, if in the Court's opinion, he of suitable age and discretion. Efforts to effect an informal adjustment may not extend for a period of more than six (6) months without the permission of the Judge of the Juvenile Court, who may extend such intervention.

3-3-3. PETITIONS-CONSENT. The Petition shall set forth in simple and brief language the facts which bring the child within the jurisdiction of the Court, as provided in this Code. The Petition shall further state:

(1) The name, age, and residence of the child;

(2) The names and residence of his parent(s);

(3) The name and residence of his guardian, if there is one;

(4) The name and address of the nearest known relative, if no parent or guardian is known;

(5) The name and residence of the person having physical custody of the child.

3-3-4. VERIFICATION OF PETITION. The statements of the Petition may be made upon information and belief and the Petition shall be verified.

3-3-5. PETITION. The Petition may be prepared and filed by the Presenting Office, Probation Officer, Police Officer, parent, guardian, or a representative of the Tribal Social Services, BIA Social Services, South Dakota Department of Social Services or other Tribally recognized agency or

concerned individual with knowledge of the facts. All petitions shall be screened by the Presenting Office or Prosecutor. At any time after a petition is filed, the Court may make an Order for Temporary Custody of the child.

3-3-6. EXAMINATIONS. The Court may, upon such conditions of notice and hearing, if any, as it deems best, order that a child concerning whom a petition has been filed shall be examined by a physician, surgeon, psychiatrist, or psychologist, and may place the child in a hospital or other facility for such examination. The Court may also order an examination of a parent or guardian whose ability to care for the child is at issue if the Court finds from the evidence presented at the hearing that the parent(s) or guardian's physical, mental, or emotional condition may be a factor in causing the neglect, dependency, or delinquency of the child. Such an examination may be ordered only for purposes of custody disposition and with the consent of the parent or guardian.

3-3-7. PETITIONS-DISMISSAL. The Court may dismiss a petition at any stage of the proceedings.

3-3-8. PROFESSIONAL AND TRIBAL ATTORNEYS. Tribal and professional attorneys who have met the requirements of the Tribal Code may appear in any proceeding before the Tribal Juvenile Court. When a person is entitled to be represented by an attorney of his choice and at his own expense in the Tribal Juvenile Court, he shall be so advised by the Judge at the commencement of any proceedings before such Court.

3-3-9. SUMMONS-WHEN REQUIRED. After a petition is filed and after such further investigation as the Court may direct, the Court shall promptly issue a summons. No summons is required as to any person who appears voluntarily or who files a written waiver of service with the Clerk of Courts at or prior to the hearing.

3-3-10. SUMMONS-CONTENT-REQUIREMENTS. The summons shall contain the name of the Court, the title of the proceedings, and (except for a summons published in a newspaper by Court Order), a brief statement of the substance of the allegations in the Petition. A published summons shall simply state that a proceeding concerning the child is pending the Court and that adjudication will be made.

The summons shall require the person or persons who physical custody of the child to appear personally and bring the child before the Court at a time and place stated. If the person so summoned is not the parent(s), or guardian of the child, then a summons shall also be issued to the parent or parents or guardian, has the case may be, notifying them of the pendency of the case and of the time and place set for the hearing. No summons need to be issued to a parent(s) whose parental rights have been terminated.

3-3-11. SUMMONS-OTHER PERSONS.

Summons may be issued to any person within the jurisdiction of the Court requiring the appearance of any person whose presence the Court deems necessary.

3-3-12. IMMEDIATE CUSTODY OF

CHILD. If it appears, from an affidavit or a sworn statement presented to the Judge, that the welfare of the child or protection of the public requires that the child be placed in detention or shelter care, when a petition is filed, the Judge may endorse upon the summons an order that an officer serving the summons shall at once take the child into custody or may issue a separate emergency custody or detention order for placement in a facility or with an agent as designated by the Court.

3-3-13. EMERGENCY CUSTODY OF

CHILD. If it appears that a child is in danger for whatever reason if the Court is unavailable to issue a custody order; any officer of the Court including a Police Officer, or Court Counselor, may make an emergency removal of a child, if such removal is deemed necessary for the welfare of that child. Such removals shall be done on an emergency basis only. The Officer or Counselor who makes an emergency removal of a child shall submit a written report on the incident, along with a petition for custody order before the end of the next working day of the Court. This policy shall reflect the following guidelines and standards

A. The police officer's report, or other officer of the Court conducting the emergency removal, shall be submitted to the RST Prosecutor's Office within 24 hours of the child's removal from an emergency situation

B. The Temporary Emergency Custody Order shall automatically lapse, resulting in the child being returned to the custody of the parent or legal guardian, in the event no police officer's report is filed

C. The Court shall set up a preliminary hearing to be held within a reasonable time, preferably within 48 to 72 hours after the child is removed and no later than 5 days to determine if probable cause for removal exists

D. The Court shall set aside specific days of the week and specific hours expressly for the purpose of the preliminary hearing to determine if probable cause exists to warrant the continued removal of the child from the home

E. The Chief of Police and other supervisory officers shall implement and develop policies and procedures to assure compliance with 3-3-13 of the Law and Order Code as well as with this resolution

F. These procedures shall be developed and implemented no later than 30 days following the passage of this Resolution

G. Failure to implement and enforce the provision of 3-3-13 of the Law and Order Code and this Resolution shall be grounds for disciplinary action for officers and supervisory personnel, as provided by other appropriate sections of the Law and Order Code

H. Any office, or representative of the Court or of the Tribe who is in a position to enforce the provisions of this Resolution who neglects to do so shall be subject to the sanctions in Section (G) above

I. The Tribal Prosecutor's office must file their petition by the end of the next working day if removal occurs after the close of business hours on a Friday or a holiday.

3-3-14. EMERGENCY MEDICAL

TREATMENT. Upon sworn testimony of one or more reputable physicians, the Court may order emergency medical or surgical treatment which is immediately necessary for a child concerning whom a petition has been filed; pending the service of summons and petition upon his parent(s), guardian, or custodian.

3-3-15. COMPULSORY ATTENDANCE

OF WITNESS. A parent or guardian shall be entitled to the issuance of compulsory process for the attendance of witnesses on his own behalf or on behalf of the child. A guardian ad litem or probation officer shall be entitled to compulsory process for the attendance of witnesses on behalf of the child or on behalf of the Tribe.

3-3-16. MANNER OF SERVICE-BY WHOM SERVED.

(1) Service of Summons of Process and the petition shall be made by a Tribal Court Process Server but upon request of the Court, such service may be made by any other peace officer, or by another suitable person selected by the Court

(2) Service of Summons and petition may be made by delivering a copy to the person summoned; provided, however, that parents of a child living together at their usual place of abode may be both served personally by delivering to either parent, copies of the Summons and petition; one copy for each parent

(3) If the Judge is satisfied that personal service of the Summons and petition is impractical under the circumstances, he may order service by registered mail, with return receipt requested to be signed by the address only, to be addressed to the last known address of the person to be served. Service shall be complete upon return to the Court of the signed receipt.

3-3-17. SUBSTITUTED SERVICE – JURISDICTION. If the parent(s) or guardian required to be summoned under this chapter, cannot be found within the jurisdiction of the Court, the fact of their child’s presence within the Reservation shall confer jurisdiction on the Court in proceedings in children’s cases under this Code as to any absent parent or guardian, provided that due notice has been given in one of the following manners:

(1) If the address of the parent or guardian is unknown, by sending a copy of Summons and petition by registered mail with return receipt requested to be signed by the addressee only, or by personal service outside the Reservation. Service by registered mail shall be complete upon return to the Court of the signed receipt

(2) If the address of whereabouts of the parent(s) guardian outside the Reservation cannot, after diligent inquiry, be ascertained, by publishing a Summons in a newspaper having general circulation on the Reservation. The Summons shall be published once a week for three (3) successive weeks. Service shall be complete on the last day of the publication.

3-3-18. SERVICE-TIME REQUIRED. In the case of service on the Reservation, service completed no less than forty-eight (48) hours before the time set in the Summons for appearance of the person served, shall be sufficient to confer

jurisdiction. In the case of service outside the Reservation, service completed no less than five (5) days before the time set in the Summons for appearance of the person served, shall be sufficient to confer jurisdiction.

3-3-19. SEARCH AND SEIZURE WARRANTS. If it appears to the Court upon affidavit sworn by a Police Officer or any other person, and upon the examination of other witnesses, if required by the Court, that there is probable cause to believe that a child is being detained or ill-treated in any place within the jurisdiction of the Court, the Court may issue a warrant authorizing a duly authorized Police Officer or Probation Officer to search for the child. Upon serving such warrant upon the person in possession of the premises specified in the warrant, the Officer making the search may enter the house or premises, if necessary by force, in order to take the child to the Court or to the place of detention or shelter designated by the Court in accordance with Section 3-3-21 hereof.

3-3-20. INVESTIGATION AND HEARINGS.

A. Social Investigations: Whenever practicable, the Court shall require that a social investigation be made and a report be submitted to the Court in writing in all cases under Section 3-1-4 of this Code in which a petition has been filed, except violation of traffic, fish and game and boating laws and ordinances.

B. Social Investigations-Scope: The investigation shall cover the child’s home environment, history, and associations, the present condition of the child and family, and recommendations as to the child’s future care. In cases involving the duty of support, the study shall include such matters as earnings, assets, financial obligations and employment. Investigations shall be made by qualified expert witnesses, as determined by the Court.

C. Proceedings-Civil in Nature: Proceedings in children’s cases shall be regarded as civil proceedings, with the Court exercising equitable power. Children’s cases under Section 3-1-4 of this Code shall be handled separate from adult cases under 3-1-4F hereof.

D. Conduct of Hearings-Informal in Manner: Hearings in children’s cases shall be before the Court without a jury and may be conducted in an informal manner. The general public shall be excluded and only such persons shall be admitted whom the

Judge finds have a direct and legitimate interest in the case of work of the Court. The child or one of his parents may be separately interviewed at any time at the discretion of the Court. The hearings may be continued from time to time, at a date specified by the Court .

E. Hearings-Record: A verbatim record by either stenographic or electrical or mechanical recording device shall be taken in all cases processed through the Juvenile Court. The Court may dispense with such record at its discretion, but no sooner than sixty (60) days after the time for appeal has expired. In no event shall a record be dispensed with if a case is to be further reviewed by the Court.

F. Records-Use in Other Courts: Neither the record in the Tribal Juvenile Court nor any evidence given therein shall be released for use in any proceedings in any other Court. No child shall be charged with any crime nor be convicted in any other Tribal Court, except as provided in Section 3-1-4D of this Code.

G. Hearings-Guardian Ad Litem: The Court may, if in the best interests of the child, appoint a Guardian Ad Litem who shall represent the Tribe in the interests of a child in any proceedings in a child's care, or within another Court's jurisdiction.

H. Hearings-Evidence: For the purpose of determining proper disposition of the child, and for the purpose of establishing the fact of neglect or dependency, written reports and other material relating to the child's mental, physical, and social history and condition must be received in evidence; and must be considered by the Court along with other evidence, but the Court may require that the person who wrote the report or prepared the material appear as a witness if he is reasonably available.

I. Consolidation of Procedures: When more than one child is involved in a home situation which may be found to constitute neglect, dependency, or when more than one child is alleged to be involved in the same law violation, the proceeding may be consolidated, except that separate hearings may be held with respect to disposition

J. Amendments of Pleadings-Continuances: When it appears, during the course of any proceeding in a child's case that the evidence presented points to the material facts not alleged in the Petition, the Court may proceed to consider forthwith the additional or different matters raised by the evidence. In such event, the Court, on motion of any interested party, or on its own

motion, shall direct that the Petition be amended to conform to the evidence. The Court shall grant such continuances as justice may require.

K. Special Rules of Procedures-Traffic, Fish and Game, and Boating Ordinances: The Court may adopt special rules of procedure to govern proceedings involving violations by children of traffic laws or ordinances and violations of fish and game, and boating laws and ordinances.

L. Presence of Parents-Protection of Child: The Court shall endeavor to insure the presence at the hearing, of one or both parents, or of the guardian of the child. If neither is present, the Court may appoint a guardian ad litem to protect the interests of the child. A guardian ad litem may also be appointed whenever necessary for the welfare of the child; whether or not a parent or guardian is present.

M. Grounds for Re-Hearing: A parent, guardian, custodian, relative or friend of any child whose status has been adjudicated under this Code, or any adult affected by a decree in a child's proceeding hereunder, may, at any time, petition the Court for a new hearing on the ground that new evidence which was not known or could not, with due diligence, have been made available at the original hearing, and which might affect the decree, has been discovered. If it appears to the Court that there is such evidence which might affect the decree, it shall order a new hearing and enter such decree and make such disposition of the case as is warranted by all the facts and circumstances and the best interests of the child.

N. Maintenance of Order During Hearing: Upon request of the Court, the Chief of the Tribal Police or is Deputy or other Officer shall aid the Court in maintaining order during any hearing.

3-3-21. ARREST AND DETENTION OF CHILDREN.

A. A child may be taken into custody by any Police Officer or Probation Officer without Order of the Court in the following situations:

- (1) When, in the presence of the Officer, the child has violated Tribal, State, Federal or local law or ordinance; and
- (2) When there are reasonable grounds to believe that he has committed an act which, if committed by an adult, would be a felony, or an offense under the Rosebud Sioux Tribal Code; and there is reasonable cause to believe that such child, before a

warrant or other Court Order can be obtained may:

- (a) Flee the jurisdiction of the Court or conceal himself to avoid arrest;
 - (b) Destroy or conceal evidence of the commission of an offense; and/or
 - (c) Injure or annoy another person or damage property belonging to another.
- (3) When he is seriously endangered by his surroundings, and immediate removal appears to be necessary for his protection.
- (4) When there are reasonable grounds to believe that he has run away from his parents, guardian, or custodian.

B. Citizen's Arrest of Child: A private citizen may take a child into custody if the circumstances are such that he could make a citizen's arrest if an adult were involved. Taking child into custody under this Section shall not be deemed an arrest .

C. Notification of Parents-Release of Child: When an officer takes a child into custody, he shall immediately notify a parent or an adult person with whom the child lives if not the parent, or the custodian. Such notification shall be made by contacting the person(s) or custodian personally through the assistance of other Officers or persons unless notification can be and is, in fact, made by phone. If a parent or custodian cannot, after due diligence, be found or contacted, then such notice shall be given to the nearest relative or to an adult person who is well acquainted with the child. The parent or person notified shall be told why the child has been taken into custody where the child is being held. The child shall then be released to the care of his parents or other responsible adult unless his immediate welfare or the protection of the community requires that he be detained. Before the child is released, the parent or other person to whom the child is released may be required by the person holding the child to sign a written promise, on forms supplied by the Court, to bring the child to the Court at a time set by or to be set by the Court.

D. Detention of Child: A child shall not be detained by the Tribal Police or at the police station any longer than is necessary to obtain his name, age, residence, and other identifying information and to contact his parents, guardians, or custodian. If he is not thereupon released as provided in the preceding section, he must be taken without necessary delay to the Court or the Juvenile Center or shelter designated by the Court.

E. When it is absolutely necessary and in the best interest of a child and/or community for a youngster to be placed

in the jail, prior authorization must be granted by the Judge: No child taken into custody shall be held in a detention facility or jail longer than forty-eight hours, at which time the child may be released to the custody of his parents, guardian or legal custodian. If the child cannot be released to his parents, guardian or legal custodian, he shall be released to a representative of the Tribal Department of Social Services, or upon prior written or verbal approval of the court, a responsible adult. If the child is not released to his parents, guardian or legal custodian, the Court shall hold a detention hearing. No child under the age of twelve (12) years of age shall be detained in a jail, lock-up or other place used for the confinement of adult offenders or persons charged with a crime. The exception shall be used by the Court only if no other suitable place of confinement is available.

F. Detention-Report to Court: The Officer or other person who takes a child to a detention or shelter facility must notify the Court at the earliest opportunity that the child has been taken into custody and where he was taken. The Officer or other person shall also promptly file with the Court a brief written report stating the occurrences or facts which bring the child into the jurisdiction of the Tribal Juvenile Court and given the reasons by the child was not released.

G. Restriction on Detention: No child shall be placed or kept in a detention or shelter facility pending court proceedings unless, it is unsafe for the child or the public to leave him in custody of his parent(s), guardian, or custodian, or unless the Judge has reason to believe the child will not appear for his hearing

H. Detention-Discretion of Judge: After immediate investigation by a duly authorized Officer of the Court, the Judge or other authorized Officer shall, upon written promise to bring the child to Court at a set time or without restriction, order the release of the child to his parent(s), guardian, or custodian, if it is found that he can be safely left in their care. If it is found that it is not safe to release the child, the Judge or authorized Officer may order that the child be held in the Juvenile Center or be placed in another appropriate facility, subject to further order of the Court.

I. The following Guidelines Shall be Maintained for Detention:

- (1) During the working hours when a child is in need of detention placement the Court will hold an informal detention hearing

to determine the need and appropriateness of such placement before placement occurs. If the Judge finds such placement to be appropriate under the guidelines as stated in Section 13G and 13H, an Order shall be issued for placement.

(2) When a child is placed at the Juvenile Detention Center during the night, on a weekend, or on a holiday, the Juvenile Judge will hold an informal hearing before the end of the next working day to determine the appropriateness of continued placement.

(3) No child shall be held in any Juvenile Detention Center for more than thirty (30) days unless a short term treatment plan has been developed and so ordered by the Court for a period not to exceed ninety (90) days from the date of original entry into the Center. Longer commitments to the Center are at the discretion of the Court, and will have as their focus, rehabilitation and reintegration into the community.

(4) No child under the age of twelve (12) years shall be confined to the Juvenile Detention Center and no juvenile over the age of eighteen (18) years shall be placed at the Center, except in exceptional situations and then only at the discretion of the Judge before placement.

(5) In situations where a juvenile is not being charged with a crime; but is in need of temporary placement, the Judge, in his discretion, may order placement at the Center if the juvenile is at least fourteen (14) years of age and for a period not to exceed thirty (30) days. In so doing, the Court shall also order the appropriate agency to develop plans for alternative living arrangements for the child and submit weekly progress reports to the Court.

J. Primary Consideration-Welfare of Child:

(1) In placing a child under the guardianship or legal custody of an institution, the Court shall give primary consideration to the welfare of the child, and whenever practical, may take into consideration the religious preferences of the child and his parent and shall consider the factors set forth in Section H and I preceding.

(2) No child found to come within jurisdiction of the Court shall be committed to, or placed in, an institution or facility established for the care and rehabilitation of delinquent children, unless such child is found delinquent for the commission of any act that would be a crime or offense if committed by an adult or unless said child has once before, within a period of six (6)

months, been found to be within the jurisdiction of the Court.

K. Establishment of Conditions by the Court: In support of a decree under Section 13A of this Code, the Court may make an order setting forth reasonable conditions to be complied with by the parents, the child, his custodian, or other person who has been made a party to the proceedings, including but not limited to, restrictions on visitations by the parent(s), restrictions on the child's associates, occupation, and other activities and requirements to be observed by the parent(s) or custodian

L. Hospitalization of Child: With respect to a child within the jurisdiction of the Court, under this Section, the Court may order hospitalization in an authorized hospital if the Court finds, upon due notice to the parents or guardian and a special hearing conducted in accordance with any applicable laws and regulations, that the child is:

(1) Mentally ill;

(2) Because of his illness, likely to injure himself or others if allowed to remain at liberty, or is in need of custody, care or treatment in a mental hospital

M. Commitment: The Court may make an order committing a child within its jurisdiction to an authorized agency if the child has been found mentally deficient in accordance with applicable laws and regulations.

N. Termination of Parental Rights: The Court may terminate all parental rights whether it be voluntary or involuntary.

O. Other Disposition of Cases: The Court may make any other reasonable Orders which are the best interests of the child or are required for the protection of the public, except that no child may be committed to prison; nor any child under sixteen (16) years of age, to jail upon adjudication under this Code. The Court may combine several of the above listed modes of disposition where they are compatible.

P. Review of Cases: An Order under this Chapter for the placement of a child with an individual or an agency shall include a date set for review of the case by the Court with a new date to be set upon each review. As a guide, when extended custody is maintained over juveniles, reviews should be submitted to the Court at least every three (3) months.

3-3-22. DISPOSITION OF CASES.

A. When a child is found to come within the provisions of 3-1-4 of this Code, the Court shall so adjudicate and make findings of facts upon which it bases its jurisdiction over the child and shall enter its decree. Upon such adjudication, the Court may make the following dispositions by Court Order:

(1) Place the child on probation or under protective supervision in his own home upon conditions determined by the Court

(2) Place the child in the legal custody of a relative or suitable person with or without probation or protective supervision;

(3) Vest placement rights over the child in the Rosebud Sioux Tribal court, BIA Social Services or a child placement agency as defined therein, for placement in a foster home or other facility, not including the South Dakota Training School or any similar institutions;

(4) Commit the child to an authorized Government boarding school, or training or corrective institutions authorized to receive Indian children, except that a child found to come within the Court's jurisdiction solely on the grounds of neglect or dependency under this Code may not be committed to any school or similar institution with or without the State except for reasons of delinquency and/or status offenses;

(5) The Court may commit the child to an institution or facility for short-term confinement, for the purpose of evaluation, in accordance with accepted standards for the care and treatment of delinquent children;

(6) Place the child in an approved Indian Boarding School, on a ranch, a forestry camp, or other camp or similar facility, for the care and for work, if possible, provided that the person, agency or association operating the facility has been approved by the Tribal Judge or has complied otherwise with all applicable Tribal laws;

(7) If the Court has assurance that the responsibility to make payments will rest on the child, and not his parent(s), guardian, or custodian, in order that the child be required to make restitution for damages and loss caused by this wrongful acts and may impose fines at its discretion;

(8) Arrange for employment or work programs, to enable children to fulfill their obligations under Section, or for other purposes which are deemed desirable by the Court;

(9) In cases of violations of traffic laws or ordinances, the Court may, in addition to any other disposition, restrain the child from

driving for such period of time as the Court deems necessary and may take possession of the child's driver's license;

(10) Order that the child be examined or treated by a physician, surgeon, or psychologist, or that he receives other special care, and for such purposes may place the child in a hospital or other suitable facility;

(11) Appoint a guardian for the child where it appears necessary to do so in the interests of the child, and may appoint a public or private institution or agency in which placement of the child is vested, as such guardian

B. Review of Cases:

(1) The period for review of cases shall be no longer than six (6) months

(2) In any case where a child has been referred to a licensed social services agency for adoptive placement and has not been placed within a one (1) year period of time, the Court may transfer placement rights to another agency

(3) In any case situations where paternal rights have not been terminated and a child continues under the care of a social services agency, that agency will be required to submit, at least every three (3) months, or at times specified by the Court, a report indicating that services have been offered to the child's family and describing the reasons for continued placement.

3-3-23. JUDGMENTS AND ORDERS.

A. Judgment: No Judgment, Order, or Decree of the Tribal Juvenile Court shall operate after the child becomes eighteen (18) years of age unless the Court deems that it is in the best interest of the individual or the Tribe to discontinue its jurisdiction

B. Orders-Termination-Renewals: An Order vesting placement of a child in an individual agency, or institution shall be for an indeterminate period, but shall not remain in force longer than two (2) years from the date it is entered unless, within the two (2) year period, the Court, after notice to the parties and a hearing, shall have reviewed the Order and found its renewal necessary to safeguard the welfare of the child or the public interest, in which case, the Order shall be extended for a two year period. The findings of the Court and the reasons therefore shall be entered into the record with a Review Order or with the Order Denying Renewal

C. Orders-Modification: The Court may modify or set aside any Order or Decree made by it; but no modification or an Order placing a child on probation shall be made

upon an alleged violation of the terms of probation, until there has been a hearing after due notice to all persons concerned. Notice and a hearing shall also be required in any other cases in which the effect of modifying or setting aside an Order, may be to deprive a parent of the legal custody of the child, to place the child in a child care facility or agency, or to transfer the child from one institution or agency to another; except that transfer from one foster home to another may be effected without notice and hearing

D. Orders of Termination-Notice:

Notice of an Order terminating probation or protective supervision shall be given to the parents, guardian, or custodian, and where appropriate to the child

E. Court Adjudication-Not Criminal in Nature: Adjudication by the Tribal Juvenile Court that a child is within its jurisdiction under 3-1-4 of this code shall not be deemed a conviction of a crime.

3-3-24. SUPPORT OF CHILDREN.

A. By Parents: When placement of a child is vested by the Court in an individual agency other than his parents or Government boarding schools, the Court may at the initial hearing or any subsequent proceeding inquire into the ability of the parents or any other person who may be obligated, to support the child and to pay any other expenses of the child, including the expenses of medical, psychiatric, or psychological examination or treatment, provided under Order of the Court. The Court may, after due notice and a hearing on the matter, require the parent(s) or other person to pay the whole, or part of such support and expenses, depending upon their financial resources and other demands of their funds. The amount so required to be paid shall be paid at such intervals as the Court may direct, and unless otherwise ordered, payment is to be made to the Clerk of the Tribal Court for transmission to the person or agency having placement of the child or to whom compensation is due. The Clerk of Court shall have authority to receive periodic payments toward the care and maintenance of the child, such as social security payments made in the name of or for the benefit of the child

B. Procedure for Payment: No Court Order issued under the preceding section against a parent or other person shall be entered unless Summons has been served, a voluntary appearance is made, or a waiver of service is given. The Summons shall specify

that a hearing with respect to the financial support of the child will be held

C. Enforcement of Support Orders:

(1) An order entered under A and B of this Section against a parent or other person may be enforced by contempt proceedings, and shall also have the effect of a civil judgment at law. In addition to other remedies, the Court may issue an Order to any employee, trustee, financial agency, or other person, firm, or corporation, indebted to the parent or parents, or indebted to any other person ordered to make payments under this Code, to withhold and pay over to the Clerk of Court, money due or to become due in excess of the lesser of the following:

(a) The amount ordered to be paid by the Court under A and B of this Section; or

(b) One-fourth (1/4) of the amount due or becoming due the parent or other person at each regular or usual pay-day or day of disbursement

(2) A copy of such Order shall, if possible, be served on the adjudged liable party and the indebted party may request a hearing to determine the propriety of the Order

D. Support from Other Sources: If the Court finds that the parent(s) are unable to pay for full or partial support, examination, treatment, and other expenses of the child, and that no other provision for payment of such support has been made, or if the parent(s) or other person obligated to pay under the Court Order issued under this Chapter, have failed to make such payments, or if Summons could not be served upon the parent(s) or other persons under 3-3-24B, the Court shall request the Tribal Social Services or any other Tribal or public agency or department of the United States, or the State with funds available for such purposes to pay for such support and other expenses, and if such department or agency consents, it shall be so ordered by the Court

E. Payment Directly to Agency-Report to the Court-Visits: Payments for child support may be made to non-governmental agency in whom the Court vests legal custody, provided that the agency shall make periodic reports to the Court concerning the care and treatment the child is receiving and his responses to such treatment. Such reports shall be made at such interval as the Court may direct and shall be made with respect to each child at least every three (3) months. The agency shall also afford an opportunity for a representative of the Court to visit the child as frequently as the Court deems necessary.

3-3-25. APPEALS.

A. Procedures of Appeal: An appeal to the Tribal Supreme Court may be taken from any Order, Decree, or Judgment of the Tribal Juvenile Court. Such appeal shall be taken in the same manner in which appeals are taken from Judgments or Decrees of the Tribal Court. Except as provided elsewhere in this Code, the appeal must be taken within thirty (30) days from the entry of the Order, Decree, or Judgment appealed from

B. Stay Pending Appeal: Unless the Court stays its Order, the pendency of an appeal shall not stay the Order or Decree appealed from in a child’s case. Where the Order or Decree appealed from directs a change of legal custody of a child, the appeal shall be heard and decided at the earliest practical time. The name of the child will not appear on the record of appeal.

3-3-26. MISCELLANEOUS PROVISIONS.

A. Disobedience-Contempt: Any person who willfully violated or refuses to obey any Order of the Court, may be proceeded against for contempt of Court. In the case of a juvenile on probation, disobedience of the rules of probation shall be grounds to terminate the probation

B. Payment of Fines, Penalties, etc.: Except as otherwise provided by law, penalties and forfeitures imposed and collected by the Court shall be disbursed in the same manner in which they are disbursed in Tribal Court

C. Filing Fees-Witness fees, etc., by Whom Payable: The Court shall assess a filing fee for all petitioners or applications in all actions excluding Minor-In-Need-Of-Care, Juvenile Offender, and Criminal Complaint actions. Said filing fee may be waived upon showing to the Juvenile Court of Petitioner’s/Applicant’s indigency

D. Records Kept-Accessibility: The Court shall keep records as may be required by the Judge. Records in children’s cases shall be withheld from public inspection, but the Court records shall be open to inspection by the parents or guardians. With the consent of the Judge, the attorney’s involved in the proceedings and agencies to which placement or supervision of a child has been transferred may also have access to the records

E. Juvenile Court Records: Except as provided in 3-3-26D, the Court records shall be sealed and may be opened only at the discretion of the Judge and only upon a Petition to the Juvenile Court, indicating the reasons for opening the records.

CHAPTER 4 – INDIAN CHILD WELFARE ACT AND CHILD CUSTODY PROCEEDINGS – THE MINOR IN NEED OF CARE/CHILD IN NEED OF SUPERVISION PETITION

- 3-4-1. Purpose and Policy Of Law - **Amendment**
- 3-4-2. Definitions - **Amendment**
- 3-4-3. Administration - **Amendment**
- 3-4-4. Jurisdiction - **Amendment**
- 3-4-5. Intervention In Child Custody Proceedings In State Court - **Amendment**
- 3-4-6. Motion For Transfer Of Jurisdiction Under 25 U.S.C. § 1911 (b) By Party Other Than The Rosebud Sioux Tribe - **Amendment**
- 3-4-7. Procedures For Transfer Under 25 U.S.C. § 1911 (b) - **Amendment**
- 3-4-8. Procedures and Standards In Minor in Need Of Care Cases - **Amendment**
- 3-4-9. Preservation Of A Child’s Tribal Rights - **Amendment**
- 3-4-10. Voluntary Termination - **Amendment**
- 3-4-11. The Minor in Need Of Care / Child In Need Of Supervision Petition - **Amendment**
- 3-4-12. Emergency Custody Of Child - **Amendment**
- 3-4-13. Initial Hearing - **Amendment**
- 3-4-14. Adjudication Hearing - **Amendment**
- 3-4-15. Disposition Hearing - **Amendment**
- 3-4-16. Review Hearing - **Amendment**
- 3-4-17. Placement and Custody Of Children - **Amendment**

3-4-1. PURPOSE AND POLICY OF LAW.

The purpose of this Chapter is to codify and implement Rosebud Sioux Tribal authority and responsibility under the Indian Child Welfare Act, 25 U.S.C, 1901 *et. seq.* (1978) (ICWA) and establish procedural safeguards and standards to protect the best interests of Tribal children, to promote the stability, integrity and security of Rosebud Sioux Tribal families and to protect essential Rosebud Sioux Tribal interests. The provisions of this Chapter shall be interpreted to comply with other Chapters of the Rosebud Sioux Tribe Juvenile Code.

3-4-2. DEFINITIONS.

A. The term used in this Chapter shall have the same meaning as the terms defined in Section 1903 of the Indian Child Welfare Act (ICWA) and the definitions set forth in the Rosebud Sioux Tribe Juvenile Code, Chapter 1, General Provisions at 3-1-2:

(1) "Children's Court Judge" shall mean any Judge of the Rosebud Sioux Tribal Court who is authorized to act as a Judge of the Children's Court

(2) "Tribal child" shall mean a child who is a member of, or eligible for enrollment in, the Rosebud Sioux Tribe.

3-4-3. ADMINISTRATION.

A. Management: The implementation and administration of the policies and laws of this Chapter and of the ICWA is delegated to the office of the Rosebud Sioux Tribal ICWA Specialist, with supervision from the Children's Court Judge

B. Service of Notice: Indian Child Welfare Act Notices shall be received by the Office of the ICWA Specialist. The Tribe shall designate the ICWA Specialist as the official recipient of ICWA notices and send this designation to the Bureau of Indian Affairs for publication in the Code of Federal Regulations. The ICWA Specialist shall be responsible for responding to all ICWA Notices

C. ICWA Specialist: Duties and Responsibilities: The ICWA Specialist shall work with the Children's Court Judge, Tribal Attorneys, and the Tribal child welfare system to facilitate and exercise Rosebud Sioux Tribe authority and responsibility under the Federal Indian Child Welfare Act. The following are the minimum duties and responsibilities required of the ICWA Specialist:

(1) Monitor child custody proceedings to ensure ICWA compliance: Monitor and act to ensure state compliance with the minimum federal requirements of the Federal ICWA, and act to enforce ICWA provisions pursuant to 25 U.S.C. § 1914 I warranted

(2) Give legal directions to the Tribe's attorneys: Consult with and give directions to the attorney representing the Tribe in ICWA cases, on such matters as whether to file a motion to transfer, or to invalidate a proceeding, or to seek an appeal of a state court order

(3) Intermediary: Act as intermediary between State, Federal and Tribal courts on behalf of tribal children and families; collaborate and cooperate with the Sate, Bureau of Indian Affairs, other child placement agencies, county attorneys and all

other parties to Indian child custody proceedings

(4) Maintain a resource database: Maintain a database of tribally qualified expert witnesses, guardians-ad-litem, foster homes qualified as either or both, tribally-licensed and/or state licensed, other tribally approved foster homes, and other resources necessary to participate in federal and state programs

(5) Maintain a computerized client information system: The Specialist shall be responsible for maintaining a computerized client data system, including data entry of current information concerning the legal status, service outcome, and location of Rosebud Sioux Tribal children who are now or were implicated in State child custody proceedings

(6) Maintain electronic files: Maintain detailed documentation in electronic files for placement plans and identity culturally appropriate permanency outcomes for Tribal children in conformance with the Rosebud Sioux Tribe Juvenile Code, this Chapter, and other laws, rules and regulations affecting Rosebud Sioux Tribal children

(7) Access to Tribal records: The ICWA Specialist shall have access to a current database of children who are wards of the Rosebud Sioux Tribal Court, whether domiciled on the reservation or living off the reservation, access to the enrollment office for verifying the enrollment status of a child for which notice to the Tribe was received, and access to records which would verify the domicile status of the child

(8) Prepare and maintain legal forms: The ICWA Specialist shall prepare and maintain all computerized legal forms necessary to facilitate Rosebud Sioux Tribal authority and responsibility pursuant to the Indian Child Welfare Act. In any child custody proceeding, the ICWA Specialist shall prepare the Motion to Intervene, Request to Produce and Examine, Motion for Extension of Time, Motion to Transfer Jurisdiction and Dismiss the Case, and Petition or Order of Acceptance of Jurisdiction

(9) Investigation and Recommendations: Conduct investigations and provide recommendations prior to making motions for transfer of jurisdiction to Tribal Court

(10) Present case for Review by the Children's Court Judge: Present recommendations concerning questions of transfer to the Children's Court Judge, and will perform the duties set forth in Section 3-4-5 (b) of this Chapter

(11) Reporting: Provide non-confidential reports, as requested, to the Children's Court Judge, Rosebud Sioux Tribal Council and other tribal communities designated by the Council, concerning Tribal children and families involved in State child custody proceedings

(12) Conflict of Interest: If there is a conflict of interest in carrying out the ICWA Specialist's duties set forth in this Chapter regarding a specific case, the ICWA Specialist shall report said conflict to the Children's Court Judge and the Judge shall appoint another qualified person from the Tribe's child welfare system to manage the case.

D. Confidentiality of Files and

Records: The files and records of children and families shall be kept confidential pursuant to 42 CFR Part 2 (June 9, 1987). Unless authorized by law or court order, no information may be released from the files or records to anyone unless written authorization for the release of information is obtained from the party that may be affected by this action or his or her representative. The Specialist may release information to an authorized representative of the Tribe, or to a state or tribal provider serving the child and family, or the legal representatives of any of the parties, if such release is not in violation of tribal or federal law. If the Tribe's ICWA program received federal fund's through a Self-Determination (Public Law 93-63 8) Contract, the provisions of the federal Privacy Act shall apply.

E. Judicial and Legal Duties

Responsibilities. The Rosebud Sioux Tribe Children's Court Judge:

(1) Shall provide guidance to the Rosebud Sioux Tribe's Indian Child Welfare Act Specialist and the Tribe's ICWA Program in order to effectuate the provisions of the Act and to protect the interests of the Rosebud Sioux Tribe.

(2) Shall be responsible for the implementation and monitoring of rules related to this Chapter, and the Rosebud Sioux Tribe ICWA Policy and Procedure Manual.

(3) Upon receipt of a petition for acceptance of jurisdiction from an individual who may or may not be a party to the case shall refer the petition for a pre-petition investigation to the ICWA Program.

(4) The Children's Court Judge shall review the recommendations of the ICWA Specialist as to whether or not the Tribe should move to transfer jurisdiction of a case to the Tribal Court. The Judge's review of the ICWA Specialist's recommendation will

be done in an informal hearing, at which time the Judge can hear written or verbal statements from extended family members and interested parties on the question of transfer. After hearing the recommendation of the ICWA Specialist and any other interested party, the Children's Court Judge will have final decision-making authority as to whether the Tribe will move to transfer jurisdiction of a case to the Tribal Court, and will direct the ICWA Specialist to proceed according to that decision. The decision by the Children's Court Judge will not be subject to modification or appeal by any tribal officer or Tribal Council or Court. The attorney representing the Rosebud Sioux Tribe in an ICWA case.

(5) Shall represent the Tribe in state court proceedings, and shall take appropriate legal actions to exercise and enforce the rights of the Rosebud Sioux Tribe in child custody proceedings.

(6) Shall counsel, communicate with, and take legal directions from the ICWA Specialist.

(7) Shall appear on behalf of and represent the Tribe in Tribal, state and federal court proceedings concerning ICWA.

(8) Shall take necessary actions to appeal an order of a state or federal court, if directed to do so by the ICWA Specialist.

3-4-4. JURISDICTION.

A. Exclusive and Concurrent

Jurisdiction: the Rosebud Sioux Tribal Court shall have exclusive jurisdiction over any child custody proceeding in State court involving an Indian child who resides and is domiciled on the reservation, if the child is a ward of tribal court, the Court shall retain exclusively jurisdiction, notwithstanding the residence or domicile of the child. (U.S.C. § 1911 (a)). The Tribal Court shall have concurrent jurisdiction with the state court of any child custody proceeding involving an Indian child who does not reside or who is not domiciled on the reservation.

B. Rosebud Sioux Tribe Jurisdiction

after Transfer: the Rosebud Sioux Tribe shall have jurisdiction over any child custody proceeding involving an Indian child upon acceptance by the Tribal Court to transfer of such proceeding from a state court.

C. Full-Faith and Credit: the Rosebud Sioux Tribal Court shall give full faith and credit to the public acts, records and judicial proceedings and lawful orders of other federally recognized tribes when such acts, proceedings, records or orders are applicable to the Indian Child Welfare Act.

Technical variations in practice that do not affect the fundamental fairness of the proceedings nor violate the federal ICWA shall not be reason to fail to give full faith and credit. (25 U.S.C. § 1911 (c.)). Unless there is good cause not to do so, as established by findings of facts in the record, the Tribal Court shall give full faith and credit to any state court records, findings and orders previously taken in the case.

3-4-5. INTERVENTION IN CHILD CUSTODY PROCEEDINGS IN STATE COURT.

A. Procedure: the procedure for intervening in State Indian Child Welfare proceedings shall be as follows:

(1) The Rosebud Sioux Tribe's ICWA Specialist may take necessary action to have the Tribe intervene as a party in a state court child custody proceeding, if in the informed opinion of the specialist, intervention is appropriate under the fact's and the law. A decision to intervene does not need to be approved by the Children's Court Judge.

(2) It shall be the policy of the Rosebud Sioux Tribe to intervene as a party in all state court child custody proceedings involving an Indian child who is an enrolled member or who is eligible for membership in the Tribe, except in extraordinary circumstances.

3-4-6. MOTION FOR TRANSFER OF JURISDICTION UNDER 25 U.S.C. § 1911 (b), BY PARTY OTHER THAN THE ROSEBUD SIOUX TRIBE.

A. Filing of Motion; Acceptance: if the parent(s), guardian, or custodian of a Rosebud Sioux Tribe child, through their legal counsel, petitions a state court in a child custody proceeding to transfer jurisdiction of the proceeding to the Tribal Court, such transfer shall not be effective until accepted by the Tribal Court.

B. Petition Referred to the ICWA Specialist; Tribe has Automatic Standing: upon receipt of a motion for acceptance of jurisdiction from an individual, the Tribal Court shall refer the petition for investigation to the ICWA Specialist. The ICWA Specialist shall have thirty (30) days from the date of referral by the Tribal Court in which to conduct the investigation and to make written recommendations of the matter to the Children's Court Judge.

3-4-7. PROCEDURE FOR TRANSFER UNDER 25 U.S.C. 1911 (b).

A. Authority to Request Transfer: the Rosebud Sioux Tribe's Children's Court Judge shall have sole authority to determine whether or not the Tribe will request transfer of jurisdiction to the Tribal Court in a particular case. The ICWA Specialist or the Specialist's designee shall act as an agent for the Tribe. If the Children's Court Judge decides not to seek transfer, the Judge may reconsider his or her decision at any time if new information is obtained, or changed circumstances merit a motion to transfer

B. Pre-Petition Investigation by ICWA Specialist and Recommendation: within ninety (90) days of receipt of Notice that a Rosebud Sioux Tribal child is the subject of a child custody proceeding in state court, the ICWA Specialist shall conduct an investigation of the case, and shall make a written recommendation to the Children's Court Judge concerning whether the Tribe should move transfer jurisdiction to the Tribal Court. The recommendation shall consider, among other factors, the following:

- (1) The age of the child;
- (2) Any special needs of the child;
- (3) The location and circumstances of the family;
- (4) Whether the state had made active efforts to reunite the family;
- (5) The availability of Tribal services that can address the child's and the family's needs;
- (6) The availability of a suitable Tribal home for placement of the child;
- (7) Whether financial assistance for the care of the child will be available if transfer of jurisdiction occurs; and
- (8) The child's ties with the Reservation and/or extended family;
- (9) Whether the child is eligible for enrollment or is enrolled in the Rosebud Sioux Tribe;
- (10) Whether the child has recently moved from the Reservation;
- (11) Whether the child has been abandoned;
- (12) Whether the parents requested that the child be returned and raised on the Reservation;
- (13) Whether the child desires to return to the reservation;
- (14) Whether the child's on-reservation family is stable and strong;
- (15) The reservation has resources available to meet the needs of the child

D. Informal Meeting on Indian Child Welfare Specialist's Recommendation: The Court shall schedule an informal meeting on the Indian Child Welfare Specialist's recommendations at the earliest available

time following submission of the Indian Child Welfare Specialist's recommendations. Prior notice and an opportunity to be heard shall be provided to all named parties in the State Court case. If the Indian Child Welfare Specialist is recommending the Tribal Court accept jurisdiction over the case he/she shall file a Petition to Accept Jurisdiction along with his/her written recommendation.

E. Reasons for Declining Transfer:

the Tribal Court may decline to accept transfer of jurisdiction over a state child custody proceeding if the Tribal Court finds that good cause exists to decline to accept jurisdiction. The declination must be based on evidence that the transfer would not be in the best interest of the Rosebud Sioux Tribe, or the child pursuant to the Rosebud Sioux Tribe Juvenile Code, Chapter 1, 3-1-4, H (3)(b). Among the factors that would constitute good cause not to transfer are the following factors:

- (1) Child is of mixed marriage where primary family ties and/or identity are with the non-member;
- (2) Child is old enough to reason and does not want to return to the reservation;
- (3) Child has no ties with the reservation;
- (4) Child has problems for which there is no an adequate on-reservation program or resources;
- (5) When either parent contests the transfer;
- (6) Child is not eligible for enrollment or not enrolled.

F. Procedure upon Acceptance of Transfer: if the Children's Court Judge approves a transfer of a child custody proceeding, the Tribal Court shall issue an order indicating that it will accept jurisdiction of the state proceedings. The ICWA Specialist shall prepare a motion to transfer the case, under 25 U.S.C. § 1911 (b), for signature of the Children's Court Judge and shall file a motion to transfer with the state court. The motion shall state that the Tribal Court has issued an order indicating that it will accept the transfer of jurisdiction.

G. If the state court then grants the Tribe's motion to transfer: the Tribal Court shall immediately file an order accepting transfer of jurisdiction and direct the state court to transfer its files to the Tribal Court. The Court shall schedule a hearing in the case. At such hearing, the court will make rulings concerning temporary placement and custody of the child, case progression, and matters relevant to the protection and well-being of the child.

H. The applicable portions of the Rosebud Sioux Tribe Juvenile Code shall govern any child custody proceedings that are transferred to the Tribal Court:

After transfer, the cases shall proceed as a Minor in Need of Care case, in accordance with all the procedures and standards that govern such cases that are set forth in the Juvenile Code.

3-4-8. PROCEDURES AND STANDARDS IN MINOR IN NEED OF CARE CASE PLACEMENT PREFERENCES, ACTIVE EFFORTS; STANDARD OF PROOF;

EXPERT TESTIMONY. In all Minor in Need cases that originate in the Tribal Court and all such cases that are transferred to the Tribal Court under ICWA, the following procedural safeguards and standards shall be followed, and the court shall make appropriate findings of fact, conclusion of law and orders in accordance with the provisions of this section.

A. PLACEMENT OF TRIBAL CHILDREN.

(1) Adoptive placement; preferences: In any adoptive placement of an Indian child under Tribal law, a preference shall be given, in the absence of good cause to the contrary, to a placement with;

- (a) A member of the child's extended family;
- (b) Other members of the Indian child's tribe; or;
- (c) Other Indian families

(2) Any child accepted for foster care or pre-adoptive placement shall be placed in the least restrictive setting which most approximate a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or pre-adoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with;

- (I) a member of the Indian child's extended family;
- (II) a foster home licensed, approved, or specified by the Indian child's Tribe;
- (III) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(IV) an institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(3) Where appropriate, the preference of the Indian child or parent shall be considered and the Court or agency shall give weight to such desire in applying the preferences

(4) A record of each such placement of a Tribal child be maintained by the agency having responsibility of placing the child, evidencing the efforts to comply with the order of preference.

B. REMEDIAL SERVICES AND REHABILITATIVE PROGRAMS;

PREVENTIVE MEASURES. Any party seeking to effect a foster care placement of, or termination of parental rights to, a tribal child in the Tribal Court shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

C. FOSTER CARE PLACEMENT ORDER; EVIDENCE; DETERMINATION OF DAMAGE TO CHILD. No foster care placement may be ordered in a Minor in Need of Care proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

D. PARENTAL RIGHTS TERMINATION ORDERS; EVIDENCE; DETERMINATION OF DAMAGE TO CHILD. No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses that the continued custody of the child by the parent or Indian guardian is likely to result in serious emotional or physical damage to the child.

3-4-9. PRESERVATION OF TRIBAL RIGHTS OF A ROSEBUD SIOUX CHILD.

The termination of parental as to a Rosebud Sioux Tribe child shall not adversely affect the child's rights and privileges as an Indian, nor as a member of the Rosebud Sioux Tribe, nor shall it affect the child's enrollment status with the Tribe or his or her eligibility for enrollment.

3-4-10. VOLUNTARY TERMINATION. Parental Rights; voluntary termination:

(a) Consent; record; certification matters; invalid consents: where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights in the Tribal Court, such consent shall not be valid unless executed in writing and recorded before a judge of the Rosebud Sioux Tribal Court and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior, to or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent: Any parent or Indian may withdraw consent to a foster care placement under Tribal law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody: In any voluntary proceeding for termination of parental rights to, adoptive placement of, an Indian child, the consent of the parents may be withdrawn for any reason at any time prior to the entry of a formal decree of termination or adoption, as the case may be, and the child shall be returned to the parent

(d) Collateral attack; vacation of decree and return of custody; limitations: After the entry of a final decree of adoption of an Indian child in the Tribal Court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection.

3-4-11. THE MINOR IN NEED OF CARE / CHILD IN NEED OF SUPERVISION PETITION

A. Authorization to File Petition.

(1) Child and family protection proceedings in the Children's Court will be commenced by the filing of a Petition. The Tribe's Juvenile Presenting Officer will file the Petition on behalf of the Tribe and in the best interests of the child.

(2) For purposes of this chapter, child and family protection proceeding shall include any proceedings in the Children's Court in which a child is alleged to be a Minor in Need of Care or Child in Need of Supervision.

B. Contents of Petition. The child and family protection Petition shall set forth the following with specificity;

(1) The name, birth date, sex, residence and tribal affiliation of the child;

(2) The basis for the court's jurisdiction;

(3) The specific allegations of abuse, neglect or abandonment and the specific Code statutes relied upon;

(4) A plain and concise statement of the facts upon which the Petition is based, including the date, time and location at which the alleged facts occurred;

(5) The names and residence of the child's parents, guardians or custodians, if known;

(6) If the child is placed outside the home, the Petition shall state where the child is placed, the facts necessitating the placement and the date and time of the placement. A copy of the police officer's report, setting forth the facts and circumstances of the removal, shall be attached to the Petition.

C. Prior Notice and Initial Hearing on the Petition Required in Non-Emergency Cases.

If the Tribe has probable cause to believe that a child is a minor in need of care or a child in need of supervision, but circumstances do not pose an immediate threat to the safety of the child or others, then an emergency removal will not be justified. In such non-emergency circumstances, the Tribe will apply for an order to remove legal and/or physical custody of a child from its parent or guardian by filing a Petition in the Children's Court and by giving prior notice to the parent or guardian of the date, time, and place of the initial hearing on the Petition.

3-4-12. EMERGENCY CUSTODY OF CHILD.

(1) **Emergency Removal of a Child.** If there are reasonable grounds to believe that a child in danger, any officer of the Court or a police officer may make an emergency removal of a child from the parent or guardian, and take temporary emergency custody of the child, if such removal is reasonably necessary for the welfare of that child. Such removals shall be done on an emergency basis only. No officer of the Tribe

may deprive a parent or guardian of the custody of a child under this section unless emergency circumstances pose an immediate threat to the safety of the child and others.

(2) Temporary Emergency

Placement of Child. After taking emergency custody of a child, the officer shall place the child with a responsible relative or with a tribally licensed social services agency or shelter.

(3) Written Report by the Officer.

A. The officer of the Court or the police officer who makes an emergency removal of a child shall submit a written report on the incident to the Tribe's Prosecutor's Office within 24 hours of the child's removal from the custody of the parent or guardian. The Tribal Prosecutor of Juvenile Presenting Officer will attach the officer's report to the Petition and file the Petition and report with the court.

B. If no report by the officer is filed with the Prosecutor's Office within 24 hours after taking emergency custody of the child, the temporary emergency custody of the child shall automatically lapse and custody of the child will be returned to the parent or guardian.

(4) Notice to the Parent or Guardian.

The person removing the child will make all reasonable efforts to give notice to the parent or guardian of the removal, along with notice of the first hearing in court.

(5) Notice to the Children's Court.

After a child is taken into temporary emergency custody, the person who removed the child shall attempt to contact the Children's Court, so that a hearing may be scheduled. Notice to the Court shall be made, no later than 5:00 o'clock p.m. the next court working day.

(6) Necessity for scheduling a timely initial hearing. After receiving notice of an emergency removal of a child, the clerk of court shall schedule an initial hearing. The initial hearing must be commenced within 72 hours after the child is removed, except as provided below in subsection (7) of this section.

(7) Time Limitations in Emergency Custody Cases.

A. No later than 72 hours after an officer takes a child into emergency custody, the Tribe shall file a child and family protection petition with the Children's Court and an initial hearing on the Petition will be held in the Children's Court. If the 72 hour time period elapses during a weekend or a court holiday, the Tribe will have until the end

of the next working court day to file the Petition and hold the initial hearing.

B. Except as provided above in Section 7 (a), if an initial hearing on the Petition is not held within seventy-two (72) hours after an officer takes a child into emergency custody, the temporary emergency custody will automatically lapse, and legal and physical custody of the child must be returned to the parent or guardian, unless the court makes an express finding of extraordinary circumstances. The basis of a finding of extraordinary circumstances must be set forth on record.

3-4-13. INITIAL HEARING.

A. Hearing Date.

(1) If a child has been removed from the custody of a parent or guardian, an initial hearing shall be held within seventy-two (72) hours after the emergency removal, except as provided above in Section II (7).

B. Notice of Initial Hearing. The court and the Tribe shall make all reasonable efforts to advise the parents, guardians or custodian of the time and place of the initial hearing. The court shall order that the parent, guardian or custodian be present for the hearing. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment or other location where the person is known to frequent with regularity. If the court is unable to contact the parent, guardian or custodian, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

C. Purpose of Initial Hearing.

(1) At the initial hearing, the Tribe will serve the Petition on the parent or guardian, who will be referred to as respondent in the Petition. The Respondent will have an opportunity to answer the Petition by entering an admission or denial to the facts and allegations in the Petition. If the Respondent enters a denial to the Petition, the court will schedule an adjudication hearing. If the Respondent enters an admission to the Petition, the court will proceed to disposition or schedule a dispositional hearing.

(2) If a child has been removed from the custody of the parent or guardian, the Court will determine if good cause existed at the time of the removal to warrant taking the child into emergency custody; and the Court will further determine whether continued removal from the home is necessary to insure safety, health, and well-being of the child.

D. Notice of Rights. During the initial hearing, the court shall advise the parties of the reason for the hearing and of their basic rights as provided for in this code. The court will inform the parties that all parties have a right to be represented by an advocate or attorney at their own expense in all proceedings under this code, to introduce evidence, to be heard on his or her own behalf, to examine witnesses, and to be informed of possible consequences if the allegations of the petition are found to be true. All parties shall be entitled to advance copies of court documents, including petitions and reports, unless deemed inappropriate by the court.

E. Nature of Hearing. The initial hearing shall be informal in nature. Concerned parties may present evidence relating to the situation. The general public shall be excluded from the proceedings. Only the parties their counsel, witnesses, the child's extended family and other appropriate persons, as determined by the court, shall be admitted.

F. Possible Outcomes of the Initial Hearing.

(1) The child and family protection petition may be dismissed and the child returned to the home

(2) The child may be returned to the home of the parents, guardian or custodian under the supervision of the court, pending the adjudicatory hearing, which shall be ordered to be held within thirty (30) days

(3) The child may be continued in the child's out-of-home placement. The court can give temporary legal and/or physical custody of the child to a responsible relative, or, if none is available, to a child protection agency.

G. Waiver of rights. A party may waive any rights provided in this chapter of the Juvenile Code, if such waiver is made knowingly and voluntarily. Willful failure to appear at the initial hearing, after receiving notice, will be deemed to be a waiver of the Respondent's right to be present and to participate in the hearing; and the hearing will proceed in the absence of the parent or guardian.

3-4-14. ADJUDICATION HEARING.

A. Purpose. The court will schedule an adjudication hearing to held within (30) days following the initial hearing. At the adjudication hearing, the Tribe will have the burden of proving by a preponderance of the evidence the allegations set forth in the petition. If the court finds that the Tribe has

not proven the allegations in the petition will be dismissed and full legal and physical custody of the child will be returned to the parent. If the court finds that the Tribe has proven the allegations in the Petition and rules that the child is a minor in need of care or a child in need of supervision, the court will schedule a disposition hearing. Pending the disposition hearing, the Court will enter appropriate orders concerning temporary custody of the child.

B. Hearing Procedure. The adjudicatory hearing shall be an evidentiary hearing, governed by the Federal Rules of Evidence, except as otherwise set forth in this chapter.

C. Time Limitations.

(1) If the Tribe is not ready to proceed with a scheduled adjudication hearing within thirty (30) days of the filing of the petition, and the court grants a motion by the Tribe for a continuance of the hearing, custody of the child will be returned to the parent, unless the court finds good cause prevented the Tribe from proceeding with the hearing. The Court may re-schedule the hearing for a date not more than thirty (30) days from the original date of the adjudication hearing. Absent an express finding by the court of extraordinary circumstances, if the Tribe is not ready to proceed with a hearing on the next adjourned date, then the Court must order that full legal and physical custody of the children be returned to the parent or guardian and the petition be dismissed.

(2) For purposes of calculating time, the next calendar day following the date of the initial hearing will be counted as the first day.

D. Waiver by parent or guardian. A respondent's willful failure to appear at the adjudication, after receiving actual notice, will be deemed to be a waiver of the Respondent's right to be present and to participate in the hearing, and, on the Court's discretion, the hearing may proceed in the absence of the Respondent.

E. Admissibility. The records of the initial hearing shall not be admissible at the adjudication hearing. This shall not be construed to prevent the admissibility of any evidence that was presented at the hearing which would normally be admissible under the court's rules of evidence.

F. Closed Hearing. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family, and other persons determined to be appropriate by the court shall be admitted.

G. Advice of Rights. During the hearing, the court shall advise the party(s) of the reason for the hearing and of their basic rights as provided for in this chapter of the Juvenile Code.

H. Child Witnesses. If the court determines that it is in the best interests of the child and does not violate the right of a party, the court may allow the child to testify by means of a videotape deposition, closed circuit television or other appropriate method.

I. Burden of Proof. The burden of proof lies with the petitioner. In order to prevail, the petitioner must prove that the allegations raised in the child/family protection petition are more likely true than not-that ism by the preponderance of the evidence, and that the best interests of the child will be served by continued court intervention.

J. Outcome of Hearing. The court will either find the allegations of the child and family protection petition to be proven or dismiss the petition, unless the hearing shall be continued to a date certain to allow for the presentation of further evidence. If the court finds that the allegations in the petition have been proven, the court may then proceed to a disposition hearing or schedule a disposition hearing within (30) days.

3-4-15. DISPOSITION HEARING.

A. Purpose of Disposition Hearing. In the disposition hearing, the court will enter an order concerning the case and custody of the child, including the actions to be taken by the parties to accomplish the goal of re-unification of the family, and any other issues relevant to the best interests of the child. The primary goal of the dispositional proceedings shall be to bring about the re-unification of the child with his or her family, unless the court makes an express finding that re-unification would not be in the best interests of the child.

B. Requirements of a Social Service Report. To aid the court in its decision, a social services report consisting of a written evaluation of matters relevant to the disposition of the case shall be made by a person or agencies filing the petition, or by the social service agency having custody of the child. The social service report shall be filed with the court and served upon the parties three (3) days prior to a disposition hearing. Service may be made by certified mail, personal service, or service upon the attorney of record.

C. Contents of a Social Service Report. The social service report shall include the following points:

- (1) A summary of the problem(s)
- (2) What steps, have the parent, guardian, custodian, or social services personnel already taken to correct the problem(s)
- (3) What service could be of benefit to the parent, guardian or custodian, but are not available in the community
- (4) A report on how the child is doing in his/her current placement(s) since the last hearing. If there have been any moves, the report will contain the reason for such moves
- (5) Dates of contacts with parent, guardian, or custodian and the child since the first hearing was held, method of contact, duration and subjects discussed
- (6) If there have been no contacts with the parent, guardian or custodian or social worker, what efforts have been made to contact such parties
- (7) An assessment of when the child is expected to return home
- (8) A list of who the extended family members are and list of contacts, or attempts to contact such family members regarding placement of child
- (9) The social services personnel shall develop a written case plan and shall make recommendations for the next six (6) months. Such recommendation will include:
 - a) A treatment plan for the parents
 - b) Future placement of the child
 - c) What services should be provided for the child, if services are needed
- (10) If the social services agency that has legal custody of the child recommends placement of the child in a setting away from the Rosebud Sioux Indian Reservation, the report will set forth in detail the reasons for such placement, the efforts made to place the child on the reservation, and a statement as to why off-reservation placement would be in the best interests of the child.

C. Return to Home. The court may find the allegations of the child and family protection petition to be true, but that out of home placement is not needed to protect the child. The court may, however, due to unresolved problems in the home, continue intervention and supervision as appropriate.

D. Court Order for Continuing Removal. The court shall specify in its order the necessary intervention and appropriate steps, if any, the parent, guardian or custodian must follow to correct the underlying problem.

E. Return of Child to Parent, Guardian or Custodian. The court may find the allegations of the child/family protection petition to be true and out-of-home placement necessary, but with the accomplishment of specified actions by the parent, guardian or custodian, the child may be returned absent good cause to the contrary. The order of the court shall specify actions, and the time frames for such actions, that parent, guardian, or custodian must accomplish before the child is returned. The order will also specify the responsibilities of any support agency or personnel to be involved.

F. Out-of-Home Placement and Duty to Make Reasonable Efforts to Re-unify Families. The court may find out-of-home placement to be necessary and that the child should not be returned to the home. The court shall specify what steps the parent shall take to demonstrate their abilities to care for their child, and shall specify to the parties what factors the court will consider at a subsequent hearing to determine whether or not the child should be returned. Whenever a child has been removed from the custody of a parent or guardian, re-unification of the family shall be the goal of the child/family protection proceeding throughout every stage of the proceedings. If the court grants temporary legal and/or physical custody of the child to a child protective agency, that agency will work to re-unify the family, unless the court makes an express finding, after an evidentiary hearing, that further efforts at re-unification would not be in the interests of the child. At the dispositional hearing and at each review hearing, the child protective agency that has legal custody of the child shall make a written report to the court that shall set forth the specific actions taken by that agency to accomplish the goal of re-unification.

G. Written Order. The Court shall specify in writing its findings of facts and conclusions of law.

3-4-16. REVIEW HEARING.

A. Review Requirement.

(1) The status of all children subject to a child/family protection order shall be reviewed by the court at least every six (6) months at a hearing to determine whether court supervision shall continue. The first review shall be held within ninety (90) days after the disposition hearing

(2) A supplementary social service report will be filed at each review, and served upon the parties or their attorneys at

least three (3) days before the review hearing.

B. Return Home. A child shall be returned home after the review hearing unless the court finds that a reason for removal as set forth in the disposition order still exists. The court may, however, due to unresolved problems in the home, continue court intervention and supervision as appropriate.

C. Written Order. If continued court intervention is determined to be necessary, the court shall set forth the following in a written order:

- (1) What services have been provided or offered to the parent, guardian or custodian, to help correct the underlying problem(s)
- (2) The extent to which the parent, guardian or custodian has visited or contacted the child, any reason why such visitation and/or contact has been infrequent or not otherwise occurred
- (3) Whether the parent, guardian or custodian is cooperative with the court
- (4) Whether additional services should be offered to the parent, guardian or custodian
- (5) Whether the parent, guardian or custodian should be required to participate in any additional programs to help correct the underlying problem(s)
- (6) What needs to be done before custody of the child can be returned to the parent or guardian.

D. Additional Steps. The court at the review hearing may order that a petition to terminate the parent/child relationship be filed, or that a guardianship petition be filed.

3-4-17. PLACEMENT AND CUSTODY OF CHILDREN.

A. Least Restrictive Setting. If the court determines that a child should not be returned home, the child shall be placed in the least restrictive setting which best serves the interests of the child and where the child's special needs, if any, may be met. The child shall also be placed within reasonable proximity to his home, taking into account any special needs of the child. Placement in a home shall be preferable to a placement in a child care facility or other institutional placement. A child will be placed in a child care facility or other institutional placement only if a placement in a home is unavailable or inappropriate to the needs of the child, in light of the child's best interests.

B. Order of Preference. Whenever appropriate, a child shall be placed in a home with the following characteristics, which shall be given preference in the following order:

- (1) Members of the extended family
- (2) An Indian family of the same tribe as the child
- (3) People who have a relationship with the child, but who are not related to the child
- (4) An Indian Family
- (5) Any other family which can provide a suitable home for such a child.

C. Restrictions on Placement of Minors in Need of Care. A child alleged to be neglected or abused shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders, but may be placed or detained in the following community-based shelter care facilities:

- (1) Licensed Foster Home. A licensed foster home otherwise authorized under the law to provide foster care, group care, protective residence, or;
- (2) Other Licensed Facility. A facility operated by a licensed child welfare services agency, or:
- (3) Relatives. With a relative of the child who is willing to guarantee to the court that the child will not be returned to the alleged abusive or neglectful parent, guardian or custodian without prior approval of the court.

D. Changes of Placement.

(1) Notice of Change of Placement. If, at any time after the court has granted temporary custody of a child to a person or an agency and the custodian seeks to change the placement of the child, the custodian will give prior notice of its intention to the Respondent, to the Tribe, and to the Court, if circumstances permit prior notice without posing a danger to the child or others. If emergency circumstances do not permit prior notice and the custodian places the child in another setting without providing prior notice, the party or agency having temporary custody of the child will give notice to the Respondent, to the Tribe and the Court within seventy-two (72) hours after the child has been moved to another placement.

(2) Right to a Hearing. If a Respondent objects to the change of placement, that party may inform the court of its objection in writing. The Court shall then order a hearing regarding such change of placement.

(3) Out of State Placement. Except in a case of emergency circumstances, a child

shall not be placed outside the State of South Dakota without the prior approval of the Court, after giving notice and an opportunity for a hearing to the parent or guardian and to the Tribe. If emergency circumstances require removal to an out of State placement, notice shall be given to the parent or guardian and to the Tribe within three court days after the placement. The court shall then hold a hearing as soon as practicable to determine if the out of state placement is in the best interests of the child.

TITLE FOUR

CIVIL PROCEDURES

CHAPTER 1 – RULES OF CIVIL PROCEDURE

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RULE 1. SCOPE OF RULES. This chapter governs the procedure in the Tribal Courts of the Rosebud Sioux Tribe in all actions of a civil nature, except where different rules are specifically prescribed in this Code. These rules shall be liberally construed to secure a just, speedy and inexpensive determination of every civil action.

RULE 2. ONE FORM OF ACTION. The distinctions between actions at law and suits of equity and the common law forms of all such actions and suits are hereby abolished in the Tribal Courts. All actions to which these rules apply will be known as civil actions.

RULE 3. COMMENCEMENT OF ACTION.

(a) A civil action is commenced by filing a written Complaint and Summons with the Clerk of the Tribal Court and by delivery of copies of the Summons and Complaint by the Plaintiff or his attorney to the appropriate officials for purpose of service on the Defendants.

(b) The Summons shall be legibly signed by the Plaintiff or his attorney and directed to the Defendant and shall require the Defendants to answer the Complaint and serve a copy of his Answer on the person signing the Summons at a place within the State specified in the Summons at which there is no post office within 30 days after service of the Summons and Complaint exclusive of the day of service. The

Summons shall further notify the Defendant that in case of his failure to file and Answer, judgment by default may be rendered against him for the relief requested in the Complaint.

RULE 4. SERVICE OF PROCESS.

(a) Summons and Complaint may be served within the exterior boundaries of the Rosebud Indian Reservation by any law enforcement officer or Tribal member who is a resident of the Rosebud Indian Reservation of the age of 18 years or older and who is not a party to the litigation. Service of Summons and Complaint upon any party outside the boundaries of the Rosebud Indian Reservation may be made in the manner prescribed for service of process in that jurisdiction

(b) The Summons and Complaint shall be served by delivering copies thereof. Service in the following manner shall constitute personal service:

(1) If the action is against a corporation, service shall be made on the President, Secretary, Cashier, Treasurer, a Director, or managing or registered agent thereof and such service may be made within or outside the jurisdiction. In case the process server shall return the Summons with his certificate that no such officer, director or agent conveniently be found, service may be made by leaving a copy of the Summons and Complaint at any office of the corporation with the person in charge of such office

(2) If the action be against a minor, service shall be made on a parent or person having custody and if the minor over the age of 14 years, then also upon the minor personally, and in any event, on the legally appointed general guardian if one exists. If a guardian ad litem has been appointed, service shall also be made on the guardian ad litem

(3) If the action is against a person judicially declared to be of unsound mind or who is an inmate of any institution or mentally incompetent or for whom a general guardian has been legally appointed, service shall be made on such guardian and upon the superintendent of such institution or person having custody of the Defendant and also upon the incompetent Defendant

(4) Whenever the manner of service of process is specified in any statute or rule specifically relating to the action; remedy of special proceeding, the manner of service there specified shall be followed

(5) In all other cases on the Defendant personally.

(c) Service in the following manner shall also constitute personal service. If the Defendant cannot be conveniently found, service may be made by leaving a copy of the Summons and Complaint at the Defendant's dwelling house and delivered to a member of the Defendant's family or household over the age of 14 years.

(d) Proof of the regular service of a Summons and Complaint or any other legal document must state the time, place and manner of such service and must be made as follows:

(1) If served by a law enforcement officer or other process server, his certificate thereof.

(2) If served by any other person, his affidavit thereof.

(3) If admitted by the party upon whom service may have been made, then by the written admission of such party or his attorney; or

(4) If served by publication, by the affidavit of the publisher of the newspaper or other employee showing such regular publication and an affidavit of the party or his attorney showing regular mailing of copies to the party to be served at his last known post office address.

(e) Personal service shall be deemed completed if the person to be served is informed of the purpose of the service and provided copies of the papers being served and said copies are either received by the person to be served or left within his reach. Whether the person accepts or refuses to accept said copies is immaterial.

(f) If the Plaintiff can establish to the satisfaction of the Court by affidavit that he was made a diligent effort to obtain personal service as provided by these rules upon a Defendant both with and without this jurisdiction, and that despite such diligent effort, personal service cannot be obtained on a Defendant, then and in such event, the Court may authorize service by publication of the Summons Service by publication shall constitute publishing the contents of the Summons in a local newspaper of general circulation at least once a week for four consecutive weeks and by mailing by first class mail, postage prepaid, a copy of the Summons and Complaint to the Defendant at his last known post office address.

(g) The Court may in its discretion on such terms as it deems proper at any time allow any Summons or other process or proof of service to be amended unless it clearly appears that the substantial rights of the person against whom the process was issued would be prejudiced thereby.

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS.

(a) Except as otherwise provided by these rules, every Order required by its terms to be served, every pleading subsequent to the original Complaint, every motion other than one which may be heard ex parte and every written notice, appearance, demand, offer of judgment and similar paper shall be served upon each of the parties. No service need to be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against Defendants in default shall be served upon them in the same manner as provided for service of Summons and Complaint.

(b) Whenever service of a legal document other than the Summons and Complaint is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon that party himself is ordered by the Court. Service upon the attorney or a party shall be made either by service in the manner provided for Summons and Complaint or by mailing a copy of the legal document to the party or his attorney at the last known post office address. Service by mail shall be by first class mail and is complete upon mailing. An attorney's certificate of service, the written admission of service by the party or his attorney, or an affidavit of mailing shall be sufficient proof of service. The provisions of this Rule 5 are not intended to change the rules for Service of Summons and Complaint. Further, any process or other legal paper designed or with the purpose to bring a party into contempt shall be served by personal service only.

(c) In any action in which there are unusually large number of Defendants, the Court may order that service of documents between Defendants upon each other and replies thereto may be made in summary fashion other than by service by each Defendant on each other Defendant. A copy of any such order of the Court shall be served upon all parties in such manner and form as the Court directs.

(d) The originals of all papers served upon a party or presented to any Court or to any Judge shall either be filed with the Court prior to service or filed with the Court together with the proof of service immediately upon service. If such papers are not to be served, they must be filed with the Court at the time of their presentation to the Court for action or consideration. In the event of failure to file any paper required to be filed under this rule, the adverse party

shall be entitled without notice to an order requiring such paper to be filed within a reasonable time as specified by the Court. The Court may likewise order that upon failure to file such paper, the action or proceeding shall be dismissed without prejudice and no new action or proceeding may be commenced without payment of reasonable terms to be fixed by the Court. If any such process or other paper has been lost or withheld by any person, the Court may authorize a copy thereof to be filed and substituted for the original. A legal document is deemed filed with the Court as required by this Chapter if the same has been presented to the Clerk of Court or to the Judge assigned to handle the proceeding. The Clerk or the Judge will not thereon the filing date and assure that the document is placed in the original Court file.

RULE 6. TIME.

(a) In computing any period of time set forth in these rules, the day the time period is to commence shall not be counted and the last day of the period shall be counted, provided however, that any period which would otherwise end on a Saturday, Sunday, or a legal holiday will be deemed to end on the next day which is not a Saturday, Sunday, or a legal holiday.

(b) Whenever under these rules or by an Order of the Court an act is required to be done or a notice given within a specified time, the Court may for good cause shown, in its discretion at any time, with or without motion or notice, enlarge the time period if a request is made for enlargement before the expiration of the period originally prescribed or as extended by a previous order. If the time as originally prescribed or as previously enlarged has expired, the Court shall require written motion for enlargement of the time and appropriate notice be given to the adverse party. If the time period has expired prior to the application being made, the Court should not enlarge the time if such action will do substantial prejudice to the adverse party. Nothing in this rule shall be deemed to authorize the Court to enlarge the time for making motions for judgment notwithstanding the verdict, motions for new trial, or motions for relief from a final judgment or Order except under such circumstances as are set forth in those specific rules.

(c) Any written motion, other than one which may be heard ex parte, and notice of hearing thereon or an Order to Show Cause shall be served not less than five days before the time specified for the hearing unless a

different time period is fixed by these rules or by an Order of the Court. Application for an Order to fix a hearing date may be made ex parte. Whenever any motion is supported by an affidavit, the affidavit shall be served with the motion except as otherwise provided in these rules. Responding or opposing affidavits may be served not later than one day before the hearing unless the Court permits by Order affidavits to be served at some other time.

(d) Whenever a party has the right or is required to do some act within a specified period after the service of a notice of other paper upon him, or whenever such service is required to be made a specified event, and the notice or paper is served by mail, three days shall be added to the prescribed period.

RULE 7. PLEADINGS AND MOTIONS.

(a) The pleadings which shall be allowed shall be a Complaint and an Answer, a Counterclaim, a Crossclaim, a reply to a Counterclaim, an answer to a Crossclaim if the Answer contains a Crossclaim, a third party Complaint, and a third party Answer if a third party Complaint served. No other pleading shall be allowed except that the Court may order a reply to an Answer or a third party Answer.

(b) A party shall state in plain, concise terms the grounds upon which he bases his defense to claims pleaded against him and shall admit or deny the claims and statements upon which the adverse party relies. If he is without information or knowledge regarding a statement or claim, he shall so state. Such shall be deemed a denial. Denials shall fairly meet the substance of the claim or statement denied and may be made as to specific parts but not all of a claim or statement is general denial shall not be made unless the party could in good faith deny each and every claim covered thereby. A claim to which a responsive pleading is required except for the amount of damages shall be deemed admitted unless denied. If no responsive pleading is required, the claims of the adverse party shall be deemed denied.

(c) In responding to a pleading, a party shall set forth affirmatively all matters constituting an avoidance or affirmative defense including accord and satisfaction, arbitration, and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, re judicata, statute of frauds, statute of limitations, and waiver. When a party has

mistakenly designated a defense as a counterclaim or a counterclaim as defense, the Court if justice so requires, shall treat the pleadings as if the designation had been a proper one.

(d) Each paragraph of a pleading shall be simple, concise, and direct. A party may set forth two or more statements of claim or defense alternatively or hypothetically, either in one count or in separate counts. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based upon legal or on equitable grounds or both.

(e) All pleadings shall be construed so as to do substantial justice.

RULE 9. PLEADING OF SPECIAL MATTERS.

(a) A party need not plead or prove the existence, status or capacity of the following matters unless the same are called into issue by the responsive pleading or timely motion of the adverse party, namely:

(1) Capacity to be sued or to sue in an individual or in a representative capacity;

(2) The legal existence of a corporation or organized association of persons being made a party;

(b) All allegations of fraud or mistake must be pled factually and with particularity. Malice, intent, knowledge, or other state of mind of a person may be alleged generally.

(c) The performance of a condition precedent may be pled generally. The non-performance of a condition precedent must be pled specifically and with particularity.

(d) In pleading an official document or official act, it is sufficient to allege that the document was issued or the act done in compliance with the law. In pleading any statute or ordinance, it is sufficient to refer to the statute by its number and the ordinance by its title or number and the date of its approval.

(e) In pleading a judgment or decision of a Court or a judicial or quasi-judicial body or of a board or hearing officer, it is sufficient to allege the judgment or decision without setting forth any matters showing the jurisdiction to render it.

(f) For the purpose of testing the sufficiency of a pleading, allegations of time and place are material and shall be considered like all other allegations of material matters.

(g) When items of special damage are claimed, they should be specifically alleged.

(h) When a party is ignorant of the name of an opposing party, and so alleges in his pleading, the opposing party may be

designated by any name, and when his true name is discovered, the process and all pleading in the action shall be amended by substituting the true name.

(i) In any action for libel or slander it shall not be necessary to allege any facts for the purpose of showing the application to the Plaintiff of the defamatory matter upon which the cause of action is based, but it shall be sufficient to state generally that the same was published or spoken concerning the Plaintiff. If such allegation be controverted, the Plaintiff shall be bound to establish at trial that the matter was published or spoken.

RULE 10. FORM OF PLEADINGS.

(a) Every pleading shall have a caption setting forth the name of the Court, the title of the action, and an identification of the type of pleading. In the Complaint, the title of the action shall include the names of all the parties, but in all subsequent pleadings, it is sufficient to state the name of the first party on each side with an appropriate indication that other parties are involved.

(b) All allegations of name or defense shall be made in numbered paragraphs, the contents of each paragraph to be limited in as far as is practical to a statement of a single set of circumstances. A paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than a denial shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters alleged.

(c) Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part of the pleading for all purposes.

RULE 11. SIGNINGS OF PLEADINGS.

Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name whose address shall be stated. A party who is not represented by an attorney shall sign the pleading and state his address except when otherwise specifically provided by rule or statute. Pleadings need not be verified or accompanied by affidavits. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief, there is good ground to support it, and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this section, it may be

stricken as sham and false and action may proceed as though the pleading had not been served.

RULE 12. DEFENSES AND OBJECTIONS.

(a) A Defendant shall serve his Answer within 30 days after the service of the Complaint and Summons upon him. Any party served with a pleading stating a counterclaim or crossclaim against him shall serve an Answer within 20 days after service of the Answer, or if a reply is ordered by the Court within 20 days after service of the Order unless modified by the Court. The service of any motion permitted under Rule 12 alters these periods of time as follows unless a different time is fixed by order of the Court.

(1) If the Court denies the motion or postpones a decision until the trial on the merits, the responsive pleadings shall be served within 10 days after notice of the Court's action.

(2) If the Court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(3) If an appeal is taken from an Order sustaining a motion to dismiss and such Order is thereafter reversed, the responsive pleading shall be served within 20 days after the judgment or Order of reversal is filed in the trial Court.

(b) Every defense to a claim for relief in any pleading whether a Complaint, Counterclaim, Crossclaim, or Third Party Claim shall be asserted in the responsive pleading if one is required, except that the following defenses may at the option of the pleader be made prior to the filing of a responsive pleading my motion, namely, lack of jurisdiction over the subject matter, lack of jurisdiction over the person, insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief may be granted, failure to join a party under Rule 19. If the Court is presented a motion for failure to state a claim upon which relief can be granted and matters outside the pleadings are presented to the Court and not excluded, the Court may treat the motion as one for summary judgment, if all parties are provided a reasonable opportunity to present all material pertinent to such motion.

(c) After the pleadings are closed but within such time as to not delay trial, any party may move for judgment on the pleadings. If during a hearing for judgment on the pleadings, matters outside the pleadings are presented and not excluded by

the Court, the Court may treat the motion as one for summary judgment and dispose of the same in that fashion if all parties had been given a reasonable opportunity to present any material pertinent to such a motion.

(d) Any of the defenses raised either by pleading or by motion and listed in Rule 12 (a), (b), (c), shall be heard and determined before trial upon application of one of the parties unless the Court orders such hearings to be deferred until the time of trial.

(e) If a pleading to which a responsive pleading is permitted is so vague or ambiguous that the opposing party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before filing a responsive pleading. The motion shall point out the defects complained of and details desired. If the motion is granted and the Order of the Court is not obeyed within 10 days after notice of the Order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such other Order as is deemed appropriate.

(f) Upon a motion made by a party before responding to a pleading, or if no responsive pleading is permitted upon motion made by a party within 20 days after service of the pleading upon him or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient defenses or any redundant, immaterial, impertinent, or scandalous matter.

(g) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived if not raised pursuant to motion under Rule 12 or if not included in a responsive pleading or an amendment thereto as permitted or allowed by these rules. A defense of failure to state a claim upon which relief may be granted, a defense to join an indispensable party, or an objection of failure to state a legal defense claim may be raised at the trial on the merits even though not previously raised under Rule 12 or on a responsive pleading. Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.

RULE 13. COUNTERCLAIMS AND CROSSCLAIMS.

(a) A responsive pleading shall state as a counterclaim any claim which at time of serving the pleading the pleader had against the opposing party if it arises out of the transaction or occurrence that is the subject

matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the Court cannot acquire jurisdiction. The pleader need not state the claim if at the time the action was commenced the claim was the subject of another pending action or the opposing party brought suit on his claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on the claim, and the pleader is not standing any counterclaim under Rule 13 of the claim is not one over which the Court would have jurisdiction if brought as an original action.

(b) A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) A counterclaim may diminish in part or defeat totally the recovery sought by the opposing party. It may claim relief exceeding an amount or different in kind from that sought in the pleading of the opposing party.

(d) A claim which either matured or was acquired by the pleader after service his responsive pleading may, with the permission of the Court, be presented as a counterclaim by a supplemental pleading.

(e) When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect or when justice requires, he may with the permission of the Court set up a counterclaim by amendment of his pleading.

(f) A pleading may state as a crossclaim any claim by one party against a co-party arising out of the transaction or occurrences that is the subject matter either of the original action or of a counterclaim or relating to any property that is the subject matter of the original action. Such crossclaim may include a claim that the party against whom it is asserted is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

(g) Persons other than those made parties to the original action may be made parties to a counterclaim or crossclaim in accordance with the provision of Rule 19 and Rule 20.

(h) If the Court orders separate trials pursuant to these rules, then and in such event judgment on a counterclaim or crossclaim may be rendered when the Court has jurisdiction to do so even if the claim of the opposing party has been dismissed or otherwise disposed of.

RULE 14. THIRD PARTY NOTICE. At any time after commencement of an action and within 10 days of filing an original answer, a defending party may without permission of the Court cause Summons and Complaint to be served upon any person not a party to the action who is or may be liable to the defending party for all or part of the Plaintiff's claims against him. After 10 days from service of the original answer, the defending party must obtain permission of the Court to join a third party. Any person so served with Summons and Complaint shall be called a third party Defendant and shall be allowed to file responsive pleadings and including answers, counterclaims, and crossclaims as provided in Rule 12 and 13. A third party Defendant may also proceed under Rule 14 against any person not a party to the claim made in the action against third party Defendant. The Court may render such judgments, one or more in number, as may be suitable. When a counterclaim is asserted against a Plaintiff, he may cause a third party to be brought in under such circumstances which would entitle a Defendant to do so under this rule.

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS.

(a) A party may amend his pleadings once as a matter of right before the opposing party has replied, or, if no reply is required, within 20 days after the pleading was served. Other amendments shall be allowed only upon motion and order of the Court or permission of the adverse party. Any party served with an amended pleading has an additional 10 days from the service date or the original expiration date for the answering, whichever is longer, within which to respond to the amended pleading.

(b) When issues not raised in the pleading are presented at trial and tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. The Court may allow amendments of the pleadings at trial such as may be necessary to cause them to conform to the evidence and the issue actually raised at trial. An issue presented and retried in a subsequent proceeding even though it was not raised in the pleading.

(c) All amendments of pleadings related back to the date of the original pleading.

(d) The Court may upon motion and notice permit a party to serve a supplemental pleading setting forth occurrences or events which have happened since the date of the pleading sought to be supplemented. If such permission is granted to file supplemental

pleadings, the Court shall fix the response time for the adverse party.

(e) The Court may upon the motion and notice permit a party to serve a supplemental pleading setting forth occurrences or events which have happened since the date of the pleading sought to be supplemented. If such permission is granted to file supplemental pleadings, the Court shall fix the response time for the adverse party.

RULE 16. PRETRIAL CONFERENCE. In any action, the Court may in its discretion direct the attorneys or the parties to appear before it in a conference to consider the following:

- (1) Simplification of issues
- (2) Amendments to the pleadings
- (3) Stipulations as to facts or admissibility of documents
- (4) The limitation of numbers of expert and other witnesses
- (5) Jury Instructions
- (6) Any other matters which may aid in the disposition of the action

Following a pretrial conference the Court may make such Orders with relationship to the conference as is appropriate.

RULE 17. PARTIES.

(a) Every action shall be prosecuted by the real party in interest except that a personal representative or other person in a fiduciary capacity may sue in his own name without joining the party for whose benefit the action is being maintained.

(b) When two or more persons associated in business together and transacting such business under a common name are sued by such common name, the Summons and Complaint in such case may be served on one or more of the associates but need not be served upon all. A judgment in such action shall bind the joint property of all the associated and the individual property of the party or parties actually served a Summons and Complaint in the same manner as if all have been named Defendants and have sued upon their joint liability. This section will not apply to corporations.

(c) When an infant or other incompetent person without a general guardian is made a party to a lawsuit, the Court shall appoint a guardian ad litem to present such person in the proceeding. Unless the Court otherwise orders, no guardian ad litem shall be permitted to receive any money or other property from the ward. Such guardian ad litem may settle or compromise the litigation only with the approval of the Court and shall make application to the Court for payment of

any fees or expenses incurred by him, which fees and expenses shall be the responsibility of the ward.

RULE 18. JOINDER OF CLAIMS AND REMEDIES.

(a) Any party asserting a claim to relief as an original claim, counterclaim, crossclaim, or third party claim may join either as independent or as alternative claims as many claims either legal or equitable as he has against an opposing party.

(b) Whenever a claim is one cognizable only after another claim has been prosecuted to a successful conclusion, the two claims may be joined in a single action, but the Court shall grant relief in said action only after determining that the right to relief has been established in the proper manner and in the proper order. For example, a Plaintiff may state a claim for money damages and a claim to have set aside a fraudulent conveyance as to him without first having obtained a judgment establishing the claim for money damages.

RULE 19. JOINDER OF PERSONS NEEDED FOR A JUST ADJUDICATION.

(a) Certain persons shall be made parties to pending litigation if possible. Those persons are as follows: persons in whose absence complete relief cannot be accorded among those persons already parties; or persons who claim an interest in the subject of the action and are situated so that the disposition of the action in their absence may impair their ability to protect their interest or leave one of the parties subject to a substantial risk of incurring multiple or inconsistent obligation. If such person exists, the Court shall order that he be made a party.

(b) If any person described in Rule 19(a) above cannot be made a party because he is beyond jurisdiction of the Court or otherwise, then and in such event, the Court shall determine whether the absent person is indispensable. If the Court determines that the person is indispensable, the Court shall dismiss the action. If not, the Court shall allow the action to proceed and take such protective measures by the shaping of relief or appropriate provisions of the judgment as will protect the rights of the person not joined and those persons who are parties to the lawsuit.

RULE 20. PERMISSIVE JOINDER OF PARTIES.

(a) All persons may join in one action as Plaintiff if they assert any right to relief jointly, severally, or in the alternative, arising out of the same transaction, occurrence, or series of transactions, and if any questions of law or fact is common to all those persons and will arise in the proceedings. All persons may be joined in one action as Defendants if the common element exist as to all Defendants as stated in the previous sentence. Judgment may be given for one or more of the Plaintiffs according their respective rights to relief and against one or more of the Defendants according to their respective liabilities.

(b) The Court may make such orders as will prevent the party from being embarrassed, delayed, or put to additional expense by the inclusion of a party against whom he asserts no claim or who asserts no claim against him. The Court may order separate trials or make other Orders to prevent delay or prejudice.

RULE 21. MISJOINDER AND NON-JOINDER OF PARTIES. Misjoinder of parties is not grounds for dismissal of an action. Parties may be dropped or added by order of the Court on motion of any party or on its own initiative at any stage of the proceeding and on such terms as are just. Any claim against any party may be severed and proceeded with separately by the Court Order.

RULE 22. INTERPLEADER. Any party to a lawsuit who believes that he is or may be exposed to double or multiple liability may make application to the Court for permission to join as parties those people whom he believes expose him to inconsistent or multiple liability by way of interpleader. Interpleader will be liberally granted by the Court to the extent that it does not deprive the Court of Jurisdiction over the proceedings.

RULE 23. CLASS ACTIONS AND STOCKHOLDER ACTIONS. No class action shall be allowed to be brought in the Tribal Court without prior permission of the Tribal Council. No stockholder derivative action may be brought in Tribal Court without prior permission of the Tribal Council.

RULE 24. INTERVENTION. Upon timely application, any person shall be permitted to intervene in an action if he has otherwise qualified to be a party to the proceeding pursuant to Rule 19, Rule 20, or Rule 22. any

person desiring to intervene shall serve a motion to intervene upon the parties, which motion shall state the grounds for intervention and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. Upon the hearing or stipulation of the parties, the Court shall determine whether or not intervention will be allowed.

RULE 25. SUBSTITUTION OF PARTIES.

If a party dies and the claim is not thereby extinguished or if a party becomes incompetent or transfers his interest or separates from some official capacity, the Court may allow substitute parties to be joined in the proceedings as justice requires.

RULE 26. DISCOVERY.

(a) Parties may obtain discovery regarding any matter not privileged which is relevant to the pending action, whether or not such is or may be admissible at trial, if the request appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may not be had of the work product of the party's attorney. Discovery may be had by any or all of the following methods. The frequency of use of these methods is not limited unless the Court so orders.

(b) Interrogatories - Any party may submit interrogatories to any other party who must answer the same in writing under oath within 30 days of receipt.

(c) Any party may take the oral deposition of an adverse party or any witness under oath upon not less than 10 days notice specifying the time and place when and where such deposition will occur. A deposition may be taken at any place by agreement of the parties. If no agreement as to location can be reached, such deposition will be performed at the Tribal Court building in Rosebud, South Dakota.

(d) Any Party may request any other party to produce any documents or physical evidence in his custody or possession or copying or request permission to enter and inspect real property reasonably related to the case. The party to whom the request has been presented shall within 30 days reply as to whether or not such will be allowed, and if not, state the reason. If production or inspection is not agreed to, or allowed, then the party requesting the same shall move the Court for a determination by the Court of whether or not inspection or production of documents will be allowed. The Court shall order such inspection if it is reasonably relevant to the case at hand.

(e) A party against whom discovery is sought may move the Court for protective order to prevent annoyance, harassment, embarrassment oppression, undue burden of expense, or protection of trade secrets or other confidential material. The Court may make such orders as are reasonably necessary to protect the confidentiality of the material yet still allow such discovery as is appropriate. The Court may grant the protective order in its entirety or deny the same in its entirety or grant partial relief to either party.

(f) If a party fails to respond or appear for discovery as provided in these rules, the opposing party may move the Court for an Order to compel the non-performing party to perform. The Court may award the costs or attorney fees to the non-defaulting party for the necessity of bringing the matter before the Court. If a party fails to perform after being ordered to do so by the Court, the Court may upon motion and notice order that a certain fact, claim, or defense be deemed established or strike part of a claim or defense or dismiss the action or render a judgment by default against the non-complying party in an aggravated case.

(g) Answers to interrogatories and depositions may be used at any hearing or at trial to impeach or contradict the testimony of a person deposed or discovered. The deposition of a witness, whether or not a party, may be used by any party or any purpose if the Court finds that the witness is dead, or that the witness is outside the jurisdiction of the Court unless it appears that the absence of a witness was procured by the party offering the deposition, or that the witness is unable to attend or testify because of age, sickness, infirmity, imprisonment, or occupational commitments, or if the party offering the deposition has been unable to procure the attendance of the witness by subpoena. In the event that a deposition to be offered, review the same and make rulings on such objections to admissibility of questions as are in such deposition or as are made in writing by either party. The Court shall then edit the deposition based upon such objections and the deposition as edited shall be read to the jury in lieu of the witness's testimony.

RULES 27 THROUGH 37 ARE RESERVED FOR FUTURE USE.

RULE 38. TRIALS.

(a) Trials of all civil actions shall be to the Court without a jury unless a party to the action files a request for a jury tribal and

pays the fee of \$100 at the time of filing his initial pleadings. Court will then fix the time and place for hearing the request for a jury trial which the Court may postpone until the pleadings have been completed and issues formulated. The Court shall make the determination of whether or not a jury shall be granted upon whether significant issues of fact are presented which will be determined of the issues which are inappropriate for the Court to decide. No jury trial will be allowed unless such significant factual issues are determined by the Court to exist.

(b) Unless the requested party or the Court specified otherwise, all factual issues properly triable by a jury shall be decided by the jury at trial.

(c) A judge may, upon his motion, order a trial by jury of any or all of the factual issues of a case regardless of whether or not the parties have requested the same. A judge may hear and decide any or all of the issues at trial without a jury if either party fails to appear for trial regardless of whether a jury trial was requested or ordered.

(d) The failure of a party to demand or request a jury trial at the time of filing his initial pleadings together with the appropriate filing fee shall constitute a waiver by him of any rights which he may have to trial by jury.

RULE 39. RIGHTS TO TRIAL BY JURY.

No absolute right if jury trial exists in a civil case in the Rosebud Sioux Tribal Court. Whether a request for jury trial be granted is within the sound discretion of the Judge assigned to hear the case.

RULE 40. ASSIGNMENT OF CASES FOR TRIAL.

(a) The Chief Judge shall be responsible to assign civil cases to the various Judges and shall be responsible to maintain a separate Court calendar for civil jury cases and civil Court Cases. The Chief Judge shall review both calendars on a regular basis, but at least every six months to assure himself and the Tribal Judiciary Committee that all pending civil actions are being disposed of as expeditiously as possible. In the event that the Chief Judge determines that no activity has occurred in a pending civil case beyond two calendar reviews, the Court may fix a hearing time pursuant to Order to Show Cause why the action should not be dismissed without prejudice for failure to prosecute the claim. If the Court finds that no good cause exists, the Court may in its discretion, giving due regard for the

interests of justice, dismiss the case without prejudice for failure to prosecute.

(b) Any party wishing to secure a trial date in a civil jury or non-jury case where a responsive pleading has been filed shall make his application for trial date by a certificate of readiness. A certificate of readiness shall be served on the opposing party or his counsel and shall contain substantially the following information:

(1) That all responsive pleadings have been filed and that the case is ready for trial in all respects.

(2) That all necessary discovery has been completed.

(3) That sufficient time has elapsed to afford all parties the reasonable opportunity to be ready for trial.

(4) The case is either for jury trial or for trial by the Court

(5) There either is or is not a possibility of settlement of the case.

(6) That a pretrial conference either is or is not requested for the purpose of disposing of pretrial motions, jury instructions, or any other pertinent matter. If the opposing party feels in good faith that the case is not in a posture for trial, he shall file a resistance to the certificate of readiness within 10 days after the receipt of the same and serve a copy of the same on all parties establishing by specific facts the reasons why the case is not ready for trial.

He may request a hearing date on the question of whether or not a trial date should be set. If hearing date is requested, the Court shall fix a hearing date on the question of whether the case is ready for trial and make appropriate Orders. If no hearing is requested, or no response or resistance is made to the certificate of readiness, the Court shall determine whether the case is ready for trial, and if so, enter an Order fixing a trial date. If the Court determines that the case is not ready for trial, the Court shall attempt to ascertain what items need to be completed before the case is not ready for trial and enter an Order directed to the parties or their attorneys to complete such items within a reasonable time fixed by the Court so that the matter can be moved forward for trial. Once a case has been approved by the Court for trial and a trial date has been fixed, no other certificate of readiness need be filed in order to fix trial dates if the initial trial date is postponed for any reason. Once a certificate of readiness has been filed and the Court has fixed a trial date, no trial date shall be postponed without at the same time fixing a new trial date.

RULE 41. DISMISSAL OF ACTION.

(a) Any civil action may be dismissed by the Plaintiff without Order of the Court by filing a notice of dismissal at any time before services by the adverse party of a responsive pleading or of a motion for summary judgment, or by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice.

(b) Except as provided in Rule 41(a), no action shall be dismissed at the Plaintiff's request except on Order of the Court and upon such terms and conditions as the Court deems proper. If a counterclaim, crossclaim, or third party claim has been pleaded prior to the service upon such person of the Plaintiff's motion to dismiss, the action shall be dismissed over the Defendant's objection or the third party's objection unless the counterclaim or third party claim can remain pending for independent adjudication by the Court. Unless otherwise specified in the Order, a dismissal under this paragraph is without prejudice.

(c) If the Plaintiff fails to prosecute or substantially comply with this chapter or any Order of the Court, a Defendant may move for dismissal of an action or any claim against him. After the plaintiff in an action tried to the Court has completed presentation of his case, the Defendant may move for dismissal on the grounds that upon the facts presented or the law, the Plaintiff has shown no right to relief. The Court may rule on the motion at that time or may decline to rule on the motion until the close of all the evidence. If the Court renders judgment on the motion against the Plaintiff, the Court shall enter findings of fact and conclusions of law establishing the reason for his ruling. A dismissal under this section, other than a dismissal for lack of jurisdiction or failure to join a party, operated as an adjudication on the merits.

(d) The Court on its own motion may dismiss any action where the records of the Clerk of Courts indicate that the case has been inactive for a period of two years.

RULE 43. EVIDENCE. At all hearings and trials, the testimony of witnesses shall be taken orally under oath unless otherwise provided in these rules. All evidence admissible under the Federal Rules of Evidence or as specified as admissible under Tribal law shall be admissible. The competency of witnesses to testify shall be similarly determined.

RULE 44. PROOF OF OFFICIAL RECORDS.

(a) An official record kept within the United States or any territory thereof or any State thereof or any entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested or certified by the officer having the legal custody of the record or his deputy together with a certificate that such officer having a seal of office and having official duties in the political subdivision in which the record is kept, authenticated by the seal of his officer. It may also be proved by the testimony of the official having custody of the record.

(b) In any action tried to a jury, excluded evidence may upon request be included in the record for purposes of appeal and excluded oral testimony shall be put into evidence by means of an offer of proof made outside the hearing of the jury. In actions tried to the Court, the Judge may receive such excluded evidence and testimony into the record for appeal purposes.

(c) A written statement that after diligent search, no record or entry of a specified tenor is found to exist in the records designated by the statement and authenticated as provided in Rule 44. (a) is admissible as evidence that the records contain no such record or entry.

RULE 45. SUBPOENAS.

(a) The Clerk of Courts or any Tribal Judge upon application of any party of their attorney in a civil case may issue a subpoena for a witness or witnesses to attend any hearing or trial or for the purpose of taking a deposition pursuant to the discovery rule.

(b) A subpoena shall state the name of the Court, title of the action, and shall command the person to whom it is directed to attend and give testimony or produce documents, books, papers, or other tangible pieces of evidence stated in the subpoena at a time and place specified in the subpoena. It shall state the name of the party or parties for whom the testimony or documents are required.

(c) A subpoena may be served by any officer or person qualified to make service of a Summons and Complaint. A subpoena shall be served in the same manner as a Summons and Complaint served except that no service by publication is allowed. A subpoena must be served sufficiently in advance of the date when the appearance of the witness is required to enable the witness to reach the appearance place by the

ordinary or usual method of transportation which he may use.

(d) Any person requesting the issuance of subpoenas shall tender to the Clerk of Judge the sum of \$5 for each and every subpoena which he requests be served, which sum shall be deemed to cover the cost of the service fees to the process servers. The person requesting the subpoena shall at the time tender to the Clerk or Judge the sum of \$10 which sum shall be tendered to the witness fees for one day's attendance at Court pursuant to the subpoena. If such fees are not paid at the time of the request for issuance of the subpoenas, the Clerk of Courts or the Tribal Judge shall not issue such subpoena. At the commencement of each day of trial or hearing after the first day, a witness under subpoena may demand an additional daily fee from the party who subpoenaed him for each subsequent day's attendance, and if the same is not paid immediately, the witness shall not be required to remain. When any subpoena is requested to be issued on behalf of the Rosebud Sioux Tribe or any of its political or official subdivisions or any officer of agency thereof, no fees for service or fees for attendance on such subpoenas shall be required to be paid, but such subpoena shall be issued and attendance pursuant to those subpoenas shall be required.

(e) A person who has been properly served with a subpoena and fails to appear or produce such documents as were required may be deemed in contempt of Court and punished accordingly.

(f) A person present in Court or before a judicial officer may be required to testify in the same manner as if he had been served with a subpoena even though no subpoena has actually been issued to him.

RULE 46. EXCEPTIONS. Formal exceptions to rulings or Orders of the Court are unnecessary for the purpose of appeal, but for all purposes where an objection is proper and the party has an opportunity to object to a ruling or Order at the time it is made, such party should do so in order to assure that such objection or ruling is preserved for appeal purposes.

RULE 47. JURIES.

(a) Each year, preferably in January, but in any event, as soon after the first of the year as can reasonably be done, the Judiciary Committee of the Tribal Council or such other committee as the Council may direct shall compile from the Rosebud Sioux Tribe Tribal census rolls a list of not less than

50 persons who shall be designated as the jury list for that year until their successors are selected. The committee selecting the jury list shall select resident members of the Rosebud Sioux Tribe at least 18 years of age who in opinion of the committee shall be able to regularly attend Court as required and shall not have been convicted of any felony. When the jury list is completed, the list shall be delivered to the Chief Judge and the Clerk of Courts. The Clerk shall then notify in writing each member of the jury list that they have been selected for jury duty for that year and advise them to be presented for jury service during the succeeding year.

(b) At any time when a jury trial has been scheduled and a trial date has been fixed, at least one week prior to the date fixed for trial, the Clerk shall draw by lot from the jury list the names of 20 jurors which 20 jurors shall be deemed the jury panel for the succeeding jury trial which is scheduled. Those persons shall be notified at least seven days prior to the date set for trial by first class mail that their presence is required at the time and place fixed for said jury trial and that they may be punished as being in contempt of Court for their willful failure to appear.

(c) Individuals shall be paid the sum of \$10 plus road trip mileage at the prevailing tribal rate per day for each day that they are required to appear for jury duty. However, those selected to actually serve as Jurors shall be paid the sum of \$40 dollars plus road trip mileage at the prevailing tribal rate per day for each day that they are required to actually perform jury service.

(d) The Court shall permit the parties or their counsel, but not both, to conduct an examination of prospective jurors. The Court may also examine the prospective jurors for the purpose of establishing challenges.

(e) A challenge is an objection made to a potential juror. Challenges are two types, namely, challenges for cause or preemptory challenges. Challenges for cause, must be based upon statements or status of the potential juror that the juror is familiar with the case, has formed an opinion regarding the outcome, is sufficiently related to one of the parties or one of the witnesses that it would be impossible or difficult for the juror to render a fair and impartial verdict, or for any other reason that the juror could not render a fair and impartial verdict. The Judge shall immediately rule on any challenges for cause. Preemptory challenges are challenges made for no reason. Each side of a case shall have three preemptory challenges. Where there are multiple Plaintiffs or multiple Defendant's, the Plaintiffs and Defendants must divide the

preemptory challenges among them or work out some other agreeable arrangements for exercising of the challenges. No more than three preemptory challenges will be executed on each side.

(f) The Clerk shall draw lots and seat 12 potential jurors from the panel and shall replace jurors for whom a challenge for cause is allowed until a full panel of 12 is passed for cause. The parties shall then exercise preemptory challenges. Each side must exercise the full three preemptory challenges allowed to them. After exercise of the preemptory challenges, the Clerk shall administer an oath to the jury selected for the trial that they will fairly deliberate on the case before them and render a true verdict according to the Court's instructions.

(g) The Court may allow an alternate juror or jurors to be chosen in such manner as the Court may direct. If after the proceedings begin but before the case is submitted to the jury for their verdict, a juror becomes unable or disqualified to perform his duties, and alternate juror shall take his place. If no alternate juror had been selected, the parties may agree to complete the action with the remaining jurors. If no agreement can be reached, the Judge shall declare a mistrial, discharge the jury, and the case shall be tried with a new jury.

(h) The Court may, in its discretion, allow the jury to view a location or piece of property or place of occurrence of a disputed or otherwise relevant fact or event.

(i) At any time prior to their verdict, when the jurors are allowed to leave the Courtroom, the Judge shall admonish them not to converse with or listen to any other person on the subject of the trial and further admonish them not to form or express any opinions on the case until the case is submitted to them for their decision.

(j) Once the case is submitted to the jury, they shall retire to deliberate in private under the charge of an officer of the Court called the bailiff. He will refrain from communicating with them or allowing any other person to communicate with them except to inquire whether they have reached a verdict and he shall prevent others from improperly communicating with the jury.

(k) The jury take into the jury room during deliberation the Court's instructions, all documents received in evidence, and any notes taken by the jurors themselves.

(l) If the jury has any questions on an instruction or other point of law or other area of inquiry, the jury may request additional instructions of the Court. Such questions shall be answered by the Court after notice of the parties or their counsel.

(m) If the jury is unable after a reasonable length of time to reach a verdict under these rules, the Court shall declare a mistrial and set the action for a new trial.

RULE 48. JURY VERDICTS.

(a) There shall be six jurors chosen to hear a case. In addition, the Court may allow the selection of one or more alternate jurors in the event the Court anticipates a lengthy trial. In the event an alternate juror is chosen and hears the case, he shall be dismissed at the time the case is submitted to the jury if he is not needed.

(b) When all or at least five of the six jury members have agreed on a verdict, they shall so inform the bailiff who shall notify the Court. The jury shall return to the Courtroom, and the Clerk shall call the jury roll. The verdict shall then be given in writing to the Clerk who shall read the same to the Court. The Judge shall then inquire of the jury foreman as to whether the verdict just read is the true verdict of the jury. Either party may request that the jury be polled individually to determine if such, in fact, is the jury verdict. If insufficient jurors agree with the verdict, the jury shall be sent out again to reconsider. Otherwise, the verdict is complete and the jury shall be dismissed.

RULE 49. SPECIAL VERDICTS. A Court may, in its discretion, require the jury to return a verdict or verdicts in the form of specific findings on specified issues. The Court may require the jury to return a general verdict accompanied by answers to questions related to the issues under consideration.

RULE 50. MOTIONS FOR DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

(a) A party who moves for a directed verdict at the close of the evidence offered by the opposing side may offer evidence as if no motion has been made in the event that the motion is denied. A motion for directed verdict shall state the grounds therefore, and may be granted by the Court without the consent of the jury.

(b) A party who has moved for a directed verdict at the close of all the evidence as if no motion has been made in the event that the motion has been denied, or not ruled upon, may within 10 days after entry of judgment move to have the verdict and any judgment thereon set aside and entered according to his motion for directed verdict or if there has been a verdict, the party may so move within 10 days after the jury has

been discharged. A motion for a new trial may be made in the alternative under the same restrictions. The Court shall enter judgment or make any Orders consistent with his decision on the motions.

RULE 51. INSTRUCTIONS AND ARGUMENTS TO THE JURY.

(a) At the close of the evidence or at such earlier times as the Court may direct, any party may file proposed written instructions for the Court to give to the jury. Copies shall be served on the other parties. At the close of the evidence, the Court, and the parties of their counsel shall settle instructions at which time out of the hearing of the jury the Court shall hear arguments on the instructions which the Court proposes to make and offer the parties the opportunity to except to the instructions of the Court. No grounds of objections or exception to the giving or the refusing of all instruction shall be considered on motion for new trial or appeal unless specifically presented to the Court upon the settlement of such instruction.

(b) Final arguments for the parties to the jury shall be made by the parties or their counsel, but not both, after the jury has been instructed. The Plaintiff, having the burden of proof, will open and close the argument. Each side shall be allotted the same amount of time for opening and closing, and the Plaintiff may not use more than half his time for closing argument. The Court shall not comment on the evidence of this case.

RULE 52. FINDINGS BY THE COURT.

(a) In all actions tried upon the facts without a jury, the Court shall, unless otherwise provided in these rules, find the facts specially and state separately its Conclusions of Law thereon, and judgment shall thereafter be entered pursuant to Rule 58. In granting or refusing temporary restraining orders or preliminary injunctions, the Court shall similarly set forth the Findings of Fact and Conclusions of Law which constitute the grounds of its action. If an opinion or memorandum of decision is filed, the facts and legal conclusions stated therein need not be restated, but may be included in the Findings of Fact and Conclusions of Law by reference, or the Court may adopt its written decision of Findings of Fact and Conclusions of Law.

(b) Findings of Fact and Conclusions of Law are waived by failing to appear for trial, by consent in writing filed with the Clerk, by oral consent in open Court, or by entering into a stipulation of facts for consideration by

the Court. Findings of Fact and Conclusions of Law are not necessary and need not be entered when granting or denying a temporary restraining order or preliminary injunction in a divorce proceedings or other domestic relation type dispute or on decisions and motions under Rule 12 or Rule 56 or any other motion except under Rule 41 for involuntary dismissal of a lawsuit.

RULE 53. RESERVED.

RULE 54. JUDGMENTS.

(a) A judgment is any Order which finally and conclusively determines the rights of the party. When more than one claim for relief is presented in an action, however designated, a final judgment may be entered on less than of such claims. If the Court enters an Order severing such decided claims from the remaining claims, then the appeal time will commence to run as to the claim decided in the same manner in which the appeal time would begin to run if the claim had been sued out separately. Otherwise, the appeal will not commence to run until all of the claims in the litigation are decided.

(b) A judgment by Default shall not award relief different in kind from or exceed the amount which was specifically prayed for in the Complaint. Otherwise, every final judgment shall grant the relief to which the party in whose favor the same was rendered is entitled even if such relief was not demanded in the pleadings. It may be given for or against one or more several persons, and it may, if justice requires, determine the ultimate rights of the parties on either side as between themselves.

(c) The Court may award costs and disbursements to the prevailing party or order that each party shall bear its own costs. The prevailing party shall file with the Court an affidavit of his costs and necessary disbursements within five days of the entry of the judgment and serve a copy on the opposing party. If such are not objected to within five days after receipt of the affidavit of costs, they shall be deemed to be part of and included in the judgment rendered. The costs which are allowable are filing fees, fees for service and process, publication fees, fees for subpoena and attendance of witnesses and costs of depositions. No other fees shall be allowed.

(d) The Court shall not award attorney's fees in any case except the Court may in its discretion award a reasonable attorney's fee in divorce or other domestic relations type case.

RULE 55. DEFAULT JUDGMENTS.

(a) When a party against whom a judgment for affirmative relief is sought has failed to make an appearance or plead or otherwise defend as provided by these rules, his default shall be proved by affidavit and judgment by default may be granted to the opposing party.

(b) If the party against whom judgment by default is sought has appeared in the action, he or his counsel shall be served with written notice of the application for default judgment at least three days prior to the hearing on such application. The same notice shall be given if the person against whom default judgment is sought is an infant or incompetent, regardless of whether he has appeared or not.

(c) Judgment by default without evidence may be entered by the Court if a party's claim against the opposition is for a sum of money which is or can be computation be made certain. Judgment by default or any other type relief shall be entered only upon receipt of such evidence as the Court may deem necessary to establish the validity and amount of the claim. Notice of an entry of a default judgment shall be served upon the party against whom it is taken and such default judgment shall not be effective until such service has been accomplished and proof thereof has been filed with the Court.

(d) The Court may, for good cause shown, set aside either an entry of default or a default judgment under this rule or under Rule 60.

RULE 56. SUMMARY JUDGMENT. At any time 30 days after commencement of an action any party may move the Court for summary judgment as to any or all issues presented in the case, and such shall be granted by the Court if it appears that there is no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law. Such motion shall be served not less than 10 days prior to the hearing on said motion and my be supported by affidavits, discovery material, or memorandum, all of which must be made available to the opposing parties at least 10 days prior to the hearing. The opposition shall have full opportunity to respond to such motion at the time fixed for hearing.

RULE 57. DECLARATORY JUDGMENTS.

In the case of an actual controversy, the Tribal Court, upon filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not

further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

RULE 58. ENTRY OF JUDGMENT.

(a) A money judgment upon a verdict of a jury shall be signed by the Clerk and filed. All other judgments shall be signed by the Judge and filed with the Clerk. A judgment is complete and shall be deemed entered and effective for all purposes when it is signed and filed as provided herein and when proof of service of notice of entry of judgment on the opposing party has been filed with the Clerk.

RULE 59. NEW TRIALS.

(a) Any party may petition for a new trial on any or all of the issues presented by serving a motion not later than 10 days after entry of judgment for any of the following reasons:

(1) Error or irregularity in the Court proceedings or misconduct by one of the adverse parties which prevented one of the parties from receiving a fair trial.

(2) Misconduct of the jury or jury members or a finding that any question submitted to them was determined by a resort to chance.

(3) Accident or surprise or newly discovered evidence which ordinary prudence could not have guarded against or produced at trial.

(4) Damages so excessive or inadequate that they appear to have been given under the influence of passion or prejudice.

(5) Insufficiency of the evidence to justify the verdict or other decision or that is contrary to law.

(6) Error of law occurring at the trial, provided however, that the claimed error was accompanied by an objection, an offer of proof, or a motion to strike at the time the alleged error was made.

(b) A new trial shall not be granted on the basis of any claim which is determined to be harmless in that it did not result in a substantial injustice.

(c) All requests for new trial shall be summarily dismissed unless they are accompanied by affidavits establishing the particular facts in detail upon which the motion is based. Arguments of law may also be included.

(d) The Court may on its own initiative within 10 days after entry of judgment order a new trial on any grounds assertable by a

party to the action and shall specify the reasons for so doing.

(e) A motion to alter or amend a judgment shall be served within 10 days after the entry of judgment.

RULE 60. RELIEF FROM JUDGMENTS OR ORDERS.

(a) Clerical mistake in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time on its own initiative or on motion of any party and after such notice as the Court may direct. Mistakes may be corrected before an appeal is docketed in the Appellate Court and thereafter while the appealing is pending, but only with the permission of the Appellate Court.

(b) On motion and upon such terms as are just, the Court may, in the furtherance of justice, relieve a party or his counsel from a final judgment, Order, or proceeding for the following reasons:

(1) Mistake, inadvertence, surprises, or excusable neglect.

(2) Newly discovered evidence, which, by the exercise of due diligence, could not have been discovered in time to move for a new trial.

(3) Fraud.

(4) The judgment is void.

(5) That the judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated or it is not longer equitable that the judgment should have prospective application, or,

(6) Any other reason justifying relief from the operation of the judgment.

The motion should be made within a reasonable time and for reasons 1, 2, and 3 not more than 30 days after the judgment order or proceeding was entered upon or taken. This rule does not limit the power of a Court to entertain an independent action to relieve a party from a judgment, Order, or proceedings, or to grant relief to a Defendant not actually personally notified as provided by statute or to set aside a judgment for fraud upon the Court.

RULE 61. HARMLESS ERROR. No error in either the admission or exclusion of evidence or in any ruling or Order or in anything done or omitted by the Court or by any of the parties is grounds for granting a new trial or otherwise disturbing a judgment or Order unless refusal to grant relief appears to the Court inconsistent with substantial justice. The Court at every stage

of the proceeding shall disregard any error or defect which does not adversely affect the substantial rights of the parties.

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGEMENT.

(a) Except as ordered by the Court for good cause shown, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 30 days after its entry unless otherwise ordered by the Court. A judgment in an action for injunction shall not be stayed during the period after its appeal and until an appeal is taken or during the pendency of an appeal. The other provisions of this rule shall govern the suspending, modifying, or restoring, or granting of an injunction during the pendency of an appeal.

(b) In its discretion and on such conditions for security of the adverse party as are proper, the Court may stay the execution of or any proceeding to enforce a judgment pending the disposition of a motion for new trial under Rule 59 or of motions under Rule 50 or 60.

(c) When an appeal is taken from a judgment granting, dissolving, or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such conditions as deems proper for the security of the rights of the adverse party. The Court may require a cash or surety bond be posted by the appropriate parties.

(d) When an appeal is taken, the appellants by giving bond in an amount fixed by the Court of at least an amount sufficient to pay any judgment which may be rendered against him on appeal, may obtain a stay unless such stay is otherwise prohibited by law or by these rules. The stay is effective when the bond is approved and received by the Court, but not until such time.

(e) When an appeal is taken by the Tribe or an officer or agency of the Tribe, a stay shall be granted by the Tribal Court automatically upon request and no bond or other security shall be required from the Tribe or its officers or agencies.

(f) Nothing in this rule shall be construed to limit the power of the Appellate Court to grant such stays or other proceedings or make such Orders appropriate to preserve the status quo or the effectiveness of any judgment subsequently to be entered.

(g) When a Court has ordered a final judgment on some but not all claims presented in an action, the Court may stay enforcement of that judgment until the

entering of a remaining judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(h) No stay, injunction, or other relief from a judgment or Order pursuant to this rule shall be granted by the Court without notice to the opposing party and the opportunity to be heard.

RULE 63. DISABILITY OR DISQUALIFICATIONS OF A JUDGE.

(a) If by reason of death, sickness, or other disability a Judge before whom an action has been tried is unable to perform the duties under these rules after a verdict is returned, or Findings of Fact and Conclusions of Law are filed, then in such event, any other Judge assigned or sitting in the Court may perform those duties. However, if such other Judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

(b) Whenever a party to an action or proceeding or his attorney shall make and file an affidavit to the effect that he believes that he may not receive a fair trial before such Judge before whom such action is pending, such Judge shall automatically disqualify himself and shall proceed no further in the matter except to call in another Judge to hear and determine the case. No reasons need be stated in the affidavit. However, an affidavit can only be filed by a party once in any proceedings.

RULE 64. EXECUTION OF JUDGEMENTS.

(a) At any time 30 days after entry of judgment awarding money or costs against a party, it is made to appear to the Court that the judgment debtor has been served notice of entry of judgment and has not paid the judgment in full or is not current in making installment payments in a manner agreed to by the parties in writing and filed with the Court, the Court shall, upon motion of the judgment creditor heard ex parte, order the Tribal Police to levy and execute upon the personal property of the judgment debtor as provided herein.

(b) The Tribal Police shall forthwith attempt to locate all personal property of the judgment debtor within the jurisdiction of the Court and seize the same and transport it to a safe, convenient place. The Tribal Police shall then, as soon as reasonably be done, make arrangements to sell the same at

public auction. Sale of the seized property shall be at a public auction conducted by the Tribal Police after having given at least 10 days public notice posted in three conspicuous public places on the reservation together with a notice of sale published in a local newspaper of general circulation at least seven days prior to the date fixed for the sale. The property shall be sold to the highest bidder for cash at the time of the sale. The person conducting the auction may postpone such in his discretion if there is an inadequate response to the auction or the biddings and may reschedule such upon giving the required notice. The person conducting the sale shall make a return of sale to the Court including an inventory of the items taken into his possession, the amount received therefore, the person who brought the same, and deposit in the proceeds thereof with the Court for distribution to the judgment creditor and to be credited against the judgment. The Tribal Police may also levy and execute upon items of personal property which cannot be conveniently moved such as bank accounts, accounts receivable, and other such items. The levy and execution shall be made by serving upon the holder of such item of personal property a copy of the Order of the Court. Upon receipt of such Order of the Court, the person in whose possession the property to the Tribal Police for either public auction sale or crediting on the judgment creditor, the Court shall order the judgment debtor to appear in Court and answer questions under oath regarding all of his personal property. The Court shall then determine what property of the judgment debtor is available for execution and order the Tribal Police to take appropriate measures to convert the property to cash and apply the same to the judgment. Failure of the judgment debtor to appear or fully answer questions shall be deemed a contempt of Court.

(c) The judgment debtor may claim as exempt from levy and execution the sum of \$1500 worth of property selected from all property of the judgment debtor in the sole discretion of the judgment debtor. The judgment debtor may only claim the exemptions by filing with the Court an affidavit and inventory listing all the judgment debtor's property wheresoever and howsoever situated and a reasonable estimate of the value of such property and identifying in said affidavit the specific items of property claimed as exempt and the values of said property. Such affidavit and inventory shall be filed at least five days prior to the date fixed for levy execution sale and shall be deemed waived if the same is not

filed on time. The property claimed as exempt shall be offered at public auction at the time and place previously fixed. If the property claimed as exempt does not bring at public auction the amount of value as estimated by the judgment debtor, the same shall be no sale and returned to the judgment debtor. If the property claimed as exempt brings a higher bid than the value stated by the judgment debtor, then the same shall be sold and the value established by the judgment debtor in his affidavit shall be withheld from the proceeds of the sale and paid to the judgment debtor. Any such sums paid to the judgment debtor shall be exempt from levy and execution for a period of 90 days following such payments. All sales shall be subject to prior valid liens of records.

(d) A judgment may be satisfied in whole or in part by the owner thereof or his attorney executing under oath and filing an acknowledgment of satisfaction specifying the amounts paid and whether such is in full or partial satisfaction. A Judge may order the entry of satisfaction upon proof of payment and failure of the judgment creditor to file a satisfaction. A judgment satisfied in whole with such fact entered in the judgment record shall cease to operate as a lien on the judgment debtor's property. A partially satisfied judgment or an unsatisfied judgment shall continue in effect and become and remain a lien upon the judgment debtor's property for a period of 10 years or until satisfied, whichever comes first. An action to renew a judgment may be maintained anytime prior to the expiration of 10 years and will extend the period of limitations an additional 10 years and may be thereafter extended once more by the same procedure.

(e) Notwithstanding the availability of tribally commissioned police to exercise the powers of levy and execution described in this Rule, the Tribal Court may appoint suitable tribal members as Judgment Enforcement Commissioners having all the powers to levy and execute upon the property of the judgment debtor described in subsections (a) through (d) of this Rule.

RULE 65. TEMPORARY RESTRAINING ORDER AND INJUNCTIONS.

(a) No preliminary injunction shall be issued without written application and notice to the adverse party. Before or after the commencement of the hearing for an application for a preliminary injunction, the Court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even if this consolidation is not ordered, any evidence

received on an application for a preliminary injunction which would be admissible on the trial of the merits becomes part of the record on the trial and need not be repeated at the trial. This paragraph shall be construed and applied to save the parties any rights they may have to a trial by jury.

(b) No temporary restraining order shall be granted without written or oral notice to the adverse party or his counsel unless:

(1) It clearly appears from specific facts shown by affidavit or by the verified Complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and,

(2) The applicant's attorney or the applicant certifies to the Court in writing under oath the efforts, if any, which have been made to give notice or the reasons supporting his claim that notice should not be required.

Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the Clerk's office and entered on record; shall define the injury and state why it is irreparable and why the Order was granted without notice, and except in actions arising in a divorce proceeding or other domestic relation type litigation, shall expire by its terms within 10 days after entry unless the Court fixes a shorter time period for expiration. For good cause shown, the Court may extend the temporary restraining order for an additional 10 days unless the party against whom the Order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered on record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. When the motion comes on for hearing, the party who obtained the Order shall proceed with the application for preliminary injunction. If he does not do so, the Court shall dissolve the temporary restraining order. On two days notice to the party who obtained the temporary restraining order without notice or upon such shorter notice period as the Court may prescribe, the adverse party may appear and move its dissolution and modification. In such event, the Court shall proceed to hear and determine such motion as expeditiously as possible. Temporary restraining orders by their very nature may not be appealed.

(c) Except as otherwise provided by law, no restraining order or preliminary injunction

shall issue except by the posting of a bond by the applicant in an amount approved by the Court for the payment of such costs and damages as may be incurred by the opposing party who is found to have been wrongfully enjoined or restrained. No security shall be required in a divorce proceeding or other domestic relations litigation in the discretion of the Court. Any surety upon a bond under this rule submits himself to the jurisdiction of the Court and irrevocably appoints the Clerk of Tribal Courts as his agent upon whom any papers affecting his liability on the bond may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and notice of motion may be served upon the Clerk of Courts who shall forthwith mail copies to the sureties at their last known post office addresses.

(d) Every Order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not be reference to the Complaint or other documents, the acts or act sought to be restrained. It is binding only upon those persons in active concert or active participation with them who receive actual notice of the Order by personal service or otherwise. In addition, the Court shall set forth the Findings of Fact and Conclusions of Law which constitute the grounds of its actions.

(e) No injunctions or restraining order shall be issued unless the Court finds from the pleadings, affidavits, or testimony presented to it as follows:

- (1) That the party making application has no adequate legal remedy;
- (2) That the party making application has exhausted all administrative remedies
- (3) That irreparable harm will result which cannot be solved by the awarding of money damages unless the injunction or temporary restraining order is granted and,
- (4) That greater harm will be done to the party making application by the refusal of the injunctive relief than will be occasioned to the opposing party by the granting of such relief.

**CHAPTER 2 – LIMITATION OF
ACTIONS AND SOVEREIGN
IMMUNITY**

- 4-2-1. Sovereign Immunity
- 4-2-2. Actions by or Against The Tribe or Its Officers or Employees

- 4-2-3. Adoption By Reference Does Not Constitute A Waiver Of Sovereign Power
- 4-2-4. Statute Of Limitations
- 4-2-5. Principles Of Construction
- 4-2-6. Jurisdiction Over Persons
- 4-2-7. Personal Service Off Of Reservation - **Amendment**
- 4-2-8. Law Applicable To Actions In Tribal Court - **Amendment**
- 4-2-9. When Order or Judgment Of Other State, Tribal or Foreign Court May Be Recognized In Tribal Court - **Amendment**

4-2-1. SOVEREIGN IMMUNITY. Except as required by federal law or the Constitution and bylaws of the Tribe or specifically waived by a resolution or ordinance of the Tribal Council making specific reference to such, the Rosebud Sioux Tribe and its officers and employees shall be immune from suit in any civil action for any liability arising from the performance of their official duties.

4-2-2. ACTIONS BY OR AGAINST THE TRIBE OR ITS OFFICERS OR EMPLOYEES. In any action otherwise authorized by or against the Tribe or its officers or employees arising from performance of their official duties, the following modification to the rules and procedures set forth in this Code shall apply.

- (1) The periods of time specified for civil cases for appeals of either a civil or criminal nature for which an answer, reply, or other pleading or response of any kind shall be required shall be double the normal period.
- (2) Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be liable for the payment of costs or expenses of the opposing parties.
- (3) Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their duties either as Plaintiff or Defendant shall be required to post security bond or otherwise for any purpose.

4-2-3. ADOPTION BY REFERENCE DOES NOT CONSTITUTE A WAIVER OF SOVEREIGN POWER. The adoption of any law, code or other document by reference into this Code shall in no way constitute a waiver or secession of any sovereign power of the Rosebud Sioux Tribe to the jurisdiction whose law or code is adopted or in any way diminish such sovereign power, but shall

result in the law or code thus adopted becoming the law of the Rosebud Sioux Tribe.

4-2-4. STATUTE OF LIMITATIONS.

Unless otherwise specifically provided in this Code, the following limitations on bringing of a civil action will apply:

(1) Any action arising against the Tribe or its officers or employees arising of their official duties must be commenced within one year of the date the cause of action accrued.

(2) Any other cause of action must be commenced within two years the cause of action accrued provided, however, that any cause of action based upon fraud or misrepresentation shall not be deemed to have accrued until the aggrieved party has discovered the facts constituting fraud or misrepresentation.

4-2-5. PRINCIPLES OF CONSTRUCTION.

(1) Masculine words shall include the feminine and singular words shall include the plural and vice versa.

(2) Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.

(3) Whenever a term is defined for a specific part of this Code, that definition shall apply in all parts of the Code unless a contrary meaning is clearly appropriate.

(4) This Code shall be construed as a whole to give effect to all of its parts in a logical and consistent manner.

(5) If any provision of this Code or the application of any provision to any person or circumstance is held invalid, the remainder of this Code shall not be affected thereby, and to the extent possible, the invalid provisions of this Code are declared reasonably obvious to the Court.

(6) Any typographical errors or omissions shall be ignored whenever the meaning of the provision containing the error or omission is otherwise reasonably obvious to the Court.

(7) Any other questions of construction shall be handled in accordance with the generally accepted principles of construing giving due regard for the underlying principles and purposes of this Code.

4-2-6. JURISDICTION OVER PERSONS.

The Rosebud Sioux Tribal Court will exercise civil and criminal jurisdiction over all persons within its territorial jurisdiction to the extent allowed by federal statutory law and Federal Court decisions. It is recognized that

decisions such as Oliphant (55 Lawyers Ed 2nd 209) limit the jurisdiction of this Court over certain non-Indians. However, the Rosebud Sioux Tribal Court will continue to exercise all of the civil and criminal jurisdiction over all persons allowed to it by federal statute and federal judicial Court decisions.

4-2-7. PERSONAL SERVICE OFF OF RESERVATION.

A. To the greatest extent consistent with due process of law, any person, whether or not a citizen, resident, or present on the Reservation, who in person or through an agent does any of the acts as enumerated in this Section, thereby submits said person or his personal representative to the jurisdiction of the Tribal Court as to any cause of action arising from doing any of the following acts within the Rosebud Indian Reservation.

(1) The transaction of any business;

(2) The commission of a tortious act;

(3) The ownership, use or possession of any property, real or personal;

(4) Contracting to insure any person, property or risk;

(5) The act of sexual intercourse within this Reservation;

(6) Living in a marital relationship, notwithstanding the subsequent departure from this Reservation, as to any action for divorce or separate maintenance so long as the petitioning party has continued to reside within the Reservation.

B. Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this Section.

C. Nothing in this Section limits or affects jurisdiction over persons now or hereafter provided by law or the rights to serve any process in any other manner now or hereafter provided by law.

4-2-8. LAW APPLICABLE TO ACTIONS

IN TRIBL COURT. The Tribal Court shall apply the applicable laws of the Rosebud Sioux Tribe and the United States in actions before it. Any matter not covered by applicable tribal or federal laws shall be decided according to the customs and usage of the Tribe. Where doubt arises as to customs and usages of the Tribe, the Court may request the advice of persons generally recognized in the community as being familiar with such customs and usages. In any matter in which the rule of law is not supplied by any of the above, the Tribal Court may look to the law of any tribe or state

which is consistent with the policies underlying tribal law, custom and usages.

4-2-9. WHEN ORDER OF JUDGMENT OF OTHER STATE, TRIBAL OR FOREIGN COURT MAY BE RECOGNIZED IN TRIBAL COURT.

No order or judgment of a state, tribal or foreign court may be recognized as a matter of comity in the Rosebud Sioux Tribal Court except under the following terms and conditions.

(1) Before the Rosebud Sioux Tribal Court may consider recognizing a state, tribal or foreign court order or judgment, the party seeking recognition shall establish by clear and convincing evidence that:

(a) The court had jurisdiction over both the subject matter and the parties;

(b) The order or judgment was not fraudulently obtained;

(c) The order of judgment was obtained by a process that assures the requisites of an impartial administration of justice including but not limited to due notice and a hearing;

(d) The order or judgment complies with the laws, ordinances and regulations of the jurisdiction from which it was obtained; and

(e) The order or judgment does not contravene the public policy of the Rosebud Sioux Tribe.

(2) If a Court is satisfied that all of the foregoing conditions exist, the Court may recognize the court order or judgment in any of the following circumstances:

(a) In any child custody or domestic relations case;

(b) In any case in which the jurisdiction issuing the order or judgment also grants comity to orders and judgment of the Rosebud Sioux Tribal Courts;

(c) In other cases if exceptional circumstances warrant it; or

(d) Any order authorized to be recognized pursuant to 25 USC 1911 (d) or 25 USC 1919.

CHAPTER THREE – AMENDMENTS TO LAW AND ORDER CODE

4-3-1.	Definition of Terms
4-3-2.	Amendments By Ordinance Only
4-3-3.	Reading, Passage and Publication Of Ordinances
4-3-4.	Passage Of Resolutions
4-3-5.	Recording Of Votes On Ordinances
4-3-6.	Publication and Effective Date Of Ordinance

4-3-7.	Recording of Ordinance in Ordinance Book
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4-3-1. DEFINITIONS OF TERMS. For the purposes of this Chapter the word “Ordinance” shall mean a permanent legislative act of the Tribal Court of the Rosebud Sioux Tribe, within the limits of its powers. The word “resolution” as used in this Chapter shall mean any determination, decision or direction of the Tribal Council of the Rosebud Sioux Tribe of a special or temporary character for the purpose of initiating, affecting, or carrying out its administrative duties and functions under the law and ordinances governing the Rosebud Sioux Tribe.

4-3-2. AMENDMENTS BY ORDINANCE ONLY. No amendments shall be made to this Tribal Law and Order Code of the Rosebud Sioux Tribe by resolution. The only amendments which shall be effective and recognized by the Tribal Council or the Courts of the Rosebud Sioux Tribe to this Tribal Law and Order Code shall be those amendments which are made by ordinance pursuant to this Chapter.

4-3-3. READING, PASSAGE AND PUBLICATION OF ORDINANCES. All ordinances shall be presented to the Tribal Council in writing and shall be read twice with at least seven (7) days intervention between the first and second reading. If amendments are offered to the ordinance during the reading process, such shall be offered in writing. If such amendment is allowed by the Council, the reading process must begin again. Under no circumstances shall an ordinance be effective unless it has had the two readings required by this Chapter in its final unamended form.

4-3-4. PASSAGE OF RESOLUTIONS. A resolution may be passed after one reading. It shall be recorded at length in the minutes of the meeting at which it was passed with a statement of the number of votes for and against the same. It shall be published in full as part of the minutes.

4-3-5. RECORDING OF VOTES ON ORDINANCES. The vote upon all ordinances after the second reading shall be taken individually and entered upon the minutes of the meeting.

4-3-6. PUBLICATION AND EFFECTIVE DATE OF ORDINANCES. Following the

second reading and adoption of an ordinance under this Chapter, the Secretary of the Tribal Council shall within ten (10) days thereafter cause such ordinance to be published in a newspaper designated by the Tribal Council for that purpose. The Tribal Secretary shall also, within the same ten (10) days period, submit the ordinance to the agency superintendent pursuant to the Tribal Constitution if BIA approval is required for that particular ordinance, the ordinance shall become effective after publication and the completion of the approval process by the Bureau of Indian Affairs. If approval is not required, the ordinance shall become effective ten (10) days after publication.

4-3-7. RECORDING OF ORDINANCE IN ORDINANCE BOOK. After an ordinance takes effect, the Secretary of the Tribe shall record the same, together with a certificate of the date of its publication in a book to be known as the Tribal Ordinance Book and file the original Affidavit of Publication with the ordinance.

CHAPTER 4 – ALTERNATIVE REMEDY

- 4-4-1. Alternative Remedy To A Civil A- **Amendment**
- 4-4-2. Informal Hearing - **Amendment**
- 4-4-3. Persons Present – **Amendment**
- 4-4-4. Objectives Of The Informal Hearing - **Amendment**
- 4-4-5. Court Approval Of Agreement - **Amendment**
- 4-4-6. Failure To Reach Agreement - **Amendment**

4-4-1. ALTERNATIVE REMEDY TO A CIVIL ACTION. In any dispute between persons within the Rosebud Sioux Tribal Court’s civil jurisdiction over a claim of a person debt, not incurred from an established business, or child support owed or a dispute over ownership of personal property, any adverse party may petition the Tribal Court for an alternative remedy to a civil action as hereinafter provided.

4-4-2. INFORMAL HEARING. Upon petition by any adverse party, a judge of the Rosebud Sioux Tribal Court may issue a subpoena to any named adverse respondents requiring that person or persons to appear before the Tribal Court at a stated time and place for an informal

hearing aimed at working out the dispute in the Indian way.

4-4-3. PERSONS PRESENT. At the informal hearing there may be present the petitioner, the respondent to the summons, a judge of the Rosebud Sioux Tribal Court, the tribal defender, the tribal prosecutor and any other person requested to be present by either the petitioner or the respondent.

4-4-4. OBJECTIVES OF THE INFORMAL HEARING. At the informal hearing, both parties shall have a chance to discuss in the Indian way any disputed facts and shall be guided by the Court officials present to reach a mutual agreement that is satisfactory to both the petitioner and the respondent.

4-4-5. COURT APPROVAL OF AGREEMENT. If both the petitioner and the respondent reach a mutual agreement it shall be transcribed and approved by the Judge of the Tribal Court. A mutual agreement approved by the Court shall have the force of a civil judgment of the Tribal Court and if not adhered to may be enforced as a civil judgment under Section 5 of this Chapter or by any appropriate order issued by the Court.

4-4-6. FAILURE TO REACH AGREEMENT. If no agreement can be reached in the Indian way by the parties, the only remaining remedy is a civil action as provided by Chapter 1 above. If there is a civil action, the tribal judge who sat in on the informal hearing shall not preside.

TITLE FIVE

CRIMES

CHAPTER 1 – PARTIES TO CRIMES

- 5-1-1. Person Capable Of Committing Crimes
- 5-1-2. Aiding, Abetting, Advising, or Assisting Criminal Conduct-Charged and Punished As Principal
- 5-1-3. Accessories To Crime

5-1-1. PERSONS CAPABLE OF

COMMITTING CRIMES. All persons are capable of committing crimes except the following:

- (1) Children under the age of 10 years;
- (2) Children of the age of 10 years or more but under the age of 14 years in the absence of proof that at the time of the committing of the act charged against them they knew its wrongfulness;
- (3) Persons who committed the act charged while under the involuntary subjection to the power of superiors;
- (4) Persons who, at the time of committing the act charged against them, were mentally ill.

5-1-2. AIDING, ABETTING, ADVISING, OR ASSISTING CRIMINAL CONDUCT-CHARGED AND PUNISHED AS PRINCIPAL. Any person, who, with the intent to promote or facilitate the commission of a crime, aids, abets, advises, or assists another person in the planning or commission of a crime, **is chargeable and punishable as a principal to the crime committed.**

5-1-3. ACCESSORIES TO CRIME. A person is an accessory to a Class A crime, if, with the intent to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of a Class A crime, he renders assistance to the other person. **There are no accessories to Class B crimes or Class C crimes.**

The term "render assistance" means to:

- (1) Harbor or conceal the other person;
- (2) Provide the other person with money, transportation, a weapon, a disguise, or any other thing to be used in avoiding discovery or apprehension, including information as to

the impending discovery or apprehension of the other person;

(3) Obstruct anyone by force, intimidation, or deception in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of the other person; or;

(4) Conceal, destroy, or alter any physical evidence that might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of the other person.

A violation of this section is a Class A crime.

CHAPTER 2 – CATEGORIES OF CRIMES

- 5-2-1. Class D Crimes
- 5-2-2. Class C Crimes - *Amendment*
- 5-2-3. Class B Crimes - *Amendment*
- 5-2-4. Class A Crimes - *Amendment*
- 5-2-5. Serving Jail Time In Lieu Of Payment Of Fine

5-2-1. CLASS D CRIMES. A Class D Crime carries a maximum penalty of a fine not to exceed One Hundred Dollars (\$100.00) and court costs.

5-2-2. CLASS C CRIMES. A Class C Crime carries a maximum penalty of a fine not to exceed Five Hundred Dollars (\$500.00) and court costs.

5-2-3. CLASS B CRIMES. A Class B Crime carries a maximum penalty of a fine not to exceed Five Hundred Dollars (500.00) and court costs or a jail term not to exceed six (6) months or both fine, court costs, and jail term.

5-2-4. CLASS A CRIMES. A Class A crime carries a maximum penalty of a fine not to exceed Five Thousand Dollars (\$5000.00) and court costs or jail term not to exceed one (1) year or both the fine, court costs, and jail term.

5-2-5. SERVING JAIL TIME IN LIEU OF PAYMENT OF FINE. In the event that a fine is imposed by the court and the defendant is unable or unwilling to pay the fine, the court may order the same to be served out in jail at the rate of Twenty Dollars (\$20.00) per day. In addition, if the defendant is willing to work

during the period of incarceration either while serving out a fine or serving out a jail sentence, the court may in its discretion grant additional credit against the jail term or fine for the work performed by the defendant during the period of incarceration.

CHAPTER 3 – ATTEMPTS TO COMMIT CRIME

- 5-3-1. Attempt Defined-Punishment
- 5-3-2. Defenses Not Available For Charge Of Attempt

5-3-1. ATTEMPT DEFINED-

PUNISHMENT. Any person who attempts to commit a crime and in the attempt does any acts toward the commission of the crime, but fails or is prevented or is intercepted in the perpetration thereof, is punishable as follows:

(1) If the attempted crime is punishable as a Class A crime, the person guilty of such attempt is punishable by up to one-half of the maximum penalty, either fine or imprisonment, or both, as prescribed upon a conviction for a Class A crime; or

(2) If the attempted crime is punishable as a Class B crime, the person guilty of such attempt is punishable by up to one-half of the maximum penalty, either fine or imprisonment or both, as is prescribed for a Class B crime; or,

(3) If the attempted crime is punishable as a Class C crime, the person guilty of such attempt is punishable by up to one-half of the maximum penalty prescribed for commission of a Class C crime.

5-3-2. DEFENSES NOT AVAILABLE FOR CHARGE OF ATTEMPT. It is no defense to a charge of attempt that;

- (a) The offense attempted was actually committed; or
- (b) That in attempting unsuccessfully to commit a crime, the person accused actually accomplished the commission of another and different crime; or
- (c) The actor was legally or factually incapable of completing the crime if the crime could have been committed has the circumstances been as the actor believed them to be.

CHAPTER 4 – GENERAL OFFENSES

- 5-4-1. Conduct Forced or Under Threat Of Force
- 5-4-2. Voluntary Intoxication

5-4-1. CONDUCT FORCED OR UNDER THREAT OF FORCE. A person may not be convicted of a crime where he engaged in conduct which would otherwise be criminal because of the use or threatened use of unlawful force upon him or upon another person, which force or threatened use thereof a reasonable person in his situation would have been unable to resist.

5-4-2. VOLUNTARY INTOXICATION. No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his having been in such condition.

CHAPTER 5 – ASSAULTS AND RELATED CRIMES

- 5-5-1. Simple Assault
- 5-5-2. Aggravated Assault
- 5-5-3. Reasonable Force During Arrest Is Not Assault
- 5-5-4. Reasonable Attempt To Prevent Crime Against Person Property Not Assault
- 5-5-5. Reasonable Force Used By A Parent, Guardian, or Teacher Not Assault

5-5-1. SIMPLE ASSAULT. A person is guilty of simple assault if he:

- (1) Attempts to cause or knowingly causes bodily injury to another; or
- (2) Negligently cause bodily injury to another with a dangerous weapon; or
- (3) Attempts by physical menace to put another in fear of imminent serious bodily harm, whether or not such harm actually occurs.

Simple assault is a Class B crime.

5-5-2. AGGRAVATED ASSAULT. A person is guilty of aggravated assault if he:

- (1) Attempts to cause serious bodily injury to another, or causes such injury knowingly, under circumstances manifesting extreme indifference to the value of human life; or
- (2) Attempts to cause or knowingly cause, bodily injury to another with a dangerous weapon; or
- (3) Attempts to cause, or knowingly causes, any bodily injury to a law enforcement officer or judge or magistrate of the Rosebud Sioux Tribal Court; or other public officer of the Rosebud Sioux Tribe, Bureau of Indian Affairs, or Public Health Service while such public officer is engaged in the performance of his duties; or

(4) Assaults another with the intent to commit serious bodily injury which results in serious bodily injury.

Aggravated Assault is a Class A crime.

5-5-3. REASONABLE FORCE DURING ARREST IS NOT ASSAULT. To use or attempt or offer to use reasonable force upon the person of another is not assault when committed by any law enforcement officer in the course of arresting one who has committed a crime and delivering him into custody.

5-5-4. REASONABLE ATTEMPT TO PREVENT CRIME AGAINST PERSONAL PROPERTY NOT ASSAULT. To use or attempts or offer to use force or violence toward the person of another is not assault when committed by the person about to be injured, or by another person in his aid or defense, in preventing or attempting to prevent a crime against his person or trespass or other unlawful interference with real or personal property in his lawful possession, provided that the force or violence used is not more than is reasonably necessary to prevent the crime.

5-5-5. REASONABLE FORCE USED BY A PARENT, GUARDIAN, OR TEACHER NOT ASSAULT. To use or attempt or offer to use force or violence toward the person of another is not assault when committed by a parent or the authorized agent of any parent or by any guardian, teacher, or other school official in the exercise of a lawful authority to restrain or correct his child or ward provided restraint or correction has been rendered necessary by the misconduct of such child or ward or by his refusal to obey the lawful command of such parent or authorized agent, guardian, teacher or other school official and the force or violence used is reasonable in manner and moderate in degree.

CHAPTER 6 – KIDNAPPING AND RELATED OFFENSES

- 5-6-1. Kidnapping
- 5-6-2. Possession of Ransom or Reward Illegal
- 5-6-3. Custodial Interference
- 5-6-4. Stalking - **Amendment**
- 5-6-5. Harasses - **Amendment**
- 5-6-6. A Credible Threat - **Amendment**

- 5-6-7. Stalking A Child Twelve or Younger - **Amendment**
- 5-6-8. Order Of Protection - **Amendment**

5-6-1. KIDNAPPING. Any person who shall seize, confine, decoy, abduct, or carry away any person and hold or detain such person, except in case of an unmarried minor by parent thereof, for any of the following reasons is guilty of kidnapping:

- (1) To hold for ransom or reward, or as a shield or hostage; or
- (2) To facilitate commission or any crime or flight thereafter; or
- (3) To inflict bodily injury upon or to terrorize the victim or another person; or
- (4) To interfere with the performance of any Tribal, other governmental, or political function.

Kidnapping is a Class A crime.

5-6-2. POSSESSION OF RANSOM OR REWARD ILLEGAL. Any person who received, possesses, or disposes of any money or any portion of any property, which has at any time been delivered as a ransom or reward in connection with the violation of any statute against kidnapping, knowing the same to be money or property which has been at any time delivered as such ransom or reward, is guilty of a **Class A crime.**

5-6-3. CUSTODIAL INTERFERENCE. Any person, whether or not he is the parent of the child involved, is guilty of custodial interference if:

- (1) He, knowing that he has no legal right of custody or visitation with said child at the time and place, takes, entices, conceals, or detains a child under the age of 14 years from any person having lawful custody of said child;
- (2) Having actual physical custody of child under the age of 14 years pursuant to a judicial decree of a Court of competent jurisdiction which has granted to another person visitation or custody rights, and without legal cause, he detains or conceals said child with the intent to deprive said other person of lawful visitation or custody rights; or
- (3) Without legal cause he takes, entices, or detains an incompetent or other person who has been committed by legal authority to the custody of a third person or institution from said third person or institution, knowing he has no legal right to do so.

Custodial interference is a Class B crime.

5-6-4. STALKING. Any persons willfully, maliciously and repeatedly follows or harass another person or who makes a credible threat to another person with the intent to place that person in reasonable fear of death or bodily injury is guilty of Stalking.

Stalking is a Class A crime.

5-6-5. HARASSES. For the purpose of this chapter, “harasses” means a knowing and willful pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purposes, directed at a specific person which seriously alarms, annoys, or harasses the person and which serves no legitimate purpose.

5-6-6. A CREDIBLE THREAT. For the purposes of this chapter “a credible threat” means a threat made with the intent and the apparent ability to carry out the threat. A credible threat need not be expressed verbally.

5-6-7. STALKING A CHILD TWELVE OR YOUNGER. Any person who willfully, maliciously and repeatedly follows or harasses a child, twelve years of age or younger or who makes a credible threat to a child twelve years of age or younger with the intent to place that child in reasonable fear of death or bodily injury or to reasonably fear for the child’s safety is guilty of Stalking.

5-6-8. ORDER OF PROTECTION. Upon the filing of a complaint under this Chapter, the victim shall immediately be issued an Order of Protection from the actor named in the complaint.

CHAPTER 7 – SEX OFFENSES

- 5-7-1. Aggravated Sexual Abuse - **Amendment**
- 5-7-2. Sexual Abuse - **Amendment**
- 5-7-3. Marital Defense Precluded - **Amendment**
- 5-7-4. Abusive Sexual Contact - **Amendment**
- 5-7-5. Sexual Contact Without Consent With Person Capable Of Consenting - **Amendment**
- 5-7-6. Safety Zone Of Child Victim Of Sex Crime - **Amendment**
- 5-7-7. Threatening To Commit A Sexual Offense - **Amendment**
- 5-7-8. Bestiality - **Amendment**

- 5-7-9. Sexual Act With An Animal Defined- **Amendment**
- 5-7-10. Provisions of 5-7-8 and 5-7-9 Not Applicable To Accepted Practices - **Amendment**
- 5-7-11. Indecent Exposure - **Amendment**
- 5-7-12. State Of Mind Requirements - **Amendment**
- 5-7-13. Sexual Exploitation Of A Minor - **Amendment**
- 5-7-14. Definitions - **Amendment**

5-7-1. AGGRAVATED SEXUAL ABUSE.

Any person who knowingly causes another person to engage in a sexual act:

- (1) By using coercion or force against that other person;
- (2) By threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;
- (3) When the other person has not attained the age of 12 years;

is guilty of aggravated sexual abuse.

Aggravated Sexual Abuse is a Class A crime.

5-7-2. SEXUAL ABUSE. Any person who knowingly causes another person to engage in a sexual act;

- (1) When the other person is incapable of consent;
- (2) When the other person is incapable of consent because of intoxicant, narcotic, or anesthetic agent or hypnosis;
- (3) When the other person has attained the age of 12 years but has not attained the age of 16 years and is at least four years young than the person so engaging;
- (4) If the person so engaging engages in sexual act with a person, that the actor knows to be related to the actor by marriage, blood or adoption to include hunka or traditional adoption ceremony, either legitimately or illegitimately, as an ancestor, descendant, brother, sister, aunt, uncle, nephew, niece or first cousin, while such relationship exists;
- (5) If the other person is in custody of law enforcement or detained by corrections, or in a hospital or other institute and the actor has custodial, supervisory, or disciplinary authority over him or her;
- (6) If the person so engaging is a psychotherapist and the other person is the psychotherapist’s patient, regardless of consent by the patient;

is guilty of sexual abuse.

Sexual Abuse is a Class A crime.

5-7-3. MARITAL DEFENSE PRECLUDED.

In any prosecution for aggravated sexual abuse or sexual abuse, it is no defense that the person so engaging in the sexual act is married to the other person.

5-7-4. ABUSIVE SEXUAL CONTACT. Any person who knowingly engages in or causes sexual contact with or by another person;

- (1) By using force against that other person;
- (2) By threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;
- (3) When the other person is incapable of consent because of physical or mental incapacity;
- (4) When the other person is incapable of consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis;
- (5) When the other person has not attained the age of 12 years;
- (6) When the other person has attained the age of 12 years but not attained the age of 16 years and is at least four years younger than the person so engaging;
- (7) If the person so engaging in a sexual act with a person, that the actor knows to be related to the actor by marriage, blood or adoption, to include a hunka or traditional adoption ceremony, either legitimately or illegitimately, as an ancestor, descendant, brother, sister, aunt, uncle, nephew, niece or first cousin, while such relationship exists;
- (8) If the other person is in custody of law enforcement or detained by corrections, or in a hospital or other institution and the actor has custodial, supervisory, or disciplinary authority over him or her;
- (9) If the person so engaging is a psychotherapist and the other person is the psychotherapist's patient, regardless of consent by the patient;

is guilty of abusive sexual contact.

Abusive Sexual Contact is a Class A crime.

5-7-5. SEXUAL CONTACT WITHOUT CONSENT WITH PERSON CAPABLE OF CONSENTING. No person may knowingly engage in sexual contact with another

person who, although capable of consenting, has not consented to such contact.

Sexual Contact without Consent with Person Capable of Consenting is a Class A Crime.

5-7-6. SAFETY ZONE OF CHILD VICTIM OF SEX CRIME.

The court, upon the conviction of any person of a violation of the provisions of chapter 5-7 in which the victim was a child or upon an adjudication of a juvenile as a delinquent child for a violation of the provisions of chapter 5-7 in which the victim was a child, as a part of the sentence or adjudication.

- (1) Must order that the defendant or delinquent child not knowingly or willfully come within one thousand feet of the victim;
- (2) Must order that the defendant or delinquent child not have any contact with the victim, whether direct or indirect or through a third party; and
- (3) May order that the defendant or delinquent child not reside within one mile of the victim's residence unless the person is residing in a juvenile detention facility, jail or any tribe/state/federal corrections facility.

5-7-7. THREATENING TO COMMIT A SEXUAL OFFENSE. Any person who directly threatens or communicates specific intent to commit sex offenses is guilty of threatening to commit a sexual offense.

Threatening to Commit A Sexual Offense is a Class B crime.

5-7-8. BESTIALITY. No person, for the purpose of that person's sexual gratification, may:

- (1) Engage in a sexual act with an animal; or
- (2) Coerce any other person to engage in a sexual act with an animal; or
- (3) Use any part of the person's body or an object to sexually stimulate an animal; or
- (4) Videotape a person engaging in a sexual act with an animal; or
- (5) Kill or physically abuse an animal.

Bestiality is a Class B crime.

5-7-9. SEXUAL ACT WITH AN ANIMAL DEFINED. The term, sexual act with an animal in 5-7-8, means any act between a person and an animal involving direct

physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and genitals of the other. A sexual act with an animal may be proved without evidence of penetration.

5-7-10. PROVISIONS OF 5-7-8 AND 5-7-9 NOT APPLICABLE TO ACCEPTED PRACTICES. The provisions of 5-7-8 and 5-7-9 do not apply to or prohibit normal, ordinary, or accepted practices involved in animal husbandry, artificial insemination, or veterinary medicine.

5-7-11. INDECENT EXPOSURE. A person is guilty of indecent exposure if, for the purpose of arousing or gratifying the sexual desires of any person, they expose their genitals in such a fashion that they might be reasonably seen by the public.

Indecent Exposure is a Class B crime.

5-7-12. STATE OF MIND REQUIREMENTS.

A. In any prosecution for Aggravated Sexual Abuse, Sexual Abuse, Abusive Sexual Conduct based on the other party having not attained the age of 12 or 16, it shall not be necessary for the Tribe to prove that the defendant had knowledge that the victim had not attained that age.

B. In any prosecution for Sexual Abuse or Abusive Sexual Conduct based on the other party having attained the age of 12 years but not having attained the age of 16 years, it shall be an affirmative defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed the other party had attained the age of 16 years.

5-7-13. SEXUAL EXPLOITATION OF A MINOR. A person is guilty of sexual exploitation of a minor if the person causes or knowingly permits a minor to engage in an activity or the simulation of any activity, through any means of communication (including but not limited to the internet, photographs, phone, instant messaging, texting, etc.) that:

- (1) Involves nudity;
- (2) Is obscene; or
- (3) Is intended to be sexually arousing to the actor.

Consent to performing these acts by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's ages is not a defense to a charge of violating this section.

Sexual Exploitation of a Minor is a Class A crime.

5-17-14. DEFINITIONS. For the purposes of this chapter, the following definitions apply:

- (1) "Sexual Penetration" means;
 - (a) Contact involving penetration, however slight, between the penis and the vulva or the penis and the anus;
 - (b) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or
 - (c) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- (2) "Sexual Act" means;
 - (a) Sexual penetration; or
 - (b) The intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;
- (3) "Sexual Contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;
- (4) "Psychotherapist" means any physician, psychologist, nurse, chemical dependency counselor, social worker, member of the clergy, a medicine man or spiritual leader, as those terms are defined by the traditional laws of the Rosebud Sioux Tribe, marriage and family therapist, mental health service provider, or other person, whether or not licensed or certified, who performs or purports to perform psychotherapy;
- (5) "Psychotherapist's patient" means any person who seeks or obtains psychotherapeutic services from the psychotherapist.

**CHAPTER 8 – CRIMES AGAINST
THE FAMILY**

- 5-8-1. Bigamy
- 5-8-2. Criminal Non-Support
- 5-8-3. Failure To Send Children To School
- 5-8-4. Child Neglect
- 5-8-5. Child Abuse
- 5-8-6. Reports Of Child Abuse Required
- 5-8-7. Immunity From Liability From Reporting Suspected Child Abuse
- 5-8-8. Privileged Communications Not Available In Defense Of Child Abuse or Neglect Proceeding
- 5-8-9. Compelling Another To Marry

5-8-1. BIGAMY. Any person who, while being married to another presently living person, marries any third person, is guilty of bigamy. It is an affirmative defense to a charge of bigamy that:

(1) The actor's spouse in the former marriage has been absent from the Rosebud Sioux Reservation for over five successive years without being known to be living by the actor; or

(2) The actor's spouse in the former marriage has absented himself or herself from the actor by being outside the United States continuously for over five years; or

(3) The actor's previous marriage has been pronounced void, annulled, or dissolved by a Court of competent jurisdiction.

Bigamy is a Class B crime.

5-8-2. CRIMINAL NON-SUPPORT. Any person who intentionally fails or refused without lawful excuse to furnish necessary good, clothing, shelter, medical attention, or other remedial care or means of support for his spouse or minor child under the age of 18, is guilty of criminal non-support. As used in this section, the word "child" includes any child born out of wedlock whose paternity has been admitted by the actor or has been otherwise acknowledged or established in a civil proceeding. It is no defense in a prosecution under this section that the spouse or minor child to be supported received necessary support from any source other than the Defendant. A parent who chooses medical treatment for his minor child by spiritual means alone in lieu of traditional medical attention is not for that

reason alone in violation of this section. In any prosecution under this section against a parent who is not the lawfully appointed custodian of the minor child to be supported, it is an affirmative defense that at the time of trial, the Defendant is current with any and all child support payment obligations imposed by him by any Court of competent jurisdiction.

Criminal non-support is a Class B crime.

5-8-3. FAILURE TO SEND CHILDREN TO SCHOOL. Any person who being the parent, guardian or other person having a child under the age of 18 years in his care, custody or control, shall without good cause, neglect or refuse to send such child to school is guilty of failure to send children to school. **Failure to send children to school is a Class C crime.**

5-8-4. CHILD NEGLECT. Any person who shall, without proper cause, fail to take proper care of or neglect any minor child dependant upon him, including any dependant child born out of wedlock, and he being able to provide proper care, shall be deemed **guilty of a Class A offense.**

5-8-5. CHILD ABUSE.

(1) Any person who shall willfully abuse any minor child, shall be deemed guilty of a Class A offense.

(2) Any person who shall willfully abuse any unborn child by excessive consumption of alcohol or other controlled substance, said person being the mother of the unborn child, shall be deemed **guilty of a Class A offense.**

5-8-6. REPORTS OF CHILD ABUSE REQUIRED. Any physician, dentist, chiropractor, doctor of osteopath, optometrist, psychologist, social worker, law enforcement officer, teacher, school employee or official, nurse, employee of Public Health Service, licensed or registered child welfare provider, or other person having reasonable cause to suspect that a child under the age of 18 years examined by such person either for care or treatment, or having observed said child in the course of ordinary and usual contact with said child, has been abused or neglected, or has been injured by other than accidental means by any person including a parent or other person responsible for such child's care, shall report or cause reports to be made orally and immediately by telephone or

otherwise to the Tribal Prosecutor of the Rosebud Sioux Tribe or to the South Dakota or BIA Department of Social Services, or to the Tribal or BIA Police or the State's Attorney or County Sheriff of the county in which the child resides, if the child resides outside the Rosebud Sioux Reservation. Such person shall additionally file written reports under oath if requested to do so by the agency to which the suspected abuse has been reported. Failure to comply with this section constitutes the offense of failing to report suspected child abuse.

Failing to report suspected child abuse is a Class B crime.

5-8-7. IMMUNITY FOR LIABILITY FROM REPORTING SUSPECTED CHILD ABUSE.

Any person who in good faith makes a report of suspected child abuse pursuant to Section 5-8-6 above shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed, and shall have the immunity with respect to participation in any judicial proceeding resulting from such report.

5-8-8. PRIVILEGED COMMUNICATIONS NOT AVAILABLE IN DEFENSE OF CHILD ABUSE OR NEGLECT PROCEEDING.

The following evidentiary privileges are not available and may not be claimed in any judicial proceeding involving child abuse or neglect or resulting from the giving of any report concerning a child's injury or neglect or the cause thereof pursuant to section 5-8-7 above, namely;

- (1) Physician-patient privilege,
- (2) Communications between husbands and wives, or
- (3) Communications between teachers and students

5-8-9. COMPELLING ANOTHER TO MARRY.

Any person, who by force, menace, or duress compels another to marry, is guilty of a Class B crime.

CHAPTER 9 – PROSTITUTION AND RELATED OFFENSES

- 5-9-1. Prostitution
- 5-9-2. Pimping
- 5-9-3. Procuring, Promoting, or Patronizing Prostitution
- 5-9-4. Definitions
- 5-9-5. Husband-Wife Privilege

5-9-6. Giving Venereal Disease To Another

5-9-1. PROSTITUTION.

- (1) Is an inmate or resident of a house of prostitution or otherwise engages in sexual penetration for a fee; or
- (2) Loiters in or within view of public place for the purpose of being hired to engage in sexual penetration;
- (3) Engages in or offers or agrees to engage in any sexual penetration with another person for a fee; is guilty of penetration.

Prostitution is a Class B crime.

5-9-2. PIMPING.

- (1) Solicits another person to patronize a prostitute; or
- (2) Procures or attempts to procure a prostitute for another; or
- (3) Transports a person into the Rosebud Reservation to promote that person's engaging in prostitution or procure or pays for said transportation; or
- (4) Owns, controls, manages, supervises, or otherwise keeps alone or in association with another, a house of prostitution or a prostitution business, or leases or otherwise permits a place under his control to be used for prostitution or the promotion of prostitution by others; or
- (5) Solicits, receives, or agrees to receive any benefit for doing or agreeing to do anything forbidden by this section; is guilty of pimping.

Pimping is a Class A crime.

5-9-3. PROCURING, PROMOTING, OR PATRONIZING PROSTITUTION. Any person who:

- (1) Encourages, induces, procures or otherwise purposely causes another to become or remain a prostitute; or
- (2) Promotes prostitution of a minor; or
- (3) Promotes prostitution of his spouse, child, ward or any person for whose care, protection or support he is responsible; or
- (4) Pays or offers to pay another person a fee for the purpose of engaging in sexual penetration; or
- (5) Enters or remains in a house of prostitution for the purpose of engaging in sexual penetration;

is guilty of a Class A crime.

5-9-4. DEFINITIONS. The term sexual penetration shall have the same meaning as is used in section 5-7-2 of this Code. A house of prostitution is any place where sexual

penetration or promotion of sexual penetration is regularly carried on by one or more persons for a fee, under the control, management, or supervision of another. On the issue of whether a place is house of prostitution, the following shall be admissible into evidence, namely its general reputation, the reputation of the persons who reside in or frequent the place, and the frequency, timing or duration of visits by non-residents.

5-9-5. HUSBAND-WIFE PRIVILEGE NOT AVAILABLE. The husband and wife evidentiary privilege may not claim by any person who is a witness during the prosecution under this chapter.

5-9-6. GIVING VENEREAL DISEASE TO ANOTHER. Any person who, knowing or having reason to believe he is infected with a venereal disease, shall infect another with said venereal disease is guilty of spreading venereal disease.

Spreading venereal disease to another is a Class C crime.

The Rosebud Sioux Tribal Court shall, upon conviction, have the power to order the medical examination and treatment of the convicted person and may also order and compel the convicted person to disclose confidentially to the appropriate medical authorities the identities of other person who may have been exposed by the convicted person.

CHAPTER 10 - HOMICIDE

- 5-10-1. Murder By Premeditated Design
- 5-10-2. Felony Murder
- 5-10-3. Manslaughter
- 5-10-4. Vehicle Homicide
- 5-10-5. Justifiable Homicide
- 5-10-6. Referral To Justice Department

5-10-1. MURDER BY PREMEDITATED DESIGN. Any person who kills another human being without the authority of law and with a premeditated design to affect the death of the person killed or of any other human being, is guilty of murder.
Murder is premeditated design is a Class A crime.

5-10-2. FELONY MURDER. Any person who kills another human being while engaged in the perpetration of, or attempt to perpetrate, any arson, rape, robbery,

burglary, kidnapping, or theft, is guilty of felony murder.

Felony murder is a Class A crime.

5-10-3. MANSLAUGHTER. Any person who, without a design to affect death:

(1) Kills another human being while engaged in the commission of any crime other than those mentioned in section 5-10-2 above; or

(2) Kills another human being in a heat of passion; or

(3) Kills another human being by means of a dangerous weapon; or

(4) Kills another human being by any act imminently dangerous to others and evincing a disregard of human life; or

(5) Kills another human being by the use of excessive force or more force than was reasonably necessary, either while resisting an attempt by the deceased to commit a crime, or after such attempt shall have failed; is guilty of manslaughter.

Manslaughter is a Class A crime.

5-10-4. VEHICLE HOMICIDE. Any person who, while under the influence of an alcoholic beverage, intoxicating liquor, a controlled substance, or any other drug or substances, causes the death of another human being by the operation of a motor vehicle in a reckless, negligent, or careless manner, is guilty of vehicle homicide. For the purpose of this section, a motor vehicle is any self-propelled vehicle and includes, but is not limited to any automobile, truck, van, motorcycle, train, engine, watercraft, aircraft, or snowmobile.

Vehicle homicide is a Class A crime.

5-10-6. JUSTIFIABLE HOMICIDE.

Homicide is justifiable when committed by law enforcement officers and by those persons acting by their command and in their aid and assistance, when necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any legal duty, or when necessarily committed in retaking felons who have escaped, or when necessarily committed in arresting felons fleeing from arrest.

5-10-7. REFERRAL TO JUSTICE

DEPARTMENT. No prosecution can be made under this Homicide Chapter unless the case has been submitted to the United States Attorney or other appropriate federal official and the case has been declined for prosecution.

**CHAPTER 11 – CRIMES RELATED
TO WEAPONS**

5-11-1.	Definitions
5-11-2.	Controlled Weapon
5-11-3.	Exceptions To Controlled Weapons Statute
5-11-4.	Discharge Of A Weapon In A Public Place
5-11-5.	Carrying A Concealed Weapon
5-11-6.	Possession Of Firearm By Felon
5-11-7.	Possession Of Firearm or Dangerous Weapon While Intoxicated
5-11-8.	Possession Of Firearm By A Minor
5-11-9.	Antique Firearms Exempt
5-11-10.	Firearms Permits
5-11-11.	Forfeiture Of Weapons or Firearms

5-11-1. DEFINITIONS. The word “firearm” means any person from which a projectile or projectiles may be discharged by gunpowder. The word “gunpowder” includes any propellant that upon oxidation emits heat and light and is commonly used in firearm cartridges. The word “dangerous weapon” means any firearm, knife, or device, instrument, material, or substance, whether animate or inanimate, which is calculated or designed to inflict death or serious bodily harm, or by the manner in which it is used is likely to inflict death or serious bodily harm. The word “antique firearm” means any firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before the year 1898 or any replica of such firearm, if such replica has not been designed or redesigned for using rim fire or conventional center fire fixed ammunition, or uses rim fire or conventional center fire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade, or any other firearm which has been permanently altered so that it is incapable of being discharged.

5-11-2. CONTROLLED WEAPON. Any person who knowingly possesses a controlled weapon is **guilty of a Class A crime.**

As used in this Section, the word “controlled weapon” includes a firearm silencer, machine gun, short shotgun, or short rifle.

The word “firearm silencer” means any instrument, attachment, weapon, or appliance for causing the firing of any gun, revolver, pistol, or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any such weapon. The word “machine gun” means any firearm that automatically discharges two or more cartridges by a single function of the firing device, or is capable of being modified to function as a machine gun. The word “short shotgun” means a shotgun having a barrel less than 18 inches long or an overall length of less than 26 inches. The word “short rifle” means a rifle having a barrel less than 16 inches long or an overall length of less than 26 inches.

5-11-3. EXCEPTIONS TO CONTROLLED WEAPONS STATUTE. The following persons may lawfully possess a controlled weapon within the Rosebud Reservation, namely:

- (1) A person who holds a valid federal license issued pursuant to law for such weapon or has registered such weapon with the proper federal authorities pursuant to law; or
- (2) A person who is a law enforcement officer or member of the Armed Forces of the United States acting in the lawful discharge of his duties; or
- (3) A person who possesses a controlling weapon briefly after having found it or taken it from an aggressor and is the process of delivering it to law enforcement officers.

5-11-4. DISCHARGE OF A WEAPON IN A PUBLIC PLACE. Any person who willfully discharges any firearm, air gun, bow and arrow, or other weapon, in any public place, or in any place where there is any person likely to be endangered thereby, although no injury to any person results, is guilty of discharge of a weapon in a public place. **Discharge of a weapon in public place is a Class A crime.**

5-11-5. CARRYING A CONCEALED WEAPON. Any person, other than a law enforcement officer engaged in the discharge of his duties, who carries, loaded or unloaded, concealed about his person, any firearm or other dangerous weapon without an appropriate Tribal license, shall be guilty of the crime of carrying a concealed weapon. **Carrying a concealed weapon is a Class B crime.**

5-11-6. POSSESSION OF FIREARM BY FELON. Any person who has been convicted in the Courts of the United States or any state thereof of a felony or has been convicted in the Courts of the Rosebud Sioux Tribe of any Class A crime who has in his possession or under his control a firearm is **guilty of Class A crime.** This Section shall not apply to any person who has been discharged from prison, jail, probation, or parole for his most recent felony or Class A crime more than 5 years prior to the commission of said crime.

5-11-7. POSSESSION OF FIREARM OR DANGEROUS WEAPON WHILE INTOXICATED. Any person who, being under the influence of an alcoholic beverage or controlled substance or drug or medication or any other substance whatever, who has in his possession or under his custody or control any firearm or other dangerous weapon is guilty of possession of a firearm while intoxicated. Possession of a firearm while intoxicated is a **Class C crime if the firearm was unloaded.** Possession of a firearm while intoxicated is a **Class B crime if the firearm was loaded.** Possession of any other dangerous weapon while intoxicated is a **Class B crime.**

5-11-8. POSSESSION OF FIREARM BY A MINOR. No person under the age of 16 years may possess or own a firearm without the consent of his parent or guardian and the appropriate license issued by the Rosebud Sioux Tribe.
A violation of this Section is a Class B crime.

5-11-9. ANTIQUE FIREARMS EXEMPT. The restrictions of this chapter shall not apply to antique firearms.

5-11-10. FIREARMS PERMITS. The Treasurer of the Tribe with the approval of the director of the Department of Natural Resources of the Rosebud Sioux Tribe and the head of the Tribal police may issue permits to persons under the age of 16 but of the age of at least 12 years to carry firearms for hunting purposes only. The fee for the issuance of said permit shall be \$5. Said permit shall be effective through age 15. The Tribal Treasurer' office, with the approval of the Chief Judge of the Tribal Court and the

head of the Tribal police force, may issue a license to a person to carry a pistol concealed on or about his person on the Reservation for a period of not more than 2 years from the date of issue, if it appears that the applicant has good reason to fear an injury to his person or his property, or has some other proper reason for carrying a pistol and that he is a suitable person to be so licensed and is not disqualified pursuant to section 5-11-6 of this code. The Treasurer's office will maintain a record of the written application for said license and the applicant will subscribe an oath before the Treasurer that the statements made on the application are true. The fee for issuing such license shall be \$25.00.

5-11-11. FORFEITURE OF WEAPONS OR FIREARMS. Any controlled weapon or firearm or other dangerous weapon used or possessed in violation of the provisions of this chapter shall be forfeited to the Tribe to be destroyed or sold or delivered to the Tribal police for their use or if the same was stolen, returned to the lawful owner upon the proof of ownership. The sale of any such weapons shall be the responsibility of the head of the Tribal police who shall remit the proceeds of any such sale promptly to the Tribal Treasurer's office to be deposited in the general fund. The Tribal Treasurer in addition shall, upon receipt of the funds or upon any notification from Tribal law enforcement officer, cancel any weapons permit that was issued on said weapon.

CHAPTER 12 – DESTRUCTIVE DEVICES

- 5-12-1. Destructive Device Defined
- 5-12-2. Placing Destructive Device In Vehicle
- 5-12-3. Possession of Destructive Device With Intent to Injure

5-12-1. DESTRUCTIVE DEVICE DEFINED. For the purposes of this Section, a "destructive device" is any box, package, contrivance, bomb, or apparatus containing or arranged with an explosive, acid, or poisonous or inflammable, substance, chemical or compound, or other dangerous or harmful weapon or thing, constructed, contrived, or arranged so as to explode, ignite, or throw forth its contents, or strike with any of its parts, unexpectedly when moved, handled, or opened, or after the passage of time or under a condition or in a

manner calculated to endanger health, life, limb, or property.

5-12-2. PLACING DESTRUCTIVE

DEVICE IN VEHICLE. Any person who with intent to injure or to threaten to injure any person or property places or causes to be placed a destructive device on any motor vehicle, aircraft, watercraft, railroad, or common carrier or on or about the property of another or in any place where another person is likely to be injured thereby, without lawful authority **is guilty of a Class A crime.**

5-12.3 POSSESSION OF DESTRUCTIVE DEVICE WITH INTENT TO INJURE. Any person who has in his possession any destructive device with intent to injure, intimidate or terrify any person, or with the intent to injure or destroy any property without lawful authority **is guilty of a Class A crime.**

CHAPTER 13 – VANDALISM AND RELATED CRIMES

5-13-1. Vandalism

5-13-1. VANDALISM. Any person who, intentionally:

- (1) Injures, defaces, damages, or destroys private property in which any other person has an interest without the consent of such other person; or
- (2) Damages, defaces, injures, or destroys Tribal or other public property without the lawful consent of the appropriate governing body having jurisdiction thereof;
- (3) Causes or threatens a substantial interruption or impairment of any public utility service, including but not limited to transportation, water supply, gas, power or other utility services; or
- (4) Causes a substantial interruption or impairment in mass communication service or police, fire, or other public service communications or amateur or citizen’s band radio communications being used for public service or emergency communications; or
- (5) Deposits, throws, or propels any substance upon any highway, roadway, runway, or railroad track, or at any vehicle while such vehicle is either in motion or stationary;

is guilty of vandalism.
Vandalism is a Class C crime if the damage inflicted is \$100 or less.

Vandalism is a Class B crime if the damage inflicted is \$100 but \$500 or less.

Vandalism is a Class A crime if the damage is inflicted is more than \$500.

CHAPTER 14 – ESCAPE AND RELATED CRIMES

5-14-1. Escape
5-14-2. Aiding an Escape
5-14-3. Providing Contraband

5-14-1. ESCAPE. Any person who without lawful permission removes himself from custody, or fails to return to custody following temporary leave granted for a specific purpose or limited period is guilty of escape. The word “custody” means arrest, detention in any facility for custody of persons under charge or conviction of crime, or any other detention for law enforcement purposes; but “custody” does not include supervision under probation or parole, or limitations incident to release on bail.

Escape is a Class B crime.
If any person convicted under this section is under sentence of imprisonment, his sentence on conviction for escape shall commence following the expiration of the term of the last sentence of his imprisonment.

5-14-2. AIDING AN ESCAPE. Any person who:

- (1) Aids another person to escape from custody; or
- (2) Knowingly provides a person in custody with anything which may facilitate such person’s escape; or
- (3) While in custody, knowingly procures, makes, or possesses anything which may facilitate another’s escape;

is guilty of aiding and escape.

Aiding an escape is a Class B crime.

5-14-3. PROVIDING CONTRABAND. Any person who knowingly provides another person in custody with alcoholic beverages, drugs, controlled substances, weapons, firearms, any implement to aid an escape, or any other thing or substance which the actor knows the detainee cannot lawfully possess under the terms of the detainee’s custody; is guilty of providing contraband.

Providing contraband is a Class B crime.

**CHAPTER 15 – DOG CONTROL AND
RELATED CRIMES**

- 5-15-1. Cruelty To Animals
5-15-2. Definitions - *Amendment*
5-15-3. Office Designated - *Amendment*
5-15-4. Licensing Of Dogs and Cats Required - *Amendment*
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5-15-11. Licensing Fees and Fines - *Amendment*
5-15-12. Transferability - *Amendment*
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5-15-26. Quarantine Of Animals - *Amendment*
5-15-27. Becoming Sick In Quarantine - *Amendment*
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5-15-29. Disposition Of Rabid Animals - *Amendment*
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5-15-31. Disposition Of Animal Injuring Livestock - *Amendment*
5-15-32. Nuisance - *Amendment*
5-15-33. Restraint Of Animals - *Amendment*
5-15-34. Animals In Heat - *Amendment*
5-15-35. Vicious Animals - *Amendment*
5-15-36. Harassment, Organized fights, or Deliberate Injury/Death of Another Animal - *Amendment*
5-15-37. Liability For Dog Bites - *Amendment*
5-15-38. Lawful Presence On Property Where Animal Resides Defined - *Amendment*
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5-15-40. Exotic, Wildlife and Endangered Species - *Amendment*
5-15-41. Animal Shelter - *Amendment*
5-15-42. Removal Of Animals From Animal Shelter - *Amendment*
5-15-43. Removal Of Bite Animals From Quarantine – *Amendment*
5-15-44. Disposition of Impounded Licensed Animals - *Amendment*
5-15-45. Impoundment Fee – *Amendment*
5-15-46. Unwanted Animals - *Amendment*
5-15-47. Interference With The Licensing Authority or Its Authorized Representatives - *Amendment*
5-15-48. Penalty For Violation - *Amendment*
- 5-15-1. CRUELTY TO ANIMALS.** Any person who intentionally:
(1) Tortures or seriously overworks an animal; or
(2) Fails to provide necessary food, care, or shelter for an animal in his custody or control; or
(3) Abandons an animal in his custody; or
(4) Transports or confines an animal in a cruel manner; or
(5) Kills, injures, or administers a poison to an animal without legal privilege to do so; or
(6) Causes one animal to fight with another; is guilty of cruelty of animals. It is a defense to prosecutor under this section that the conduct of the actor towards the animal involved was an accepted veterinary practice, or directly related to a bona fide experiment for scientific research, and that the animal being destroyed was destroyed in a manner no more cruel than necessary to accomplish the scientific research involved.
Cruelty to animals is a Class B crime.

5-15-2. DEFINITIONS. For use in this Ordinance the following terms are defined:

(1) Abandonment of animals...any owner or who leaves an animal or animals off the premises without provision for care or control by owners or another person.

(2) Animal...means dogs, cats and every other animal being other than human, not to include birds.

(3) At heel...means under the voice control and within fifteen feet of the owner or person in custody of the animal.

(4) At large...means any licensed or animal found off the premises of its owner and not under the control of a person, restrained within a vehicle, housed in a veterinary hospital, kennel or shelter or at the heel beside a person and obedient to that persons command.

(5) Cat...means both male and female animals of the cat family (Felis Catus) whether neutered or not.

(6) Dangerous animal...means and includes any animal which is not naturally tamed or gentle; or which is of a wild nature or disposition; or which is capable of killing or inflicting serious injury upon human beings and having known tendencies, individually or as a species. To do so; or which because of its size or other characteristics, would constitute a danger to life or property if it is not kept or maintained in a safe manner or in secure quarters.

(7) Domestic animal...shall mean any of various animals, such as the horse, cow, or sheep, domesticated by man so as to live and breed in a tame condition.

(8) Dart...means the process whereby a drug of a sedative nature is delivered to and injected into an animal by means of a projectile shot from a rifle or gun for the purpose of subduing or rendering an animal unconscious for capture.

(9) Dog...means both male and female animals of the canine species whether neutered or not.

(10) Harboring...the occupant of any premises on which an animal is kept or to which customarily returns daily food and care, is presumed to be harboring or keeping the animal within the meaning of this ordinance.

(11) Neutered...refers to a surgical procedure that has been performed on a dog or a cat that renders it incapable of siring or bearing offspring.

(12) Nuisance animal...any dog that is repeatedly at large and:

(a) Molests passerby's or passing vehicles

(b) Causes a threat to vehicle traffic

(c) Attacks other animals or harassment and threat of livestock

(d) Damages private or public property

(e) Trespasses on school grounds endangering children

(f) Is vicious, dangerous or ferocious

(g) Sick with or liable to communicate rabies or other contagious or infectious disease

(h) Is female and in heat

(i) Habitually, constantly, or frequently disturbs the sleep, peace and quiet of any neighborhood or person.

(13) Owner...means any person or persons, firm, association, or corporation, or parent of a child owning, keeping, sheltering or harboring an animal.

(14) Pet...shall mean any animal kept for pleasure rather than utility.

(15) Rabies vaccination...means the injection intramuscularly of antirabic vaccine received from a licensed veterinarian or at a public clinic which may be established for this purpose.

(16) Stray...shall mean any dog, cat or animal not having a known owner.

(17) Vicious Dog...any dog that constitutes a physical threat to human beings or other animals.

(18) Wild or Exotic Animal...shall mean any non-human primate, raccoon, skunk, wolf, squirrel, fox, bear, leopard, panther, tiger, lion, lynx, or any other warm blooded animal of the bovine, suidae, marsupials, constrictive or poisonous snakes, amphibians, or stone fish which can normally be found in the wild state or any member of the crocodilian including, but not limited to, alligators, crocodiles, caimans' and gavial. Non-poisonous snakes, rabbits, guinea pigs, laboratory rats, mice, gerbils, and hamsters, which have never lived in the wild state, shall be excluded from this definition.

(19) RST...shall refer to the Rosebud Sioux Tribe.

5-15-3. OFFICE DESIGNATED.

(1) The Animal Control Program, under the RST Health Department, is designated as the official agent for the Rosebud Sioux Tribe for the purpose of enforcement of this Ordinance. The Health Department (Licensing Authority) will be responsible for issuing animal licenses, and collecting fees therefore pursuant to the provisions of this Ordinance.

(2) The Animal Control Officer shall have the authority to enter into agreements with third parties for capture, transport, impoundment and disposition of any animal found within the boundaries of the Rosebud

Reservation, and for other purposes relating to the enforcement of this ordinance.

(3) The Animal Control Officer will be cross deputized through Tribal Law Enforcement and Game Fish and Parks (Natural Resources)

5-15-4. LICENSING OF DOGS AND CATS REQUIRED. Any person owning, keeping, harboring, maintaining, or having custody of any animal within the boundaries of the Rosebud Reservation must obtain from the Tribal Health Department a license as herein provided. All licenses shall expire on February 28, of each year and the full amount for required license shall be paid for any fraction of the licensing year. Upon collection of the license fee by the Licensing Authority, a dated receipt shall be issued indicating the name and address of the owner, description of the animal, the appropriate fee amount, license number, year and location of issuing office. The fee shall be \$5.00 per year or fraction thereof.

5-15-5. LICENSING REQUIRES VACCINATION CERTIFICATION.

(1) The Tribal Health Department shall issue a Certification of Registration for each dog or cat within the Rosebud Reservation provided that the owner exhibit proof that the dog or cat described in the registration application is up to date on its rabies vaccination and provided further that the owner shall pay to the Health Department a registration fee of five (\$5) dollars for each dog and cat.

(2) Within thirty days after March 1, or within thirty days after the dog or cat reaches six (6) months of age, or is under six (6) months of age and is no longer with its mother, every owner of such dog or cat shall procure a tribal animal license, under the provisions stated above.

5-15-6. EXCEPTION. This code applies reservation wide with no exceptions.

5-15-7. DISPLAY OF TAGS. The tag received at the time the animal is vaccinated against rabies along with the license tag shall be attached to a collar, harness or other device and shall be worn by the licensed animal at all times, and shall not be removed from any animal by an unauthorized person. The original license receipt and rabies vaccination certificate shall be retained by the owner or harbinger for inspection by any person charged with the enforcement of this Ordinance.

5-15-8. AT LARGE PROHIBITED. The owner of an animal shall at all times have the animal confined or restrained, to prevent it from running at large.

5-15-9. DUPLICATE TAGS. In the event of loss or destruction of the original license tag the owner of the animal shall obtain a duplicate tag by paying a fee of three (\$3) dollars from the licensing authority. The Licensing Authority shall enter in the license record the new number assigned.

5-15-10. FAILURE TO OBTAIN OR DISPLAY LICENSE. Any person who fails to obtain or to display the license tags shall be required to pay a fine as set by the Licensing Authority.

5-15-11. LICENSING FEES AND FINES. Fees for licenses, duplicate tags and licensing times shall be issued by the Licensing Authority, and Public Notice of fees and fines shall be published in the local paper and posted and by public display on posters, in frequently visited places. The fees and fines described within, shall be in effect for year at which time they may be changed with approval of the Tribal Council. All changes in fees must give the public 30 days notice before taking affect.

5-15-12. TRANSFERABILITY. Animal licenses are not transferable. Any person attaching a license or rabies tag to any other than the animal for which such tag was originally issued shall be required to pay a fine set by the Licensing Authority.

5-15-13. LICENSE RENEWAL. Licenses must be renewed each year, regardless of date of issue. All licenses shall expire on February 28, and will be valid until February 28, of the following year. Registration fees shall be paid at the time of license renewal.

5-15-14. PERMITS. No person, partnership, or corporation shall operate a commercial animal establishment or animal shelter within the Rosebud Reservation boundaries or without first obtaining a permit in compliance with this section and with all other licensing laws of the Rosebud Reservation. All permits shall expire on February 28, of each year and all fees shall be pro-rated for any fraction of the licensing year. Upon collection of payment for the permit by the Licensing Authority a dated receipt shall be issued indicating the name

and address of the owner of the commercial animal establishment and the appropriate fee.

5-15-15. CHANGE IN OWNERSHIP. If there is a change in the ownership of any current commercial establishment, the new owner may have the current license transferred to their name upon payment of a transfer fee, as established by the Licensing Authority.

5-15-16. PERMIT FEES. Permits for animals in a commercial establishment may be licensed in group depending on size of group, providing each animal within the group can prove current rabies vaccination certifications, group license shall be issued upon payment of the applicable fee to be set by the Licensing Authority.

5-15-17. FAILURE TO OBTAIN PERMIT. Any person who fails to obtain a business license, animal permit before opening any facility covered by this section shall be subject to, and pay a fine as set by the Licensing Authority.

5-15-18. ALL FACILITIES. All facilities covered by this section shall be operated in a safe and sanitary manner. Humane treatment of animals, as covered under this Ordinance is required. Penalty for violation of this subsection shall be a fine set by the Licensing Authority and/or revocation of all permits, and possible impoundment of animals within the facility, dependant on the severity of the in-humane treatment found during inspections or reports of cruelty.

5-15-19. RABIES CONTROL. The Rosebud Reservation is a rural and sometimes frontier area with pets frequently coming in contact with wild animals and interacting with other dogs, therefore this section is specific to the control of the communicable disease rabies.

5-15-20. VACCINATIONS.

(1) Every person owning or harboring a dog and cat three (3) months of age or older for five (5) or more days shall have such animals vaccinated against rabies with an approved vaccine by a licensed veterinarian or by persons authorized by the Licensing Authority. This vaccine shall be listed as an approved vaccine in the most recent Compendium of Animal Rabies Vaccine prepared by the National Association of State Public Health Veterinarians, Inc. Dogs

whose vaccination expires during the licensing year will be vaccinated prior to license renewal. Failure to have animals vaccinated will result in a fine as set by the Licensing Authority.

(2) A current certificate of immunization or rabies signed by a licensed veterinarian or other designated agent shall hereafter be required for all dogs and cats within the limits of the Rosebud Reservation, and a copy of the certificate shall be presented by the owner or his agent to the Rosebud Sioux Tribe's Licensing Authority, for filing. The certificate must contain the following information.

(a) The name, address and telephone number of the owner;

(b) The type of vaccine used, manufacturer, and serial or lot number;

(c) The date the vaccination expires in the dog or cat or harbored of the inoculated animal;

(d) The date of inoculation;

(e) The year and serial number of the rabies tag; and

(f) The breed, age, color, and sex of the inoculated animal.

5-15-21. RABIES TAG. Concurrent with the issuance and delivery of the certificate of vaccination referred to, the owner of the animal shall attach to the collar or harness of the vaccinated animal a metal tag serially numbered and bearing the year of issuance, as comes with the vaccination.

5-15-22. DUPLICATE TAGS. In the event of loss or destruction of original tag, the owner of the animal shall obtain a duplicate tag from the Licensing Authority for a fee set by the Licensing Authority.

5-15-23. DESIGNATION OF QUALIFIED PERSONS. All veterinarians who are duly registered and licensed to practice veterinary medicine in the United States are hereby designated as authorized to vaccinate animals against rabies and to execute certificates of vaccinations as provided by law. Also health advisors, who have received specialized training in vaccinating animals against rabies, are authorized to vaccinate animals.

5-15-24. PROOF. It shall be unlawful for any person who owns or harbors, any dog or cat or other animal to fail or refuse to exhibit a copy of the certificate of vaccination upon demand to any person charged with the enforcement of this Ordinance.

5-15-25. DUTY TO REPORT. When any person is bitten by an animal, it shall be the duty of such person or his parent or guardian and the owner or keeper of the animal to immediately notify the Licensing Authority, IHS Office of Environmental Health (OEH), or the Rosebud Sioux Tribe Law Enforcement of the incident.

5-15-26. QUARANTINE OF ANIMALS. Any animal which has bitten a person shall be observed for a period of 10 days from the date of the bite. The procedure and place of observation shall be designated by the representative of the Licensing Authority. If the animal is not confined on the owner's premises, confinement shall be in an authorized Animal Shelter, or holding facility, or at any veterinary hospital of the owner's choice and at owner's expense. Stray animals whose owners cannot be located shall be confined in an authorized animal shelter or holding facility. The owners of any animal that has been reported as having inflicted a bite on any person shall on demand produce said animal for quarantine as prescribed in the Section. Refusal to produce said animal constitutes a violation of this Section and each day of such refusal shall constitute a separate and individual violation.

5-15-27. BECOMING SICK IN QUARANTINE. Any dog or cat being held in quarantine, reviewed daily to be a representative of the Licensing Authority develops signs and symptoms which may be indicative of rabies, shall be humanely killed by the representative by the Licensing Authority and its head submitted by IHS OEH to a laboratory qualified to conduct rabies analysis.

5-15-28. REMOVAL OF ANIMALS OF QUARANTINE. No person shall remove from any place of isolation or quarantine any animal which has been isolated or quarantined, without the written consent of the Licensing Authority.

5-15-29. DISPOSITION OF RABID ANIMALS. Any dog or cat bitten by an animal known or proven to be rabid shall be humanely killed immediately by a person authorized by the Licensing Authority, provided that any dog or cat which has been vaccinated at least three (3) weeks before being bitten shall be re-vaccinated against rabies and confined for ninety days. At the end of the confinement period, the dog or cat

shall be released if declared free of rabies by a licensed veterinarian. If as determined by the veterinarian, the dog or cat develops rabies during the confinement period, the owner or keeper shall notify the Licensing Authority and it shall be humanely killed and properly disposed of.

5-15-30. LIABILITY FOR DAMAGE. If a dog shall kill or injure any livestock, the owner or keeper of such animal shall be liable for all damages that may be sustained thereby, to be recovered by the party so injured; provided that the livestock is within an area of authorized livestock use.

5-15-31. DISPOSITION OF ANIMAL INJURING LIVESTOCK. No person shall keep any dog after it is known that dog is liable to kill or injure livestock and it shall be the duty of the owner to kill or have killed the dog upon order of the Licensing Authority after finding that the dog has killed or injured livestock; provided however, that it shall be the right of any owner of livestock so killed or injured by the actions of any dog or any person witnessing such actions to kill such animal while it is upon property controlled by the owner of the livestock. If a dog is observed attacking livestock and wildlife (game animals, individuals authorized by the Licensing Authority can take appropriate actions to prevent these actions.

5-15-32. NUISANCE. No animal owner or keeper to harbor or maintain or permit on any lot, parcel of land or premise under his/her control, any dog or other animal which by any sound or cry shall disturb the peace and comfort of the inhabitants, of the neighborhood or interfere with any person in the reasonable and comfortable enjoyment of life or property.

5-15-33. RESTRAINT OF ANIMALS. It shall be unlawful for any person owning or having charge of any animal except a domestic house cat to permit such animal to run at large, unless such animal is restrained by a leash not to exceed six (6) feet in length and is in charge of a person competent to restrain such animal. Such animal may be at large on the owner's property, if contained within a secure fence that will keep the animal confined to the premises.

5-15-34. ANIMAL IN HEAT. Every female dog or cat in heat shall be confined in a building or secure enclosure in such a

manner that such animal cannot come in contact with no other dog or cat except for planned breeding. Any person permitting a female dog in heat to run at large shall be cited into Tribal Court.

5-15-35. VICIOUS ANIMALS. No person shall keep any animal known to be vicious (by breed or nature) and liable to attack and injure a human being or other animal unless such animal(s) is securely kept so as to prevent injury to any person, pet or livestock. The owner of such an animal must post signs on his property warning others to beware of the animal. Signs must be in clear view prior to entering the property.

5-15-36. HARASSMENT, ORGANIZED FIGHTS, OR DELIBERATE INJURY/DEATH OF ANOTHER ANIMAL. No person shall harass or intimidate another person or their pet, through ownership of a vicious dog. No owner of a vicious dog shall allow their animal to deliberately injure or kill another animal. There shall be no organized fighting of Dogs allowed within the boundaries of the Rosebud Reservation.

5-15-37. LIABILITY FOR DOG BITES. The owner of any dog which bites a person when the person is in or on a public place, or on the property where the owner of the animal resides, shall be liable for damages suffered by the person bitten, (including medical treatment costs) regardless of the former lack of viciousness of the dog or the owner's knowledge of its viciousness, and including a fine of \$100.00.

5-15-38. LAWFUL PRESENCE ON PROPERTY WHERE ANIMAL RESIDES DEFINED. Any person is lawfully in or on said property within the meaning of this section when as an invitee, or guest, or when in the performance of a duty or service imposed on that person, by law, regulation, or consent of a family member of that residence.

5-15-39. PROVOCATION AS DEFENSE. Proof of provocation, or aggravation, (by owner visualization with other witnesses, written documentation over time, or by police notification), of the attack by the person injured shall be a defense action for liability and/or damages.

5-15-40. EXOTIC, WILDLIFE AND ENDANGERED SPECIES. It is a nuisance

and shall be unlawful for any person to keep, harbor, or maintain or to sell native fur bearers, bears, exotic cats, venomous and constrictive snakes, any endangered species, or dangerous reptiles, amphibians, or exotic rodents, or wildlife, as pets.

5-15-41. ANIMAL SHELTER. An animal shelter shall be established for the purpose and caring for any animal impounded under the provisions of this Ordinance, and such shelter shall be constructed to facilitate cleaning and sanitizing and shall provide adequate water and lighting. The animal shelter shall be operated in a safe and sanitary manner and shall meet Indian Health Service Standards, as well as the Standards of the Rosebud Sioux Tribe.

5-15-42. REMOVAL OF ANIMALS FROM ANIMAL SHELTER. It shall be unlawful for any person to remove any impounded animal from the Animal Shelter without consent from the Licensing Authority.

5-15-43. REMOVAL OF BITE ANIMALS FROM QUARANTINE. Animals impounded because of bites shall not be removed from the pound until after ten (10) days observation period and a release from the Licensing Authority is secured, and payment of food care fee is paid.

5-15-44. DISPOSITION OF IMPOUNDED LICENSED ANIMALS. As soon as practicable after impoundment, the Licensing Authority shall notify the owner, provided that a name tag including the owners name, address, and telephone number is attached to the dog or cat's collar or harness. Any impounded animal which is licensed may be redeemed by the owner upon payment of an impoundment fee, care and feeding fee, veterinary fees, and such other costs as set by the Licensing Authority. If such animal, is not redeemed within eight (8) days, it shall be deemed abandoned and the Licensing Authority may humanely destroy said animal. As soon as practicable after impoundment, the Licensing Authority shall notify the owner, provided that a name tag including the owner's name, address, and telephone number is attached to the dog or cat's collar or harness. Any impounded animal which is not licensed may be redeemed, upon payment of the payment of the license fee, impoundment fee, care and feeding fee, veterinary charges, and presentation of proof of rabies vaccination, and such other costs as set by the Licensing Authority. If

such animal is not wearing its tags as required by this code is not redeemed within three (3) days, it shall be deemed abandoned and the Licensing Authority may humanely destroy the animal as such.

5-15-45. IMPOUNDMENT FEE. An owner reclaiming an impounded cat shall pay a fee to be set by the Licensing Authority.

5-15-46. UNWANTED ANIMALS. Unwanted and for wild or untamed dogs and cats can be immediately humanely destroyed or put up for adoption for fees to be set by the Licensing Authority.

5-15-47. INTERFERENCE WITH THE LICENSING AUTHORITY OR ITS AUTHORIZED REPRESENTATIVES. No one shall interfere with, molest, harass, hinder, or prevent the Licensing Authority or its authorized representatives in the discharge of their duties as herein prescribed, or to violate any of the provisions of this Ordinance.

5-15-48. PENALTY FOR VIOLATION. Unless otherwise provided in this Ordinance, any person who violates any of the provisions of this Ordinance shall be fined no less than fifty dollars (\$50.00) and not more than one thousand dollars (\$1,000.00).

Recommended fees/fines for this ordinance:

Registration Fee	\$5.00
Rabies Vaccination (given by Animal Control Officer)	\$20.00
Duplicate Registration Tag	\$3.00
Failure to Display Tag	\$5.00
Transferability of Tags	\$50.00
Permits (group rates)	
6-10 animals	\$50.00
10-25 animals	\$100.00
over 25 animals	\$200.00
Ownership Transfer Fee	\$75.00
Failure to Obtain Permit	\$100.00
Failure to Operate Safe and Sanitary Facility	
Per individual animal	\$100.00
Plus over facility	\$500.00
Failure to Obtain Rabies Vaccination	\$50.00
Duplicate Rabies Tag	\$3.00
Refusal to Produce Animal for Quarantine	\$5.00
per day for up to 10 days	\$50.00
Removal of Animal from Quarantine	\$50.00
Nuisance Animal	
First Offense	\$50.00
Second Offense	\$100.00

	Third Offense	Disposal of Animal
Animal at Large		
First Offense		\$50.00
Second Offense		\$100.00
Third Offense		\$150.00
Fourth Offense		Disposal of Animal
Animal in Heat		\$30.00
Harassment, Intimidation or Organized Fights		
First Offense for Harassment		
Intimidation		\$200.00
Second Offense		\$300.00
Fighting of Vicious Animals		
First Offense		\$500.00
Second Offense		Per animal \$1,000.00 + Disposal of Animal
Keeping of Exotic or Wildlife		\$1,000.00
Removal of Bite Animal		\$100.00
Impoundment Fee		\$10.00
Interference with Licensing Authority Representative		\$500.00

CHAPTER 16 – PERJURY AND RELATED CRIMES

5-16-1.	Perjury
5-16-2.	False Alarms
5-16-3.	Tampering With Witnesses
5-16-4.	Retaliation Against Witness
5-16-5.	Solicitation
5-16-6.	Tampering With Evidence
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5-16-8.	Impersonating An Officer or Public Servant
5-16-9.	Definitions
5-16-10.	Compounding A Crime
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5-16-12.	Attempting To Influence Agreement To Give A Verdict
5-16-13.	Resisting Arrest
5-16-14.	Failure To Appear - Amendment
5-16-15.	

5-16-1. PERJURY. Any person who, having taken an oath that he will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which such an oath may by law be administered, intentionally and contrary to such oath, states any material

matter he knows to be false, is guilty of perjury.

A false statement is material, regardless of the admissibility of the statements under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the false statement to be immaterial.

It is no defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement.

No person shall be convicted of an offense under this section if he retracted the false statement in the course of the proceedings in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding. An unqualified statement of that which one does not know or reasonably believe to be true is equivalent to a statement of that which one knows to be false.

Perjury is a Class B crime.

5-16-2. FALSE ALARMS. Any person who knowingly:

(1) Causes a false fire alarm or alarm of other type of emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property; or

(2) Gives false information to any law enforcement officer with the intent to implicate another crime; or

(3) Reports to law enforcement authorities a crime or other incident within their official concern knowing that said crime or incident did not occur; or

(4) Fails or refuses to give his correct name or address to a law enforcement officer in lawful discharge of his official duties;

is guilty of giving a false alarm.

Giving a false alarm is a Class B crime.

5-16-3. TAMPERING WITH WITNESSES.

Any person who, believing that an official proceeding or investigation is pending or about to be instituted, attempts to induce or otherwise causes a person to:

(1) Testify or inform falsely; or

(2) Without any testimony, information, documents, or things of value to the investigation; or

(3) Elude legal process summoning him to testify or supply evidence; or

(4) Absent himself from any proceeding or investigation to which he has been legally summoned;

is guilty of tampering with a witness.

Tampering with a witness is a Class A crime.

5-16-4. RETALIATION AGAINST A

WITNESS. Any person who harms another person or property by an unlawful act in retaliation for anything done by said other person or member of his family in a capacity as a witness or informant, is guilty of retaliation against a witness.

Retaliation against a witness is a Class A crime.

5-16-5. SOLICITATION. Any person who solicits, accepts, or agrees to accept any benefit for doing any of the things prohibited by sections 5-16-1 and 5-16-3 above is guilty of solicitation to tamper with a witness.

Solicitation to tamper with a witness is a Class A crime.

5-16-6. TAMPERING WITH EVIDENCE.

Any person who, believing that an official proceeding or investigation is pending or about to be instituted:

(1) Alters, destroys, conceals, or removes any record, document, or other potential item of evidence with the intent to impair its accuracy or availability in such proceeding or investigation; or

(2) Makes, presents, uses or offers into evidence as genuine any record, document, or other thing, knowing it to be false and with the intent to mislead the finder of fact in such official proceeding or investigation; is guilty of tampering with evidence.

Tampering with evidence is a Class A crime.

5-16-7. TAMPERING WITH PUBLIC

RECORDS. Any person who:

(1) Knowingly makes a false entry in, or false alteration of any record, document, or thing belonging to or received or kept by the Tribe or the United States or any state government for information or recording, or required by law to be kept by others for information of the Tribe or the United States or any state government; or

(2) Makes, presents, or uses any record, document, or other thing knowing it to be false, with the intent that it be taken as a genuine part of information or records referred to in (1) above; or

(3) Intentionally and unlawfully destroys, conceals, removes, or otherwise impairs the accuracy or availability of any record document, or thing, described in (1) above; is guilty of tampering with public records.

Tampering with public records is a Class A crime.

5-16-8. IMPERSONATING AN OFFICER OR PUBLIC SERVANT.

Any person who falsely pretends to be a public servant or law enforcement officer with the intent to induce another person to submit to such pretended official authority or otherwise to act in reliance upon the pretense to his prejudice is guilty of impersonating a public servant or officer.

Impersonating a public servant or officer is a Class A crime.

5-16-9. DEFINITIONS. The word “official proceeding” means any proceeding before a legislative, judicial, administrative or other Tribal or government body or official authorized by law to take evidence under oath or affirmation, including a Notary Public or other person taking evidence in connection with any proceeding described in this sentence.

The word “public servant” means any officer or employee of the Tribe, United States government or any state government, including judges and Tribal leaders, and any person participating as a juror, advisor, consultant, or otherwise, in performing a governmental function, but the term does not include witnesses.

5-16-10. COMPOUNDING A CRIME. Any person who accepts or offers or agrees to accept any pecuniary benefit as consideration for:

(1) Refraining from seeking prosecution of an offender; or

(2) Refraining from reporting to law enforcement authorities the commission or suspected commission of any crime or information relating to a crime; is guilty of compounding a crime.

Compounding a crime carries the same penalty as the crime which was compounded, that is to say, **if the principal crime was a Class B crime, the penalty for compounding said crime would also be a Class B Crime.**

5-16-11. THREATENING OR INTIMIDATING A JUDICIAL OFFICER.

Any person who, directly or indirectly, utters

or addresses any threat or intimation to any juror, referee, arbitrator, judge, hearing officer, umpire, assessor, or Tribal official authorized by law to hear or determine any controversy, with the intent to induce him either to do any act not authorized by law, or to omit or delay the performance of any duty imposed upon him by law, or for having performed any duty imposed upon him by law, **is guilty of a Class A crime.**

5-15-12. ATTEMPTING TO INFLUENCE JUROR AND OTHERS.

Any person who attempts to influence a juror, of any person summoned or drawn as a juror, or chosen as an arbitrator or appointed as a referee or Judge with respect to his verdict or decision in any cause or matter pending before him, or about to be brought before him;

(1) By means of any communication, oral or written, had with him, except in the regular course of proceedings upon the trial of the causes; or

(2) By means of any communication, oral or written, had with him, except in the regular course of the proceedings upon the trial of the cause; or

(3) By publishing any statement, argument, or observation relating to the causes;

is guilty of a Class A crime.

5-16-13. AGREEMENT TO GIVE A

VERDICT. Any juror or person drawn or summoned as a juror or referee, arbitrator, judge, hearing officer, or any other person authorized by law to hear or determine a controversy, who makes any promise or agreement to give a verdict for or against any party **is guilty of a Class B crime.**

5-16-14. RESISTING ARREST. Any person who, with the intent of preventing a law enforcement officer from affecting an arrest or detention of himself or of any other person, or of discharging any other duty, creates a substantial risk of bodily harm to anyone, or employs a means justifying or requiring substantial force to overcome the resistance, regardless of whether there is a legal basis for the arrest or detention, is guilty of resisting arrest.

Resisting arrest is a Class B crime.

5-16-15. FAILURE TO APPEAR. Any person who, having been released pursuant to a posted bond, bail, or personal recognizance or any other release agreement, fails to appear before any Court or Judicial Officer as required shall forfeit

any security which was given or pledged for such person's release and shall be Guilty of Failure to Appear.

Failure to Appear is a Class A crime.

CHAPTER 17 – DISORDERLY CONDUCT

5-17-1. Disorderly Conduct

5-17-1. DISORDERLY CONDUCT. Any person who intentionally causes serious public inconvenience, annoyance, or alarm to any other person, or creates a risk thereof by:

- (1) Engaging in fighting or in violent or threatening behavior; or
 - (2) Making unreasonable noise; or
 - (3) Disturbing any lawful assembly or meeting of persons without lawful authority; or
 - (4) Obstructing vehicular or pedestrian traffic; or
 - (5) Using abusive, indecent, profane, or vulgar language in a public place, or makes an offensive gesture or display in a public place, which language or gesture tends to incite an immediate breach of the peace; or
 - (6) Creates by chemical means any noxious order in the a public place; or
 - (7) Displays a firearm or other deadly weapon in a public place; or
 - (8) Begg in any public place for money or any other thing of value;
- is guilty of disorderly conduct.

Disorderly conduct is a Class C crime.

CHAPTER 18 – PROTECTIVE CUSTODY AND RELATED ALCOHOL CRIMES.

5-18-11. Protective Custody
5-18-12. Public Consumption Of Alcohol
5-18-13. Minor in Possession Of Alcohol Beverage

5-18-11. PROTECTIVE CUSTODY. Any person who appears to be intoxicated by alcohol in a public place and to be in need of help, may be assisted to his home or may be taken into protective custody by law enforcement officers and taken forthwith to the hospital or to a jail for the purposes of detoxification. No person placed in protective custody under this section shall be held for a period exceeding 24 hours. In taking a person into protective custody

under this section, the detaining officer may take reasonable steps to protect himself. A taking into protective custody under this section is not an arrest. No warrants, complaints or summons shall issue pursuant to this section. Law enforcement officers are, however, specifically authorized to maintain records of the identity of persons placed in protective custody and dates thereof under this section for use in alcohol commitment proceedings and any other judicial proceeding where the person's use or abuse of alcohol may be in question.

5-18-2. PUBLIC CONSUMPTION OF ALCOHOL. Any person who voluntarily consumes any alcoholic beverages, or has in his possession an open package containing any alcoholic beverage in a public place, is guilty of public consumption. As used in the section, the word "public place" means any property which is not privately owned, or any private property which is ordinarily open to or has free access by the public, and includes any motor vehicle.

Public consumption of alcohol is a Class C crime.

5-18-03. MINOR IN POSSESSION OF ALCOHOL BEVERAGE. Any person under the age of 18 years who:

- (1) Possesses or consumes any beer, wine, ale, whiskey, or any other alcoholic beverage; or
 - (2) Misrepresents his age for the purpose of buying or otherwise obtaining any alcoholic beverage;
- is guilty of minor in possession of an alcoholic.

Minor in possession of an alcoholic beverage is a Class C crime.

CHAPTER 19 – CURFEW

5-19-1. Curfew Violations - **Amendment**

5-19-1. CURFEW VIOLATIONS. Any person under the age of 18 years who is away from his/her place of residence in a public place or a private place, other than the place where he/she intends to spend the night with the permissions of the owner of such place and the permission of his/her parents or guardian, after the following times is guilty of curfew violations:
11:00 P.M. Sunday through Thursday when school is in session
12:00 A.M. Friday and Saturday and during the summer months.

This section shall not apply to those persons accompanied by a parent or guardian; or to persons in attendance at or returning directly home from an organized school, church, or Tribal functions.

Curfew Violation is a Class C crime.

Any child found to be in violation of this Ordinance shall be taken to the Police Department and held in a closely monitored room (to be checked on every 15 minutes), and his/her parent or guardian shall be immediately notified to pick up their child. Failure to pick up the child immediately will be a violation of Title 5, Chapter 8, Section 4, Child Neglect and a warrant to arrest will be issued and the child will be placed with a social service agency.

CHAPTER 20 – CONTRIBUTING TO THE DELINQUENCY OF A MINOR

5-20-1. Contributing To The Delinquency Of A Minor

5-20-1. CONTRIBUTING TO THE DELINQUENCY OF A MINOR. Any person who:

(1) Sells or gives to or otherwise makes an alcoholic beverage available to a person under the age of 18 years; or

(2) By act omission, encourages, causes, or contributes to the delinquency of a person under the age of 18 years; is guilty of contributing to the delinquency of a minor.

It is no defense to this section that the person charged did not know or that the minor was in fact under the age of 18 years.

Contributing to the delinquency of a minor is a Class B crime.

CHAPTER 21 – DEFRAUDING CREDITORS AND RELATED CRIMES

5-21-1. Defrauding Creditors
5-21-2. Making False Credit Report
5-21-3. Unauthorized Transfer Of Mortgaged Property

5-21-1. DEFRAUDING CREDITORS.

(1) Destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a valid security interest, lien, or mortgage, with the intent to hinder enforcement of said security interest, lien, or mortgage; or

(2) Knowing that proceedings have been or are about to be instituted for the appointment of a receiver or other person

entitled to administer property for the benefit of creditors:

(a) Destroys, removes, encumbers, transfers, or otherwise deals with any property with the intent to defeat or obstruct the operation of any law relating to administration of property for the benefit of creditors; or

(b) Knowingly falsifies any writing or record relating to said property; or

(c) Knowingly misrepresents or refuses to disclose to any person entitled to administer property for the benefit of creditors, the existence, amount, or location of said property, or any other information which the actor could legally be required to furnish in relation to such administration; is guilty of defrauding creditors.

Defrauding creditors is a Class A crime.

5-21-2. MAKING FALSE CREDIT

REPORT. Any person who knowingly makes a materially false or misleading statement in writing for the purpose of obtaining property or credit or an extension of credit for himself or another person or to keep some other person from obtaining property or credit or an extension of credit is guilty of making a false credit report.

Making a false credit report is a Class B crime.

5-21-3. UNAUTHORIZED TRANSFER OF MORGAGED PROPERTY.

Any person who owns, or has under his possession or control, any personal property which is the subject of a valid and enforceable security interest or other lien, and with respect to said property commits any of the following; namely:

(1) Willfully destroys, conceals, sells, or in any other manner disposes of or materially injures any part of said property without the written consent of the then holder of such security interest or other lien; or

(2) Willfully abandons said property without first giving written notice to the then holder of said security interest or other lien, of his intention to abandon such property; or

(3) When said property consists of livestock, willfully fails to notify the hold of said security interest or other lien upon such livestock of the death of any such livestock after the death of said livestock; or

(4) Removes any part of said property to a point outside the Rosebud Sioux Tribe Reservation without the written consent of the then holder of the security interest or other lien;

is guilty of unauthorized transfer of mortgaged property

Unauthorized transfer of mortgaged property is a Class A crime.

Paragraph (4) above shall not be applicable to motor vehicle used primarily for personal transportation or business which are temporarily off the Reservation in accordance with the usual and customary business or person transportation practices of the person who would otherwise be required to obtain permission to remove said vehicle from the Reservation.

CHAPTER 22 – ARSON AND RELATED OFFENSES

5-22-1.	Arson
5-22-2.	Burning To Defraud Insurer
5-22-3.	Owner Of Property Defined
5-22-4.	Reckless Burning

5-22-1. ARSON. Any person who intentionally sets fire to or burns or causes to be burned any structure or other real or personal property not his own without the consent of the owners thereof, is guilty of arson.

Where the value of the property burned or damaged by fire is less than \$100, arson is a Class B crime.

Where the value of the property burned or damaged by fire is \$100 or more less than \$200, arson is a Class B crime.

Where the value of the property burned or damaged by fire is greater than \$200, arson is a Class A crime.

5-22-2. BURNING TO DEFRAUD INSURER. Any person who, with the intent to injure or defraud an insurer, sets fire to or burns or causes to be burned any real or personal property of any kind, whether said property belongs to himself or any other person, which property is insured against fire, is guilty of a Class A crime.

5-22-3. OWNER OF PROPERTY DEFINED. For the purposes of this chapter, the owner of any property includes all persons who have a legal or equitable interest in the property.

5-22-4. RECKLESS BURNING. Any person who:
(1) Recklessly starts, or causes a fire to be started, which endangers human life; or

(2) Damages property of another by reckless use of fire; or

(3) Having started a fire, whether recklessly or not, and knowing that said fire is spreading and will endanger lives or property of another, either fails to take reasonable measures to put out or control said fire or fails to give a prompt fire alarm, is guilty of reckless burning.

Reckless burning is a Class B crime.

CHAPTER 23 – BURGLARY AND RELATED OFFENSES

5-23-1.	Burglary
5-23-2.	Defenses To Simple Trespass
5-23-3.	Aggravated Trespass

5-23-1. BURGLARY. Any person who enters or remains in any structure with the intent to commit a crime therein is guilty of a burglary.

Burglary is a Class A crime.

(1) That the premises involved were at the time open to the public; or

(2) That the Defendant had at the time permission or a privilege to enter the structure.

5-23-2. SIMPLE TRESPASS. Any person who, knowing he is not privilege to do so, enters or remains in any place where notice against trespass is given by;

(1) Actual communication to the actor by the owner of the premises or by any other authorized person; or

(2) Posting of signs reasonably likely to come to the attention of intruders; or

(3) Fencing or other type enclosure which a reasonable person would recognize as being designated to exclude intruders; is guilty of simple trespass.

Simple trespass is a Class C crime.

5-23-3. DEFENSES TO SIMPLE TRESPASS. The following are affirmative defenses to simple trespass, namely:

(1) That the premises were at the time open to the members of the public; or

(2) That the actor reasonably believed that the owner of the premises, or other authorized person, would have permitted him to enter or remain.

5-24-4. AGGRAVATED TRESPASS. Any person who, knowing that he is not privilege to do so, enters or remains upon property under circumstances not amounting to

burglary, with the intent to commit a crime thereon, is guilty of aggravated trespass.
Aggravated trespass is a Class B crime.

CHAPTER 24 – ROBBERY

- 5-24-1. Robbery Defined
- 5-24-2. Types Of Force or Fear Necessary To Constitute Robbery
- 5-24-3. Taking Without Knowledge Of Victim Is Not Robbery

5-24-1. ROBBERY DEFINED. Any person who intentionally takes personal property, regardless of value, in the possession of another from his person or immediate presence, and against his will, accomplished by means of force or fear, is guilty of robbery.

Robbery is a Class A crime.

It is an affirmative defense to a charge of robbery that the actor has the right to take the property pursuant to legal process or otherwise pursuant to law.

5-24-2. TYPES OF FORCE OR FEAR NECESSARY TO CONSTITUTE

ROBBERY. To consider robbery, the amount or degree of force or fear employed as immaterial. However, the force or fear must be employed either to obtain or retain possession of the property or to prevent or overcome resistance to the taking. If force or fear is employed merely as a means of escape, it does not constitute robbery. The fear which constitutes an element of the offense of robbery may be either;

- (1) The fear of an injury, immediate or future, to the person or property of the person robbed, or of any relative of his or member of his family; or
- (2) The fear of an immediate injury to the person or property of anyone in the company of the person robbed at the time of the robbery.

5-24-3. TAKING WITHOUT KNOWLEDGE OF VICTIM IS NOT ROBBERY. The taking of property from the person of another or in his immediate presence is not robbery when it clearly appears that the taking was fully completed without his knowledge.

CHAPTER 25 – THEFT AND RELATED CRIMES

- 5-25-1. Theft Defined

- 5-25-2. Categories Of Theft
- 5-25-3. Theft By Fraud
- 5-25-4. Theft By Extortion
- 5-25-5. Theft Of Lost, Mislaid, or Mistakenly Delivered Property
- 5-25-6. Receiving Stolen Property
- 5-25-7. Theft Of Services
- 5-25-8. Theft By Embezzlement
- 5-25-9. Theft By Credit Card
- 5-25-10. General Defense To Theft
- 5-25-11. Recent Possession Of Stolen Property May Be Theft

5-25-1. THEFT DEFINED. Any person, who takes, steals, obtains, or exercises control over property of another with the intent to deprive the owner thereof, is guilty of theft.

5-25-2. CATEGORIES OF THEFT. Theft of any property or services under this chapter shall be punishable as follows:

- (1) If the value of the property or services involved is less than \$50, the theft shall be a Class C crime.
- (2) If the value of the property or services involved is \$50 or more but less than \$200, theft shall be a Class B crime.
- (3) If the value of the property or services involved is \$200 or more, theft shall be a Class A crime.

If no evidence as to the value of the property or services involved is presented and the value of such is not obvious without presentation of such evidence, and if it is otherwise proven that theft has been committed, the crime shall be a Class C crime.

5-25-3. THEFT BY FRAUD. Any person who obtains property of another by fraud is guilty of theft. A person commits fraud if he intentionally, regarding a matter material to the transaction:

- (1) Creates or reinforces a false impression, including false impression as to law, value, intention or other state of mind; but fraud as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or
- (2) Prevents another from acquiring information which would affect his judgment regarding a transaction; or
- (3) Fails to correct a false impression which the actor previously created or reinforced, or which the actor knows to be

influencing another to whom he stands in a fiduciary or confidential relationship; or

(4) Fails to disclose a known lien, adverse claim, or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of public record.

The term "fraud" does not, however, include matters having no pecuniary significance, or mere puffing by statements unlikely to deceive ordinary persons.

5-25-4. THEFT BY EXTORTION. Any person who obtains or exercises control over property of another with the intent to deprive the owner thereof by extortion is guilty of theft.

Extortion occurs when a person threatens to:

(1) Inflict bodily injury on any person or commit any other criminal offense; or

(2) Accuse anyone of a criminal offense; or

(3) Take or withhold action as an official, or cause an official to take or withhold action; or

(4) Expose any secret tending to subject any person to hatred contempt, or ridicule, or to impair his credit or business reputation; or

(5) Bring about or continue a strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or

(6) Testify or provide information, or withhold testimony or information, with respect to another's legal claim or defense; or

(7) Inflict any other harm which would not benefit the actor but which would substantially harm any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or person relationship.

It is an affirmative defense to prosecution based upon paragraphs (2), (3), or (4) of this Section, that the property obtained was honestly due as restitution or indemnification for harm done in the circumstances to which the threat of accusation, exposure, or official action related, or as compensation for a legitimate debt.

5-25-5. THEFT OF LOST, MISLAID, OR MISTAKENLY DELIVERED PROPERTY.

Any person who comes into control or possession of property of another, and knowing or reasonably believing that said property has been lost, mislead, or delivered

under a mistake as to the nature or amount of property or the identity of the recipient, and with the intent to deprive the owner thereof, fails to take reasonable measures to restore the property to the persons entitled thereto, is guilty of theft.

5-25-6. RECEIVING STOLEN

PROPERTY. Any person who receives, retains, or disposes of property of another, knowing that said property has been stolen, or believing that said property has probably been stolen, unless said property is received, retained, or disposed of, with the intent to restore the same to the owner thereof, is guilty of theft.

5-25-7. THEFT OF SERVICES. Any person who intentionally:

(1) Obtains services which he knows are available only for compensation by fraud, extortion, force, or any other means designed to avoid the regular payment therefore; or

(2) Having control over the disposition of services of other, to which he is not entitled, diverts such services to his own benefit, or the benefit of another not entitled thereto; is guilty of theft.

When compensation for services is ordinarily paid immediately upon the rendering of such services, refusal to pay, or absconding without payment or offer to pay, gives rise to a presumption that the service was obtained by fraud as to the intent to pay.

The word "services" includes, but is not limited to labor, professional services, telephone or other public service, accommodation in motels, restaurants or elsewhere, admissions to places for which a charge for admission is made, the use of vehicles, or use of any other movable or real property.

5-25-8. THEFT BY EMBEZZLEMENT.

Any person, who has been entrusted with property belonging to another, who, with the intent to benefit any person not entitled to benefit from said property, appropriates said property to his own use to a use or a purpose not in the due and lawful execution of his trust, is guilty of theft by embezzlement. A distinct act of taking is not necessary to constitute theft by embezzlement.

A person is "entrusted with property of another" if he has possession or control of:

(1) Real or personal property owned in whole or in part by a deceased person and which property is the proper subject of an estate proceeding; or

(2) Real or personal property, the legal title to which is in the Rosebud Sioux Tribe or any subdivision thereof, the United States of America or any subdivision thereof, or of any financial institution; or

(3) Real or personal property, the legal title to which is in any person other than the actor, and which property is not subject to a lien or security interest in favor of the actor.

5-25-9. THEFT BY CREDIT CARD. Any person, who, by use of a credit card issued to another person, without the consent of the person to whom issued, or by use of a credit card issued to another person, without the consent of the person to whom issued, or by use of a credit card which has been revoked or cancelled or has expired, or by use of a falsified, mutilated, altered, or counterfeit credit card, obtains property or services on credit, is guilty of theft.

5-25-10. GENERAL DEFENSE TO THEFT. It is an affirmative defense to any prosecution for theft that the Defendant acted under an honest claim of right to the property or service involved, or that he had a right to acquire or dispose of said property or service as he did.

It is not a defense to theft that the actor has an interest in the property or services taken if any other person also has an interest that the actor is not entitled to infringe upon.

5-25-11. RECENT POSSESSION OF STOLEN PROPERTY MAY BE THEFT. Possessions of property recently stolen, when no satisfactory explanation of such possession is made or available, shall give rise to a presumption that the person in possession of said property stole the same.

CHAPTER 26 – FORGERY AND RELATED CRIMES

5-26-1. Forgery Defined
5-26-2. Criminal Simulation
5-26-3. Possession, Filing, or Recording Of Forged Instruments

5-26-1. FORGERY DEFINED. Any person who, with the intent to defraud, falsely makes changes or alters a written instrument of any kind, or passes such an instrument, is guilty of forgery.

Forgery is a Class A crime.

5-26-2. CRIMINAL SIMULATION. Any person who, with the intent to defraud, makes, alters, completes, or attempts to sell or circulate as genuine, any object other than a written instrument, so that the same appears to have value because of antiquity, rarity, source, or authorship which it does not actually possess, is guilty of criminal simulation.

Criminal simulation is a Class B crime.

5-26-3. POSSESSING, FILING, OR RECORDING OF FORGED INSTRUMENTS. Any person who, with intent to defraud, knowingly offers for recording as a public record, possesses, or offers for filing with the Tribal Court or any public agency or the Rosebud Sioux Tribe or the United States of America or any of its political subdivisions, a forged instrument or a false instrument is guilty of filing, recording, or possessing a forged instrument.

Filing, recording, or possessing a forged instrument is a Class A crime.

CHAPTER 27 – BAD CHECKS

5-27-1. Check Defined
5-27-2. Issuing Bad Checks
5-27-3. Jury Instructions Regarding Bad Checks

5-27-1. CHECK DEFINED. As used in this chapter, the word “check” means any check, draft, order, or other commercial device which orders a financial institution to pay a certain sum of money upon its presentation to said financial institution.

5-27-2. ISSUING BAD CHECKS. Any person who issues or passes a check for any of the following purposes, namely:

(1) To then and there obtain money, property or other thing of value; or
(2) To pay for rent, wages, salary, taxes due the Rosebud Sioux Tribe or the United States of America or any of its subdivisions, or as payment for services ordinarily paid immediately upon the rendering of such service, knowing or believing that said check will not be honored by the financial institution upon which the same was drawn, is guilty of issuing bad checks.

Issuing bad checks is a Class B crime if the check upon which the prosecution is based was returned because of insufficient funds in the account upon which the same was drawn.

Issuing bad checks is a Class A crime if the check upon which the prosecution was based is returned from the financial institution because no account existed in the financial institution against which the check was drawn at the time the check was passed.

5-27-3. JURY INSTRUCTIONS

REGARDING BAD CHECKS. In any prosecution or bad checks where the same is tried to a jury, the jury shall be instructed that where a check in evidence was returned from the financial institution because of insufficient funds in the account against which it was drawn, or because no account existed in the financial institution against which the check was drawn at the time the check was passed, such evidence is sufficient upon which to base a conviction of bad checks unless such return by the financial institution is satisfactorily explained by the facts and circumstances brought out at the trial.

The jury shall be instructed that no person can be convicted of issuing bad checks where the evidence established that the checks was post dated, or was a “hold” check, or was issued in payment for credit previously negotiated or arranged.

CHAPTER 28 – DRUGS AND CONTROLLED SUBSTANCES

- 5-28-1. Definitions
- 5-28-2. Standards and Schedules
- 5-28-3. Schedule I - Opiates and Hallucinogenics
- 5-28-4. Schedule II – Opium and Amphetamines
- 5-28-5. Schedule III – Depressants and Narcotics
- 5-28-6. Schedule IV – Barbiturates
- 5-28-7. Schedule V – Prescription Drugs
- 5-28-8. Exclusion From Schedule
- 5-28-9. Regulation Of Manufacture
- 5-28-10. Distribution, Manufacture, or Possession With Intent To Distribute
- 5-28-11. Unlawful Possession Of Controlled Substance
- 5-28-12. Peyote Exemption
- 5-28-13. Inhabiting A Room Where Controlled Substance Is Illegally Stored or Used
- 5-28-14. Sale Of Lysol Prohibited

5-28-1. DEFINITIONS. The following definitions are applicable to this section:

(1) “Controlled substances” means a drug, substances, or immediate precursor listed in Schedules I through V of this Act.

(2) “Deliver” or “delivery” means the actual or constructive transfer from one person to another of a controlled substance, whether or not there is an agency relationship. For purposes of this Act, it also included an offer to sell a controlled substance. Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

(3) “Dispense” means to deliver a controlled substance to an ultimate use or research subject by, or pursuant to the lawful order of a practitioner (in the course of professional practice or research), including prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery.

(4) “Dispenser” means a person who dispenses.

(5) “Distribute” means to deliver, other than by administering or dispensing, a controlled substance.

(6) “Distributor” means a person who distributes.

(7) “Marijuana” means and includes all parts of the plant cannabis sativa, cannabis Americana, and cannabis indica, whether growing or not; the see thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plants, its seeds, or resin; but shall not include the mature stalks of such plants, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks except the resin extracted therefrom, fiber oil, cake, or the sterilized seed of such plant which is incapable of germination.

(8) “Narcotic drugs” means coco leaves, opium, cannabis, isonipecaine, amidone, isoamidone, ketobemidone, lysergic acid diethylamide, commonly known as LSD, and every substance neither chemically nor physically distinguishable from them; and other drugs to which the Federal laws relating to narcotic drugs may now apply.

(9) “Opiate” means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability.

(10) “Opium poppy” means the plant of the species Papaver somniferum L., except its seeds.

(11) “Person” means any individual, corporation, government, or government

subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(12) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(13) "Possession" means actual care, custody, control or management.

(14) "Practitioner" means:

(a) A physician, dentist, veterinarian, scientific, investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze or conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this State; or

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this State.

(15) "Production" includes manufacturing, planting, cultivating, growing, or harvesting of a controlled substance

(16) "Ultimate user" means a person who has lawfully obtained and possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal by him or by a member of his household.

5-28-2. STANDARDS AND SCHEDULES.

The Rosebud Sioux Tribal Council determines that the substances listed in Schedules I, II, III, IV, and V shall be controlled substances.

5-28-3. SCHEDULE 1 – OPIATES AND

HALLUCINOGENICS. Schedule I shall initially consist of the controlled substances listed in this section, as follows:

(1) Any of the following opiates, indicating their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (a) Allylprodine
- (b) Benzethidine
- (c) Betaprodine
- (d) Clonazene
- (e) Dextrorphan
- (f) Diampromide
- (g) Diethylthiambutene
- (h) Dimenoxadol
- (i) Dimethylthiambutene
- (j) Diozaphetyl Butyrate

- (k) Dipipanone
- (l) Ethylmethylthiambutene
- (m) Etonitazene
- (n) Etoxidine
- (o) Furethidine
- (p) Hydroxypethidine
- (q) Ketobemidone
- (r) Levophenaclymorphane
- (s) Meprodine
- (t) Methadol
- (u) Moramide
- (v) Morpheridine
- (w) Noracymethadol
- (x) Norlevorphanol
- (y) Normethadone
- (z) Norpipanone
- (A) Phenodoxone
- (B) Phenampromide
- (C) Phenomorphan
- (D) Phenorperidine
- (E) Piritramide
- (F) Proheptazine
- (G) Proheptazine
- (H) Propiram
- (I) Trimeperidine

(2) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) Acetorphine
- (b) Acthidihydrocodeine
- (c) Benzylmorphine
- (d) Codeine methyrbromide
- (e) Codeine-N-Oxide
- (f) Cyprenorphine
- (g) Desomorphine
- (h) Dihydromorphine
- (i) Etorphine
- (j) Heroin
- (k) Hyrdomorphinol
- (l) Methyl-desorphine
- (m) Methyl-dihydromorphine
- (n) Norphine methylbromide
- (o) Morphine methysulfonate
- (p) Morphine-N-Oxide
- (q) Myrophine
- (r) Nicocodeine
- (s) Nicomorphine
- (t) Normorphine
- (u) Pholcodine
- (v) Thebacon

(3) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

3, 4-methylenedioxy amphetamine

5-methoxy-3, 4-methylenedixy amphetamine
 3, 4, 5-trimethoxy amphetamine
 Bufotenine
 Diethyltryptamine
 Dimethyltryptamine
 4-methyl-2, 5-dimethoxyamphetamine
 Ibogaine
 Lysergic acid diethylamide
 Marijuana
 Peyote
 N-ethyl-3-piperidyl benzilate
 N-methyl-3-piperidyl benzilate
 Psilocybin
 Psilocybin
 Tetrahydrocannabinols and synethetics
 equivalents of the substances contained in
 the plant, or in the resinous extractives of
 cannabis or synthetic substances,
 derivatives and their isomers with similar
 chemicals structure and pharmacological
 activity such as the following:
 delta-1 cis or trans tetrahydrocannabinol,
 and their optical isomers;
 delta-6 cis or trans tetrahydrocannabinol,
 and their optical isomers;
 delta-3, 4 cis or trans tetrahydrocannabinol
 and its optical isomers.

5-28-4. SCHEDULE II – OPIUM AND

AMPHETAMINES. Schedule II shall initially
 consist of the controlled substance listed in
 this section, as follows:

(1) Any of the following substances,
 except those narcotic drugs listed in other
 schedules, however produced:

(a) Opium and opiate, and any salt,
 compound, derivative, or preparation of
 opium or opiate, including the following:

- (A) Raw opium
- (B) Opium extracts
- (C) Opium Fluid extracts
- (D) Powered opium
- (E) Granulated opium
- (F) Tincture of opium
- (G) Apomorphine
- (H) Codeine
- (I) Ethylmorphine
- (J) Hudrocodone
- (K) Hudromorphine
- (L) Metopon
- (M) Morphine
- (N) Oxycodone
- (O) Oxymorphone
- (P) Thebaine

(b) Any salt, compound, isomer,
 derivative, or preparation thereof which is
 chemically equivalent or identical with any of
 the substances referred to in paragraph (a)
 of this section, but not including the
 isoquinoline aldaloids of opium;

(c) Opium poppy and poppy straws;

(d) Coca leaves and any salt,
 compound, derivative, or preparation of coca
 leaves, and any salt, compound, derivative,
 or preparation thereof which is chemically
 equivalent or identical with any of these
 substances, but not including decocainized
 coca leaves or extractions which do not
 contain cocaine or ecgonine.

(2) Any of the following opiates, including
 their isomers, esters, ethers, salts, and salts
 of isomers, whenever the existence of these
 isomers, esters, ethers, and salts is possible
 within the specific chemical designation:

- (a) Alphaprodine
- (b) Anileridine
- (c) Besitramide
- (d) Dihydrocodeine
- (e) Dephenoxylate
- (f) Fentanyl
- (g) Isomethadone
- (h) Levomethorphan
- (i) Levorphanol
- (j) Metazocine
- (k) Methadone
- (l) Methadone-Intermediate, 4-cyano-
 2dimethylamino-4, 4-diphenyl butane
- (m) Moramide-Intermediate, 2-methyl-3-
 corpholino-1, 1-duphenylporpane-
 carboxylic acid
- (n) Pethidine
- (o) Pethidine-Intermediate-A, 4-cyano-
 1-methyl-4-phenylpiperidine
- (p) Pethidine-Intermediate-B, ethyl-4-
 phenyl-piperidine-4-carboxylate
- (q) Pethidine-intermediate-C, 1-methyl-
 4-phenyl-piperidine-4-carboxylic acid
- (r) Phenazocine
- (s) Piminodine
- (t) Racemethorphan
- (u) Racemorphan

(3) Unless listed in another Schedule, any
 material, compound, mixture, or preparation
 which contains any quantity of the following
 substances having a potential for abuse
 associated with a stimulant effect on the
 central nervous system:

- (a) Amphetamine, its salts, optical
 isomers, and salts of its optical isomers
 - (b) Methamphetamine, including its
 salts, isomers, and salts of isomers
 - (c) Methylphenidate and its salts
 - (d) Phenmetrazine and its salts
- (4) Methaqualone

**5-28-5. SCHEDULE III – DEPRESSANTS
 AND NARCOTICS.**

(1) Schedule III shall initially consist of the
 controlled substances listed in this section,
 as follows.

(2) Unless listed in another schedule, any
 material, compound, mixture, or preparation

which contains any quantity of the following substances having a potential for abuse associated with a depressant effect of the central nervous system:

(a) Any substance which contains any quantity of a derivative or barbituric acid, or any salt of a derivative or barbituric acid, except those substances which are specifically listed in other schedules.

(b) Cholrhexadol

(c) Glutethimide

(d) Lysergic acid

(e) Lysergic acid amide

(f) Methyprylon

(g) Phencyclidime

(h) Sulfondiethylmethane

(i) Sulfonethymethane

(j) Sulfonmethane

(3) Nalorphine

(4) Any material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs, or any salts thereof:

(a) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(b) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milliliters per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts.

(c) Not more than 300 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(d) Not more than 300 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(e) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(f) Not more than 300 milligrams of ethylmorphine or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts

(g) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(h) Not more than 50 milligrams of morphine, of any of its salts, per 100 milliliters or per 100 grams with one or more active non-narcotic ingredients in recognized therapeutic amounts.

5-28-6. SCHEDULE IV –

BARBITURATES.

(1) Schedule IV shall initially consist of the controlled substances listed in this section, as follows:

(2) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(a) Barbital

(b) Chloral Betaine

(c) Chloral Hydrate

(d) Ethchlorvynol

(e) Ethinamate

(f) Methohexital

(g) Meprobamate

(h) Methylphenobarbital

(i) Paraldehyde

(j) Petrichloral

(k) Phenobarbital

(3) Any compound, mixture, or preparation containing any depressant substances listed in Section (2) of this section is excepted from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

5-28-7. SCHEDULE V – PRESCRIPTION DRUGS.

(1) Schedule V shall initially consist of the controlled substances listed in this section, as follows:

(2) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contain one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal quantities other than those possessed by the narcotic drug alone:

(a) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(b) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(c) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(d) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(e) Not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams.

5-28-8. EXCLUSION FROM SCHEDULE.

A non-narcotic substance is excluded from Schedule I through V if the Substance may lawfully be sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act and the Tribal Council shall have no power to include a non-narcotic substance in Schedule I through V if the Substance may lawfully be sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act.

5-28-9. REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES.

(1) Registration Requirements

(a) Every person who manufactures, distributes, analyzes, or dispenses any controlled substances within the exterior boundaries of the Rosebud Sioux Tribe Indian Reservation must possess a valid registration from the South Dakota State Board of Pharmacy. Said registrations must be obtained annually and be in compliance with all rules and regulations promulgated by the State.

(b) Persons registered with the State of South Dakota or the United States of America to manufacture, distribute, dispense, analyze or conduct research with controlled substances may possess, manufacture, distribute, dispense, analyze or conduct research with those substances to the extent authorized by their registration.

5-28-10. DISTRIBUTION, MANUFACTURE, OR POSSESSION WITH INTENT TO DISTRIBUTE. Except as authorized by this Act, any person who knowingly or intentionally manufactures, distributes, or possesses with intent to manufacture or distribute a controlled substance listed in Schedules I through V, is **guilty of a Class A crime.**

5-28-11. UNLAWFUL POSSESSION OF CONTROLLED SUBSTANCE. Except as authorized by this Act, any person who knowingly or intentionally possesses a controlled substance listed in Schedules I through V unless the substance was obtained directly from, or pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice, is **guilty of a Class B crime.**

5-28-12. PEYOTE EXEMPTION. The provisions of this Act relating to the possession and distribution of peyote shall not apply to the use of peyote by members of the Native American Church in bona fide religious ceremonies of the church.

5-28-13. INHABITING A ROOM WHERE CONTROLLED SUBSTANCE IS ILLEGALLY STORED OR USED. Any person who inhabits a room knowing that any controlled drug or substance is being illegally stored or used therein is **guilty of a Class B crime.**

5-28-14. SALE OF LYSOL PROHIBITED. It shall be unlawful for any merchant to sell Lysol within the boundaries of the Rosebud Sioux Reservation. A violation of this provision is a **Class C crime.** The Rosebud Sioux Tribal Court shall have the authority to enforce this provision by injunction.

CHAPTER 29 – MARIJUANA

- 5-29-1. Possession Of Marijuana
- 5-29-2. Manufacture, Distribution, or Possession With Intent To Distribute
- 5-29-3. Distribution Of Marijuana To A Minor

5-29-1. POSSESSION OF MARIJUANA. No person shall knowingly possess marijuana. **Any person who knowingly possesses marijuana is guilty of a Class B crime if the amount of marijuana possessed is 1 ounce or less. Possession of more than 1 ounce of marijuana is a Class A crime.**

5-29-2. MANUFACTURE, DISTRIBUTION, OR POSSESSION WITH INTENT TO DISTRIBUTE. Any person who knowingly:
(1) Grows marijuana; or

(2) Manufactures marijuana; that is to say packages, repackages, dries, or prepares marijuana for distribution; or

(3) Distributes marijuana; or

(4) Possesses marijuana with the intent to distribute the same;

is guilty of a Class A crime.

5-29-3. DISTRIBUTION OF MARIJUANA TO A MINOR. Any person who distributes marijuana, with or without consideration, to any other person under the age of 18 years is guilty of distribution of marijuana to a minor. It is not defense to a prosecution under this section that the defendant was not aware of the true age of the other person to whom the marijuana was distributed.

Distribution of marijuana to a minor is a Class A crime.

CHAPTER 30 – BRIBERY AND ABUSE OF PUBLIC OFFICE

- 5-30-1. Bribery Of Public Office
- 5-30-2. Solicitation Of A Bribe
- 5-30-3. Inability To Act No Defense
- 5-30-4. Selling Official Conduct
- 5-30-5. Selling Omission Of Official Conduct
- 5-30-6. Bribery or Unlawful Influence Of The Tribal Council
- 5-30-7. Solicitation By The Tribal Council
- 5-30-8. Attempting To Influence A Judge - *Amendment*
- 5-30-9. Nullification Of Legislative and/or Executive Action Over Judicial Acts - *Amendment*

5-30-1. BRIBERY OF PUBLIC OFFICE. Any person who gives or offers to give a bribe to any public officer or employee with the intent to influence him in respect to any act, decision, vote, opinion, or other proceeding which the public officer or employee is responsible for, is guilty of bribery of a public officer.

Bribery of a public officer is a Class A crime.

5-30-2. SOLICITATION OF A BRIBE. Any public officer or employee who asks, receives or agrees to receive a bribe upon an agreement or understanding that his vote, opinion or action upon any matter then pending, or which may by law be brought before him in his official capacity will be

influenced thereby is guilty of solicitation of a bribe.

Solicitation of a bribe is a Class A crime.

5-30-3. INABILITY TO ACT NO DEFENSE. It is no defense to prosecution under sections 5-30-1 and 5-30-2 above that the person sought to be influenced or bribed was not qualified to act in the desired way because he had not yet assumed office, lacked authority, or for any other reason.

5-30-4. SELLING OFFICIAL CONDUCT. Any public officer or employee who asks for or receives any pecuniary benefit for the performance of any official function which has not been performed, or who asks for or receives any pecuniary benefit for doing any official act, is guilty of selling official conduct. It is an affirmative defense to a charge under this section that the fees or consideration received or requested by the public official were authorized by law or required to be collected by law.

Selling official conduct is a Class A crime.

5-30-5. SELLING OMISSION OF OFFICIAL CONDUCT. Any public officer or employee who asks for or receives any pecuniary benefit or other consideration for omitting or deferring performance of any official conduct, is guilty of selling omission of official conduct.

Selling the omission of official conduct is a Class A crime.

5-30-6. BRIBERY OR UNLAWFUL INFLUENCE OF THE TRIBAL COUNCIL. Any person who gives or offers to give a bribe to any member of the Tribal Council or attempts directly or indirectly by menace, deceit, or any other unlawful means, to influence a Tribal Council member in giving or withholding his vote or in not attending a Council meeting or meeting of any Committee thereof is guilty of unlawful influence of the Tribal Council.

Unlawful influence of the Tribal Council is a Class A crime.

5-30-7. SOLICITATION BY THE TRIBAL COUNCIL. Any member of the Tribal Council who asks, receives, or agrees to receive any bribe or other consideration upon any understanding that his official vote, opinion, judgment, or action shall be

influenced thereby or shall be given in any manner upon which he will be required to act in his official capacity, is guilty of solicitation by the Tribal Council.

Solicitation by the Tribal Council is a Class A crime.

(1) There shall be no ex parte communication between any member of the Rosebud Sioux Tribal Council or the Office of the President or Vice President or any of their employees or agents who are not an official party to cause of action to the court, any judge of the Rosebud Sioux Tribal Court or the Rosebud Sioux Supreme Court, in an attempt to influence, by any means any ruling outcome or decision of any cause of action, case or matter before the court, whether pending or completed. If any such person attempts to have ex parte communication with a judge concerning any court matter pending or completed, it will be the duty of the judge to whom such an attempt was made to report the attempt to all parties to the case and the official court record.

(2) No order, judgment sentence or ruling of a judge of the Rosebud Sioux Tribe Court or the Rosebud Sioux Tribe Supreme Court shall be subject to review, amendment, or nullification by the Tribal Council or the Office of the Tribal President. Any legislative, administrative, or executive act or order which seeks or purports to modify, vacate, or nullify any judicial act or order, in violation of this ordinance shall be deemed null and void as a matter of law.

5-30-8. ATTEMPTING TO INFLUENCE A JUDGE. Any member of the Rosebud Sioux Tribal Council or the Office of the President or Vice President or any of their employees or agents who shall communicate with any Judge of the Rosebud Sioux Tribal Court or the Rosebud Supreme Court, concerning any Court matter, pending or completed **is guilty of Attempting to influence a judge is a Class A crime.** It will be the duty of the Judge to whom such an attempt to influence was made upon to report the attempt to all parties to the case on the official Court record.

5-30-9. NULLIFICATION OF LEGISLATIVE AND/OR EXECUTIVE ACTION OVER JUDICIAL ACTS. No order, judgment, sentence or ruling of the Rosebud Sioux Tribal Court or Rosebud Sioux Supreme Court shall be subject to review, amendment or nullification by the Rosebud Sioux Tribal Council or the Office of the Tribal President or the Vice President or

any of their employees or agents. Any legislation, administrative or executive act or order which seeks or purports to modify, vacate or nullify any judicial act or order in violation of this ordinance shall be deemed null and void as a matter of law.

CHAPTER 31 – RIOT AND RELATED CRIMES

- 5-31-1. Riot
- 5-31-2. Failure To Disperse
- 5-31-3. Street Gang Activity and Membership – **Amendment**
- 5-31-4. Definition - **Amendment**
- 5-31-5. Drive By Shooting - **Amendment**
- 5-31-6. Participating In Drive-By Shooting - **Amendment**
- 5-31-7. Gang Related Congregations - **Amendment**
- 5-31-8. Recruiting A Gang Member In The First Degree - **Amendment**
- 5-31-9. Recruiting A Gang Member With Force - **Amendment**
- 5-31-10. Recruiting A Gang Member without Force - **Amendment**
- 5-31-11. Sexual Imposition - **Amendment**
- 5-31-12. Prohibiting Encouragement To Minors To Participate In A Criminal Street Gang - **Amendment**
- 5-31A-1. Pre-Diversion - **Amendment**
- 5-31A-2. Diversion - **Amendment**

5-31-1. RIOT. Any person who:

(1) Simultaneously with two or more other persons engage in threatening or violent conduct and thereby knowingly or recklessly creates a substantial risk of causing public alarm; or

(2) Assembles with two or more persons with the purpose of engaging immediately thereafter in threatening or violent conduct, knowing or having reason to believe that two or more persons in the assembly have the same purpose; is guilty of riot.

Riot is a Class A crime.

5-31-2. FAILURE TO DISPERSE. Any person who refuses or willfully fails to obey an order to disperse or leave the immediate vicinity given by a law enforcement officer or other public servant performing the function of a law enforcement officer at the scene of a riot, fire, or other public disorder or given in the course of executing or enforcing the law

or in the course of investigation of the scene of an accident or the commission of a fire, crime, or suspected crime is guilty of failure to disperse.

Failure to disperse is a Class B crime.

5-31-3. STREET GANG ACTIVITY AND

MEMBERSHIP. Any person who is a member of a street gang or involved in street gang activity is guilty of Street Gang Activity and Membership.

Street Gang Activity and Membership is a Class A crime.

5-31-4. DEFINITIONS.

(1) "Street Gang" a formal or informal ongoing organization, association or group of three or more persons who have a common name or common identifying signs, colors or symbols and have members or association who, individually or collectively, engage in or have engaged in a pattern of street gang activity;

(2) "Street Gang Member" a person who engages in a pattern of street gang activity and who meets two or more of the following criteria:

(a) Admits to gang membership;

(b) Is identified as a gang member by a documented reliable informant;

(c) Resides in or frequents a particular gang's area and adopts its style of dress, its use of hand signs or its tattoos and associated with known gang members;

(d) Is identified as a gang member by an informant of previously untested reliability is such identification is corroborated by independent information;

(e) Has been arrested more than once in the company of identified gang members for offenses which are consistent with usual gang activity;

(f) Is identified as a gang members by physical evidence, such photographs or other documentation; or

(g) Has been stopped in the company of known gang members four or more times.

(3) "Pattern of Street Gang Activity" the commission, attempted commission or solicitation by any member or members of a street gang of two or more or offenses on separate occasions within a three-year period for the purpose of furthering gang activity as evidenced by the following:

(a) Intentionally organizing, managing, directing or supervising a criminal street gang with the intent to promote or further the criminal objectives of the street gang;

(b) Knowingly enticing and inducing others to engage in violence or intimidation

to promote or further the criminal objectives of the street gang.

(c) Furnishing advice or direction in the conduct, financing or management of a street gang's affairs with the intent to promote or further the objectives of a street gang;

(d) Hiring, engaging or using a minor for any conduct preparatory to or in furtherance of any offense in this section.

(e) Committing, attempting to commit or soliciting one or more criminal offenses prescribed by this Ordinance or the Tribal Law and Order Code with the intent to promote or advance the objectives of a street gang.

5-31-5. DRIVE BY SHOOTING. Any person who discharges a firearm or causes the propulsion of any explosive or explosive device from a motor vehicle whether the vehicle is moving or stopped at the time of the discharge or propulsion is guilty of Drive-By Shooting.

Drive-By Shooting is a Class A crime.

5-31-6. PARTICIPATING IN DRIVE-BY

SHOOTING. Any person who of his or her own will is physically present in a vehicle used in a drive-by shooting is guilty of Participating in Drive-By Shooting.

Participating in Drive-By Shootings is a Class A crime.

5-31-7. GANG RELATED

CONGREGATIONS. Any person, known to be a street gang member, as defined above, who is found loitering in a public place with two or more other persons and who fails to remove themselves from the area when ordered by a police officer, property owner or school authorities is in violation of this Ordinance.

5-31-8. RECRUITING A GANG MEMBER IN THE FIRST DEGREE.

A person commits the crime of recruiting a gang member in the first degree if the person uses or threatens the use of force against a person or property to include a person to participate in a criminal street gang or to commit a crime on behalf of a criminal street gang.

Recruiting a gang member in the first degree is a Class A crime.

5-31-9. RECRUITING A GANG MEMBER WITH FORCE.

A person commits the crime of recruiting a gang member with force if the person is 18 years of age or older and with

force or threat of force encourages or recruits a person who is under 18 years of age to participate in a criminal street gang.
Recruiting a gang member with force is a Class A crime.

5-31-10. RECRUITING A GANG MEMBER WITHOUT FORCE. A person commits the crime of recruiting a gang member without force if the person is 18 years of age or older and without force or the threat of force encourages or recruits a person who is under 18 years of age to participate in a criminal street gang.
Recruiting a gang member without force is a Class B crime.

5-31-11. SEXUAL IMPOSITION. A person commits the crime of sexual imposition if the person engages in a sexual act or sexual contact with another or who causes another to engage in a sexual act or sexual contact, whether consensual or not, as part of an induction, initiation, ceremony, pledge, hazing, or qualification to become a member or an associate of any criminal street gang or as a part of a release from a criminal street gang.
Sexual imposition is a Class A crime.

5-31-12. PROHIBITING ENCOURAGEMENT TO MINORS TO PARTICIPATE IN A CRIMINAL STREET GANG. A parent, guardian, friend or any other relative commits the crime of encouraging minors to participate in a criminal street gang if the parent, guardian, friend or any other relatives allow and/or encourages minors to participate in any criminal street gang.
Encouraging minors to participate in a criminal street gang is a Class A crime.

5-31A-1. PRE-DIVERSION.
A. Send out Summons to parent(s)/guardian(s) and child.
B. Parent(s)/guardian(s) and child will meet with Diversion Officer.
C. Evidence of child's involvement will be provided to parent(s)/guardian(s).
I. Pre-diversion Contract will be discussed and signed.
D. If there is evidence of continued violation or participation of the child in gang, the child and parent(s)/guardian(s) will be referred to Diversion.

5-31-A-2. DIVERSION.

A. Send out Summons to parent(s)/guardian(s) and child.
B. Parent(s)/guardian(s) and child will meet with Court Services Officer.
C. Parent(s)/guardian(s) and child will acknowledge involvement.
D. Parent(s)/guardian(s) and child will sign documents to enter Diversion Program.
I. Documents necessary for Diversion Program.
(a) Parental Responsibility Form
(b) Individualized Plan
(c) Agreement to attend gang education classes
(d) Agreement to attend cultural/spiritual education classes
(e) Agreement to attend counseling with Elders
(f) Agreement to attend specialized parenting program
(g) Agreement to attend alcohol/drug abuse education classes
II. Schedule of classes will be provided to parent(s)/guardian(s)
E. If the parent(s)/guardian(s) and child dispute evidence of child's involvement in a gang, an Informal Hearing will be set up before a Hearing Officer.
I. If the Hearing Officer finds the child is involved in a gang, parent(s)/guardian(s) and child will follow diversion procedure.
II. If the Hearing Officer does not find that the child is involved in a gang, the case will be closed.
F. If there is evidence of continued violation the child and/or the parent(s)/guardian(s) will be formally charged in Children's Court.
I. Procedure will be the same as specified in the Rosebud Sioux Tribe's Law and Order Code.

CHAPTER 32 – HUFFING

5-32-1. Huffing

5-32-1. HUFFING. Any person who intentionally ingests, inhales, breathes, or otherwise takes into his body any substance, except an alcoholic beverage, for the purpose of becoming intoxicated, unless such substance is prescribed by a physician or other practitioner of the medical arts lawfully practicing within the scope of his practice, is guilty of huffing.
Huffing is a Class B crime.

CHAPTER 33 – INVASION OF PRIVACY

- 5-33-1. Trespassing With Intent To Eavesdrop
- 5-33-2. Window Peeking

5-33-1. TRESPASSING WITH INTENT TO EAVESDROP. Any person who:

(1) Trespasses on property with the intent to subject anyone to eavesdropping or other surveillance in a private place; or

(2) Installs in any private place, without the consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in such place, or uses any such unauthorized installation; is guilty of trespassing with intent to eavesdrop.

It is an affirmative defense to this section that the actor had legal authorization to engage in the conduct here prohibited or that the actor was a law enforcement officer or acting under the direction of a law enforcement officer and engaged in the performance of lawful duties.

Trespassing with intent to eavesdrop is a Class B crime.

5-33-2. WINDOW PEEKING. Any person who enters private property of another and peeks in the door or window of any inhabited building or structure located thereon without having lawful purpose with the owner or occupant thereof is guilty of window peeking. **Window peeking is a Class C crime.**

CHAPTER 34 – HABITUAL OFFENDERS

- 5-34-1. Increased Penalties For Persons With Prior Convictions
- 5-34-2. Duty To Report Knowledge Of Prior Conviction
- 5-34-3. Prior Conviction Information
- 5-34-4. Procedure With Regard To Prior Conviction Information

5-34-1. INCREASED PENALTIES FOR PERSONS WITH PRIOR CONVICTION. In any criminal prosecution under this Code where it appears that the Defendant has been previously convicted by this Court under the same statute one or more times previously within the last 1 year, the penalty for the crime charged shall be increased to the next class which is more severe, one class for each prior conviction, which has been established. An example of what is intended here would be as follows. If a

Defendant was charged under a section which was a Class C crime, and the evidence established that the same person had been convicted of the same offense one time previously within the last 1 years then such event the penalty for the violation of that section would be increased by one class and the Defendant upon conviction would thereby be punished as for a Class B crime.

5-34-2. DUTY TO REPORT KNOWLEDGE OF PRIOR CONVICTION.

Whenever any jailor, probation or parole officer, law enforcement officer, or other Tribal or U.S. government official has knowledge that any person charged in this Court has been previously convicted of a like offense, it shall become his duty forthwith to report the same to the Tribal prosecutor.

5-34-3. PRIOR CONVICTION

INFORMATION. An allegation that a Defendant has prior convictions must be filed as a separate charge at the time of or before arraignment. The information must state the times, places, and specific crimes alleged to be prior convictions and must be signed by the Tribal prosecutor. An official Court record under seal will be sufficient to be admitted into evidence without further foundation to prove the allegation that the Defendant has prior convictions

5-34-4. PROCEDURE WITH REGARD TO PRIOR CONVICTIONS INFORMATION.

The Defendant shall be apprised of the prior convictions charge and shall be arraigned on said charge at the same time as arraignment on the principal charge. In the event the jury trial on the principal charge, the jury shall not be advised of the prior convictions charge until they have reached a verdict on the principal crime. If the operative effect of this chapter is to increase the penalty for the crime to a point where the right to jury trial is invoked, the Defendant shall be entitled to separate jury trials on the principal offense charged and on the prior convictions charge, although the same jury may hear both cases.

CHAPTER 35 – GAME, FISH & PARKS CODE

- 5-35-1. General Provisions and Definitions
- 5-35-2. Powers and Duties Of The Department Of Natural Resources
- 5-35-3. Procedural Rules

- 5-35-4. General Licensing, Hunting and Fishing Provisions - **Amendment**
- 5-35-5. Big Game Provisions
- 5-35-6. Fishing Regulations
- 5-35-7. Trapping
- 5-35-8. Forestry
- 5-35-9. Recreation

5-35-1. GENERAL PROVISIONS AND DEFINITIONS.

(a) INTENT. It is the intent of the provisions contained herein to provide for an orderly system on the Rosebud Sioux Indian Reservation for the management and control of the wildlife, fishery, forest, and outdoor recreation resources of the Rosebud Sioux Tribe.

(b) JURISDICTION. The provisions contained herein specifically address all lands within the boundaries of Todd County, South Dakota, all territory of the Tribe outside of Todd County but within the original boundaries of the Rosebud Sioux Indian Reservation, and all matters contained herein relating to propagation, conservation, management, distribution, transportation, storage, and taking of fish and game, relating to the management, conservation and control of reservation lands, forests and waters for fish and game purposes, and relating to fishing, hunting, trapping, timber harvest, sale, barter, and exchange of fish, game, timber, and timber products from the local resources on the Rosebud Sioux Indian Reservation and relating to the use of boats, snowmobiles and other off-road recreational vehicles on the Rosebud Sioux Indian Reservation as well as other outdoor recreational activities are all subject to the absolute jurisdiction of the Rosebud Sioux Tribe.

(c) FORESTS, FISH AND WILDLIFE PROPERTY OF THE TRIBE.

(1) All fish, wildlife and forest resources, now and hereafter within the Rosebud Indian Reservation, not held in private ownership legally acquired, and which for the purposes of this code shall include all big game animals, game birds, water fowl, game fish, reptiles, amphibians, fur bearing animals, and all other forms of wildlife, and all forest and timber stands, whether harvested or unharvested mentioned in these provisions, are hereby declared to be the property of the Rosebud Sioux Tribe and no right, title, interest or property therein can be acquired or transferred or the possession thereof had or maintained, except as herein expressly provided.

(2) It shall be lawful for the Department of Natural Resources or any person or entity appointed by it in writing so to do under the direction of the Director of the Department of Natural Resources, to take fish and wildlife, or cut timber for the purpose of inspection, cultivation, propagation, distribution, scientific, or other purposes deemed by it to be in the best interest of the fish, game and timber industry of the Tribe.

(d) COOPERATIVE AND RECIPROCAL AGREEMENTS. The Department of Natural Resources is hereby authorized, subject to the approval of the Rosebud Sioux Tribal Council, to enter into reciprocal and cooperative agreements with the State of South Dakota and any other governments or governmental agencies, federal or otherwise, for the purposes of promoting and implementing fishery, and wildlife management programs, forestry programs and outdoor recreational activities.

(e) DEFINITIONS; INTERPRETATION. The following terms, words and definitions shall be used in Chapter 35 and shall have the meaning so ascribed to them in the respective sections unless a different meaning clearly appears from the context.

(1) "Reservation" means all territory within the boundaries of Todd County, South Dakota, all territory outside of Todd County, South Dakota but within the original boundaries of the Rosebud Sioux Reservation, and any and all territory within the exterior boundaries within that land area referred to as Rosebud Sioux Indian Reservation by federal law.

(2) "Tribe" means Rosebud Sioux Tribe.

(3) "Tribal Court" means Rosebud Sioux Indian Tribal Court.

(4) "Department" means Rosebud Sioux Tribal Department of Natural Resources.

(5) "State" means the State of South Dakota.

(6) "Possession" means physical possession or control of any undomesticated game or nongame animal or parts thereof, on ones person, premises, motor vehicle, or public or private place of processing or storage.

(7) "Motor Vehicle" means a motorized vehicle including any trailed or towed vehicle which may travel on land, water, snow, or air.

(8) "Big Game Tag" means an adhesive-backed tag issued with big permit which must be attached around the hock of the big game animal at the time it is taken.

(9) "Antlered" means a male animal with a visible antler at least four inches above the head.

(10) "Antlerless" means any animal not classified as antlered as defined in number 9 above.

(11) "Loaded Firearm" means any firearm containing cartridges in the chamber, clip or magazine.

(12) "Hunt/Trap" means any effort to kill, injure, capture or disturb any wild animal or wild bird as defined herein.

(13) "Fish" means any effort made to kill, injure, disturb, capture, or otherwise possess fish in and from the waters of the Rosebud Sioux Indian Reservation.

(14) "Carcass" means the dead body of any wild animal to which it refers including the head, hair, skin, plumage, skeleton, or any other parts thereof.

(15) "Game" means all wild animals and birds for which hunting seasons have been established by provisions contained within this chapter.

(16) "Game Fish" means all species belonging to the paddlefish, sturgeon, salmon, trout, pike, catfish, bullheads, sunfish, black bass, bluegill, crappies, perch, walleye, and sauger families of fish species.

(17) "Rough Fish" means any and all fish species, not included in the game fish families.

(18) "Nongame Species" means all species of birds and animals which are not listed or covered or provided for within the provisions of this chapter and are protected.

(19) "Restricted water or trout Water" means that fishing methods on any lake, pond, stream, or any part thereof may be limited to the use of artificial lures or bait other than live fish.

(20) "Bag Limit" means maximum number of game species which may be legally taken per day and shall include maximum number of each species of sex.

(21) "Possession Limit" means maximum number of game species which may be possessed.

(22) "Seasons" means all of the time during the entire year except during the "open season" as specified by regulation or ordinance of the Rosebud Sioux Tribal Council.

(23) "Open Season" means the time specified by rule, regulation, order, resolution or ordinance of the Rosebud Sioux Tribal Council when it shall be lawful to hunt, fish, or trap for any animals, birds or fish. Each period of said time shall be specified as an "open season" and the period during each day when these activities can legally take place.

(24) "Closed Waters" means any lake, pond, river, stream, body of water or any part thereof within the Rosebud Indian

Reservation wherein it shall be unlawful to fish, hunt, or trap, said waters may be closed to one or all of these activities depending on the designation of these waters.

(25) "Predator" means animals which kill and eat the flesh of other animals.

(26) "Fur Bearer" means animals which are taken primarily for sale of their pelts.

(27) "Resident" means a person whose domicile is in the Rosebud Sioux Indian Reservation or the State of South Dakota.

(28) "Non Resident" means persons other than residents as defined in number 27 above.

(29) "Officer" means a Conservation Officer of the Rosebud Sioux Tribal Department of Resources or any other law enforcement officers of the Bureau of Indian Affairs or Rosebud Sioux Tribe.

(30) "Sell" means to offer or possess for sale, barter, exchange or trade or the act of selling, bartering, exchanging or trading.

(31) "Tag" means a card, table, or other identification device issued for the carcass of any game animal.

(32) "Take" means to fish, angle, hunt, pursue, catch, capture, trap, kill or otherwise possess any wildlife or any attempt to commit any of these acts.

(33) "Closed Area" means any area where by authority of the Department of Natural Resources, hunting and trapping is prohibited and to which access or any other activities may be allowed if signs so state in conspicuous places along access routes.

(34) "Specified Areas" means areas where the taking of game animals is restricted to the specifications set forth by rules, regulations, ordinance, or resolution set forth by the Department of Natural Resources in conjunction with the Rosebud Sioux Tribal Council.

(35) "Wildlife" means any form of animal life generally living wild in a state of nature, endowed with sensation and the power of voluntary motion, including all wild mammals, birds, fish, reptiles, amphibians and their eggs, nests, and spawn, and any animals, birds, or fish which are part of a Department program which may be in semi domesticated state.

(36) "Bait" means any food item including but not limited to shelled or unshelled grains, shucked or unshucked grains, beans, alfalfa hay, food supplements, salt, and any other items which entices or attracts game to a particular place.

(37) "Baiting" means the act of putting out, scattering, or in other ways distributing bait for the purposes of attracting and taking any game animal or hunting over bait.

(38) "Snagging" means the use of hook or hooks and line, with or without a pole, to impale or attempt to impale fish in a manner other than by natural feeding behavior by fish.

(39) "All-Terrain Vehicle" means any motorized vehicle designed for or capable of travel over unimproved terrain.

(40) "Recreational Vehicle" means any snowmobile or all-terrain vehicle engaged in off-highway recreational use.

(41) "Snowmobile" means any motorized vehicle designed for travel on snow and/or ice and supported in whole or in part by skis, belts, cleats, runner, or low pressure tires.

(42) "Bait Fish" means any fish or minnow which is used for angling or the capture or taking of fish.

(43) "Live Bait" means the use of any baitfish, amphibian, or any other animal while alive for angling.

(44) "Cold Water Fishery" means any lake, pond, stream, creek or river or any part thereof which is managed for trout, and where the use of live bait and bait fish is prohibited.

(45) "Creel Limit" means the maximum number of any species of fish which may be legally taken per day.

(46) "Trot Line" means any line used for fishing with one or more hooks which is not used with a conventional rod and reel and is left unattended which shall include but not be limited to the terms throw line, set line, limb line or jug line.

(47) "License" means the primary document issued by authority of the Rosebud Sioux Tribe which grants authority to engage in activities covered by the provisions of this Chapter.

(48) "Permit" means a secondary document including stamps, requiring a license as a prerequisite to its issuance, which grants authority to engage in certain specified activities under the provisions of this chapter, within the parameters of Tribal rules and regulations governing these activities.

(49) "Small Game" shall be defined as including the following: Family Anatidae limited to geese, brants, dabbling ducks, diving ducks, tree ducks, sea ducks, and mergansers; Family Rallidae including coots (mudhens) and gallinules (Rails and Soras); Family Charadiidae including plovers and turnstones; Family Scolopacidae including snipe, woodcock, and sandpipers; Gallinaceous Birds with the exception of family Malaegrididae wild turkeys to include family tetraonidae Sharptail grouse and Prairie chicken; Family Phasiandidae Bobwhite Quail, Ringneck Pheasant, and

Hungarian Partridge; family Columbidae Mourning Dove; Cotton Rabbit, Eastern Fox Squirrel, Gray Squirrel, and Pine Squirrel.

(50) "Big Game" shall be defined as wild Turkey and any undomesticated clovenhooved ungulate, including whitetail deer, mule deer, antelope, elk and buffalo, for which harvest may be established by the Rosebud Sioux Tribe.

(51) "Unprotected Species" means those species of birds and animals which are not protected under the provisions of this Chapter, and for which, year round hunting is allowed. This shall include the following: Prairie Dog, Jackrabbits, Groundsquirrels, Crows, Purple Grackles, All species of Skunks, Redwing Black Birds, European Startling, Raven, Brewer's Blackbirds and Bronzed Grackles.

(52) "Water Fowl" means any wild geese, brants, or wild ducks.

5-35-2. POWERS AND DUTIES OF THE DEPARTMENT OF NATURAL RESOURCES.

(a) **RECOGNITION.** There is hereby recognized within the scheme of government of the Rosebud Sioux Tribe the Department of Natural Resources as has heretofore been established by the Rosebud Sioux Tribal Council.

(b) **POLICY AND INTENT.** It shall be and is hereby established as the policy and intent of the Department of Game, Fish and Parks, in conjunction with the Rosebud Sioux Tribal Council for establish the following:

(1) To provide adequate and flexible system for the protection and conservation of all forestry, fish and game resources on the Rosebud Sioux Indian Reservation;

(2) To provide for the establishment of rules, regulation and ordinances relating to the harvest of fish, wildlife and timber on the Rosebud Sioux Indian Reservation;

(3) To provide for the general management and supervision of all wildlife, fishery, forestry and outdoor recreational activities on the Rosebud Sioux Indian Reservation;

(4) To provide for the establishment of license requirements, prohibited acts, penalties in regard to wildlife, fishery, forestry, and outdoor recreational activities on the Rosebud Sioux Indian Reservation.

(c) **REGULATIONS AND ORDINANCES, CONTENT.** The Department of Natural Resources shall, from time to time recommend to the Rosebud Sioux Tribal Council for the adoption, amendment, promulgation, or repeal of such

regulations and ordinances, consistent with the policy, objectives and intent of this Chapter as it may deem necessary or desirable in the public interest in carrying out the policy and provisions of this Chapter. Such regulations and ordinances, shall without limiting the general powers herein conferred, include the following:

(1) To fix seasons and shorten, extend or close seasons on any species of wildlife in any specific locality or localities, or in the entire reservation, when it shall be found, after investigation, that such actions necessary either to assure maintenance of an adequate supply thereof, to regular taking, or to effectuate proper game management and control.

(2) To close or open lakes, streams, and refuges or parts therefore to angling, trapping or hunting, and to regulate and prescribe the means by which wildlife may be taken as may be best to perpetuate, restore, increase or control any species of wildlife and assure an adequate supply thereof, and to regulate the transportation and storage of all wildlife or parts thereof within the boundaries of the Rosebud Sioux Indian Reservation and the shipment or transportation off of the Rosebud Sioux Indian Reservation.

(3) To establish or change bad limits & possession limits.

(4) To establish and change territorial limits for the taking of all species of wildlife.

(5) To prescribe the types of or kinds of bait, lures, tackle, equipment, trap, firearms and weapons, the tagging of game or fish or parts thereof or any other means or devices for taking of such wildlife.

(6) To designate the areas for hunting with bow and arrow and seasons therefore.

(7) To establish big game, small game, fish, and/or furbearing animal refuges, production areas, demonstration areas, and research areas; when private property is to be included in one of the above, written consent of the owner must first be obtained; all boundary lines shall be posted at the usual place of ingress with signs bearing instructions and title of the Department of Natural Resources of the Rosebud Sioux Tribe.

(8) To establish methods for checking hunters, fishermen, trappers into and out of designated areas, to prescribe safety and fire control measures and other regulations as may be deemed necessary in the interest of range, forest, game, fish or furbearing animal management, and for the safety and welfare of hunters, trappers, fishermen, landowners and the Rosebud Sioux Tribe.

(9) To establish fees and license costs for hunting seasons, general, special or otherwise.

(10) To establish rules and regulations governing the operations of boats upon waters located within the exterior boundaries of the Rosebud Sioux Tribe.

(11) To establish rules and regulations governing the operation of snowmobiles and other all-terrain recreational vehicles on the lands of the Rosebud Sioux Tribe, which shall also include aircraft.

(12) To establish guidelines, rules and regulations for the harvest of timber and to supervise such activities in such a way as to perpetuate the timber resources and to provide for sustained yield.

5-35-3. PROCEDURAL RULES.

(a) **OFFICER OF DUTIES.** It shall be the duty of every Tribal Conservation Officer and Tribal Law Enforcement Officer to enforce the rules, regulations and ordinances promulgated hereunder relating to hunting, fishing, trapping, and all other regulations which may relate to all activities pursuant to the policy and intent of this Chapter and such officers may issue citations and/or make arrest and bring before the proper court any persons violating the provisions of this Chapter or any of the regulations, ordinances or rules adopted thereto pertaining to the policy intent and purposes of this Chapter.

(b) **RELATION TO CRIMINAL PROCEDURES UNDER THE ROSEBUD SIOUX TRIBAL CODE.** Unless other wise provided for within in this Chapter the procedural and substantive provisions of the Rosebud Sioux Tribal Code relating to criminal procedure and substantive crime shall apply within this chapter.

(c) **SEARCH.** Any Officer may search without warrant any conveyance vehicle, game bag, game basket, game coat or any receptacle, for game animals, birds, fish, or any package, box hunting camp or similar place where he has reason to believe contains evidence of violation of this code, regulations, ordinances or rules adopted hereunder pertaining to hunting, fishing or trapping.

(d) **AUTHORITY TO ENTER PRIVATE LAND.** Any Officer in the course of his duty may enter upon any lands or waters of the Rosebud Sioux Indian Reservation and remain thereon while performing such duties hereunder, and such actions by such Officers shall not constitute trespass.

(e) SEIZURE. Any Officer may upon probable cause, seize without warrant, all birds, animals, or parts thereof taken, killed, transported or possessed, contrary to the provisions of this Chapter or any regulation, rule or ordinance pertaining to hunting, fishing, or trapping, and or gun, trap, net, seine, decoy, bait, boat, light, fishing tackle, or other device unlawfully used in hunting, fishing, or trapping, or held with the intent to unlawfully use for hunting, fishing or trapping.

(f) FORFEITURE PROCEDURE. Any contraband game or fish seized shall be subject to forfeiture at the order of the Tribal Court of the Rosebud Sioux Tribe after notice and opportunity for hearing or trial as herewith set forth. In case it appears upon the sworn complaint of the Officer making the seizure that any articles seized were not in the possession of any person, and that the owner thereof is unknown, the Court shall have the power and jurisdiction to forfeit such articles unknown by publishing such summons in any newspaper or of general circulation for a period of two successive issues. The summons shall describe the articles seized and shall give the owner 15 days from the date of the last publication to appear before the Tribal Court and contest the forfeiture.

(g) FORFEITURE; DISPOSITION OF PROPERTY. In the event that the Tribal court orders forfeiture of any articles seized, such articles shall be sold at auction with proceeds going to the Department of Natural Resources. If any articles are not declared forfeited by the Order of the Tribal Court, they shall be returned to the person from whom seized, after the completion of the case and the fines and liquidated damages, if any, have been paid. If fines and/or liquidated damages are assessed by the Court and not paid within a period of time to be established by the Court, the Court may dispose of said property as described above.

(h) CIVIL LIABILITY TO THE TRIBE. Upon conviction of an offense where the defendant has illegally taken, killed or possessed any species of fish or wildlife, the defendant shall be liable for liquidated damages. The minimum damages to be paid to the Department of Natural Resources shall be as follows:

BIG GAME	Male	Female
Deer	\$150.00	\$300.00
Antelope	\$150.00	\$300.00
Elk	\$1,500.00	\$1,500.00
Buffalo	\$1,500.00	\$1,500.00
Turkey	\$75.00	\$75.00

SMALL GAME		
Ducks	\$25.00	\$50.00
Geese	\$50.00	\$50.00
Pheasants	\$25.00	\$25.00
Grouse &		
Prairie Chicken	\$20.00	\$20.00
Mourning dove	\$10.00	\$10.00
Hungarian	\$10.00	\$10.00
Partridge	\$10.00	\$10.00
Rabbits	\$10.00	\$10.00

FISH – All fish, regardless of species, will have a value of \$2.00 per inch.

FURBEARERS	Male	Female
Coyote	\$75.00	\$75.00
Fox	\$75.00	\$75.00
Bobcat	\$300.00	\$500.00
Mountain Lion	\$500.00	\$1,000.00
Mink	\$50.00	\$50.00
Raccoon	\$50.00	\$50.00
Weasel	\$30.00	\$30.00
Badger	\$30.00	\$30.00
Porcupine	\$30.00	\$30.00

NONGAME SPECIES – All songbirds (except unprotected species) will have a value of \$15.00

5-35-4. GENERAL LICENSING, HUNTING AND FISHING PROVISIONS.

(a) LICENSE AND PERMIT. License and permit fees for hunting and fishing within the exterior boundaries of that land area wherever situation known as the Rosebud Sioux Indian Reservation shall be established by the Rosebud Sioux Tribal Council by resolution as it deems annually without need to amend this Ordinance.

(b) GENERAL HUNTING LICENSE. The general hunting license is required of every hunter within the exterior boundaries of that land wherever situated known as the Rosebud Sioux Indian Reservation; hunters between the ages of 12 and 15 years inclusive must possess a certificate of competency or a hunters safety card and must be accompanied by a parent, guardian or responsible adult while in the actual acts of hunting; the general hunting license provided for hereunder shall not be issued to anyone under the age of 12.

(c) PERMIT TO HUNT BIG GAME. It shall be unlawful for any person to hunt any big game animal except persons to whom a tribal game permit has been issued.

(d) SMALL GAME PERMIT. The small game permit as provided for herein is required of every hunter who hunts small game, including migratory water fowl.

(e) FISHING LICENSE. It shall be unlawful for any person to take fish, frogs,

turtles, or any other form of aquatic life without a valid Tribal fishing license.

(f) HANDICAPPED HUNTERS.

Licensed hunters who are paraplegic or otherwise physically unable to walk with or without crutches, braces, or other mechanical support devices in the fields or woods, and who have obtained special permits from the Department, may shoot from a standing vehicle in the course of hunting game animals or game birds.

(g) PROTRUDING GUNS. Except as otherwise provided for herein it shall be unlawful for any gun or firearm to protrude from any motor vehicle or conveyance while on a highway or public road within the exterior boundaries of that land area known as the Rosebud Indian Reservation.

(h) DISTURBING WILDLIFE PROHIBITED. No person shall scare, chase, harass, disperse, rally or otherwise disturb any wildlife by means of other than by legal hunting methods and in the ordinary course of hunting.

(i) SIZE OF PARTY LIMITED. No more than twenty (20) persons shall cooperate as a group in hunting.

(j) HUNTING METHODS

RESTRICTED TO SHOULDER GUNS AND BOWS AND ARROWS. No person shall at any time hunt any game bird or game animal in any other manner than by shooting with a gun held to the shoulder or with a bow and arrow with a draw weight of at least twenty pounds and a draw peak of twenty eight inches at the draw peak of draw, except that large caliber handguns of the calibers .41 and .44 caliber may be used in taking of big game animals; all cross bows or various forms thereof shall be illegal.

(k) USE OF RIFLES TO HUNT BIRDS PROHIBITED. The use of rifles in the hunting of game birds is prohibited, except that rifles using center fire cartridges may be used in the hunting of wild turkeys.

(l) USE OF ARTIFICIAL LIGHT IN HUNTING PROHIBITED. No person shall take or attempt to take any game or wild animal with the aid or use of artificial light, except raccoons after they have been treed with the aid of dogs.

(m) HUNTING FROM A MOTOR VEHICLE PROHIBITED. No person while in or on a motor vehicle or any conveyance attached thereto shall take game nor discharge any firearm at any wild animal while on a public highway or in a field of unharvested grain.

(n) HUNTING FROM MOTOR VEHICLE OR SNOWMOBILE UNLAWFUL.

It shall be unlawful for any person to chase, drive or harass or hunt any game animal, game bird or any other form of wildlife with or from a motorcycle or snowmobile.

(o) USE OF AIRCRAFT FOR HUNTING PROHIBITED. It shall be unlawful to hunt from an airplane or any form of aircraft within the exterior boundaries of the Rosebud Indian Reservation or any trust land of the Tribe outside of Todd County:

(1) It shall be unlawful to assist in any way hunters on the ground with the aid of an aircraft, to spot game for the purpose of making it less difficult to harvest game, or to disturb, rally, drive, stirrup, or otherwise harass any game or other wildlife species with an airplane;

(2) It shall be unlawful to hunt big game, predators, furbearers, and waterfowl on the same day that one has flown aircraft over, around or through the Rosebud Indian Reservation.

(p) POSSESSION OF UNLAWFULLY TAKEN OR IMPORTED BIRD, ANIMAL OR FISH UNLAWFUL. It shall be unlawful for any person, at any time, to have in his possession or under his control, any bird, animal, fish, or any part thereof, which has been unlawfully taken on the Rosebud Sioux Indian Reservation, this state or any other state or Indian Reservation which has been unlawfully transported into this reservation.

(q) POSSESSION DURING CLOSED SEASONS AS PRIMA FACIE EVIDENCE OF TAKING DURING CLOSED SEASON. The possession or having under control by any person of any bird, animal, fish or part thereof at any time when the killing, taking or possession thereof is by the law of the Rosebud Sioux Tribe declared to be unlawful, shall be prima facie evidence that such taking or killing has occurred the closed season.

(r) INSPECTION AND COUNTING OF BIRDS, ANIMALS AND FISH TO BE PERMITTED BY PERSON IN

POSSESSION. Every person having in possession any game, bird, animal or fish or any part thereof, shall upon the request of any person authorized to enforce the game and fish laws of the Rosebud Sioux Tribe, permit the inspection and count of such birds, animals or fish in his possession, and any motor vehicle may be stopped for such inspection and count by any uniformed law enforcement officer.

(s) USE OF CITIZEN BAND RADIOS PROHIBITED. It shall be unlawful to use citizen band radio from either base stations or vehicles to make it easier or less difficult to harvest any form of wildlife on the Rosebud Reservation.

(t) ACCOMPANIED BY UNLICENSED HUNTER. It shall be unlawful for anyone to accompany properly licensed hunters in the field with a bow and arrow or firearm of any type without possessing a valid tribal hunter license and permit for the wildlife species being hunted.

(u) LICENSING, MISREPRESENTATION. Misrepresentation of identity, age, or residency while purchasing a tribal license or tribal permit shall be unlawful and shall constitute fraud.

(v) TRANSFER/ALTERATION OF LICENSE. Tribal licenses and tribal permits shall be valid only for the person whose name appears on the license and/or permit; further it shall be unlawful to alter or change in any way any tribal license or permit after being issued by the Department or authorized vendor.

(w) DESTRUCTION OF PROPERTY. No person shall deface, mutilate, shoot at, tear or pull down, or destroy any sign on the Rosebud Indian Reservation, nor shall any person cut, run through, tear out, take down, and leave down, fence, or leave gates open or in any way destroy gates or fence on any lands on the Rosebud Sioux Indian Reservation; in addition to the penalty provided for violating this provision, any person convicted of such a violation may be required by the convicting court to pay for all damages resulting from such violation.

(x) WASTE PROHIBITED. No person shall want only waste or destroy any of the birds, animals, or fish of the kinds protected by the laws of the Rosebud Sioux Tribe.

(y) FINANCE. All revenue taken in by the Department from hunting, fishing, and trapping licenses and permit sales, timber harvest permit, bait vendors license, sale of timber and timber products, sale of any species of wildlife, receipt of liquidated damages and fines from violations of this code will be used to operate the Department and the Department programs to implement the best possible management and practices for tribal natural resources.

(z) PUNISHMENT. Unless otherwise specifically provided for within this Chapter or any subsection thereof, any person convicted hereunder for the acts or omission

made unlawful and provided for herein shall be deemed to have committed an offense against the Rosebud Sioux Tribe and the peace and dignity thereof and may be fined in an amount not to exceed \$500.00, and may be sentenced to a period in the Rosebud Sioux Jail facilities for period not to exceed 6 months or both such fine and imprisonment; in addition thereto the civil liabilities as provided for within this Chapter shall be applied as against anyone who is convicted and sentenced and fined hereunder.

5-35-5. BIG GAME PROVISIONS.

(a) BIG GAME TAGGING. The locking seal issued with each big game permit shall be attached securely around one leg between the hoof and knee joint.

(b) GENERAL. No big game animal shall be hunted or harvested by any other method than is prescribed by this Code.

(c) BAITING. It shall be unlawful to use bait of any kind to attract big game animals while hunting or to hunt or take big game over bait.

(d) EVIDENCE OF SEX. After harvesting a big game animal evidence of sex must be left attached to the carcass. Suitable evidence of sex shall include scrotum, udder, head, or identifiable portions of reproductive organs.

(e) SILENCING. It shall be unlawful to use any mechanism to silence, muffle, or minimize the report of any firearm while hunting big game.

(f) HUNTING FOR ANOTHER. No person shall hire another person to hunt big game for him nor shall any person hunt big game for another with or without any form of compensation.

(g) DISTURBING WILDLIFE PROHIBITED. No person shall scare, chase, harass, disperse, call or otherwise disturb any wildlife by means other than legal hunting methods and in the ordinary course of hunting.

(h) ACCOMPANIMENT PROHIBITED. No big game permittee, while hunting in the field during any big game season shall be accompanied by any non-licensee or non-permittee carrying any firearm or bow and arrow. A "non-licensee" or "non-permittee" is a person not having a big game license for the same season.

(i) MINIMUM CALIBER OR BIG GAME AMMUNITION. It shall be unlawful for any person to hunt any big game animal with a firearm which discharges a projectile of a diameter less than 22/100 of an inch. The

cartridge must contain a soft point or expanding bullet.

(j) MINIMUM LENGTH OF BIG GAME AMMUNITION. It shall be unlawful for any person to hunt any big game animal with a cartridge less than two inches in length, except with large Caliber handguns.

(k) LARGE CALIBER HANDGUNS. It shall be unlawful to hunt any species of wildlife on the Rosebud Sioux Reservation with a handgun, except that big game may be hunted with handguns of .41 caliber and .44 caliber using factory loaded ammunition with expanding bullets and with at least a 4 inch barrel. All other calibers of handguns shall be illegal for hunting of big game.

(l) MINIMUM CALIBER OF MUZZLE-LOADING GAME AMMUNITION. It shall be unlawful for any person to hunt big game with any muzzle loading rifle which discharges a projectile of a diameter less than 42/100 of an inch.

(m) MAXIMUM NUMBER OF CARTRIDGES IN SELF-LOADING FIREARMS USED TO HUNT BIG GAME. No self-loading firearm that holds more than six cartridges may be used to hunt any big game animal.

(n) BUCKSHOT PROHIBITED IN HUNTING BIG GAME. No buckshot may be used, and no single call or rifled slug weighing less than ½ ounce may be used in hunting big game animals.

(o) DOGS PROHIBITED IN HUNTING BIG GAME. No dog shall be used in the hunting of big game animals.

(p) USE OF SALT TO ATTRACT BIG GAME PROHIBITED. No person shall place any salt or salt lick or construct a blind or stand at or near any salt lick for the purpose of hunting big game animals.

(q) USE OF ARTIFICIAL LIGHT IN HUNTING BIG GAME PROHIBITED. It shall be unlawful to use any artificial light in taking or attempting to take big game animals, or to use artificial light in big game areas while in possession of a firearm or bow and arrow.

(r) UNLAWFUL TAKING, POSSESSION, SALE OR TRANSPORTATION OF GAME BIRDS, ANIMALS, OR FISH. Any person who takes, catches, kills, or has in his possession with intent to sell; sells, or causes to be conveyed; has in his possession with intent to ship or convey to any point, either within or without this Reservation, any game birds,

animals, or fish or parts thereof, in violation of any law of this Tribe or any legally prescribed pertinent regulations of the Department of Natural Resources, or any common carrier or agent or agents thereof who aids or abets any person in shipping such game animals or fish, or has the same in his possession with intent to ship or convey to any point either within or without this Reservation contrary to law, shall be guilty of a misdemeanor.

(s) ARCHERY EQUIPMENT RESTRICTIONS. No person hunting with bow and arrow shall use or possess explosive points, poisonous points, barbed points, or cross bows.

(t) MINIMUM SIZE OF BOW AND ARROW. Big game permittees hunting with bow and arrow shall be equipped with a bow of not less than forty pounds pull at twenty-eight inches of draw or at peak of draw, capable of shooting an arrow one hundred twenty-five yards. The cutting edge of the arrowhead must be of steel and not be less than 7/8 inches wide and not less than 1½ inches long. The shaft of the arrow must be at least 24 inches long. Broadheads must be of reasonable sharpness (razor sharp). Each cutting blade of the broadhead must be of one piece, and all broadheads with spiral shaped cutting surfaces are prohibited.

(u) ARCHERS PROHIBITED FROM POSSESSING FIREARMS. No person licensed in season restricted to archery only shall possess any firearm in the field while hunting with bow and arrow.

(v) TAGGING REQUIREMENTS FOR BIG GAME. No big game animal taken on this Reservation shall be transported unless the tag bearing the licensee/permittee's number for that season, has been securely attached at the time the big game animal is brought into any hunting camp, dwelling, farmyard, or other place or abode of any kind occupied overnight or in the event such big game animal is brought out to a road or trail, then before the same is placed upon or in a vehicle of any kind. All tagging instructions printed on the tag must be followed.

5-35-6. FISHING REGULATIONS.

(a) LABELING AND ACCESS TO FISHING HOUSES. Fish houses, shanties, or other shelters must display on the outside the name and address of the owner in letters at least 2 inches high. The door must permit entry at all times except when unoccupied and locked from the outside. All such shelters must be removed from the ice by

March 5 or earlier, as determined by the Department.

(b) ICE HOLE SIZE RESTRICTIONS.

No hole shall be cut or drilled through the ice or a greater diameter than 12 inches, nor shall the length of any side of the ice hole exceed 12 inches which is used for ice fishing.

(c) REFUSE LEFT ON ICES. It shall be unlawful for any person to deposit any form of organic or inorganic waste on the ice of any water of the Rosebud Sioux Reservation.

(d) FISHING RESTRICTED TO AUTHORIZED METHODS. It shall be unlawful to catch or attempt to catch, take, or kill any fish by any method, except as provided in this Code.

(e) MAXIMUM NUMBER OF LINES AND HOOKS. It shall be unlawful for any person to fish with more than two lines at the same time, and no more than three hooks shall be attached to the same line. Artificial lures constitute one hook, regardless of the number of gang hooks attached.

(f) ROUGH FISH: DEFINITION; CONDITIONS. It is legal to take certain rough fish by means of bow and arrow. "Rough Fish" means; Paddle fish, carp, buffalo, carpsuckers, suckers, gar, drum, and gizzard shad.

(1) Each bow and arrow shooter shall have in his possession a valid Tribal fishing license.

(2) The minimum weight of bows shall be twenty-five pounds.

(3) The maximum length of arrows shall be thirty-two inches.

(4) Each arrow must have a barbed head.

(5) Each arrow must be shot from a bow.

(6) A line must be attached from bow to arrow.

(7) It shall be unlawful to take fish using a crossbow

(g) ROUGH FISH AREAS; RESTRICTIONS. All streams, lakes, ponds, and other waters in the Rosebud Sioux Reservation are subject to Tribal Games, Fish & Parks Regulations relative to fishing, and are open to the taking of certain rough fish by means of bow and arrow, except that all water areas within a distance of 100 yards of any boat dock, swimming area, picnic area, or other place where people are congregated, are closed to bow and arrow fishing. Bow and arrow fishing is permitted only during daylight hours.

(h) SNAGGING; UNLAWFUL. To catch or take any fish by hand fishing, toe fishing, snagging, or by use of brush lines, jug or float line fishing, or any other similar device; snagging as prohibited by law, shall not include hooking when the fish by its action takes into its mouth a bait or lure. A fish hooked in any manner must be immediately released into the water from which it came if not immediately released, the person hooking the fish shall be guilty of snagging.

(i) SEINES; NETS; SPEARS; TRAPS; UNLAWFUL. It is unlawful for any person to have in his possession any seine trammel net, hook net, gill net, fish gig, fish spear, fish trap; or other device, contrivance or material for the purpose of taking fish, except as otherwise provided for by law.

(j) DELETERIOUS SUBSTANCES; EXPLOSIVE; UNLAWFUL. It is unlawful to place in or upon any waters within the Rosebud Sioux Reservation any deleterious substances, or fish berries, or to place or explode dynamite, giant powder, lime, nitroglycerine or any other explosive of any character or kind in any waters on the Rosebud Sioux Tribe, with the intent to take or kill, stun or wound fish.

(k) RODS, LINES, BAITED HOOKS. It is unlawful to take fish by any other means than by rods, lines and baited fishhooks, except as provided by law.

(l) BAIT MINNOWS.

(a) The taking of the common bait minnow (family Cyprinidae) and top minnows or killifish (family Cyprinodontidae) from streams, rivers, and lakes of the Rosebud Sioux Reservation, for use as bait, is permitted subject to the limitation that possession of such minnows and/or small fish taken in excess of 500 per day is prohibited and declared to be unlawful.

(b) It is lawful to have and use, for the sole purpose of taking minnows for a bait, a minnow seine not more than four feet wide and fifteen feet long with a mesh not larger than one-fourth inch square measure; and a glass or wire minnow trap with throat not larger than one inch in diameter, any other seine or seine of device shall be unlawful.

(c) The taking of bait minnows for resale, trade, or other commercial purpose is prohibited, except as otherwise provided in the Rosebud Sioux Tribal Code.

(m) BAIT VENDORS LICENSES. It shall be unlawful to sell, trade, or barter baitfish on the Rosebud Sioux Reservation without possessing and displaying in a conspicuous place a valid Rosebud Sioux Tribal Bait Vendor's License.

(n) PURCHASE OF LICENSE. The bait Vendor's License may be purchased from the Department of Natural Resources and is valid until December 31 of the year of issuance. The cost of the Bait Vendor's License is determined by the Department of Natural Resources.

(o) GAME FISH, CATFISH, ROUGH FISH AS BAIT UNLAWFUL. It shall be unlawful to sell, trade, or barter game fish, catfish or rough fish as bait, or for any other purpose on the Reservation. No baitfish shall be introduced to any waters of the Reservation for any purpose unless, specifically authorized by the Department.

(p) BAIT FISH IN WATERS UNLAWFUL. It is unlawful to empty the contents of any minnow bucket or otherwise introduce bait minnows or fish of any species into the waters of the Rosebud Sioux Tribe.

(q) BAITFISH IN RESTRICTED WATERS UNLAWFUL. It is unlawful to use bait minnows while fishing in any restricted waters prohibiting the use of bait minnows or any cold water fishery of the Rosebud Sioux Tribe.

(r) FROGS.

(1) A valid Rosebud Fishing license is required for any person to take, catch or kill bullfrogs, except those people exempt by law from having such a license.

(2) Bullfrogs may legally be taken by hand, dip-net, and hook and line. Any and all other means and methods of catching, taking and/or killing bullfrogs are prohibited.

5-35-7. TRAPPING

(a) TRAPPING; MEMBERS, NONMEMBERS. Trapping of furbearers on the Rosebud Reservation is limited to tribal members only, except that non-members farmer/ranchers may trap predators in the course of their farm and ranch operation for animal damage control.

(b) TRAPS; MAKING. All traps will be marked with the owners name and address.

(c) TRAPS; DISTURBING. No one shall disturb in any way another person's trap sets, harass, kill, or take a trapped animal from another person's trap set.

(d) TRAPS TO BE CHECKED. Traps set shall be checked at least once every 48 hours.

(e) TRAPPING AREAS. No traps shall be set within 200 yards of any house, dwelling, community, town, city limits, public use area, picnic area, or other place where public gatherings are likely to take place. No

traps shall be set within 200 yards of any Cemetery.

(f) TRAPPING GAME ANIMALS UNLAWFUL. It shall be unlawful to trap any small or big game animals. Only furbearers, predators, and unprotected species may be legally trapped.

(g) TRAPPING ON PRIVATE LAND. If trapping is to take place on leased land, the lesser must be notified prior to setting traps.

(h) TRAPPING PROTECTED SPECIES. If protected species are trapped, the animal shall be left undisturbed and the Department of Natural Resources notified.

(i) STEEL LEHOLD. No steel leghold traps larger than 14 are permitted.

(j) HARVESTING BOBCATS; TAGGING. Bobcats may be harvested between December 16 and January 15 and upon harvesting a bobcat the unskinned carcass must be presented to a Conservation Officer for inspection and tagging. Bobcats shall not be sold without being tagged by a Conservation Officer.

(k) POSSESSION OF PREDATOR, FURBEARER. No predator or furbearer shall be held in possession by anyone while in a living state, except that one furbearer may be kept as a pet under humane conditions.

(l) PHYSICAL ALTERATION OR WILD PREDATOR OR FURBEARER. No wild predator or furbearer which it to be kept as a pet shall physically altered in any way. This shall include declawing, defanging, descenting, spaying, or any other intentional physical alteration.

(m) NUMBER OF PREDATOR OR FURBEARER; PETS. No wildlife species other than one predator or furbearer may be kept as a pet or held in possession by anyone while in a living state.

5-35-8. FORESTRY.

(a) OWNERSHIP. All timber resources on the Rosebud Indian Reservation are owned by the Tribe, except for tree claims and other tree stands located on private lands within the Reservation.

(b) MANAGEMENT. The management and control of all tribal timer resources is delegated to the Rosebud Sioux Tribal Department of Natural Resources and the Natural Resources Committee.

(c) SALES. The sale of timber and timber products from tribal timber stands is under the control of the Rosebud Sioux Tribal

Department of Natural Resources and the Natural Resources Committee.

(d) TIMBER RESERVE ACTIVITIES.

All harvest, collection of firewood vehicular travel, and recreational activities within the Rosebud Sioux Tribe Timber Reserve is under the control of the Department of Natural Resources.

(e) TIMBER HARVEST REGULATED.

(1) All harvest products will require supervision by the Natural Resources Department, based upon prior contract in the form of "Timber Harvest Permit", and issued by the Natural Resources Department. Validity requires Concurrence by the Bureau of Indian Affairs.

(2) A schedule of stumpage fees will apply as set by the Tribal Council from time to time.

(a) Dry Wood

(b) Live Trees

I. Public Use

II. Personal Use

1. Post & hole

2. House logs

3. Christmas trees

4. Ornamental stock

5. Seedlings

6. Firewood

(3) Monies collected will be credited to the Natural Resources Department with the stipulation that they support Forest management/conservation practices.

(f) TREES. All live trees to be cut will be so designated prior to harvest, with a paint type mark applied by the sale supervisor.

(g) STUMPS. Stumps shall be cut as low as practicable to avoid waste. The means height of any stump shall not exceed one-half its diameter except that where this height is considered to be impracticable, higher stumps may be authorized by an authorized official of the Department of Natural Resources.

(h) SLASH. Slash disposal shall require that where practical limbs and other refuse shall be piled for future burning (with snow cover). Where not practical to pile, slash must be cut down low to ground surface and not to exceed eighteen (18) inches in height.

(i) TRAILS AND ROADS. Skidding trails and hard roads will be designated by the sale supervisor to minimize the soil erosion hazard.

(j) PERMITS; EXTENSIONS. Timber harvest permits shall specify the time period limitations of the sale. Extensions will be permitted only in the event that weather and/or moisture conditions are unacceptable

from the standpoint of operations or resources damage susceptibility.

(k) CUTTING WITHOUT PERMIT; UNLAWFUL. It shall be unlawful to cut, dig, or in any other way remove living trees from Tribal lands for any purpose without possessing a valid timber harvest permit issued by the Department of Natural Resources.

(l) CUTTING AREAS AND TIME; UNLAWFUL. It shall be unlawful to cut, dig, or in any other way removed living trees from tribal lands other than those trees designated for removal by the Department, and within the areas or areas designated for harvest, and only during the time frame established by the Department, as shown on the Timber Harvest Permit.

(m) DAMAGE; WASTE; UNLAWFUL. It shall be unlawful to harvest trees in a careless manner, which could cause damage to adjacent trees or property, or to wantonly damage or destroy living trees or to limb living trees for any purpose, unless authorized by the Department.

(n) SALE WITHOUT AUTHORIZATION; UNLAWFUL. It shall be unlawful to sell, barter, or trade any timber or timber harvest products taken from tribal lands unless such sale is authorized by the Department, and the operation is part of a program authorized by the Department.

(o) REMOVAL FROM PROGRAM AREAS; UNLAWFUL. It shall be unlawful to remove any trees, parts thereof, or timber harvest products form a work area in which a Department approved timber management program is occurring/has occurred, without the consent of the Department.

(p) VEHICLES OFF ESTABLISHED ROADS; UNLAWFUL. It shall be unlawful to drive any motor vehicle off of established roads or fire trails in the timber reserve, unless specifically authorized, by the Department.

(q) FIREFIGHTING. Any Timber Harvest Permittee will assist Tribal or BIA Officers to fight fire during the period of this permit without pay if the area covered by this permit is on fire or threatened, otherwise at the prevailing rate of pay.

(r) FIRES. No fires are allowed in the Timber Reserve except at designated campsites. Fires may be further restricted by the Department and the public will be notified by signs posted along access routes to camping areas and through the media.

5-35-9. RECREATION.

(a) LICENSING. Every boat propelled by a motor on waters located within the boundaries of the Rosebud Reservation shall be numbered and licensed as prescribed by Tribal Law.

(b) LIGHTS. All boats afloat after dark must be equipped with running lights attached to bow and stern and these lights must be in use during hours of darkness.

(c) LIFE PRESERVERS. All motorboats must be equipped with Coast Guard approved life preserves. One life preserver is required for every occupant.

(d) FIRE EXTINGUISHERS. Every boat propelled by a motor to ten horsepower and greater must be equipped with a Coast Guard approved fire extinguisher.

(e) SAFE OPERATIONS. No motorboat shall be operated in such a way as to endanger the lives of others or to cause nuisance or destruction of property.

(f) WATERSKIING. No waterskiing shall take place with 100 yards of any swimming areas. If buoy markers are used to designate such areas, all waterskiing shall take place outside of these buoys.

(g) OARS REQUIRED. All motorboats shall be equipped with a set of oars.

(h) WASTE. No bilge or any other organic or inorganic waste shall be pumped or in such a way introduced to the waters of the Reservation.

(i) WILDLIFE TAKING FROM MOTORBOATS. Motorboats while underway with of a motor shall not be used in the taking of any wildlife on the Reservation.

(j) REPORTS OF CAPSIZING OR SINKING. The capsizing or sinking of any boat shall be reported to the Department of Natural Resources within 24 hours.

CHAPTER 36 – ROSEBUD TRIBAL PESTICIDE CODE

5-36-1.	Definitions For Purposes Of This Code
5-36-2.	Classification Of Pesticides
5-36-3.	Classification Of Pesticide Applicators
5-36-4.	Categorization Of Commercial Applicators
5-36-5.	Standards Of Competency For Certification
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5-36-9.	Denial, Suspension, Revocation, or Modification or Certification
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5-36-12.	Entry and Inspection
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5-36-14.	Severability

5-36-1. DEFINITIONS FOR PURPOSES OF THIS CODE.

A. The term “Administrator” means the administrator of the Environmental Protection Agency.

B. The term “Agricultural Commodity” means any plant or part thereof, or animal, or animal products, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturalists, floriculturalists, orchardists, foresters or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

C. The term “animal” means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

D. Applicators:

(1) The term “certified applicator” means any individual who is certified by the Rosebud Natural Resources/Land Management Committee as authorized to use or supervise the use of any pesticide which is classified for restricted use.

(2) The term “private applicator” means a certified applicator who uses or supervises the use of any pesticide which is classified.

(3) The term “commercial applicator” means a certified applicator (whether or not he is a private applicator which respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or, on any property other than as provided by paragraph 2.

(4) Unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied “under the direct supervision of a certified applicator) if it is applied by a competent person acting under the instructions and control of a certified applicator who is available and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

E. The term “code” means the Rosebud Tribal Pesticide Code.

F. The term “Committee” means the Rosebud Natural Resources/Land Management Committee or that body

delegated this authority by the Rosebud Sioux Tribe.

G. The term “Council” means the Rosebud Sioux Tribal Council.

H. The term “EPA” means the U.S. Environmental Protection Agency.

I. The term “District Court” means a United States district court.

J. The term “Environment” includes water, air, land, and all plants and man and other animals living therein and the inter-relationships which exist among these.

K. The term “FIFRA” means the Federal Insecticide, Fungicide and Rodenticide Act, as Amended (1972, 1975, and 1978).

L. The term “insect” means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually having more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

M. Label and Labeling:

(1) The term “Label” means the written, printed or graphic matter on or attached to, the pesticide or device or any of its containers or wrappers.

(2) The term “Labeling” means all labels and all other written, printed, or graphic matter:

(a) Accompanying the pesticide or device at any time; or

(b) To which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Department of Agriculture and Interior, the Department of Health, Education and Welfare, State experiment stations, State institutions or agencies authorized by law to conduct research in the field of pesticides.

N. The term “Land” means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivance, and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

O. The term “pest” means (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25 (c) (1) of FIFRA or which the Committee declares to be a pest.

P. The term “Pesticide” means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended to use as a plant regulator, defoliant, or desiccant: Provided, that the term “Pesticide” shall not include any article (1) (a) that is a “new animal drug” within the meaning of Section 201(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(w), or (b) that has been determined by the Secretary of Health, Education, and Welfare not be a new animal drug by a regulation establishing conditions of use for the article, or (2) that is an animal feed within the meaning of Section 201 (x) of such Act (21 U.S.C. 321(x) bearing or containing an article covered by clause (1) of this provision.

Q. The term “Protect Health and the Environment” and “Protection of Health and the Environment” mean protection against any reasonable adverse effects on the environment.

R. The term “Reservation Lands” means all lands within the exterior boundaries of the Rosebud Sioux Indian Reservation, Todd County, South Dakota, and all Trust Lands in Tripp, Mellette, Lyman, and Gregory Counties, South Dakota, which are within the original boundaries of the Rosebud Sioux Indian Reservation.

S. The term “Restricted use Pesticide” means any pesticide use classified for restricted use by the Rosebud Natural Resources/Land Management Committee, the Secretary of the South Dakota Department of Agriculture, or the Administrator of the U.S. Environmental Protection Agency.

T. The term “Secretary” means the secretary of the South Dakota State Department of Agriculture.

U. The term “State” means the State of South Dakota.

V. The term “Unreasonable adverse effects on the Environment” means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

W. The term “Weed” means any plant which grows where not wanted.

X. The term “Wildlife” means all living things that are neither human, domesticated, nor as defined in this Code, pests, including but not limited to mammals, birds, and aquatic life.

Y. The term “Establishment” means any place where a pesticide or device or active ingredient use in producing a pesticide is produced, or held, for distribution or sale.

Z. The term “To use any registered pesticide in manner inconsistent with its labeling” means to use any registered pesticide in a manner included (1) applying pesticide at any dosage, concentration, or frequency less than that specified on the labeling; (2) applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling, unless the Administrator has required that the labeling specifically states that the pesticide may be used only for the pests specified on the labeling after the Administrator has determined that the use of the pesticide against other pests would cause an unreasonable adverse effect on the environment; (3) employing any method of application not prohibited by the labeling; or (4) mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling. Provided further, that the term also shall not include any use of a pesticide in conformance with Section 5, 18, or 24 of FIFRA, or any use of a pesticide in a manner that the Administrator determines to be consistent with the purpose of FIFRA: and provided further, that after March 31, 1979, the term shall not include the use of pesticide or after that date the Administrator issues a regulation or advisory opinion consistent with the study provided for it in Section 27 (B) of the Federal Pesticide Act of 1978, which regulation or advisory opinion specifically requires the use of definite amounts of dilution.

5-36-2. CLASSIFICATION OF PESTICIDES. The Rosebud Sioux Tribal Council or its designated agent shall recognize all pesticide products introduced on the Rosebud Reservation for “restricted use” or “general use” according to the standards consistent with Section 3 of FIFRA. As a minimum, the council will consider all pesticide products classified for restricted use by the Administrator of EPA as for restricted use on the Rosebud Reservation. In addition, the Council may restrict the use of additional pesticide products if the uses be restricted to prevent damages to property other than the property to which they are directly applied or to persons, animals, crops or vegetation other than the pests which they are intended to destroy. Individuals not appropriately certified from using restricted use pesticides, with the exception of those individuals applying the pesticide under the direct supervision of a

certified applicator, as shown in 5-36-1 D (4) of this code.

5-36-3. CLASSIFICATION OF PESTICIDE APPLICATORS. Pesticide applicators shall be classified as commercial applicators or private applicators according to the definitions shown in 5-36-1 D of this code.

5-36-4. CATEGORIZATION OF COMMERCIAL APPLICATORS. Commercial applicators shall be classified as commercial applicators or private applicators according to the definition shown in 5-36-1 D of this code.

A. Categories.

(1) Agricultural Pest Control:

(a) Plant. This category includes commercial applicators using or supervising the use of restricted use pesticides in production of agricultural crops, including without limiting the foregoing, tobacco, peanuts, cotton, feed grains, soybeans and forage; vegetables, small fruit, tree fruits and nuts, as well as on grasslands and non-crop agricultural land.

(b) Animal. This category commercial applicators using or supervising the use of restricted use pesticides on animals, including without limiting the foregoing, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry and livestock, and to places on or in which animals are confined.

Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large-scale use of pesticides are included in this category.

(2) Forest Pest Control. This category includes commercial applicators using or supervising the use of restricted use pesticides in forests, forest nurseries, and forest seed producing areas.

(3) Ornamental and Turf Pest Control. This category includes commercial applicators using or supervising the use of restricted use pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers and turf.

(4) Seed Treatment. This category includes commercial applicators using or supervising the use of restricted use pesticides on seeds.

(5) Aquatic Pest Control. This category included commercial applicators using or supervising the use of any restricted use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in category 8 below.

(6) Right-of-Way Pest Control. This category includes commercial applicators using or supervising the use of restricted use pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way or other similar areas.

(7) Industrial, Institutional, Structural and Health Related Pest Control. This category includes commercial applicators using or supervising the use of restricted use pesticides in, on, or around food handling establishments, human dwellings, institutions, such as schools and hospitals, industrial establishments, including warehouses and grain elevators, and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products.

(8) Public Health Pest Control. This category includes State, Federal, Tribal or other government employee, using or supervising the use of restricted use pesticides in public health programs for the management and control of pests having medical and public health importance.

(9) Regulatory Pest Control. This category includes State, Federal, Tribal or governmental employees who use or supervise the use of restricted use pesticides in the control of regulated pests.

(10) Research and Demonstration Pest Control. This category includes: (1) individuals who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration, and (2) persons conducting field research with pesticides, and in doing so, use or supervising the use of restricted use pesticides.

Includes in the first group are such persons as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. The second group includes; State, Federal, Tribal, Commercial and other persons conducting field research on or utilizing restricted use pesticides.

(11) Rodent, Predator, and Bird Pest Control. This category includes commercial applicators using or supervising the use of any restricted use pesticides in the control of rodents, predators, or birds. All commercial applicators are further subcategories according to the types of pesticides they apply, these subcategories are:

(a) Herbicides, desiccants, defoliants, and plant regulators.

(b) Insecticides, attractants, and repellents.

(c) Picicides.

(d) Rodenticides, predacides, and avicides.

(e) Fungicides and nematocides.

(f) Disinfectants and germicides.

All federal applicators who apply pesticides via aircraft must comply with all applicable Federal regulations administered by the State of South Dakota and special provisions set forth by the Committee.

5-36-5. STANDARDS OF COMPETENCY FOR CERTIFICATION.

A. General Standards for Commercial Applicators. All commercial applicators, shall demonstrate knowledge of the following subjects:

(1) Label & Labeling Comprehension

(a) All certified applicators should be required to be familiar with the Tribal Pesticide Code.

(b) The general format and terminology of pesticide labels and labeling.

(c) The understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels.

(d) Classification of the product, general or restricted; and

(e) Necessity for use consistent with the label.

(f) Each applicator will be given a copy of the code before he/she is certified.

(2) Safety-Factors including:

(a) Pesticide toxicity and hazard to man and common exposure routes;

(b) Common types and causes of pesticide accidents;

(c) Precautions necessary to guard against injury to applicators;

(d) Need for and use of protective clothing and equipment;

(e) Symptoms of pesticide poisoning;

(f) First aid and other procedures to be followed in case of pesticide accident; and

(g) Proper identification, storage, transport, handling, mixing procedures and disposal, methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.

(3) Environment-The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:

(a) Weather and other climatic by such factors as;

(b) Types of terrain, soil, or other substrate;

- (c) Presence of fish, wildlife, and other non-target organisms; and
- (d) Drainage patterns.
- (4) Pests-Factors such as:
 - (a) Common features of pest organisms and characteristics of damages needed for pest recognition;
 - (b) Recognition of relevant pests; and
 - (c) Pest development and biology as it may be relevant to problem identification and control.
- (5) Pesticides-Factors such as:
 - (a) Types of pesticides;
 - (b) Types of formulations;
 - (c) Compatibility, synergism, persistence and animal and plant toxicity of the formulation;
 - (d) Hazards and residues associated with use;
 - (e) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and
 - (f) Dilution procedures.
- (6) Equipment-Factors including:
 - (a) Types of equipment and advantage and limitations of each type; and
 - (b) Uses, maintenance and calibration.
- (7) Application Techniques-Factors including:
 - (a) Methods of procedure used to apply various formulations of pesticides, solutions, and gasses, together with a knowledge of which technique of application to use in a given situation.
- (8) Laws and Regulations. Applicable State, Federal, and Tribal Laws and Regulations.

B. Category Specific Standards.

- (1) Agricultural Pest Control
 - (a) Plants. Applicators must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environment contamination, non-target injury and community problems resulting for the use of restricted use pesticides in agricultural areas.
 - (b) Animal. Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A

practical knowledge is also required concerning specific pesticide toxicity and residue potential, since most animals will frequently be used for food.

Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress, and extent of treatment.

(2) Forest Pest Control. Applicators shall demonstrate practical knowledge of the types of forests, forest nurseries, and seed production in their State and on the Reservation, and the pests involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated especially as it may relate to meteorological factors and adjacent land use.

(3) Ornamental and Turf Pest Control. Applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards of humans, pets, and other domestic animals.

(4) Seed Treatment. Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting, and mixing, and misuse of treated seeds such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seed.

(5) Aquatic Pest Control. Applicators shall demonstrate practical knowledge of the

secondary effects which can be caused by improper application rates, incorrect formulations, and faulty applications restricted use pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.

(6) Right-of-Way Pest Control.

Applicators shall demonstrate practical knowledge of a wide variety of environments since right-of-ways can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way areas, and the impact of their application activities in the adjacent areas and communities.

(7) Industrial, Institutional, Structural and Health-Related Pest Control.

Applicators must demonstrate a practical knowledge of a wide variety of pests including their life cycles, types of formulations appropriate for their control and methods of application that avoid contamination of food, damage and contamination of habitat and exposure to people and pets. Since human exposure, including babies, children, pregnant women, and elderly people, is frequently a potential problem applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category. Because health-related pest control may involve outdoor applications, applications must also determine practical knowledge of environmental conditions particularly related to this activity.

(8) Public Health Pest Control.

Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to

those conditions found in buildings. They should also have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal, and drainage.

(9) Regulatory Pest Control.

Applicators shall demonstrate practical knowledge of regulated pests applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, and spread and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests, and where individual judgments must be made in new situations.

(10) Research and Demonstration Pest Control. Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pest, and population levels occurring in each demonstration situation is required. Further, they should demonstrate and understanding of pesticide organism interaction and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all the standards detailed in Section 171.4(b) of FIFRA regulations. In addition, they shall meet the specific standards required for categories (1) through (7) of this section as may be applicable to their particular activity.

Persons conducting field research or method improvement work with restricted use pesticides should be expected to know the general standards detailed in 5-36-5A of this Code. In addition, they shall be expected to know the specific standards required for categories 1 through 9 and 11 of this section, applicable to their particular activity or alternately, to meet the more inclusive requirements listed under "Demonstration".

(11) Rodents, Predator, and Bird Pest Control.

Applicators must demonstrate a practical working knowledge of both the biological and behavioral patterns of target species and related non-target species. The

importance of such knowledge is extreme in controlling rodents, predators, and birds, considering that in a rural environment many species of related non-target wildlife may occur in addition to target species. A practical knowledge of the toxicity of specific pesticides is required also because of the possibility of the carcass of the controlled species being consumed by non-target species.

C. Exemptions from Standards. The above standards do not apply to the following persons for purposes of this Code:

(1) Persons conducting laboratory type research involving restricting use pesticides; and

(2) Doctors of medicine and Doctors of Veterinary Medicine applying pesticides as drugs or medicine during the course of their normal practice.

D. Standards of Competency for Private Applicators. All Private applicators shall demonstrate knowledge of the following subjects:

(1) All certified applicators should be required to be familiar with the Tribal Pesticide Code.

(2) Recognize common pests to be controlled and damage caused by them.

(3) Read and understand the label and labeling information-including the common name of pesticide he applied; pest(s) to be controlled; timing and methods of application; safety precautions; any preharvest or re-entry restrictions; and any specific disposal procedures.

(4) Apply pesticides in accordance with label instructions and warnings, including the ability under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.

(5) Recognize local environmental situations that must be considered during application to avoid contamination.

(6) Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

(7) Each applicator applicant will be given a copy of the code before he/she is certified.

E. Standards for Supervision of Non-Certified Applicators by Certified Private and Commercial Applicators. Certified applicators whose activities indicate a supervisory role must demonstrate a practical knowledge of Federal, State, and Tribal supervisory requirements, including labeling, regarding the application of

restricted use pesticides by non-certified applicators.

The availability of the certified applicator must be directly related to the hazard of the situation. In many situations, where the certified applicator is not required to be physically present, "direct supervision" shall include verifiable instruction to the competent person, as follows: (1) detailed guidance for applying the pesticide property, and (2) provisions for contacting the certified applicator in the event he is needed. In other situations as required in the event he is needed. In other situations as required by the label, the actual physical presence of a certified applicator may be required when application is made by a non-certified applicator.

5-36-6. CERTIFICATION PROCEDURES.

A. Commercial Applicators.

(1) Certification Document Required.

No person shall apply restricted use pesticides on the Rosebud Sioux Indian Reservation lands without first obtaining a Rosebud certification document from the Rosebud Natural Resources/Land Management Committee. Rosebud tribal certification is obtained by presenting to the Committee a valid commercial applicator certification document issued by the State of South Dakota. The tribal certification document issued will reflect tribal certification only in the commercial applicator categories appearing on the State certification document presented, which the Committee determines to meet the competency standards given in Section 5-36-5 (b) of this Code. Further, the expiration date on the Rosebud certification document presented.

(2) Certification Renewal. A Rosebud certification may be renewed according to the procedures described in Section 5-36-6 (1) of this Code by presenting a valid State of South Dakota certification document to the Rosebud Natural Resources/Land Management Committee.

(3) Records Maintained. Commercial applicators shall keep and maintain records of each application of any pesticide to include the following information:

- (a) Name and address of owner of property treated;
- (b) Location of treatment site, if different from (a);
- (c) Date and time application;
- (d) Wind direction, wind velocity, and temperature at time of application (non-structural applications);

(e) Name of pesticide, formulation, concentration, rate applied, and total amount used;

(f) Purpose of application (name of pest treated);

(g) Specific crop or designated area to which pesticides application was made; and

(h) Name and address of applicator.

Such reports shall be kept for a period of three years from the date of application of the pesticide and shall be available for inspection by the Rosebud Natural Resources/Land Management Committee at reasonable times. The Committee shall upon written request, be furnished a copy of such records by the commercial applicator. Records of restricted use pesticide applicators performed by persons under the direct supervision of a certified commercial applicator shall be the responsibility of the supervising certified applicator.

B. Private Applicators.

(1) Certification Required. No applicator as defined in Section 5-36-1 D (1) of this Code shall use or supervise the use of any restricted use pesticide without a private applicator's certificate issued by the Rosebud Natural Resources/Land Management Committee.

(2) Certification Methods. A private applicator may become certified to purchase an/or apply restricted use pesticides on the Rosebud Reservation Lands by presenting a current valid South Dakota Private Applicators certification to the Rosebud Natural Resources/Land Management Committee. The Committee will issue a Rosebud Tribal Certification document to the holder of a South Dakota certification document. The expiration date of the tribal certification will be the same as that given on the South Dakota document. Recertification may be obtained by presenting an updated South Dakota certification document to the Committee.

C. Certification of Non-English

Speaking Applicators. Since pesticide labels are printed in English, persons who cannot read English cannot be certified on the Rosebud Reservation.

5-36-7. STORAGE AND DISPOSAL OF PESTICIDES AND PESTICIDE

CONTAINERS. No person shall transport, store, or dispose of any pesticide or pesticide container in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects, or to

pollute any waterway in a manner harmful to any wildlife or aquatic organisms therein.

5-36-8. UNLAWFUL ACTS. Any person who has committed any of the following acts is subject to penalties provided in Section 5-36-10 of this Code:

A. Made false or fraudulent claims through any media, misrepresenting the effect of pesticide or methods to be utilized;

B. Made a pesticide recommendation or application inconsistent with the labeling registered with EPA, the Secretary of South Dakota Department of Agriculture, or the Department of Natural Resources/Land Management Committee, for that pesticide, or in violation of EPA's, the Secretary's, or the Committee's restrictions on the use of that pesticide;

C. Operate faulty or unsafe pesticide application equipment;

D. Operate pesticide equipment in a faulty, careless, or negligent manner;

E. Neglected, or after notice, refused to comply with the provision of this Code or to any lawful order of the Committee;

F. Refused or neglected to keep and maintain the records required by this Code or to make reports when and as required;

G. Made false or fraudulent records, invoices, or reports;

H. Used, or supervised the use of a pesticide which is restricted to use by "certified applicators" without having qualified as a certified applicator; or without working under the direct supervision of a certified applicator as described in Section 5-36-5 (E) of this Code;

I. Used fraud or misrepresentation in making applications for or renewal of certification.

J. Refusal or neglected to comply with any limitations or restrictions on or in a duly issued certification;

K. Used or caused to be used any pesticide in manner inconsistent with its labeling or codes by the Committee if these codes further restrict the uses provided on the labeling;

L. Aided or abetted a certified or uncertified person to evade the provisions of this Code; conspired with a certified or an uncertified person to evade the provisions of this code; or allowed one's certification to be used by another person;

M. Made false or misleading statements during an inspection concerning any infestation or infection of pests found on land;

N. Impersonated any Federal, State, County, Tribal or other governmental official;

O. Distributed any pesticide labeled for restricted use to any person unless such person or his agent has a valid certification to use, supervise the use of, or distribute, restricted use pesticides;

P. Manufactured any restricted use pesticides or distributed any improperly labeled or unlabeled restricted use pesticides;

Q. Applied pesticides onto any land without consent of the owner or person in possession thereof; except, for governmental agencies which must abate a public health problem; or

R. Applied pesticides known to be harmful to honeybees on blossoming crops on which bees are working during the period between two hours after sunrise and two hours before sunset; except, on property owned or operated by the applicator.

5-36-9. DENIAL, SUSPENSION, REVOCATION, OR MODIFICATION OR CERTIFICATION.

A. The Natural Resources/Land Management Committee, or its designated agent, may, for good cause shown or upon its own information and belief, informally contact any applicator about possible violations of the Code or practices which may result in violations. These informal contacts are to assist the applicator in adhering to practices which promote the proper use of pesticides.

B. Upon recommendations to the Committee by its designated agent, or, based upon its own feelings and belief, the Committee may issue a Warning of Possible Violation in the form of a letter from the Committee to an applicator. The letter will explain the basis for the Warning, and an explanation of the steps that the Committee may take if the applicator does not take positive corrective action.

C. The Committee may suspend, pending inquiry, for not longer than ten days; and, after opportunity for a hearing, may deny, revoke, or modify; any certification issued under this Code if the Committee finds that the applicant or the holder of a certification has been convicted or is subject to a final order imposing a criminal or civil penalty pursuant to Section 14 of FIFRA, or has committed any of the unlawful acts listed in Section 5-36-8 of this Code; provided, that any person requiring certification under this Code shall be subject to the penalties provided for by Section 5-36-10 of this Code.

5-36-10. PENALTIES.

A. Any person violating any provision of this Code may be assessed a civil penalty not to exceed \$500.00 per violation. In determining the amount of the penalty, the Tribal Court shall consider the appropriateness of such penalty to the size of business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation.

5-36-11. DELEGATION OF AUTHORITY. Any authority vested in the Committee by this Code may with equal force and effect be delegated to such Tribal Officials as the Committee may designate.

5-36-12. ENTRY AND INSPECTION. For purposes of carrying out this Code, the Natural Resources/Land Management Committee for its designated agent may enter public or private premises at reasonable times by permission or warrant for sampling, inspection, and observational purposes.

5-36-13. COOPERATION. The Tribal Council, Tribal Chairman, or their designee is authorized to cooperate with an enter into agreements with and accept grants-in-aid from any agency of the State of South Dakota, Indian Tribal Authority, or the United States Government for the purposes of carrying out the provisions of this Code.

5-36-14. SEVERABILITY. If any provision of this Code is found to be invalid in any Tribal or Federal Court proceedings, the Court's decision will apply only to that provision found to be invalid, leading the remainder of this Code intact.

CHAPTER 37 – ELDERLY ABUSE

5-37-1.	Terms Used
5-37-2.	Caretaker
5-37-3.	Person Knowing Of Abuse
5-37-4.	Person Immune From Giving Report or Testimony
5-37-5.	Services Provided By E.P.T.
5-37-6.	Central Registry
5-37-7.	Confidentiality
5-37-8.	Giving Consent For Services
5-37-9.	Confidential Relation Privilege
5-37-10.	Intentional Abuse
5-37-11.	Negligent Abuse

5-37-1. TERMS USED IN THIS ACT, UNLESS A DIFFERENT MEANING IS

CLEARLY INDICATED BY THE CONTEXT MEAN.

(1) "Disabled adult" any person 18 years of age or over who is incapacitated due to a physical or mental disability or due to age, who is found to be in a situation or condition whereby he is unable to protect his own interest or where he faces abuse or attempts to cause abuse by a caretaker, or who is suffering from neglect, or who is exploited by his caretaker, or any other individual.

(2) "Abuse", any willful or negligent act which results in physical injury or pain or mental anguish or injury, sexual abuse, unreasonable confinement, malnutrition, or the deprivation by a caretaker of goods and services necessary to avoid physical harm or mental anguish, or other maltreatment or exploitation.

(3) "Mental anguish or injury", willingly subjecting a disabled adult to fear, agitation, confusion, severe depression, or other forms of serious emotional distress, through threats, harassment, or other forms of intimidating behavior.

(4) "Neglect", the caretaker's failure to provide adequate shelter, food, clothing, or medical services to a disabled adult.

(5) "Caretaker", an individual or public institution who has assumed the responsibility for the care of a person either voluntarily, by contact, by receipt of payment for care, as the result of family relationship or by order of a court.

(6) "Exploitation", illegal or improper utilization of a disabled person or their resources for monetary or personal benefit, profit or gain.

(7) "Goods and services necessary to avoid physical harm or mental anguish", includes but is limited to provision of medical care for physical and mental health needs assistance in person hygiene, providing adequate clothing, providing adequate shelter with heat and ventilation, protection from health and safety hazards, protection from malnutrition, and transportation necessary to secure these needs.

(8) "Elderly Protection Team (E.P.T.)", a resource group of Professional comprised of representatives from those agencies whose goals include serving the elderly population of the Rosebud Reservation. The function of the E.P.T. is as outlined in sections 3, 5, 6, and 8 of this Chapter.

5-37-2. Notwithstanding any other provisions of this Chapter, no caretaker who in good faith is providing treatment to a person solely by spiritual means through prayer in accordance with the tenets and

practices of a recognized group through a duly accredited practitioner shall for the reason alone be considered to have abused or neglected that person under this Chapter.

5-37-3. Any person knowing or having reasonable cause to suspect that a disabled adult is or has been abused other than by accidental means shall report such abuse to the Elderly Protection Team or to the appropriate law enforcement agency. If the report is made to a law enforcement agency, the agency shall immediately notify the E.P.T. The report must be in writing and shall contain the name, age, and address of the disabled adult, the name and address of the alleged perpetrator, the nature and extent of the abuse, and any other pertinent information known to the person making the report. Any person who intentionally fails to make a report required by this section will share liability.

5-37-4. Any person who in good faith makes any report pursuant to this Chapter or who testifies in any judicial proceedings arising from such report shall be immune from civil or criminal liability because of such report or testimony.

5-37-5. Upon receiving a report of abuse of a disabled adult, the E.P.T. shall make a prompt and thorough investigation to determine if such abuse exists and whether the disabled adult is in need of protection services. Services provided to abused disabled adults by the E.P.T. may include:

(1) Identification of the disabled adult and provisions of services from the Emergency Protection Team;

(2) Evaluation and diagnosis of the needs of the disabled adults;

(3) Assistance in locating and receiving alternative living arrangements as necessary;

(4) Assistance in locating and receiving necessary protection services;

(5) The coordination and cooperation of other agencies to provide for the needs of the disabled adult; and

(6) Referral of the alleged abuse to the Tribal Prosecutor.

5-37-6. The E.P.T. shall establish a central registry for reports of and conviction of abuse of disabled person. The information in the central registry shall be confidential and may be released only to the E.P.T.

5-37-7. All records, files, and information concerning disabled adult abuse reports are

confidential, and no disclosure or release of such information shall be made except as authorized Section Six (6) of this Act. Any person who knowingly violates the confidential nature of such records, files, and information shall be criminally liable.

5-37-8. The Emergency Protection Team shall provide no services to an abused disabled adult unless the adult gives consent. If the abused, disabled adult is incapable of giving consent due to legal disability or incompetency, and the caretaker of the disabled adult refuses to provide the necessary service or to allow the E.P.T. to provide the service, the E.P.T. may petition Tribal Court to assume guardianship.

5-37-9. The confidential relation privilege may not be claimed in any judicial proceedings involving abuse of a disabled adult.

5-37-10. Any person who intentionally abuses a disabled person in a manner which does not constitute aggravated assault is **guilty of abuse and neglect**, as defined in Section 1 of this Chapter, and the penalty shall be \$500.00 fine and/or 6 months in jail.

5-37-11. Any person who negligently abuses a disabled person in a manner which does not constitute simple assault is **guilty of abuse and neglect** as defined in Section 1 of this Chapter, and the penalty shall be a **\$500.00 fine and 60 days in jail.**

CHAPTER 38 – DOMESTIC ABUSE

- 5-38-1. Purpose and Definitions - **Amendment**
- 5-38-2. Crime Of Domestic Abuse - **Amendment**
- 5-38-3. Mandatory Arrest – **Amendment**
- 5-38-4. 12 Hour Hold - **Amendment**
- 5-38-5. Filing Of Complaint - **Amendment**
- 5-38-6. Liability Of Law Enforcement Officers - **Amendment**
- 5-38-7. Notice Of Rights - **Amendment**
- 5-38-8. Written Report - **Amendment**
- 5-38-9. Penalties - **Amendment**
- 5-38-10. Reporting Statistics - **Amendment**
- 5-38-11. Chapters Applied - **Amendment**

5-38-1. PURPOSE AND DEFINITIONS.

The purpose of this chapter is to recognize domestic abuse as a serious crime against our society and to assure the victim of domestic abuse the maximum protection from abuse which the law and those who enforce the law can provide.

Terms used in this ordinance, unless a different meaning is clearly indicated by context, are defined as follows:

A. Family member or household member shall mean a relative, spouse, former spouse, adult or elderly person related by marriage or an adult or elderly person who resides or formerly resided in the residence.

B. Bodily injury shall mean physical pain, illness, or an impairment of physical condition.

C. Causing apprehension of bodily injury shall mean any physical act which is intended to cause another person reasonably to fear imminent serious bodily injury or death.

5-38-2. CRIME OF DOMESTIC ABUSE. A person commits the crime of domestic abuse if he or she:

(1) Purposely or knowingly causes bodily injury to a family member or household member; or

(2) Purposely or knowingly causes apprehension of bodily injury in a family member or household member.

The crime of domestic abuse shall be a Class A crime.

5-38-3. MANDATORY ARREST.

A. A law enforcement officer shall arrest a person, anywhere, with or without a warrant, including at the person's residence, if the officer has probable cause to believe: (1) that an assault has occurred; (2) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable to the officer or not; (3) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death, and the victim is the person's family member, household member or former household member. The arrest shall be made even though the assault did not take place in the presence of the officer.

B. The officer, under this ordinance, is not required to arrest both parties when he or she believes the parties have assaulted one another. The officer shall arrest the person whom he or she believes to have been the primary aggressor. In making this determination, the officer shall make every

reasonable effort to consider: (1) the intent to protect victims of domestic abuse under this ordinance; (2) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (3) the history of domestic abuse between the persons involved.

5-38-4. 12 HOUR HOLD. Any person arrested under this ordinance shall be held without bail, in the custody of the police department, for a period not to exceed twelve (12) hours, as a mandatory “cooling off” period.

5-38-5. FILING OF COMPLAINT.

(1) The law enforcement officer making an arrest under this ordinance shall sign a complaint against the alleged abuser on behalf of the Rosebud Sioux Tribe. He or she shall submit a detailed report of the circumstances of the arrest, along with statements from the victim and other witnesses.

(2) The victim shall be subpoenaed as the primary witness for the prosecution.

(3) If the perpetrator and victim are married to one another, the Husband and Wife Communication Privilege shall not apply in the crime of domestic abuse.

5-38-6. LIABILITY OF LAW

ENFORCEMENT OFFICERS. A law enforcement officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident.

5-38-7. NOTICE OF RIGHTS. The officer shall tell the victim of domestic abuse whether a shelter or other services are available in the community and give the victim immediate notice of the legal rights and remedies available. The notice must include the victim’s right to the following:

(1) An order restraining the abuser from further acts of abuse;

(2) An order directing the abuser to leave the household;

(3) An order preventing the abuser from entering the residence, school, business or place of business;

(4) An order awarding custody or visitation with any minor children;

(5) An order directing the abuser to pay support to the victim and minor children where appropriate.

5-38-8. WRITTEN REPORT. Whenever a law enforcement officer is called to the scene of a reported incident of domestic violence, and he or she does not make an arrest, he or she shall file a written report with his or her supervisor, setting forth the reason or reasons for his or her decision.

5-38-9. PENALTIES. The purpose of this ordinance shall be to stop all family violence on the Rosebud Sioux Reservation and to promote the healing of families where possible.

A. A person convicted of a first or second offense of domestic abuse shall be imprisoned for a term of not less than ten (10) days or more than 180 days and may be fined an amount not to exceed \$500.00. The court shall require mandatory counseling as part of the sentence. Such counseling may include, but is not limited to: alcohol/drug abuse counseling, anger control, and family counseling. Persons who practice traditional Indian religion shall be entitled to counseling by a Medicine Man recognized in the community as such.

B. A person convicted of a third or subsequent offense of domestic abuse shall be imprisoned for a term of not less than 30 days or more than 365 days, and may be fined in an amount not to exceed \$2,000.00 or both. The court shall required mandatory counseling as part of the sentencing. Such counseling may include, but is not limited to alcohol/drug abuse counseling, anger control and family counseling. Counseling shall be made available for the children of the perpetrator and the children of the victim. Persons who practice traditional Indian religion shall be entitled to counseling by a Medicine Man recognized in the community as such.

5-38-10. REPORTING STATISTICS. In all cases of domestic abuse, the officer involved shall make a written report and the numbers of such cases shall be tabulated. A quarterly report shall be made by the police department, setting out the numbers of reports of domestic violence, investigations and arrests. Such statistics shall be made available to appropriate agencies and the public.

5-38-11. The following chapters of the Rosebud Sioux Tribe Law and Order Code may apply in domestic abuse cases.

Title 2 – Chapter 3
Title 4 – Chapter 1 – Rule 65
Title 5 – Chapter 5
Title 5 – Chapter 37

CHAPTER 39 - FIREWORKS

5-39-1.	Title - Amendment
5-39-2.	Authority and Purpose - Amendment
5-39-3.	Definitions - Amendment
5-39-4.	Requirements and Regulations - Amendment
5-39-5.	Permissible Fireworks - Amendment
5-39-6.	Place Of Business - Amendment
5-39-7.	Restricted Areas - Amendment
5-39-8.	Penalties - Amendment
5-39-9.	Enforcement - Amendment

5-39-1. TITLE. This law shall be known as the Fireworks law.

5-39-2. AUTHORITY AND PURPOSE.

5-39-2.1 AUTHORITY. The Governing Body of the Rosebud Sioux Tribe is exercising its authority pursuant to Article IV, Section 1 (h), and (m) of the Constitution and By-Laws of the Rosebud Sioux Tribe.

(1) Article IV, Section 1 (h) grants the authority in part to levy taxes or license fees upon members and non-members.

(2) Article IV, Section 1 (m) grants the authority to safeguard and promote the peace, safety, morals, and general welfare of the Tribe by regulating the conduct of trade.

5-39-2.2 PURPOSE. The purpose of this Tribal Law is:

(1) To regulate the sale of permissible fireworks and provide provisions to obtain a temporary business license;

(2) To restrict the areas where fireworks can be used and ignited;

(3) To provide provisions where all retailers must comply with Tribal Law concerning fireworks, taxation, commercial code and other applicable Tribal Laws;

(4) Limit the size and type of fireworks that can be sold and used.

5-39-3. DEFINITIONS.

(1) “Retailer” shall mean any person engaged in the business of making sales of fireworks at retail to consumers.

(2) “Sale” shall include barter, exchange, or gift or offer thereof, and such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.

(3) “Wholesaler” shall mean any person engaged in the business of making sale of fireworks at wholesaler to retailers.

5-39-4. REQUIREMENTS AND REGULATIONS.

5-39-4.1 License required for sale of fireworks...Application Fee...Duration...Display.

(1) No person shall sell, hold for sale, or offer for sale, as retailer any fireworks in this Reservation unless such person has first obtained a license as retailer. Application for a license as retailer shall be made to the department of revenue on forms to be prescribed by it. Each application shall be accompanied by the required fee, ten dollars for a retailer’s license. The license shall be good only for the calendar year in which issued and shall at all times be displayed at the place of business of the holder thereof. Applicants will consent to Tribal Law concerning taxation, Commercial Code, Business License and other Applicable laws.

(2) Importation by unlicensed persons is prohibited...Retailer.

(3) Period during which retail sales permitted. No person, firm or corporation shall offer fireworks for sale to individuals at retail before the first day of July and after the fifth day of July.

(4) Procedure for banning sale of fireworks. The Rosebud Sioux Tribal Council can declare a ban on the sale of fireworks if just reason exists. This will be done in resolution form.

5-39-4.2 Minimum age for sale or dispensing of fireworks. No person under the age of eighteen years shall be licensed under this Chapter and no license shall employ or permit any individual under the age of eighteen to sell, dispense or offer for sale, within the State of South Dakota and Rosebud Reservation, any permissible fireworks enumerated in this Chapter.

5-39-4.3 Prohibited

Firecrackers...Manufacture or use as misdemeanor. Any person who shall manufacture, use, or dispose of to another, with or without consideration, so as to endanger the safety of others, any firecrackers more than three inches long or made wholly or in part of dynamite, nitroglycerin, or giant powder, **is guilty of a Class C crime.**

5-39-4.4 Possession, sale or use of unauthorized fireworks unlawful. Except as provided in this title no person shall possess, sell, offer for sale, bring into this

commonly known as fireworks, other than permissible fireworks.

5-39-5. PERMISSIBLE FIREWORKS.

A. Permissible fireworks enumerated and described below. Permissible fireworks shall mean:

(1) Roman candles, not exceeding ten balls spaced uniformly in the tube, total pyrotechnic composition not to exceed twenty grams in weight. The inside tube diameter shall not exceed three eighths inch.

(2) Skyrockets with sticks, total pyrotechnic composition not to exceed twenty grams each in weight. The inside tube diameter shall not exceed one-half inch. The rocket sticks must be securely fastened to the tubes.

(3) Helicopter type rockets, total pyrotechnic composition not to exceed twenty grams each in weight. The inside tube diameter shall not exceed one-half inch.

(4) Cylindrical fountains, total pyrotechnic composition not to exceed seventy-five grams each in weight. The inside tube diameter shall not exceed three-fourth inch.

(5) Cone fountains, total pyrotechnic composition not to exceed fifty grams each in weight.

(6) Wheels, total pyrotechnic composition not to exceed sixty grams for each driver unit or two hundred and forty grams for each complete wheel. The inside tube diameter of driver units shall not exceed one-half inch.

(7) Illuminating torches and colored fire, in any form, except items in subdivision (12), total pyrotechnic composition not to exceed one hundred grams in weight.

(8) Sparklers and dipped sticks, total pyrotechnic composition not to exceed one hundred grams each in weight. Pyrotechnic composition containing any chlorate or perchlorate shall not exceed five grams.

(9) Mines and shells of which the mortar is an integral part, total pyrotechnic composition not to exceed forty grams each in weight.

(10) Firecrackers and salutes with casings, the external dimensions of which do not exceed one and one-half inches, in length or one-quarter inch in diameter, total pyrotechnical composition not to exceed two grains each in weight.

(11) Novelties consisting of two or more devices enumerated in this section, trick matches and cigarette plugs, when approved by the bureau of explosives.

(12) Railway fuses, truck flares, hand ship distress signals, smoke pots.

B. Exemptions. Nothing shall be construed as applying to toy paper caps

containing not more than twenty-five hundredths of a grain of explosive compositions per cap, and to the manufacture, storage, sale or use of signals necessary for safe operation of railroads or other classes of public or private transportation, nor apply to the military or navy forces of the United States or to peace officers, nor as prohibited the sale or use of blank cartridges for ceremonial, or theatrical, or athletic events.

5-39-6. PLACE OF BUSINESS.

A. Sale from vehicle prohibited. No retailer shall sell fireworks from any motor vehicle.

B. Exits from structures where fireworks sold. All buildings or structures wherein fireworks are sold at retail shall have at least two separate door exits which shall be equipped with panic devices or kept unlocked at all times when fireworks are being offered for sale.

C. "No Smoking" signs where fireworks sold. Signs must be prominently posted on all displays of fireworks offered for sale at retail, which shall read in red letters not less than three inches in height. "NO SMOKING WITHIN TWENTY-FIVE FEET".

D. Minimum distance for igniting of fireworks. In all buildings or structures wherein fireworks are being offered for sale the licensee shall have a sign prominently posted stating that no fireworks can be ignited or discharged within one hundred fifty feet of the licensee's premises.

E. Open flame prohibited where fireworks sold...Fire extinguishing agent required. No license shall have on his premises any device, apparatus, receptacle or burner from which an open flame is emitted. Provided, further that every licensee shall in the conduct of his business of selling fireworks keep and maintain upon said premises a fire extinguisher agent for a class A fire equivalent to two and one-half gallons of water.

5-39-7. RESTRICTED AREAS.

A. Sale or use prohibited within timber reserve and/or other designated area. No person shall sell or cause to be sold, discharge or cause to be discharged, any pyrotechnics of any description whatever within the exterior boundaries of the timber reserve or any land owned or leased by the department of game, fish and parks. However, the director of game, fish

and parks may, by written authorization, permit pyrotechnic displays or exhibited on land owned or leased by the department unless otherwise prohibited by statute.

B. Public displays permitted...Local permit required. Nothing shall prohibit the use of public display of fireworks provided that any individual, group of individuals, association, organization, city, town, county, firm, partnership or corporation, prior to making such public display for fireworks, shall first secure a written permit to do so from the Rosebud Sioux Tribe wherein said public displays is to be fired, and shall be purchased fireworks for such display from a licensed wholesaler.

5-39-8. PENALTIES.

A. Violation of Chapter. Except where a punishment is specifically provided, any person violating any of the provisions of this chapter shall be **guilty of a Class C crime.**

B. Second conviction as ground for revocation or suspension of license. If any person is found guilty of violating any of the provisions of this chapter a second time, such violation may constitute cause for revocation or suspension of the license held by such person or for refusal to renew such license upon expiration thereof.

5-39-9. ENFORCEMENT. Enforcement by department and law enforcement officers. The department of revenue, together with all law enforcement officers, both BIA and tribal, shall be charged with the enforcement of the provisions of this chapter.

A. Possession of unauthorized firework unlawful...seizure and destruction. No person shall possess any fireworks, other than those enumerated above. If any person shall have in his possession any fireworks in violation of said Section, a warrant maybe issued for the seizure of such fireworks, and such fireworks shall be safely kept to be use as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the firework shall be returned to the person those possession they were found, provided, however, that nothing in this chapter shall apply to the transportation of fireworks by regulated carriers.

CHAPTER 40 – RECEPTACLES

5-40-1. Definition Of Terms - **Amendment**

5-40-2. Receptacles In Public Places - **Amendment**

5-40-3. Property Where Receptacles Required - **Amendment**

5-40-4. Placement and Specifications Of Receptacles - **Amendment**

5-40-5. Littering Prohibited – Exceptions - **Amendment**

5-40-6. Littering From Motor Vehicle Prohibited - **Amendment**

5-40-7. Accumulation Of Litter On Property Prohibited - **Amendment**

5-40-8. Enforced Removal Of Litter Upon Conviction - **Amendment**

5-40-9. Violation Of Chapter - **Amendment**

5-40-10. Enforcement and Prosecution - **Amendment**

5-40-11. Injunction Of Violations – Citizens’ Suits – Alternative or In Addition To Criminal Proceedings - **Amendment**

5-40-1. DEFINITIONS OF TERMS. Terms used in this chapter mean:

(1) “Person” shall mean any individual, partnership, corporation or company or any agent of said individual, partnership, corporation or company.

(2) “Owner” shall mean any individual, partnership, corporation or company that actually owns, has the use of or occupies any property, either residential or commercial.

(3) “Litter” any discarded, used or unconsumed substance or waste, including but not limited to any garbage, trash, refuse, debris, rubbish, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, abandoned or junked motor vehicles, motor vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

5-40-2. RECEPTACLES IN PUBLIC PLACES. In order to assist the public in complying with this chapter, the owner or person in control of any property which is held out to the public as a place for assemblage, the transaction of business, recreation or as public way shall cause to be placed and maintained receptacles for the deposit of litter, of sufficient volume and in sufficient numbers to contain the litter which

can be expected to be generated by the numbers of people customarily coming on or using the property.

5-40-3. PROPERTY WHERE

RECEPTACLES REQUIRED. For purposes of 5-40-2, “property held out to the public for the transaction of business” includes, but is not limited to, commercially operated parks, campgrounds, drive-in restaurants, automobile service stations, business parking lots, car washes, shopping centers, boat launching areas, industrial parking lots, boat moorage and fueling stations, piers, beaches and bathing areas, airports, roadside rest stops, city, town or community celebration or “Pow-Wow” grounds, rodeo grounds, baseball fields; and “property held out to the public for assemblage, recreation or as a public way” includes, but is not limited to, any property that is publicly owned or operated for any of the purposes stated in the definition in this section for “property held out to the public for the transaction of business.”

5-40-4. PLACEMENT AND SPECIFICATIONS OF RECEPTACLES ON TRIBAL PROPERTY.

The Director of the Department of Game, Fish and Parks shall promulgate rules and regulations governing the placement and specifications of litter receptacles on property belonging to the Rosebud Sioux Tribe.

5-40-5. LITTERING PROHIBITED-EXCEPTIONS.

No person shall dump, deposit, drop, throw, discard, leave, cause or permit the dumping, depositing, dropping, throwing, discarding or leaving of litter upon any public or private property, or upon or into a river, lake, pond, or other body of water, within the jurisdiction of the Rosebud Sioux Tribe, unless:

(1) The property has been designated by the Rosebud Sioux Tribe or any of its agencies for the disposal of litter, and the litter is disposed of on that property in accordance with the applicable law of the Rosebud Sioux Tribe;

(2) The litter is placed into a receptacle or other container intended by the owner or tenant in lawful possession of that property for the deposit of litter;

(3) The person is acting under the direction of proper public officials during special cleanup days; or

(4) The person is lawfully acting in or reacting to an emergency situation where health and safety is threatened, and remove

and properly dispose of such litter when the emergency situations no longer exists.

5-40-6. LITTERING FROM MOTOR

VEHICLE PROHIBITED. No person shall dump, deposit, drop, throw, discard or otherwise dispose of litter from any motor vehicle upon any public highway, upon any public highway, upon any public or private property or upon or into any river, lake, pond, stream or body of water within the jurisdiction of the Rosebud Sioux Tribe.

5-40-7. ACCUMULATION OF LITTER ON PROPERTY PROHIBITED.

No person shall allow litter to accumulate upon real property, of which the person charged is the owner or tenant in control, in such a manner as to constitute a public nuisance, or which results in an unsafe, unsanitary, or unsightly condition, or such a manner that the litter may be blown or otherwise carried by the natural elements onto the real property of another person.

5-40-8. ENFORCED REMOVAL OF LITTER UPON CONVICTION-COSTS TAXED AGAINST VIOLATION.

In addition to any fine imposed under this chapter, the court may order that the person convicted of any violation under this chapter remove and properly dispose of the litter, may employ special bailiffs to supervise such removal and disposal, and may tax the costs of such supervision as costs against the person so convicted.

5-40-9. VIOLATION OF CHAPTER.

Any person who violated any of the provisions of this chapter is **guilty of a Class B offense**. The penalties prescribed by this section and by 5-34-1 are in addition to, and not in lieu of, any penalties, rights, remedies, duties or liabilities otherwise imposed or conferred by law.

5-40-10. ENFORCEMENT AND

PROSECUTION. This chapter shall be enforced by all law enforcement officers, Tribal or Bureau of Indian Affairs, any officers of the Department of Game, Fish and Parks, and any other officers or persons authorized by the Rosebud Sioux Tribe to enforce Tribal law. Prosecutions for violation of this chapter shall be conducted by the prosecutors for the Rosebud Sioux Tribe. The prosecutor of the Rosebud Sioux Tribe may also file for an injunction against continuing violations.

5-40-11. INJUNCTION OF VIOLATIONS-CITIZENS' SUITS-ALTERNATIVE OR IN ADDITION TO CRIMINAL

PROCEEDINGS. Any person violating the provisions of this chapter may be enjoined from further violations in the Rosebud Sioux Tribal Court. Such suits may be brought by any person. An action for injunction shall be an alternative to, or in addition to, criminal proceedings. Nothing in this section shall prevent any person from bringing a civil action for any damage of any nature whatsoever sustained as a result of any violations of this chapter.

CHAPTER 41 – ILLEGAL SALE AND MISUSE OF COMMODITIES AND RELATED CRIMES

- 5-41-1. Illegal Sale and Misuse Of Commodities and Related Crimes - *Amendment*
- 5-41-2. Categories Of Illegal Sale and Misuse Of Commodities – *Amendment*
- 5-41-3. Tribal Felony Defined – *Amendment*

5-41-1. ILLEGAL SALE AND MISUSE OF COMMODITIES AND RELATED CRIMES DEFINED.

Any person who, in violation of tribal and/or federal law, receives, retains, disposes, sells, barter, embezzles, steals, willfully misapplies or obtains by fraud, any funds, assets, or property, which at any time are issued by, possessed or owned by the United States Department of Agriculture Food Distribution Program (USDA Commodities); the Women’s, Infants and Children supplemental food program (WIC), or any Tribal Food Assistance Program, or programs of like nature, or whoever, in violation of federal and/or tribal law, receives, conceals, or retains such funds, assets or property for their use and gain, knowing such funds, assets, or property for their use and gain, knowing such funds, assets, or property have been received, retained disposed, sold, bartered, embezzled, stolen, willfully misapplied or obtained by fraud, shall be guilty of the illegal sale and misuse of commodities and related crimes.

5-41-2. CATEGORIES OF ILLEGAL SALE AND MISUSE OF COMMODITIES AND RELATED CRIMES. Any violations under

this chapter shall be punishable according to the classes of crime defined in Chapter Two above, as follows:

- (1) If the value of the funds, assets or property involved is less than \$50, **it shall be a Class C crime.**
- (2) If the value of the funds, assets or property involved is \$50 or more, **it shall be a Class B crime.**
- (3) If the value of the funds, assets or property involved is \$200 or more, **it shall be a Class A crime.**
- (4) If the value of the funds, assets or property involved is \$1,000 or more, **it shall be a tribal felony.**

If no evidence as to the value of the funds, assets or property involved in a violation of this chapter is presented and the value of such is not obvious without presentation of such evidence, and it is otherwise proven that a violation has occurred, **the crime shall be a Class C crime.**

5-41-3. TRIBAL FELONY DEFINED. A tribal felony carries a maximum penalty of a fine not to exceed Five Thousand Dollars (\$5,000.00) and court costs or a jail term not to exceed one year or both the fine and the jail term.

CHAPTER 42 – ROSEBUD SIOUX TRIBE SEX OFFENDER REGISTRATION CODE

- 5-42-1 Title – *Amendment*
- 5-42-2 Purpose - *Amendment*
- 5-42-3 Need - *Amendment*
- 5-42-4 Creation Of Registries - *Amendment*
- 5-42-5 Creation Of Registries - *Amendment*
- 5-42-6 Definitions - *Amendment*
- 5-42-7 Covered Offenses - *Amendment*
- 5-42-8 Tiered 1 Offenses - *Amendment*
- 5-42-9 Tiered 2 Offenses - *Amendment*
- 5-42-10 Tiered 3 Offenses – *Amendment*
- 5-42-11 Required Information - *Amendment*
- 5-42-12 Criminal History – *Amendment*
- 5-42-13 Date Of Birth - *Amendment*
- 5-42-14 DNA Sample - *Amendment*
- 5-42-15 Driver’s Licenses, Identification Cards,

- 5-42-16 Passports and Immigration Documents - *Amendment*
- 5-42-17 Employment Information - *Amendment*
- 5-42-17 Finger and Palm Prints - *Amendment*
- 5-42-18 Internet Identifiers - *Amendment*
- 5-42-19 Name - *Amendment*
- 5-42-20 Phone Numbers - *Amendment*
- 5-42-21 Picture - *Amendment*
- 5-42-22 Physical Description - *Amendment*
- 5-42-23 Professional Licensing Information - *Amendment*
- 5-42-24 Residence Address - *Amendment*
- 5-42-25 School - *Amendment*
- 5-42-26 Social Security Number - *Amendment*
- 5-42-27 Temporary Lodging - *Amendment*
- 5-42-28 Offense Information - *Amendment*
- 5-42-29 Vehicle Information - *Amendment*
- 5-42-30 Frequency, Duration, Reduction - *Amendment*
- 5-42-31 Requirements For In Person Appearances - *Amendment*
- 5-42-32 Where Registration Is Required - *Amendment*
- 5-42-33 Time of Registration - *Amendment*
- 5-42-34 Retroactive Registration - *Amendment*
- 5-42-35 Keeping Registration Current - *Amendment*
- 5-42-36 Failure To Appear For Registration and Absconding - *Amendment*
- 5-42-37 Website - *Amendment*
- 5-42-38 Required and Prohibited Information - *Amendment*
- 5-42-39 Community Notification
- 5-42-40 Immunity - *Amendment*
- 5-42-40 Crime and Civil Sanctions - *Amendment*
- 5-42-42 Community Safety Zones - *Amendment*
- 5-42-43 Community Safety Zones - *Amendment*
- 5-42-44 Community Safety Zones - *Amendment*
- 5-42-45 Community Safety Zones - *Amendment*
- 5-42-46 Community Safety Zones - *Amendment*
- 5-42-47 Community Safety Zones - *Amendment*

5-42-1. TITLE.

This Code/Ordinance shall be known as the Rosebud Sioux Tribe Sex Offender Registration Code.

5-42-2. PURPOSE.

The intent of this code is to implement the federal Sex Offender Registration and Notifications Act (SORNA) (Title I of Public Law 109-248) and shall be interpreted liberally to comply with the terms and conditions of SORNA as presently written or hereafter amended.

5-42-3. NEED.

Violent crime in Indian Country is more than twice the national average. The Rosebud Sioux Tribe is disproportionately affected by violent crime and sex offenses in particular from both Indian and non-Indian perpetrators. Moreover, sexual violence has multi-generational effects that imperil the future well-being of the Rosebud Sioux Tribe. Consequently, the conduct and presence of convicted sex offenders within the Rosebud Sioux Community threatens the political integrity, economic security, health and welfare of the Tribe.

5-42-4. CREATION OF REGISTRIES.

Sex Offender Registry. There is hereby established a sex offender registry, which the Rosebud Sioux Tribe Police Department shall maintain and operate pursuant to the provisions of this Chapter, as amended. The Rosebud Sioux Tribe Sex Offender Registry is accessible at: www.rosebud.nsopw.gov.

5-42-5. CREATION OF REGISTRIES.

Public Sex Offender Registry Website. There is hereby established a public sex offender registry website, which the Rosebud Sioux Tribe Police Department shall maintain and operate pursuant to the provisions of this Chapter, as amended.

5-42-6. DEFINITIONS.

The Definitions below apply to this Chapter only.

- A.** Convicted. An adult sex offender is “convicted” for the purpose of this code if the sex offender is either:

- (1)** prosecuted and found guilty as an adult for a sex offense; or
- (2)** is adjudicated delinquent as a juvenile for a sex offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in either (a) or (b) of section 2241 of Title 18, United States Code), or was an attempt or conspiracy to commit such an offense.
- B.** Foreign Convictions. A foreign conviction is one obtained outside of the United States.
- C.** Employee. The term “employee” as used in this code includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation. Volunteers of a tribal agency or organization are included within the definition of employee for registration purposes.
- D.** Immediate. “Immediate” and “immediately” means within 3 business days.
- E.** Imprisonment. The term “imprisonment” refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The terms is to be interpreted broadly to include, for example, confinement in a state “prison” as well as in a federal, military, foreign, BIA, private or contract facility, or a local or tribal “jail”. Persons under “house arrest” following conviction of a covered sex offense are required to register pursuant to the provisions of this code during the period of “house arrest”.
- F.** Jurisdiction. The term “jurisdiction” as used in this code refers to the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands and any Indian Tribe.
- G.** Minor. The term “minor” means an individual who has not attained the age of 18 years.
- H.** Resides. The term “reside” or “resides” means, with respect to an individual, the location of the individual’s home or other place where the individual habitually lives or sleeps. This definition includes sex offenders who visit the reservation for a period of 24 hours or more.
- I.** Sex Offender. A person convicted of a sex offense is a “sex offender”.
- J.** Sex Offense. The term “sex offense” means:
- (1)** A criminal offense that has an element involving a sexual act or sexual contact with another;
- (2)** A criminal offense that is a “specified offense against a minor”. The term “specified offense against a minor” means an offense against a minor that involves any of the following:
- (a)** An offense (unless committed by a parent or guardian) involving kidnapping.
- (b)** An offense (unless committed by a parent or guardian) involving false imprisonment.
- (c)** Solicitation to engage in sexual conduct.
- (d)** Use in a sexual performance.
- (e)** Solicitation to practice prostitution.
- (f)** Video voyeurism as described in 18 U.S.C. § 1801.
- (g)** Possession, production, or distribution of child pornography.
- (h)** Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.
- (i)** Any conduct that by its nature is a sex offense against a minor.
- (3)** A Federal offense (including an offense prosecuted under section 1152 or 1153 of Title 18 of the United States Code) under section 1591, or chapter 109A, 110 (other than section 2257, 2257A, or 2258), or 117, of Title 18 of the United States Code;
- (4)** A military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note); or
- (5)** An attempt to conspiracy to commit an offense described in clauses (1) through (4).
- (6)** Offenses involving Consensual Sexual Conduct. An offense involving consensual sexual conduct is not a sex offense for the purposes of this Code if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least thirteen (13) years old and the offender was

not more than four (4) years older than the victim.

- (7) Foreign Offenses. A foreign conviction is not a sex offense for the purposes of this code/ordinance unless it either:
- (a) Obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, or
 - (b) Under the laws of any foreign country when the United State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.
- K. Sexual Act.** The term “sexual act” means:
- (1) Contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;
 - (2) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
 - (3) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
 - (4) The intentional touching, not through the clothing, of the genitalia of another person that has not attained the age of 18 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- L. Sexual Contact.** The intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of another person.
- M. Student.** A “student” is a person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, or an institution of higher education. Including, but not limited to interns, externs and apprentices.
- N. SORNA.** The Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006 P.L. 109-248), 42 U.S.C. §16911 *et. seq.*, as amended.
- O. Sex Offender Registry.** The term ‘sex offender registry’ means the registry of sex offenders, and a notification program, maintained by Rosebud Sioux Tribe Police Department.
 - P. National Sex Offender Registry (NSOR).** The national database maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16919.
 - Q. SMART Office.** The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which was established within the United States Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C. §16945.
 - R. Dru Sjodin National Sex Offender Public Website (NSOPW).** The public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16920.
 - S. “Tier 1 Sex Offender”.** A “tier 1 sex offender” or a “sex offender” designated as “tier 1”, is one that has been convicted of a “tier 1” sex offense defined in 5-42-8.
 - T. “Tier 2 Sex Offender”.** A “tier 2 sex offender”, or a “sex offender” designated as “tier 2”, is one that has been either convicted of a “tier 2” sex offense as defined in 5-42-9, or who is subject to the recidivist provisions of 5-42-9(B).
 - U. “Tier 3 Sex Offender”.** A “tier 3 sex offender”, or a “sex offender” designated as “tier 3”, is one that has been either convicted of a “tier 3” sex offense as defined in 5-42-10, or who is subject to the recidivist provisions of 5-42-10(B).

5-42-7. COVERED OFFENSES.

Individuals who reside within the exterior boundaries of the Rosebud Reservation or otherwise reside on property owned by the Rosebud Sioux Tribe in fee or trust regardless of location, are employed within the exterior boundaries of the Rosebud Reservation or on property owned by the Rosebud Sioux Tribe in fee or trust regardless of location, or students who attend school within the exterior boundaries of the Rosebud Reservation or on property owned by the Rosebud Sioux Tribe in fee or trust regardless of location, or offenders who visit the Rosebud Reservation for a period of

24 hours or more, that have been convicted of any of the following offenses, or convicted of an attempt or conspiracy to omit any other following offenses, are subject to the requirements of this code:

A. Tribal Offenses.

- (1) RSTLOC 5-7-1 Aggravated Sexual Abuse,
- (2) RSTLOC 5-7-2 Sexual Abuse,
- (3) RSTLOC 5-7-4 Abusive Sexual Contact,
- (4) 5-7-5 Sexual Contact without Consent with Person Capable of Consenting,
- (5) 5-7-7 Threatening to Commit a Sexual Offense,
- (6) 5-7-8 Bestiality,
- (7) 5-7-11 Indecent Exposure,

B. Federal Offenses. A conviction for any of the following, and any other offense hereafter included in the definition of “sex offense” at 42 U.S.C. §16911(5).

- (1) 18 U.S.C. §1591 (sex trafficking of children),
- (2) 18 U.S.C. §1801 (video voyeurism of a minor),
- (3) 18 U.S.C. §2241 (aggravated sexual abuse),
- (4) 18 U.S.C. §2242 (sexual abuse),
- (5) 18 U.S.C. §2243 (sexual abuse of a minor or ward),
- (6) 18 U.S.C. §2244 (abusive sexual contact),
- (7) 18 U.S.C. §2245 (offenses resulting in death),
- (8) 18 U.S.C. § 2251 (sexual exploitation of children),
- (9) 18 U.S.C. §2251A (selling or buying of children),
- (10) 18 U.S.C. §2252 (material involving the sexual exploitation of a minor),
- (11) 18 U.S.C. §2252A (material containing child pornography),
- (12) 18 U.S.C. §2252B (misleading domain names on the internet),
- (13) 18 U.S.C. §2252C (misleading words or digital images on the internet),
- (14) 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the U.S.),
- (15) 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity),
- (16) 18 U.S.C. §2422 (coercion and enticement of a minor for illegal sexual activity),
- (17) 18 U.S.C. §2423 (Mann Act),
- (18) 18 U.S.C. §2424 (failure to file factual statement about an alien individual),
- (19) 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct),

(20) 18 U.S.C. §1152 (Assimilative Crimes Act),

(21) 18 U.S.C. §1153 (Assimilative Crimes Act).

C. Foreign Offenses. Any conviction for a sex offense involving any conduct listed in this Section that was obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, or under the laws of any foreign country when the United States State Department in its Country Reports on Human Rights Practices has concluded that in independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

D. Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. 951 note).

E. Juvenile Offenses or Adjudications. Any sex offense, or attempt or conspiracy to commit a sex offense, that is comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in 18 U.S.C. §2241) and committed by a minor who is 14 years of age or older at the time of the offense. This includes engaging in a sexual act with another by force or the threat of serious violence; or engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim.

F. Jurisdiction Offenses. Any sex offense committed in any jurisdiction, including this tribe, that involves:

- (1) Any type or degree of genital, oral or anal penetration,
- (2) Any sexual touching of or sexual contact with a person’s body, either directly or through the clothing,
- (3) Kidnapping of a minor,
- (4) False imprisonment of a minor,
- (5) Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct,
- (6) Use of a minor in a sexual performance,
- (7) Solicitation of a minor to practice prostitution,
- (8) Possession, production, or distribution of child pornography,
- (9) Criminal sexual conduct that involves physical contact with a minor or the use of the internet to facilitate or attempt such conduct.

This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense,

- (10) Any conduct that by its nature is a sex offense against a minor, or
- (11) Any offense similar to those outlined in:
 - (a) 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion),
 - (b) 18 U.S.C. §1801 (video voyeurism of a minor),
 - (c) 18 U.S.C. §2241 (aggravated sexual abuse),
 - (d) 18 U.S.C. §2242 (sexual abuse),
 - (e) 18 U.S.C. §2244 (abusive sexual contact),
 - (f) 18 U.S.C. §2422 (coercing a minor to engage in prostitution), or
 - (g) 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).

5-42-8. TIER 1 OFFENSE.

- A. Sex Offenses.** A “Tier 1” offense includes any sex offense for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that is not a “Tier 2” or “Tier 3” offense.
- B. Offenses Involving Minors.** A “Tier 1” offense also includes any offense for which a person has been convicted by any jurisdiction, local government, or qualifying foreign country pursuant to 5-42-7(C) that involves the false imprisonment of a minor, video voyeurism of a minor, or possession or receipt of child pornography.
- C. Tribal Offenses.** Any sex offense covered by this act where punishment was limited to one year in jail shall be considered a “Tier 1” sex offense.
- D. Certain Federal Offenses.** Conviction for any of the following federal offenses shall be considered a conviction for a “Tier 1” offense:
 - (1) 18 U.S.C. §1801 (video voyeurism of a minor),
 - (2) 18 U.S.C. (receipt or possession of child pornography),
 - (3) 18 U.S.C. §2252A (receipt or possession of child pornography),
 - (4) 18 U.S.C. §2252B (misleading domain names on the internet),

- (5) 18 U.S.C. §2252C (misleading words or digital images on the internet),
- (6) 18 U.S.C. §2422(a) (coercion to engage in prostitution),
- (7) 18 U.S.C. §2423(b) (travel with the intent to engage in illicit conduct),
- (8) 18 U.S.C. §2423(c) (engaging in illicit conduct in foreign places),
- (9) 18 U.S.C. §2424 (failure to file factual statement about an alien individual), or
- (10) 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).

- E. Certain Military Offenses.** Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. §951 note) that is similar to those offenses outlined in 5-42-8(A), (B), or (C) shall be considered a “Tier 1” offense.

5-42-9. TIER 2 OFFENSES.

- A. Recidivism and Felonies.** Unless otherwise covered by 5-42-10, any sex offense that is not the first sex offense for which a person has been convicted and this punishable by more than one year in jail is considered a “Tier 2” offense.
- B. Offenses Involving Minors.** A “Tier 2” offense include any sex offense against a minor for which a person has been convicted, or attempt or conspiracy to commit such an offense, that involves:
 - (1) The use of minors in prostitution, including solicitations,
 - (2) Enticing a minor to engage in criminal sexual activity,
 - (3) Sexual contact with a minor 13 years of age or older, whether directly or indirectly through the clothing, that involves the intimate parts of the body,
 - (4) A non-forcible Sexual Act with a minor 16 or 17 years old,
 - (5) The use of a minor in a sexual performance, or
 - (6) The production or distribution of child pornography.
- C. Certain Federal Offenses.** Convictions for any of the following federal offenses shall be considered a conviction for a “Tier 2” offense:
 - (1) 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion),
 - (2) 18 U.S.C. §2243 (sexual abuse of a minor or ward),

- (3) 18 U.S.C. §2244 (abusive sexual contact, where the victim is 13 years of age or older),
 - (4) 18 U.S.C. §2251 (sexual exploitation of children),
 - (5) 18 U.S.C. §2251A (selling or buying children),
 - (6) 18 U.S.C. §2252 (material involving the sexual exploitation of a minor),
 - (7) 18 U.S.C. §2252A (production or distribution of material containing child pornography),
 - (8) 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the United States),
 - (9) 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity),
 - (10) 18 U.S.C. §2422(b) (coercing a minor to engage in prostitution),
 - (11) 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).
- D. Certain Military Offenses.** Any military offense specified by the Secretary of Defense under section 115(a)(8)(i) of Public Law 105-119 (codified at 10 U.S.C. §951 note) that is similar to those offenses outlined in 5-42-9(A), (B), (C) shall be considered a “Tier 2” offense.

5-42-10. TIER 3 OFFENSES.

- A. Recidivism and Felonies.** Any sex offense that is punishable by more than one year in jail where the offender has at least one prior conviction for a Tier 2 sex offense, or has previously become a Tier 2 sex offender, is a “Tier 3” offense.
- B. General Offenses.** A “Tier 3” offense includes any sex offense for which a person has been convicted, or attempt or conspiracy to commit such an offense, that involves:
 - (1) Non-parental kidnapping of a minor,
 - (2) A sexual act with another by force or threat,
 - (3) A sexual act with another who has been rendered unconscious, involuntarily or voluntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate, or
 - (4) Sexual contact with a minor 12 years of age or younger, including offenses that cover sexual touching of or contact

with the intimate parts of the body, either directly or through the clothing.

- C. Certain Federal Offenses.** Convictions for any of the following federal offenses shall be considered conviction for a “Tier 3” offense:
 - (1) 18 U.S.C. §2241 (a) and (b) (aggravated sexual abuse),
 - (2) 18 U.S.C. §2242 (sexual abuse), or
 - (3) Where the victim is 12 years of age or younger, 18 U.S.C. §2244 (abusive sexual contact).
- D. Certain Military Offenses.** Any military offense specified by the Secretary of Defense under section 115(a)(8)(i) of Public Law 105-119 (codified at 10 U.S.C. §951 note) that is similar to those offenses outlined in 5-42-10(A), (B), or (C) shall be considered a “Tier 3” offense.

5-42-11. GENERAL REQUIREMENTS.

- A. Duties.** A sex offender covered by this code who is required to register with the tribe pursuant to Chapter 5 shall provide all of the information detailed in this chapter to the Rosebud Sioux Tribe Police Department, and the Rosebud Sioux Tribe Police Department shall obtain all of the information detailed in the chapter from covered sex offenders who are required to register with the tribe in accordance with this code and shall implement any relevant policies and procedures.
- B. Digitization.** All information obtained under this code shall be, at a minimum, maintained by the Rosebud Sioux Tribe Police Department in a digitized format.
- C. Electronic Database.** A sex offender registry shall be maintained in an electronic database by the Rosebud Sioux Tribe Police Department and shall be in a form capable of electronic transmission.

5-42-12. CRIMINAL HISTORY.

- A. Criminal History.** The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender’s criminal history.
 - (1) The date of all arrests,
 - (2) The date of all convictions,

- (3) The sex offender's status of parole, probation, or supervised release,
- (4) The sex offender's registration status, and
- (5) Any outstanding arrest warrants.

5-42-13. DATE OF BIRTH.

- A.** Date of Birth. The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's date of birth:
 - (1) The sex offender's actual date of birth, and
 - (2) Any other date of birth used by the sex offender.

5-42-14. DNA SAMPLE.

- A.** DNA. If the sex offender's DNA is not already contained in the Combined DNA Index System (CODIS), the sex offender shall provide the Rosebud Sioux Tribe Police Department or designee a sample of his or her DNA.
- B.** CODIS. Any DNA sample obtained from a sex offender shall be submitted to an appropriate lab for analysis and entry of the resulting DNA profile to CODIS.

5-42-15. DRIVER'S LICENSE, IDENTIFICATION CARDS, PASSPORTS, AND IMMIGRATION DOCUMENTS.

- A.** Driver's License. The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, a photocopy of all of the sex offender's valid driver's licenses issued by any jurisdiction.
- B.** Identification Cards. The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, a photocopy of any identification card including the sex offender's tribal enrollment card issued by any jurisdiction.
- C.** Passports. The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, a photocopy of any passports used by the sex offender.
- D.** Immigration Documents. The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, a photocopy of any and all immigration documents.

5-42-16. EMPLOYMENT INFORMATION.

- A.** Employment. The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's employment to include any and all places where the sex offender is employed in any means including volunteer and unpaid positions:
 - (1) The name of the sex offender's employer,
 - (2) The address of the sex offender's employer, and
 - (3) Similar information related to any transient or day labor employment.

5-42-17. FINGER AND PALM PRINTS.

- A.** Finger and Palm Prints. The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, both finger and palm prints of the sex offender in a digitized format.
- B.** Such prints shall be submitted by the Rosebud Sioux Tribe Police Department to the FBI Central Database (Next Program).

5-42-18. INTERNET IDENTIFIERS.

- A.** Internet Names. The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's internet related activity.
 - (1) Any and all email addresses used by the sex offender,
 - (2) Any and all Instant Message addresses and identifiers,
 - (3) Any and all other designations or monikers used for self-identification in internet communications or postings, and
 - (4) Any and all designations used by the sex offender for the purpose of routing or self-identification in internet communications or postings.

5-42-19. NAME.

- A.** Name. The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to sex offender's name:

- (1) The sex offender's full primary given name,
- (2) Any and all nicknames, aliases, and pseudonyms regardless of the context in which it is used, and
- (3) Any and all ethnic or tribal names by which the sex offender is commonly known. This does not include any religious or sacred names not otherwise commonly known.

5-42-20. PHONE NUMBERS.

- A. Phone Numbers. The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's telephone numbers:
 - (1) Any and all land line telephone numbers, and
 - (2) Any and all cellular telephone numbers.

5-42-21. PICTURE.

- A. Photograph. The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, a current photograph of the sex offender.
- B. Update Requirements. Unless the appearance of a sex offender has not changed significantly, a digitized photograph shall be collected:
 - (1) Every 90 days for Tier 3 sex offenders.
 - (2) Every 180 days for Tier 2 sex offenders, and
 - (3) Every year for Tier 1 sex offenders.

5-42-22. PHYSICAL DESCRIPTION.

- A. Physical Description. The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, an accurate description of the sex offender as follows"
 - (1) A physical description,
 - (2) A general description of the sex offender's physical appearance or characteristics, and
 - (3) Any identifying marks, such as, but not limited to, scars, moles, birthmarks, tattoos or body piercing.

5-42-23. PROFESSIONAL LICENSING INFORMATION.

- A. Professional Licenses. The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, all licensing of the sex offender that authorizes the sex offender to engage in an occupation or carry out a trade or business.

5-42-24. RESIDENCE ADDRESS.

- A. Address. The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's residence:
 - (1) The address of each residence at which the sex offender resides or will reside, and
 - (2) Any location or description that identifies where the sex offender habitually resides regardless of whether it pertains to a permanent residence or location otherwise identifiable by a street or address.

5-42-25. SCHOOL.

- A. School Location. The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's school:
 - (1) The address of each school where the sex offender is or will be a student, and
 - (2) The name of each school the sex offender is or will be a student.

5-42-26. SOCIAL SECURITY. NUMBER

- A. Social Security. The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information:
 - (1) A valid social security number for the sex offender, and
 - (2) Any social security number the sex offender has used in the past, valid or otherwise.

5-42-27. TEMPORARY LODGING.

- A. Lodging Information. The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender

shall provide the following information when the sex offender will be absent from his residence for three (3) days or more.

- (1) Identifying information of the temporary lodging locations including addresses and names,
- (2) The dates the sex offender will be staying at each temporary location.
- (3) Travel Abroad. In the event the sex offender will be traveling outside the United States for more than three (3) days, the Rosebud Sioux Tribe Police Department or designee shall immediately provide this information to INTERPOL and any other jurisdiction where the offender is registered or required to register, and
 - (a) The Rosebud Sioux Tribe Police Department must also notify the U.S. Marshalls Service as well as immediately update NCIC/NSOR information, and
 - (b) The sex offender shall notify the Rosebud Sioux Tribe Police Department or designee of such intent to travel outside of the United States at least 28 days in advance of such travel.

5-42-27. OFFENSE INFORMATION.

- A. Offense Information. The Rosebud Sioux Tribe Police Department or designee shall obtain the text of each provision of law defining the criminal offense(s) for which the sex offender is registered.
- B. SORNA Database. The text of each provision of law mentioned in 5-42-28(A) shall be cross linked to the SORNA Database containing the text of relevant sex related laws for all jurisdictions.

5-42-28. VEHICLE INFORMATION.

- A. Detailed Information. The Rosebud Sioux Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to all vehicles owned or operated by the sex offender for work or personal use including land vehicles, aircraft, and watercraft:
 - (1) License plate numbers,
 - (2) Registration numbers or identifiers,
 - (3) General description of the vehicle to include color, make, model, and year and

- (4) Any permanent or frequent location where any covered vehicle is kept.

5-42-30. FREQUENCY, DURATION AND REDUCTION.

- A. Frequency. A sex offender who is required to register shall, at a minimum, appear in person at the Rosebud Sioux Tribe Police Department for purposes of verification and keeping their registration current in accordance with the following time frames:
 - (1) For "Tier 1" offenders, once every year for 15 years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.
 - (2) For "Tier 2" offenders, once every 180 days for 25 years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.
 - (3) For "Tier 3" offenders, once every 90 days for the rest of their lives.
- B. Reduction of Registration Periods. A sex offender may have their period of registration reduced as follows:
 - (1) A Tier 1 offender may have or her period of registration reduced to 10 years if he or she has maintained a clean record for 10 consecutive years;
 - (2) A Tier 3 offender may have his or her period of registration reduced to 25 years if he or she was adjudicated delinquent of an offense as a juvenile that required Tier 3 registration and he or she has maintained a clean record for 25 consecutive years.
- C. Clean Record. For purposes of 5-42-30(B) a person has a clean record if:
 - (1) He or she has not been convicted of any offense, for which imprisonment for more than 1 year may be imposed,
 - (2) He or she has not been convicted of any sex offense,
 - (3) He or she has successfully completed, without revocation, any period of supervised release, probation, or parole, and

- (4) He or she has successfully completed an appropriate sex offender treatment program certified by the tribe, another jurisdiction, or by the Attorney General of the United States.

5-42-31. REQUIREMENTS FOR IN PERSON APPEARANCES.

- A. Photographs. At each in person verification, the sex offender shall permit the Rosebud Sioux Tribe Police Department to take a photograph of the offender.
- B. Review of Information. At each in person verification the sex offender shall review existing information for accuracy.
- C. Notification. If any information or change in information is obtained at an in person verification, the Rosebud Sioux Tribe Police Department shall immediately notify all other jurisdictions in which the sex offender is required to register of the information or change in information.

5-42-32. WHERE REGISTRATION IS REQUIRED.

- A. Jurisdiction of Conviction. A sex offender must initially register with the Rosebud Sioux Tribe Police Department of the Rosebud Sioux Tribe if the sex offender was convicted by the Tribal Court of a covered sex offense regardless of the sex offender's actual or intended residency.
- B. Jurisdiction of Incarceration. A sex offender must register with the Rosebud Sioux Tribe Police Department of the Rosebud Sioux Tribe if the sex offender is incarcerated by the tribe while completing any sentence for a covered sex offense, regardless of whether it is the same jurisdiction as the jurisdiction of conviction or residence.
- C. Jurisdiction of Residence. A sex offender must register with the Rosebud Sioux Tribe Police Department of the Rosebud Sioux Tribe if the sex offender resides within lands subject to the jurisdiction of the tribe.
- D. Jurisdiction of Employment. A sex offender must register with the Rosebud Sioux Tribe Police

Department of the Rosebud Sioux Tribe if he or she is employed by the tribe in any capacity or otherwise is employed within lands subject to the jurisdiction of the tribe.

- E. Jurisdiction of School Attendance. A sex offender must register with the Rosebud Sioux Tribe Police Department of the Rosebud Sioux Tribe if the sex offender is a student in any capacity within lands subject to the jurisdiction of the tribe.

5-42-33. TIMING OF REGISTRATION.

- A. Timing. A sex offender required to register with the tribe under this code shall do so in the following timeframe:
 - (1) If convicted by the Rosebud Sioux Tribe for a covered sex offense and incarcerated, the sex offender must register before being released from incarceration.
 - (2) If convicted by the Rosebud Sioux Tribe but not incarcerated, within 3 business days of sentencing for the registration offense, and
 - (3) Within 3 business days of establishing a residence, commencing employment, or becoming a student on lands subject to the jurisdiction of the tribe, a sex offender must appear in person to register with the Rosebud Sioux Tribe Police Department.
- B. Duties of the Rosebud Sioux Tribe Police Department. The Rosebud Sioux Tribe Police Department shall have policies and procedures in place to ensure the following:
 - (1) That any sex offender incarcerated or sentenced by the tribe for a covered sex offense completes their initial registration with the tribe,
 - (2) That the sex offender reads, or has read to them, and signs a form stating that the duty to register has been explained to them and that the sex offender understands the registration requirement,
 - (3) That the sex offender is registered, and

- (4) That upon entry of the sex offender's information in to the registry, that information is immediately forwarded to all jurisdictions in which the sex offender is required to register due to the sex offender's residency, employment, or student status.

5-42-34. RETROACTIVE REGISTRATION.

- A. Retroactive Registration. The Rosebud Sioux Tribe Police Department shall have in place policies and procedures to ensure the following three categories of sex offenders are subject to the registration and updating requirements of this code:
 - (1) Sex offenders incarcerated or under the supervision of the tribe, whether for a covered sex offense or other crime,
 - (2) Sex offenders already registered or subject to a pre-existing sex offender registration requirement under the tribe's laws, and
 - (3) Sex offenders reentering the justice system due to conviction for any crime.
- B. Timing of Recapture. The Rosebud Sioux Tribe Police Department shall ensure recapture of the sex offenders mentioned in 5-42-34(A) within the following timeframe to be calculated from the date of passage of this code:
 - (1) For Tier 1 sex offenders, 1 year,
 - (2) For Tier 2 sex offenders, 180 days, and
 - (3) For Tier 3 sex offenders, 90 days.

5-42-35. KEEPING REGISTRATION CURRENT.

- A. Jurisdiction of Residency. All sex offenders required to register in this jurisdiction shall immediately appear in person at the Rosebud Sioux Tribe Police Department to update any changes to their name, residence (including termination of residency), employment, or school attendance. All sex offenders required to register in this jurisdiction shall immediately inform the Rosebud Sioux Tribe Police Department in writing of any changes to their temporary lodging information, vehicle information, internet identifiers, or telephone numbers. In the event of a change in

temporary lodging, the sex offender and the Rosebud Sioux Tribe Police Department shall immediately notify the jurisdiction in which the sex offender will be temporarily staying.

- B. Jurisdiction of School Attendance. Any sex offender who is a student in any capacity within lands subject to the jurisdiction of the tribe regardless of location that change their school, or otherwise terminate their schooling, shall immediately appear in person at the Rosebud Sioux Tribe Police Department to update that information. The Rosebud Sioux Tribe Police Department shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, are immediately notified of the change.
- C. Jurisdiction of employment. Any sex offender who is employed by the tribe in any capacity or otherwise is employed within lands subject to the jurisdiction of the tribe regardless of location that change their employment, or otherwise terminate their employment shall immediately appear in person at the Rosebud Sioux Tribe Police Department to update that information. The Rosebud Sioux Tribe Police Department shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, are immediately notified of the change.
- D. Duties of Rosebud Sioux Tribe Police Department. With regard to changes in a sex offender's registration information, the Rosebud Sioux Tribe Police Department or designee shall immediately notify:
 - (1) All jurisdictions where a sex offender intends to reside, work, or attend school,
 - (2) Any jurisdiction where the sex offender is either registered or required to register, and
 - (3) Specifically with respect to information relating to a sex offender's intent to commence residence, school, or employment outside of the United States, any jurisdiction where the sex offender is either registered or required to register, and the U.S. Marshals Service. The tribal police shall also ensure this information is immediately updated on NSOR.

5-42-36. FAILURE TO APPEAR FOR REGISTRATION AND ABSCONDING.

- A. Failure to Appear.** In the event a sex offender fails to register with the tribe as required by this code, the Rosebud Sioux Tribe Police Department or designee shall immediately inform the jurisdiction that provided notification that the sex offender was to commence residency, employment, or school attendance with the tribe that the sex offender failed to appear for registration.
- B. Absconded Sex Offenders.** If the Rosebud Sioux Tribe Police Department or designee receives information that a sex offender has absconded the Rosebud Sioux Tribe Police Department shall make an effort to determine if the sex offender has actually absconded.
 - (1)** In the event no determination can be made, the Rosebud Sioux Tribe Police Department or designee shall ensure the tribal police and any other appropriate law enforcement agency is notified.
 - (2)** If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, they shall be informed that the sex offender has failed to appear and register.
 - (3)** If an absconded sex offender cannot be located then the tribal police shall take the following steps:
 - (a)** Update the registry to reflect the sex offender has absconded or is otherwise not capable of being located,
 - (b)** Notify the U.S. Marshals Service,
 - (c)** Seek a warrant for the sex offender's arrest. The U.S. Marshals Service or FBI may be contacted in an attempt to obtain a federal warrant for the sex offender's arrest,
 - (d)** Update the NSOR to reflect the sex offender's status as an absconder, or is otherwise not capable of being located, and
 - (e)** Enter the sex offender into the National Crime Information Center Wanted Person File.
- C. Failure to Register.** In the event a sex offender who is required to register due to their employment or school attendance status fails to do so or otherwise violates a registration requirement of this code, the Rosebud Sioux Tribe Police Department shall take

all appropriate follow-up measures including those outlined in 5-42-36(B). the Rosebud Sioux Police Department shall first make an effort to determine if the sex offender is actually employed or attending school in lands subject to the tribe's jurisdiction.

5-42-37. WEBSITE.

- A. Website.** The Rosebud Sioux Tribe Police Department shall use and maintain a public sex offender registry website.
- B. Links.** The registry website shall include links to sex offender safety and education resources.
- C. Instructions.** The registry website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.
- D. Warnings.** The registry website shall include warning that information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties.
- E. Search Capabilities.** The registry website shall have the capability of conducting searches by (1) name; (2) county, city, and/or town; and, (3) zip code and/or geographic radius.
- F. Dru Sjodin National Sex Offender Public Website.** The tribe shall include in the design of its website all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General.

5-42-38. REQUIRED AND PROHIBITED INFORMATION.

- A. Required Information.** The following information shall be made available to the public on the sex offender registry website:
 - (1)** Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded,
 - (2)** All sex offenses for which the sex offender has been convicted,
 - (3)** The sex offense(s) for which the offender is currently registered,

- (4) The address of the sex offender's employer(s),
 - (5) The name of the sex offender including all aliases,
 - (6) A current photograph of the sex offender,
 - (7) A physical description of the sex offender,
 - (8) The residential address and, if relevant, a description of a habitual residence of the sex offender,
 - (9) All addresses of schools attended by the sex offender, and
 - (10) The sex offender's vehicle license plate number along with a description of the vehicle.
- B. Prohibited Information.** The following information shall not be available to the public on the sex offender registry website:
- (1) Any arrest that did not result in conviction,
 - (2) The sex offender's social security number,
 - (3) Any travel and immigration documents, the identity of the victim, and
 - (4) Internet identifiers (as defined in 42 U.S.C. §16911).
- C. Witness Protection.** For sex offenders who are under a witness protection program, the tribal police may honor the request of the United States Marshals Service or other agency responsible for witness protection by not including the original identity of the offender on the publicly accessible sex offender registry website.

5-42-39. COMMUNITY NOTIFICATION.

- A. Law Enforcement Notification.** Whenever a sex offender registers or updates his or her information with the tribe, the Rosebud Sioux Tribe Police Department shall:
- (1) Immediately notify the FBI or other federal agency as designated by the Attorney General in order that the information may be updated on NSOR or other relevant databases,
 - (2) Immediately notify any agency, department, or program within the tribe that is responsible for criminal investigation, prosecution, child welfare or sex

- offender supervision functions, including but not limited to, police, whether BIA, tribal, or FBI, tribal prosecutors, and tribal probation.
- (3) Immediately notify any and all other registration jurisdictions where the sex offender is registered due to the sex offender's residency, school attendance, or employment.
 - (4) Immediately notify National Child Protection Act agencies, which include any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a) when a sex offender registers or updates registration.
- B. Community Notification.** The Rosebud Sioux Tribe Police Department shall ensure there is an automated community notification process in place that ensures the following:
- (1) Upon a sex offender's registration or update of information with the tribe, the tribe's public sex offender registry website is immediately updated,
 - (2) The tribe's public sex offender registry has a function that enables the general public to request an e-mail notice that will notify them when a sex offender commences residence, employment, or school attendance with the tribe, within a specified zip code, or within a certain geographic radius. This email notice shall include the sex offender's identity so that the public can access the public registry for the new information.

5-42-40. IMMUNITY.

- A. No waiver of immunity.** Nothing under this chapter shall be construed as a waiver of sovereign immunity for the Rosebud Sioux Tribe, its departments, agencies, employees, or agents.
- B. Good Faith.** Any person acting under good faith of this Title shall be immune from any civil liability arising out of such actions.

5-42-41. CRIMES AND CIVIL SANCTIONS.

- A.** Criminal Penalty. Each violation of a provision of this code by a sex offender who is an Indian shall be considered a crime and subject to a period of incarceration of one year in jail and a fine of \$5000.
- B.** Civil Penalty. Each violation of a provision of this code by a sex offender who is not an Indian shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of fines, forfeitures, civil contempt.
- C.** Customs and traditions and banishment/exclusion.
- D.** Hindrance of sex offender registration.
 - (1)** A person is guilty of an offense if they:
 - (a)** Knowingly harbors or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of this Title;
 - (b)** Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this Title; or
 - (c)** Provides information to law enforcement agency regarding a sex offender which the person knows to be false.

5-42-42. COMMUNITY SAFETY ZONES.

- A.** Definitions. Terms uses in 5-42-42 to 5-42-47, inclusive, mean:
 - (1)** "Community safety zone," the area that lies within five hundred feet from the facilities and grounds of any school, public park, public playground, or public pool, including the facility and grounds itself;
 - (2)** "Loiter," to remain for a period of time and under circumstances that a reasonable person would determine is for the primary purpose of observing or contacting minors;
 - (3)** "School," any public, private, denominational, or parochial school offering preschool, day care, Head-

start, kindergarten, or any grade from one through twelve;

- (4)** "Residence," the address an offender lists for purposes of the sex offender registry as provided for in subdivision 5-42-23.

5-42-43. RESTRICTIONS ON RESIDENCE WITHIN COMMUNITY SAFETY ZONE – VIOLATION AS CRIME.

No person who is required to register as a sex offender pursuant to this chapter may establish a residence or reside within a community safety zone unless:

- (1)** The person is incarcerated in a jail or prison or other correctional placement which is located within a community safety zone;
- (2)** The person is on parole and has been assigned to a halfway house or supervised living center within a community safety zone;
- (3)** The person is homeless and has been admitted to a community homeless shelter within a community safety zone by an appropriate community official;
- (4)** The person was under age eighteen at the time of the offense and the offender was not tried and convicted of the offense as adult;
- (5)** The person established the residence prior to July 1, 2006;
- (6)** The school, public park, public pool, or public playground was built or established subsequent to the person's establishing residence at the location; or
- (7)** The Tribal court has entered an order pursuant to 5-42-47 exempting the offender from the provisions of 5-42-42 to 5-42-47, inclusive.

A violation of this section is a Class B crime. any subsequent violation is a Class A crime.

5-42-44. LOITERING WITHIN COMMUNITY SAFETY ZONE PROHIBITED – EXCEPTION – VIOLATION AS CRIME.

No person who is required to register as a sex offender as defined in this chapter may loiter within a community safety zone unless the person was under age eighteen at the time of the offense and the offender was not tried and convicted of the offense as an adult or the tribal court has entered an order

pursuant to 5-42-47 exempting the offender from the provisions of 5-42-42 to 5-42-47.

A violation of this section is a Class B crime. any subsequent violation is a Class A crime.

5-42-45. PETITION FOR ORDER OF EXEMPTION FROM SAFETY ZONE RESTRICTIONS – CONTENTS – SERVICE – RESPONSE.

An offender subject to community safety zone restrictions pursuant to 5-42-42 to 5-42-47, inclusive, who is eligible to seek exemption from these restrictions as provided for in 5-42-46 may petition the Tribal court for an order to terminate the person's obligation to comply with the community safety zone restrictions. The offender shall serve the petition and all supporting documentation on the Attorney General for the Rosebud Sioux Tribe. The Attorney General or his designee shall respond to each petition to request exemption from the community safety zone.

No person petitioning the court under this section for an order terminating the person's obligation to comply with community safety zone restrictions is entitled to court appointed counsel, publicly funded experts, or publicly funded witnesses.

The petition and documentation to support the request for exemption from the community safety zone restrictions shall include:

- (1) All information required for registration of convicted sex offenders required by this Title;
- (2) A detailed description of the sex crime that was the basis for the offender to be subject to community safety zone restrictions;
- (3) A certified copy of the judgment of conviction or other sentencing document; and
- (4) The offender's criminal record.

The court may request that the petitioner provide additional information if the information provided is incomplete or if the court desires more information relative to the request for exemption.

5-42-46. ELIGIBILITY FOR EXEMPTION FROM COMMUNITY SAFETY ZONE RESTRICTIONS.

To be eligible for exemption from the community safety zone restrictions, the petitioner shall show, by clear and convincing evidence, the following:

- (1) That at least ten years have elapsed since the date the petitioner was convicted of the offense that subjected the petitioner to community safety zone restrictions pursuant to 5-42-42 to 5-42-47, inclusive. For purposes of this subdivision, any period of time during which the petitioner was confined in a mental health facility or during which the petitioner was on probation or parole supervision does not count toward the ten-year calculation, regardless of whether such incarceration, confinement or community supervision was for the sex offense requiring registration or for some other offense;
- (2) That the petitioner is not a recidivist sex offender. A recidivist sex offender is a person who has been convicted or adjudicated for more than one sex crime enumerated in any portion of this Title of the law and order code, inclusive, regardless of when those convictions or adjudications occurred. For purposes of this subdivision (1) of this section, a conviction or adjudication includes a verdict or plea of guilty; a verdict or plea of guilty but mentally ill; a pleas of nolo contendere; a suspended imposition of sentence in any jurisdiction, regardless of whether it has been discharged; a deferred prosecution agreement entered by a prosecutor; and a determination made in another state, federal jurisdiction, or courts martial that is comparable to any of these events;
- (3) That the petitioner has completed and truthfully complied with the registration requirements imposed under this chapter;
- (4) That the petitioner has actually resided within the Rosebud Sioux Indian Reservation at least ten consecutive years immediately prior to the filing of the petition. Residence as used in this subdivision does not mean the registration address of an incarcerated sex offender; and
- (5) The circumstances of the crime subjecting the offender to community safety zone restrictions did not involve a child under age thirteen.

5-42-47. ORDER GRANTING OR DENYING PETITION –

RESTRICTIONS ON SUBSEQUENT PETITION.

If the court finds that all of the criteria provided for in 5-42-46 have been met and that the petitioner is not likely to offend again, then the court may, in its discretion, enter an order terminating the petitioner's obligation to comply with the community safety zone restrictions of this tribe. However, if the court finds that the offender has provided false or misleading information in support of the petition, or failed to serve the petition and supporting documentation upon the parties provided for in 5-42-45, then the petition shall be denied. If the petition is denied, the petitioner may not file a subsequent petition for at least two years from the date the previous petition was denied. The court shall forward any order terminating the petitioner's obligation to comply with community safety zone restrictions to the Rosebud Sioux Tribe Law Enforcement Sex Offender Registry Office.

TITLE SIX

TRAFFIC CODE

CHAPTER 1 – DRIVING UNDER THE INFLUENCE

- 6-1-1. Driving or Physical Control
- 6-1-2. First Offense
- 6-1-3. Subsequent Offenses
- 6-1-4. Presumptions Arising From Chemical Analysis Of Body Fluids
- 6-1-5. Operation Of Vehicle A Consent To Chemical Test
- 6-1-6. Revocation Of License or Privilege after Refusal Of Test
- 6-1-7. Person Authorized To Withdraw Blood For Test

6-1-1. DRIVING OR PHYSICAL

CONTROL. A person may not drive or be in actual control of any vehicle while:

- (1) There is 0.10 percent or more by weight of alcohol in his blood as shown by chemical analysis of his breath, blood or other bodily substance;
- (2) Under the influence of an alcoholic beverage;
- (3) Under the influence of marijuana or any controlled drug or substance to a degree which renders him incapable of safely driving; or
- (4) Under the combined influence of an alcohol beverage and marijuana or any controlled drug or substance to a degree which renders him incapable of safely driving.

6-1-2. FIRST OFFENSE. If conviction for violation of 6-1-1 for a first offense, the person so convicted **is guilty of a Class B offense** and shall be prohibited from operating a motor vehicle upon the public highways of the Rosebud Reservation for a period of thirty (30) days.

6-1-3. SUBSEQUENT OFFENSES.

Prosecution of any person for a violation of 6-1-1 shall be a **Class A offense** if such person has been previously convicted under said paragraph in the past three (3) year period, and any defendant so convicted shall have their driving privileges on the Rosebud Reservation unconditionally revoked for a period of one (1) year in addition to any other sentence that may be imposed by the Court.

(1) In any prosecution brought pursuant to the provisions of this section the Complaint shall allege, in addition to the Principal offense, all former convictions under this section.

(2) Any person who has had his driving privileges revoked or suspended pursuant to the provisions of this section shall be required to surrender to the Court, any valid drivers license that has been issued to him by any government authority. The Court shall retain possession of such drivers license during the period of suspension or revocation.

6-1-4. PRESUMPTIONS ARISING FROM CHEMICAL ANALYSIS OF BODY FLUIDS.

In any criminal prosecution for a violation of 6-1-1 relating to driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, breath, or other bodily substance shall give rise to the following presumptions.

(1) If there was, at the time five hundredths percent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor.

(2) If there was at the time in excess of five hundredths but less than ten hundredths percent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(3) If there was at the time ten hundredths percent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.

Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0 cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath.

6-1-5. OPERATION OF VEHICLE AS CONSENT TO CHEMICAL TEST.

Any person who operates any vehicle upon the Rosebud Reservation is deemed to have given his consent to a chemical analysis of his blood, breath or other bodily substance to determine the amount of alcohol in his blood, and to determine the presence of marijuana or any controlled drug or substance, provided that the test is administered at the direction of a law

enforcement officer having lawfully arrested the person for violation of 6-1-1.

6-1-6. REVOCATION OF LICENSE OR PRIVILEGE AFTER REFUSAL OF TEST.

Any person described in 6-1-5 not given a chemical analysis because of his right to refuse the test may demand a hearing before the Tribal Court before further action is taken under this section. If the Court finds that the law enforcement officer complied with the law and the refusal was made by the person, the Court shall revoke that person's license to drive for one (1) year.

6-1-7. PERSONS AUTHORIZED TO WITHDRAW BLOOD FOR TEST.

Only a physician, laboratory technician, registered nurse, physician's assistant, medical technician or medical technologist acting at the request of a law enforcement officer can withdraw blood for the purpose of determining the alcoholic content therein. This limitation does not apply to the taking of a breath or other bodily substance specimen. Such authorized persons are not liable and may not be held pay damages to the party from whom the blood sample is withdrawn if the withdrawn is administered with usual and ordinary care.

CHAPTER 2 – RECKLESS DRIVING

6-2-1. Reckless Driving

6-2-1. DEFINITION OF RECKLESS DRIVING.

Any person who drives any vehicle upon a highway carelessly and needlessly in disregard of the rights of safety of others, or without due caution and circumspection and at a speed, or in a manner so as to endanger or be likely to endanger any person or property, is guilty of reckless driving. **Reckless is a Class B offense.**

- (1) If a conviction is a second or a subsequent Reckless Driving Offense within a two
- (2) year period, such person shall be guilty of a Class A offense and the Court shall make an Order prohibiting such person from driving on the Rosebud Reservation for a period of thirty (3) days. The Court may, in its discretion extend such period, not to exceed one (1) year.

CHAPTER 3 – EXHIBITION DRIVING

6-3-1. Exhibition Driving

6-3-1. DEFINITION OF EXHIBITION DRIVING.

Any person who drives any vehicle within the Rosebud Reservation in such a manner as to cause or create unnecessary engine noise, tire squeal, skid or slide upon acceleration or stopping, simulate a temporary race, cause a vehicle to sway unnecessarily, or make abrupt and unnecessary short skidding turns and/or circles or tracks upon the public streets, highways or alleys shall be guilty of exhibition driving. Exhibition driving shall be a **Class C offense.**

CHAPTER 4 – DRIVING WHILE SUSPENDED.

6-4-1. Driving While Suspended

6-4-1. DRIVING WHILE SUSPENDED.

Any person who drives a motor vehicle upon a public street or highway on the Rosebud Reservation at a time when his privilege to do so is cancelled, suspended or revoked by the Tribal Court shall **be guilty of a Class B offense.**

(1) Upon a person being convicted under the provisions of this section, the Court shall, in addition to any other penalty imposed, extend the period of suspension for an additional like period.

CHAPTER 5 – SOUTH DAKOTA MOTOR VEHICLE AND TRAFFIC LAWS

6-5-1. South Dakota Codified Laws
6-5-2. Limitation On The Tribal Council's Authority

6-5-1. SOUTH DAKOTA MOTOR VEHICLE AND TRAFFIC LAWS INCORPORATED INTO TRIBAL CODE.

The following chapters of the South Dakota Codified Laws (SDCL) as presently constituted or as hereafter amended shall be and are hereby incorporated into the Tribal Traffic Code and shall apply to all persons subject to the jurisdiction of the Tribal Court. Amendments, additions or deletions to or from such provisions made by the State Legislature after the enactment of this Code shall become part hereof unless the Tribal Council provides otherwise. Chapters:

32-3	32-5	32-12
32-14	32-15	32-16
32-17	32-18	32-19

32-20	32-20A	32-22
32-25	32-26	32-27
32-28	32-29	32-30
32-31	32-32	32-34

32-3TITLE REGISTRATION, LIENS AND TRANSFERS
32-5.....ANNUAL REGISTRATION AND LICENSE PLATES
32-12.....DRIVER LICENSES AND PERMITS
32-14.....TRAFFIC REGULATION GENERALLY
32-15.....VEHICLE AND ACCESSORY SPECIFICATIONS
32-16.....INTERSTATE VEHICLE EQUIPMENT SAFETY COMPACT (REPEALED)
32-17.....VEHICLE LIGHTS AND FLARES
32-18.....BRAKES AND BRAKE FLUID
32-19.....WHEELS, TIRES, AND SPECIAL VEHICLES
32-20.....MOTORCYCLE REGULATION
32-20A.....SNOWMOBILE OPERATION
32-22.....WEIGHT, SIZE AND LOAD RESTRICTIONS
32-25.....SPEED REGULATION
32-26.....RULES OF THE ROAD
32-27.....PEDESTRIANS' RIGHTS AND DUTIES
32-28.....TRAFFIC CONTROL DEVICES
32-29.....REQUIRED STOPS
32-30.....STOPPING AND PARKING RESTRICTIONS
32-31.....EMERGENCY VEHICLES
32-32.....SCHOOL BUSES
32-34.....ACCIDENTS AND ACCIDENT REPORTS

6-5-2. Nothing contained herein shall be construed as a limitation on the Tribal Council's authority to enact legislation for the control of traffic or the regulation of vehicles and their use on the Rosebud Sioux Reservation. Any provisions in the South Dakota Codified Laws, which by their nature, do not apply to the Rosebud Sioux Tribe or the Reservation are not incorporated herein.

CHAPTER 6 – RESERVED

CHAPTER 7 – SAFETY BELT SYSTEM USAGE IN PASSENGER VEHICLES

6-7-1.	Use Required-Public Highways-All Passengers - <i>Amendment</i>
6-7-2.	Passenger Vehicle Defined - <i>Amendment</i>
6-7-3.	Exceptions To Use Of Safety Belts - <i>Amendment</i>

6-7-4.	Failure To Comply-Evidence - <i>Amendment</i>
6-7-5.	Penalties - <i>Amendment</i>

6-7-1. USE REQUIRED-PUBLIC HIGHWAYS-ALL PASSENGERS. Every operator and passenger of a passenger vehicle operated on a public highway within the jurisdiction of the Rosebud Sioux Tribe shall wear a properly adjusted and fastened safety seat belt system, required to be installed in the passenger vehicle when manufactured pursuant to Federal Motor Vehicle Safety Standard Number 208 (49 C.F.R. 517.208) in effect January 1, 1989, at all times when the vehicle is in forward motion. The driver of the passenger vehicle shall secure or cause to be secured a properly adjusted and fastened safety seat belt system on any passenger in the vehicle who is at least five years of age but younger than eighteen years of age.

6-7-2. PASSENGER VEHICLE DEFINED. A passenger vehicle is any self-propelled vehicle intended primarily for use and operation on the public highway including passenger cars, station wagons, vans, taxicabs, emergency vehicle, motor homes, truck and pickups. The term does not include motorcycles, motor scooters, motor bicycles, motorized bicycles, passenger buses, and school buses. The term also does not include farm tractors and implements of husbandry designated primarily or exclusively for use in agricultural operations.

6-7-3. EXCEPTIONS TO USE OF SAFETY BELTS.

- (1) Any occupant of a passenger vehicle manufactured before September 1, 1973;
- (2) A person riding in a seat in which all the seating positions equipped with safety belts are occupied;
- (3) Any occupant of a passenger vehicle who possesses a written statement from a doctor licensed under SDCL 36-4 and 36-5 that the individual is unable for medical reasons to wear a safety seat belt system;
- (4) A person who is actually engages in work that requires the person to alight from and reenter a motor vehicle at frequent intervals and who, while engaged in that work, does not drive or travel in that vehicle at a speed exceeding 25 miles per hours;
- (5) Any occupant of a vehicle not equipped with a safety seat belt system because federal law does not require that vehicle to be so equipped; or
- (6) Any rural carrier of the United States Postal Service while serving his rural postal

route or any person delivering newspapers or periodicals on an assigned home delivery route.

6-7-4. FAILURE TO COMPLY-EVIDENCE.

Failure to comply with the provisions of this chapter does not constitute contributory negligence, comparative negligence or assumption of the risk. Failure to comply with the provisions of this charter may not be introduced as evidence in any criminal litigation other than a prosecution under this chapter or in any civil litigation on the issue of injuries or on the issue of mitigation of damages.

6-7-5. PENALTIES. Violation of this Chapter will be subject to the following:

- (1) 1st Offense driver and passenger who fails to fasten own seat belts, **each fine assessed at \$20.00**
- (2) 2nd and subsequent offense, driver and passenger who fail to fasten own seat belts, **fine assessed at \$20.00**

TITLE SEVEN

CRIMINAL PROCEDURE

CHAPTER 1 – RULES OF CRIMINAL PROCEDURE

I.	Scope
II.	Purpose
III.	Construction
IV.	Preliminary Proceedings
V.	Trials
VI.	Judgment and Sentencing
VII.	Procedure In Magistrate Court
VIII.	Appeal
IX.	Search and Seizure
X.	General Provisions - Amendment
XI.	Discovery
XII.	Pleadings and Pre-Trial Motions

I. SCOPE. These rules govern the procedure in the Courts of the Rosebud Sioux Tribe in all criminal proceedings. The term “proceedings” includes all steps in a criminal case from its inception to judgment and sentence.

II. PURPOSE. The purpose of these rules is to simplify criminal procedures and to eliminate outmoded rules and practices on the Rosebud Reservation and to cover the entire field of criminal proceedings with the exception of proceedings against juveniles as the same are provided for in other sections of this Code.

III. CONSTRUCTION. It is the intention of the Judiciary Committee that these rules be construed to provide simplicity in procedure, fairness in administration and to eliminate expenses and delay.

IV. PRELIMINARY PROCEEDINGS.

A. THE COMPLAINT

(1) The complaint shall be a written statement of the essential facts contributing the offense charged and shall be made upon oath before a notary public or a Judge or Magistrate of the Tribal Court, or be accompanied by a sworn affidavit.

(2) The Complaint must State:

(a) The names of the person accused, if known, or some other name, if not known, plus whatever description of the person accused is known.

(b) The general location where the offense was committed.

(c) The general name and code designation of the offense.

(d) A short, concise statement of the specific acts of omission to act complained.

(e) The person against whom or against whose property the offense was committed, if known, otherwise no statement need be made.

(f) The date and approximate time of the commission of the offense, if know.

(g) The name of the person filing the complaint.

(3) No minor omission from or error in the form of the complaint shall be grounds for dismissal of the case unless some significant prejudice against the defendant can be shown to result therefrom.

(4) It shall not be necessary to charge a specific class (Class A, B, or C) of an offense which depends for the degree of punishment upon factual findings such as the value of the property taken in a theft offense.

(5) The Judge or Magistrate issuing the complaint shall examine such complainant under oath to ascertain his knowledge as to the facts alleged in the complaint and determine if probable cause exists to issue such complaint. If it appears from the complaint and the examination of the complainant that probable cause exists to believe that an offense has been committed, the Judge or Magistrate will issue the complaint by affixing his signature thereto.

B. ARREST-WARRANT OR SUMMONS

(1) Upon the issuance of the complaint, a warrant of arrest or a summons shall be issued to bring the defendant in the complaint before a Judge or Magistrate of the Tribal Court. The warrant or summons shall specify the Court before which the defendant is to appear.

(2) Whenever it is provided that a warrant may be issued for the arrest of a person charged with the commission of a Class B or C offense, the Judge or Magistrate shall issue or cause to be issued a summons instead of a warrant, unless he has reasonable grounds to

believe that the person will not appear upon a summons, in which case he shall issue a warrant of arrest. A warrant of arrest shall be issued in all cases in which a Class A offense is charged.

(3) The warrant of arrest shall be signed by the Judge or Magistrate issuing such and shall contain the name of the defendant, or, if such is known, some other name plus a reasonable description of the defendant, if known. It shall describe the offense charged and it shall command that the defendant be arrested and brought before the Judge or Magistrate to enter a plea.

(4) When a summons is issued, it shall name the defendant, specify the offense charged and order the defendant to appear before a specified Judge or Magistrate and set the time and place of such appearance. In the event the defendant fails to appear as directed by the summons, a warrant shall be issued in his arrest.

(5) Warrants and summons shall be served by any officer authorized to make arrests on the Rosebud Reservation, or by any other person designated by the Tribal Courts or by the Judiciary Committee to perform such functions.

(a) The service of warrants and summons may be accomplished anywhere within the exterior boundaries of the Rosebud Indian Reservation and the time and place of such service or arrest and the name of the person serving the same shall be endorsed thereon and the original returned to the Court and a copy containing said endorsement shall be left with the person served.

(b) An officer need not have the warrant in his possession at the time of arrest, but if he does not, he shall inform the defendant that a warrant has been issued, the nature of the charge, and shall provide the defendant with a copy of the arrest warrant and complaint not later than the time of appearance before the Court. If reasonably possible a properly endorsed copy of the summons or warrant plus a copy of the complaint shall be given to the defendant at the time of service or arrest.

(c) In the event a defendant service of a summons or a defendant cannot be located after a reasonable search, a warrant shall be issued for his arrest.

(6) Any officer authorized to make arrests on the Rosebud Reservation may, without a warrant, arrest a person

for any offense committed in the presence of the officer or may, upon probable cause that a Class A crime has been committed and that the person arrested committed it, arrest that person although the offense was not committed in the presence of the officer.

(7) Any arresting officer:

(a) Must inform the person to be arrested of his intentions to arrest him, of the cause or reason for the arrest, and his authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to commit, an offense, or is pursued immediately after its commission, or an escape, if such is not reasonable possible under the circumstances;

(b) Must show the warrant of arrest if such exists and is demanded as soon as practicable;

(c) May use only that force which is reasonably necessary to effect an arrest;

(d) May break open a door or window of a building in which the person to be arrested is, or is reasonably believe to be, after demanding admittance and explaining the purpose for which admittance is desired;

(e) May search the person arrested and take from him and put into evidence all weapons he may have about his person;

(f) Shall, as soon as possible, do as commanded by the arrest warrant or deliver the person to jail and obtain a complaint;

(g) May, if fresh pursuit, continue such pursuit, and arrest upon capture the person pursued even if arrest would occur outside the exterior boundaries of the Reservation. All persons so arrested may be returned to the Reservation by the arresting officer if the arresting occurs in the State of South Dakota. Otherwise, the arresting person will be turned over to local police officials pending extradition proceedings.

C. ARRAIGNMENT

(1) As soon as reasonably possible, but not more than 72 hours after arrest on a warrant, a defendant shall be brought before a Judge or Magistrate of the Tribal Court. In the event a summons has been issued the defendant shall appear at the time designated in the summons.

(2) If the defendant does not have counsel and desires to be represented, he shall be given a reasonable time to secure counsel before entering his plea.

(3) The defendant shall be provided with a copy of the complaint if he has not received one; it shall be read to him and he will be advised of his rights as follows:

(a) The defendant has the right to appear and defend himself in person or by counsel.

(b) In the event a defendant is determined to be indigent by the Court and wishes to be represented by counsel, the Court shall appoint counsel for the defendant with the exception that no defendant shall have the right to have appointed professional counsel at the tribe's expense.

(c) The defendant shall have the right to confront and cross-examine all of the witnesses against him in person or by counsel.

(d) The defendant shall have the right to have witnesses compelled by subpoena to appear and testify for him.

(e) The defendant shall have the right to refuse to testify regarding the charge against him or to testify on his own behalf provided that once he takes the stand to testify he shall have waived the right to refuse to testify in any matter relevant to the immediate proceeding.

(f) The defendant shall have the right to have a speedy trial by an impartial judge or jury.

(4) The defendant shall enter a plea of guilty to the offense charged or not guilty and the Court shall then advise the defendant of the sentence or bail as is appropriate.

D. PLEAS

(1) Upon the entering of a plea of guilty by a defendant the Court shall determine from the defendant that the plea was voluntarily made and that the defendant understood the nature of the charge and the consequences of a guilty plea. In the event the defendant refuses to plead or that the Court does not accept a plea of guilty, the Court shall enter a plea of not guilty.

(a) The defendant may be permitted, with the consent of the Court and the prosecuting attorney, to enter a plea of guilty to a lesser offense included in the offense charged in the complaint.

(2) Upon the defendant entering a plea of not guilty to the offense charged in the complaint, the Court will set a time for trial of the matter and shall determine whether the defendant desires a trial by jury or a trial to the Court.

(a) Appropriate bail shall be set by the Court and the defendant released on bail or remanded to custody pending the trial of the matter in the event he is unable to post the bail as set by the Court.

(b) A defendant may be released upon his own recognizance at the discretion of the Court and upon his promise to appear

before the Court at the times set for such appearance.

E. JOINDER OF OFFENSES AND DEFENDANTS

(1) Two or more defendants may be charged in the same complaint if they are alleged to have participated in the same act or transaction constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of such defendants need not be charged on each count.

(2) Two or more defendants may be tried together if they could have been joined in a single complaint and a single defendant may be tried on more than one complaint at a single trial.

(a) If it appears that a defendant or the Rosebud Sioux Tribe is prejudiced by a joinder of offenses or other defendant for trial together, the Court may order separate complaints and may order separate trials or provide such other relief justice requires.

F. PRETRIAL CONFERENCE AND MOTIONS

(1) The Court shall, upon motion of either party, or upon its own motion, hold a pretrial conference. The Court shall compel the attendance of the defendant and his counsel at the conference. The prosecution and defense may be required by the Court to exchange discoverable information at the conference. The Court shall at the time consider all pre-trial motions and the Court may issue such orders as deemed proper to regulate the conduct of trial.

(2) Defenses or objections that are capable of determination other than a trial must be raised at the pretrial conference.

G. SUBPOENA

(1) A subpoena is an order of Court issued by a Judge, Magistrate or the Clerk of Courts. It shall command each person to whom it is directed to attend and give testimony at a place therein specified. The Clerk may issue subpoenas, signed and otherwise complete except for the name of the person or thing subpoenaed to a defendant upon request.

(2) A subpoena may be served by any police officer or any person designated by the Court or the Judiciary Committee. Service must be made by handing a copy to the person named therein and a subpoena may direct the person named to bring some object or piece of evidence before the Court. No fees or mileage allowance need be tendered with service.

(3) A subpoena may be served any place within the exterior boundaries of the Rosebud Reservation. Failure, without

adequate excuse, to obey a properly served subpoena may be deemed a contempt of court and prosecution thereof may proceed upon the order of the Court. No contempt shall be prosecuted unless a return of service of the subpoena has been made on which is endorsed the date, time, and place of service and the person performing such service.

V. TRIALS

A. TRIAL BY JURY OR BY THE COURT

(1) All criminal trials shall be by the Court without a jury unless the defendant requests a jury trial at the time of arraignment.

THERE WILL BE NO JURY TRIALS FOR CLASS B AND C CRIMES

(2) Juries shall have six (6) members unless a smaller number is consented to by the defendant. The Court may, at its discretion, require a full panel of six (6) jurors.

(a) Jurors shall be drawn from the list of eligible jurors by the Clerk of Courts and shall be notified to appear by the Clerk in advance of the trial date.

(b) All qualified electors of the Rosebud Sioux Tribe who have not been convicted of a major crime within the last two years or who have not been convicted of a misdemeanor crime in the past one year shall be eligible to serve as jurors.

(3) The Court shall permit the defendant or his counsel and the prosecutor to examine the jurors and the Court itself may make such an examination.

(4) Challenges regarding jury members may be taken as follows:

(a) Each side shall be entitled to two (2) peremptory challenges;

(b) Either side may challenge any juror for cause.

(5) The Clerk of Courts shall subpoena not less than 18 persons from the eligible jurors to appear and serve whenever a jury trial is scheduled in a criminal matter.

B. EVIDENCE

The admissibility and the competence and privileges of witnesses shall be governed by the Federal Rules of Evidence, except as herein otherwise provided.

C. INTERPRETERS

The Court shall determine whether or not interpreters are needed and shall choose and appoint such persons as are needed to act as interpreters and shall place them under oath to accurately translate as required by the Court.

D. JUDGMENT OF ACQUITTAL

(1) The Court on motion from defendant or on its own motion, shall order the entry of a judgment of acquittal of one or more offenses charged in the complaint after the evidence of either side is closed if the evidence is insufficient as a matter of law to sustain a conviction of such offenses. A motion for acquittal by the defendant does not affect his right to present evidence.

(2) If a motion for judgment of acquittal is made at the close of all evidence, the Court may reserve decision on the motion any time either before or after the jury returns its verdict or is discharged.

E. INSTRUCTIONS

It shall be the duty of the Court to properly instruct the jury at such time during the trial as the Court determines is appropriate. Each party may propose instructions and the Court shall rule on proposed instructions and shall then instruct the jury before closing arguments. Proposed instructions and objections thereto shall be made outside the hearing of the jury.

F. VERDICT

(1) The verdict of the jury shall be unanimous. It shall be returned by the jury to the Judge in open court and in the presence of the defendant.

(2) If there are two or more defendants, the jury may at any time during its deliberations return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree as to all, the defendants as to whom it does not agree may be tried again.

(3) When a verdict is returned and before it is recorded, the jury shall be polled at the request of any party or upon the Court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

VI. JUDGMENT AND SENTENCING

A. A judgment of conviction shall set forth the pleas, the verdict of findings, and the adjudication and sentence when imposed. If the defendant is found not guilty or for any other reason entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the Judge and entered by the Clerk.

B. Sentence shall be imposed without unreasonable delay as provided in this Code. Pending sentence, the Court may commit the defendant to jail or continue or alter the bail. Before imposing sentence, the Court shall afford counsel an opportunity to speak on behalf of the prosecution and defendant and

shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment.

C. Sentences shall be in accordance with the Tribal Criminal Code.

VII. PROCEDURE IN MAGISTRATE COURT

A. When a defendant is brought before a Magistrate, he shall be provided with a copy of the complaint as set out in Arraignment – Section 3, and advised of his or her rights as provided in that section.

B. In the event a defendant enters a plea of guilty to the offense charged in the complaint the Magistrate shall enter the appropriate sentence.

C. In the event a defendant enters a plea of not guilty the magistrate shall immediately bind the defendant over for appearance before a Tribal Judge for arraignment.

(1) The Magistrate shall set proper bail for the offense charged and in the event the defendant is unable to post said bail he shall be remanded to custody pending his arraignment. The Magistrate shall designate the time and place of the arraignment.

(2) The Magistrate shall transmit the warrant or summons and the complaint to the clerk of the Tribal Court along with a Magistrate's Return setting forth what proceedings were had involving the matter.

D. When a defendant appears before a Magistrate charged with an offense of a class not within the jurisdiction of the Magistrate Court, such matter shall immediately be transferred to the Tribal Court and the procedure set out in Section C above followed, including the setting of bail.

VIII. APPEAL

A. After imposing sentence in a case which has gone to trial on plea of not guilty, the Court shall advise the defendant of his or her right to appeal.

B. The defendant has the right to appeal from the following:

(1) A final judgment of conviction;

(2) From an order made, after judgment, affecting his substantial rights.

C. The Tribe has the right to appeal from the following:

(1) A judgment of dismissal in favor of the defendant upon a motion to dismiss based on any procedural irregularity occurring before a trial;

(2) An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such a verdict can be rendered;

(3) An order of the Court directing the jury to find for the defendant;

(4) An order made after judgment affecting the substantial rights of the Tribe.

D. A notice of appeal must be filed within ten (10) days of entry of the final judgment or other appealable order and such must be served on all parties except the party filing the appeal.

E. The Clerk of Tribal Court shall prepare and submit to the Appellate Court the records of the case appealed including a list of the exhibits introduced at the trial and shall submit the same to the Appellate Court within thirty (30) days of the filing of the appeal. The name of the case shall be the same as used in the trial with the appealing party designated as Appellant and the responding party designated as Respondent.

F. Upon receipt of the transcript the Appellate Court shall determine what procedure shall be followed in regard to the Appeal and shall notify the parties as to the dates of any hearing.

G. Stay of Judgment and Relief Pending Review.

(1) A sentence of imprisonment may, in the Trial Court's discretion, be stayed if an appeal is taken and the defendant may be given the opportunity to post bail. Any defendant not making bail or otherwise obtaining release pending appeal shall have all the time spent in incarceration counted towards his or her sentence in the matter under appeal.

(2) A sentence to pay a fine or a fine and costs, may be stayed pending appeal upon motion of the defendant, but the Court may require the defendant to pay such money subject to return if the appeal should favor the defendant and negate the requirements for paying such.

(3) An order placing the defendant on probation may be stayed on motion of the defendant if an appeal is taken.

IX. SEARCH AND SEIZURE

A. A search warrant is hereby authorized and may be issued only by a Tribal Judge on request of a Tribal Prosecutor, or any police officer or other law enforcement officer authorized to make arrests on the Rosebud Reservation.

B. A warrant may be issued to search for and seize any of the following:

(1) Property that constitutes evidence of the commission of the crime;

(2) Contraband, the fruits of crime, or things otherwise criminally possessed;

(3) Property designed or intended for use or which is or has been used, as the means of committing a criminal offense.

C. A warrant shall be issued only upon sworn testimony or affidavit establishing grounds for issuing the warrant. If the Judge is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based on hearsay evidence either in whole or in part. Before ruling on a request for a warrant, the Judge may require the affiant to appear personally and be examined under oath. The warrant shall be directed to any police or law enforcement officer or official and shall command such person or persons to search, within a specified period of time not to exceed ten (10) days, the person or place named for the property specified. The warrant shall be served in the daytime unless the issuing Judge otherwise authorized on the warrant. The warrant shall be returned to the Judge after service or at the end of the ten (10) day period.

(1) The officer taking property under a warrant shall give the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return to the issuing Judge shall be made promptly and shall be accompanied by an inventory of the property taken.

(2) A person aggrieved by an unlawful search and seizure may move the Tribal Court for the return of the property on the grounds that he or she is entitled to lawful possession of the property illegally seized. The Judge may receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be returned and shall not be admissible at any hearing or trial.

(3) No law enforcement officer shall search or seize any premises, property or person without a search warrant unless he knows or has reasonable cause to believe that the person in possession of such property is engaged in the commission of an offense or such is done incident to a lawful arrest or under such other circumstances in which it would not be reasonable to require the obtaining of a warrant prior to the search.

(4) A law enforcement officer may stop any person in a public place whom he has probable cause to believe is in the act of committing an offense, or has committed an

offense, or is attempting to commit an offense and demand of him his name, address, an explanation of his or her actions and may, if he or she has reasonable grounds to believe his or her own safety or the safety of others is endangered, conduct a frisk-type search for weapons, of such person.

(5) The term "Property" is used in this Rule to include documents, books, papers, and any other tangible object. The term "daytime" as used in this Rule, shall mean the hours from 6:00 o'clock a.m. to 10:00 o'clock p.m. according to local time.

X. GENERAL PROVISIONS

A. Jury list and fees. Not later than the 1st day of January of each year, the Clerk of Courts shall prepare a list of eligible jurors which shall contain the names of at least 225 person, prorated from each community as nearly as possible, to serve on juries for criminal trials. Each potential juror who appears for jury duty as a fee for each day he or she appears the sum of ten dollars (\$10.00), and each juror who actually serves upon a jury shall receive as a fee for each day of service the sum of forty dollars (\$40.00) or such amount as the Tribal Council shall establish from time to time by resolution . Each juror shall be paid round trip mileage at the prevailing tribal rate.

XI. DISCOVERY

A. Prosecution evidence discoverable by Defendant. Upon written request of a defendant the prosecuting attorney shall permit the defendant to inspect and copy or photograph:

(1) Any relevant written or recorded statements made by the defendant or copies thereof, within the possession, custody or control of the Tribal Prosecutor, the existence of which is known, or by the exercise of due diligence may become known, to the Tribal Prosecutor;

(2) The substance of any oral statement, which the Tribal Prosecutor intends to offer in evidence at the trial, made by the defendant whether before or after the arrest in response to interrogation by any person then known to the defendant to be an employee of a law enforcement agency; and

B. Defense Evidence Discoverable by Prosecution. Upon written request of the prosecuting attorney, the defendant or defendant's attorney shall disclose to the prosecutor all witnesses who may be called to testify at trial, including alibi witnesses.

C. Restriction of rights of discovery or inspection. Upon a sufficient showing the Court may at any time order that the

discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the Court may permit the party to make such showing, in whole or in part, in the form of written statement to be inspected by the judge alone. If the court enters an order granting relief following such ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

D. Remedies on failure to party to comply with discovery requirements. If, at any time during the course of a proceeding, it is brought to the attention of the Court that a party has failed to comply with an applicable discovery provision, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The Court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

- (3)** Defenses and objections based on defects in the complaint;
- (4)** Motions to suppress evidence;
- (5)** Requests for discovery; or
- (6)** Requests for a severance of charges or defendants.

XII. PLEADINGS AND PRE-TRIAL MOTIONS

A. Upon motion of a defendant the court must dismiss a complaint in any of the following cases:

- (1)** When it is not found, endorsed, and presented or filed as prescribed by this title;
- (2)** When the names of the witnesses are not inserted at the foot of the complaint or endorsed thereon;
- (3)** When it does not substantially conform to the requirements of this title;
- (4)** When more than one offense is charged in a single count;
- (5)** When it does not describe a public offense; or
- (6)** When it contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other bar to the prosecution.

B. Defenses and objections raised by motion. Any defense, objection or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to the trial:

- (1)** Defenses and objections based on defects in the institution of the prosecution;
- (2)** Defenses and objections based upon prior conviction or acquittal;

TITLE EIGHT

REMEDIES

CHAPTER 1 - EXTRADITION

- 8-1-1. Requests For Extradition
- 8-1-2. Hearing On Extradition
- 8-1-3. Waiver Of Hearing
- 8-1-4. Authority

8-1-1. All requests for extradition of persons to be taken from the Rosebud Sioux Reservation shall be directed to the Tribal Chairman. In the event that the Rosebud Sioux Tribe has entered into a reciprocal extradition agreement with the government agency requesting such extradition, the Tribal Chairman shall cause such request for extradition along with certified copies of the Complaint, Information or Indictment and Arrest Warrant from the executive authority of the agency making the request to be presented to the Chief Tribal Judge. The Chief Tribal Judge shall cause any person named in such extradition proceedings and subject to jurisdiction of the Rosebud Sioux Tribe, to be brought before the Court to determine whether or not such person shall be extradited from the Reservation.

8-1-2. Any person arrested as provided in this section may demand a hearing, and if such demand is made, such person shall be taken before the Rosebud Tribal Court, where the Chief Judge shall hold a hearing to determine the apparent validity of the Complaint, Information or Indictment, and Arrest Warrant, and to determine whether the person in custody and before the Court is the same charged therein and whether such person should be extradited.

8-1-3. A person who is the subject of a request for extradition may waive such hearing by executing a Waiver of Hearing and Consent to extradition and thereupon such person shall be promptly delivered or turned over to the authorities requesting extradition.

8-1-4. The Tribal Chairman shall be the only authority which may request the extradition to the Rosebud Reservation of any person subject to the Tribal Court who has committed an offense on the Rosebud Reservation and who fled from the Rosebud Reservation thereafter to avoid prosecution.

CHAPTER 2 – CONTEMPT

- 8-2-1. Acts or Failures To Act
- 8-2-2. Civil Contempt From Criminal Contempt
- 8-2-3. Contempt Procedure

8-2-1. Acts or failures to act for which the Court may find individuals or entities to be in contempt of Court:

(1) Disorderly, contemptuous, or insolent behavior, committed during the holding of any Court session before a Judge or Magistrate of the Tribal Court, and in the immediate view and presence of the Court and directly tending to interrupt its proceedings or to impair the respect due to its authority.

(2) Disobedience or resistance to any Order, Judgment, Subpoena, Warrant, Rule, Decree, Command or other process of the Court.

(3) Refusing to be sworn or affirmed as a witness or refusal to answer as a witness after being sworn or affirmed.

(4) Detaining or otherwise interfering with a witness or party to any action or Court proceeding while such person is going to or from or attending Court.

(5) Any other interference with the processes, proceedings, or dignity of any Tribal Court or Judge or Magistrate while in the performance of his duties.

8-2-2. Civil Contempt Distinguished from Criminal Contempt.

(1) Civil contempt procedure shall be used to enforce the adjudicated rights or parties to a civil action by enforcing the legal obligation to do or refrain from doing some act as provided for in a judicial Decree or Order.

(2) Relief in a Civil Contempt Proceeding may be in the form of compensation to the aggrieved party or may be by coercive action on the part of the Court. Relief may also include a fine payable to the Court or the aggrieved party or by imprisonment of the contemptuous party or by both fine and imprisonment at the discretion of the Court.

(3) Criminal Contempt is a willful disregard of the authority of the Court and need not arise out of a criminal action; but is conduct detrimental to the dignity of the Court.

(4) **Contempt is punishable by a fine of up to \$500.00 and by up to six months in jail, or both, at the discretion of the Court.**

8-2-3. Contempt Procedure.

(1) Direct Contempt committed in the presence of the Court or disruptive of the proceedings thereof shall be adjudged and punished summarily and at the discretion of the Court.

(2) All other Contempt's shall be determined at an Order to Show Cause hearing of which the accused person shall be given at least five (5) days notice and an opportunity to be heard.

- 8-3-5.9 Execution Of Judgment - *Amendment*
- 8-3-5.10 Stay Of Execution - *Amendment*
- 8-3-5.11 Appeals - *Amendment*
- 8-3-5.12 Property Exempt From Judgments For Money - *Amendment*
- 8-3-5.13 Miscellaneous Provisions - *Amendment*

CHAPTER 3 – LANDLORD AND TENANT CODE

- 8-3-1.1 Title - *Amendment*
- 8-3-1.2 Jurisdiction - *Amendment*
- 8-3-1.3 Relation Of The Code To Other Laws - *Amendment*
- 8-3-1.4 Purposes Of The Code and Its Interpretation - *Amendment*
- 8-3-1.5 Definitions - *Amendment*
- 8-3-2.1 Sources Of Rights, Obligations and Remedies - *Amendment*
- 8-3-2.2 Landlord Rights - *Amendment*
- 8-3-2.3 Landlord Obligations - *Amendment*
- 8-3-2.4 Remedies - *Amendment*
- 8-3-3.1 Tenant Rights - *Amendment*
- 8-3-3.2 Tenant Obligations - *Amendment*
- 8-3-3.3 Tenant Remedies - *Amendment*
- 8-3-4.1 Grounds for Eviction - *Amendment*
- 8-3-4.2 Notices - *Amendment*
- 8-3-4.3 Manner Of Giving Notice - *Amendment*
- 8-3-4.4 Termination Of A Lease - *Amendment*
- 8-3-4.5 Termination Of A Purchase Agreement or MHO Agreement - *Amendment*
- 8-3-4.6 Notice To Quit - *Amendment*
- 8-3-5.1 Civil Action - *Amendment*
- 8-3-5.2 Summons and Complaint Filing - *Amendment*
- 8-3-5.3 Summons and Complaint Contents - *Amendment*
- 8-3-5.4 Answer - *Amendment*
- 8-3-5.5 Appearance Date and Judgment - *Amendment*
- 8-3-5.6 Prehearing Conference - *Amendment*
- 8-3-5.7 Judgment - *Amendment*
- 8-3-5.8 Form of Judgment - *Amendment*

8-3-1.1 TITLE. This code and ordinance may be known and cited as the Rosebud Sioux Landlord Tenant Code and supersedes all previous tribal law on unlawful detainers and evictions. Any such law is hereby repealed.

8-3-1.2 JURISDICTION. This code shall apply to any and all arrangements, formal or informal, written or agreed to orally or by the practice of the parties, in selling, renting, leasing, occupying or using any and all housing, dwellings or accommodations for human occupation and residence.

(a) Jurisdiction is extended over all buildings and lands or residence which may lie within:

- (1) The exterior boundaries of the Rosebud Reservation;
- (2) Lands owned by, held in trust for, leased or used by the Rosebud Tribe, its Indian Housing Authority or any other entity of the Tribe;
- (3) The Indian Country of the Rosebud Tribe, as may be defined from time to time by the laws of the Tribe or of the United States.

(b) Jurisdiction is extended over all persons or entities within the jurisdiction of the Tribe who sell, rent, lease or allow persons to occupy housing, dwellings or accommodations for the purpose of human dwelling, occupation or residence, and all persons who buy, rent, lease or occupy such structures. Such personal jurisdiction is extended over all persons and entities, whether they are members of the Rosebud Tribe or not, whether they are Indian or non-Indian, and whether or not they have a place of business within the Rosebud Reservation. Any act within the Rosebud Reservation dealing with the subject matter of this code shall be subject to the jurisdiction of the Rosebud Tribe.

(c) Jurisdiction over all matters arising within the jurisdiction of the Tribe with the respect to the subjects of this code, and jurisdiction with respect to any person or entity acting or causing actions which are within the code shall be exercised by the Rosebud Tribal court of the Rosebud Tribe.

8-3-1.3. RELATION OF THE CODE TO OTHER LAWS.

(a) State statutes and laws. To the extent to which the laws of the State of South Dakota may have been made applicable to the Rosebud Reservation, if there is a conflict between such laws and the provisions of this code, this code shall govern and shall pre-empt the application of such laws. To the extent that the laws of the State of South Dakota may be applicable to the subject matter of this code, such laws will be read to be advisory and not directly binding.

(b) Other tribal laws. To the extent that this code may conflict with tribal laws or ordinances which have been enacted previous to this code, this code controls.

(c) This code supplants and supersedes traditional and common law principles.

(d) This code shall be controlling over any other tribal code provision which may conflict with it, however, this code shall not be deemed to be exclusive. Cumulative remedies and provisions if not in conflict with each other are permitted.

8-3-1.4. PURPOSES OF THE CODE AND ITS INTERPRETATION. This code shall be liberally construed and applied to carry out its purposes and intent, and the code shall:

(a) Provide and complete and usable statement of rights, obligations and remedies of the owners, sellers, lessors, landlords, lessees, tenants and occupiers of such real property.

(b) Encourage owners and occupiers of dwellings to maintain and improve them in order to improve the quality of housing as tribal resource.

(c) Preserve the peace, harmony and safety of the people of the Rosebud Sioux Tribe and those permitted to enter or reside on the Rosebud Reservation.

8-3-1.5. DEFINITIONS. As used in this code the following words will have the meanings given them in this section:

(a) An "action", "suit" or "lawsuit", "claim", "complaint" or "defense" will include any dispute between persons or entities which relates to the sale, rental, use or occupancy of any housing, dwelling or accommodation for human occupancy, including claims for the payment of monies of such housing, dwellings or accommodation, damages to such units, fees, costs or expenses relating to them, the condition of such units or the relationship between owners and occupiers of such units, including the right to occupy them.

(b) "Building or housing codes" or any law, ordinance or governmental regulation of the Tribe or an agency of the United States which deals with fitness for habitation, health conditions or the safety, construction, maintenance, operation, occupancy, use or appearance of any dwelling unit.

(c) "Code" shall refer to the Rosebud Sioux Landlord/Tenant Code except when reference is made specifically to Rosebud Tribal Code.

(d) A "dwelling or dwelling unit" means a structure or part of a structure that is used as a home, residence or sleeping place by any person who maintains a household.

(e) An "Indian" is any person recognized as being an Indian or Alaska Native by any tribe, the Government of the United States or any state, or any person who is recognized or acknowledged to be "Indian" in the community and who has an ancestor or ancestors who resided on the North American continent prior to 1492.

(f) "Indian Country", the "territorial jurisdiction" or the "jurisdiction" of the Tribe shall include all lands owned by, held in trust for, leased, occupied or otherwise controlled by the Rosebud Tribe, as well as any such ownership or use by an entity of the Tribe, and those terms will include any and all areas which may constitute the "Indian Country" of the Tribe under applicable provisions of its laws or the laws of the United States.

(g) The "Indian Housing Authority" is that entity established under the laws of the Tribe, the laws of the State of South Dakota or otherwise, for the purpose of constructing and maintaining dwellings for public use within the territorial jurisdiction of the Tribe.

(h) A "landlord" is any person or entity or agency of government that is the owner, or sub-lessor of a dwelling unit and it also means a manager of any such dwelling unit.

(i) An "M.H.O." refers to Mutual Home Owner's agreement as utilized by the United States Department of Housing and Urban Development.

(j) An "owner" is any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use or control a dwelling unit under a mortgage, long-term lease or any other security arrangement.

(k) A "person" includes an individual or organization, and where the meaning of a portion of this code requires, it means a public agency, corporation, partnership or any other entity recognized by law.

(l) A "premises" is a dwelling unit and the structure of which it is a part, and all facilities and areas connected with it, including grounds, areas and facilities

intended for the use of tenants or whose use is either promised or practiced for tenants.

(m) "Rent" means all payments to be made to an owner or landlord for the lease, purchase or occupancy of a dwelling under an express or implied agreement for the purchase or occupancy of it. For the purposes of this code the term rent will be used to refer to payments to be made under any agreement for either the purchase of occupation of a dwelling, including all lease or mutual help and occupancy agreements between an Indian Housing Authority and any person. It shall also be deemed to include a "MHO Contribution". The term shall also include any payment due and owing for the purposes of any eviction due to a default in a mutual help and occupancy agreement, purchase agreement or other agreement for the sale of housing.

(n) A "rental agreement" means any agreement, written, oral or by practice of the parties, as well as valid rules and regulations regarding the terms and conditions for any use or occupancy of a dwelling or premises. For the purposes of this code it shall also include any agreement which governs the use and occupancy of a dwelling under a use and occupancy agreement, an MHO agreement or any sales agreement where a person has not yet achieved home ownership under that agreement.

(o) The "reservation" in this code is the Rosebud Reservation of the Rosebud Tribe.

(p) A "tenant" is any person to rent, purchase or occupy a dwelling under an agreement to rent, occupy or purchase a dwelling, and it includes any person actually occupying a dwelling that he or she does not own. It will also include any person of the same household of a tenant, including guests, actual occupiers, heirs or successors to any interest in a dwelling. It shall also include any person contracting under a scatter-site mutual help housing or similar arrangements.

(q) The "Tribe" is the Rosebud Tribe of the Rosebud Reservation of South Dakota.

8-3-2.1. SOURCES OF RIGHTS, OBLIGATIONS AND REMEDIES. The rights, obligations and remedies of landlords, as defined in this code, are contained in and their applicability are listed in order of significance as precedent in dispute resolution:

- (a) The laws of the Tribe;
- (b) Tribal building or housing codes;
- (c) Other laws which are made applicable through the provisions of the Rosebud Tribal Code;

(d) Agreements with occupiers of dwellings.

8-3-2.2. LANDLORD RIGHTS. Each landlord under this code has the right to:

(a) Be paid any rent or money due under an agreement within thirty (30) days from the agreed date of payment or within thirty (30) days following the first day of a month-to-month agreement for dwelling occupancy.

(b) Adopt reasonable rules and regulations for the use and occupancy of a dwelling which are designed to promote the convenience, safety or welfare of occupants, preserve the property from abusive or improper use, make a fair distribution or use of services and facilities for those who occupy dwellings or otherwise preserve the peace and quiet enjoyment of other tenants.

(c) Have access to the dwelling for maintenance, repairs, decorations, alterations or improvements, to inspect the premises, supply necessary or agreed services, or show the dwelling to prospective buyers or tenants, and to otherwise have reasonable access to the premises. Such access must be at reasonable times when the tenant is present, and after the landlord has made a reasonable effort to give the tenant a notice of at least 24 hours, except in situations involving an emergency or where the tenant consents. No tenant who unreasonably denies access to a landlord for these purposes may allege as a defense that any services or repairs were not provided.

(d) Require that any tenant comply with codes or regulations regarding housing, health, safety or public order, keep the premises reasonably clean and safe, dispose of all ashes, garbage, rubbish and waste in a clean and safe manner, keep the premises and its parts in good repair, reasonably use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning or other facilities and appliances, conduct himself or herself and require others on the premises to conduct themselves in a way that will not disturb the peaceful enjoyment of others or abuse property, use all parts of the premises in a way they were intended or designed, and refrain from destroying, defacing, damaging or removing any part of the premises or allow any other to do so.

(e) Reasonably enjoy all rights which are given by law or the agreement of the parties.

(f) Administrative process fees incurred in the successful eviction of a tenant and/or money judgment entered against a tenant in an amount of \$25.00.

8-3-2.3. LANDLORD OBLIGATIONS.

Every landlord under this code has these obligations:

(a) To maintain the dwelling in a habitable condition.

(b) To guarantee the right of quiet enjoyment of the dwelling to the tenant and insure that the conduct of the tenants and those with them do not cause a nuisance, endangerment of public health and safety, breach of the peace or interference with the quiet enjoyment of others.

(c) To comply with applicable building or housing codes.

(d) To make necessary repairs to the premises within a reasonable time after the request is received in writing from the tenant, except where the tenant has that obligation by agreement or applicable law.

(e) To keep dwellings, facilities and common areas which are not assigned to a specific tenant in a clean and safe condition.

(f) To provide running water and hot water and heat which is appropriate for the season of the year and in accordance with applicable housing and health codes.

(g) To give possession of the premises to the tenant in accordance with the agreement to occupy.

(h) To respect the rights of tenants as set forth in this code.

8-3-2.4. REMEDIES. Where a tenant has not complied with this code or the agreement of the parties, the landlord has the right to:

(a) Give reasonable notice to the tenant to comply with his or her obligations, pay any monies due and owing under the agreement of the parties, or to terminate the agreement under which the tenant occupies the premises and demand that he and those with him leave the premises.

(b) Require repairs or maintenance which are the responsibility of the tenant and demand compliance with reasonable rules and regulations for occupancy. The landlord has the specific right to terminate the lease or occupancy agreement upon failure of tenant to so comply.

(c) Seek a court order or judgment for the payment of monies or costs, compliance with the agreements and obligations of tenants, terminate an agreement, payment of damages, eviction of tenants and any other relief to which he may be entitled to by law or the agreement of the parties, provided that no order of eviction shall be executed during the months of November, December, January, February or March except upon specific finding by the court that such an eviction would not endanger the lives or

property of the occupants by subjecting the same to intolerable, harsh weather and living conditions.

8-3-3.1. TENANTS RIGHTS. Each tenant under this code shall have the right to:

(a) Quiet enjoyment of the premises.

(b) Apply to the tribal court in any action authorized by this code or law, to enforce rights under this code.

(c) All notices as prescribed by this code, prior to any action by any landlord being taken adverse to the rights of any tenant.

(d) Refund of deposit as required in the occupancy agreement, or receipt of double the deposit upon application to the court.

(e) Reasonably enjoy all rights which are given by law or the agreement of the parties.

(f) Administrative process fees incurred in a successful legal action against any landlord in the amount of \$25.00.

8-3-3.2. TENANT OBLIGATION. Every tenant under this code will have these obligations:

(a) To pay rent, purchase payments, costs, fees, or damages in accordance with the agreement of the parties, this code and applicable law.

(b) To respect and comply with the rights of landlords recited in § 8-3-2.3 of this code, and any terms and conditions which may be entered into by written lease if not expressly contradictory to this code.

(c) To maintain the premises in a safe and clean manner, and to otherwise maintain the premises as may be required by agreement or this code and conduct themselves and their guests and invitees in using the premises and common areas in a way which does not disturb the quiet enjoyment of others or cause a breach of the peace.

(d) To comply with all provisions and conditions contained in the lease or occupancy agreement unless such provision expressly conflicts with this code.

(e) To refrain from illegal conduct or any other activity that is contrary to written or traditional law which may harm the physical or social environment of the premises or the area around it.

8-3-3.3. TENANT REMEDIES. If the landlord fails to make repairs as required under this code or written agreement, the tenant may, provided the tenant has given written notice to the landlord:

(a) Terminate the occupancy agreement.

(b) Pay rental payments in an authorized escrow account, awaiting a negotiated or judicial resolution to the problem.

8-3-4.1. GROUNDS FOR EVICTION. Any tenant, as defined in this code, may be evicted from any premises, ordered to pay damages and costs, or otherwise be subjected to the order of judgment of the tribal court for the breach of any obligation under this code, any agreement, including an agreement to purchase or rent any dwelling, or for any other obligation provided by law. A tenant may be evicted for:

(a) Nonpayment of payments under an agreement for the purchase or occupation of a dwelling when such payments are not made consistent with the terms of the agreement between the parties.

(b) Nuisance, property damage or destruction, injuries to the property, person or peace of other tenants, or injuries or damages to common areas and property.

(c) Abandonment of the premises by failing to pay rent and by establishing a place of abode or dwelling or sleeping quarters at any location other than the premises for more than thirty (30) days.

(d) Substantial noncompliance with this code, building or housing codes or the reasonable rules and regulations of the landlord.

(e) Occupying any premises without permission or agreement, following any reasonable demand by a person in authority over the premises to leave.

(f) Any violation of the lease or occupancy agreement which continues after written request by the landlord served by certified mail, return receipt requested.

8-3-4.3. MANNER OF GIVING NOTICE.

(a) Notices other than notices to cancel or terminate an agreement. Any notice to a landlord or tenant to comply with the agreement of the parties or this code, other than a notice to cancel or terminate the agreement of the parties, may be given as provided by the agreement of the parties by mailing to last known address of the tenant.

(b) Notices to cancel quit or terminate agreements, and Summons and Complaint. Any notice to cancel or terminate an agreement for the purchase, notice to quit, or summons and complaint delivered to tenant must be in writing, and must be delivered to the tenant or landlord in the following manner:

(1) Delivery must be made by:

(a) A law enforcement officer of the Tribe, an agency of the United States, or where otherwise provided by law, the State;

(b) Any person authorized by the Tribal Court to complete service of process; or

(c) Any adult member of the Tribe who resides on the reservation who is not party to the action.

(2) Delivery will be effective when it is:

(a) Personally delivered to a tenant;

(b) Personally delivered to any person over 14 years of age in the premises; or

(c) Personally delivered to an adult agent or employee of the landlord or tenant.

(3) If the notice cannot be given by means of personal delivery or the landlord or tenant cannot be found after one attempt, the notice may be delivered by means of:

(a) Certified mail, return receipt requested, at the last known address of the landlord or tenant; or

(b) Securely taping a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, and posting a copy of the notice in some public place near the premises, including a tribal office, public store or other commonly frequented place.

(4) The person giving notice must keep a copy of the notice and proof of service in accordance with this action, by signed return or other manner recognized by law.

8-3-4.4. TERMINATION OF LEASE. An agreement of the parties for the lease of a premises, and not for the purchase of a premises, may be terminated in the following manner:

(a) Upon agreement of the parties.

(b) For violation of the terms of the lease.

(c) For any termination for violation of the lease agreement, written notice must first be given to the tenant or landlord. The written notice must contain the reasons for the termination.

(d) The notice must be delivered within the following period of time:

(1) No less than fourteen (14) days prior to the termination of the lease for any failure to pay rent or other payments required by the agreement;

(2) No less than three (3) days prior to the termination of the lease for nuisance, serious injury to property or injury to persons. In situations where there is an emergency, such as a fire or condition making the dwelling unsafe or inhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be made in a period of time which is reasonable, given the situation.

(3) No less than thirty (30) days in all other situations.

8-3-4.5. TERMINATION OF A PURCHASE AGREEMENT OR MHO AGREEMENT.

An agreement of the parties for the purchase of a dwelling may be terminated in the following manner:

(a) Where the landlord is an Indian Housing Authority, the purchase or MHO agreement may be terminated for failure to comply with obligations under the agreement, misrepresentation or withholding of material information with respect to admission, income or family composition or any other material breach of the agreement. In all other cases the agreement may be terminated for its breach.

(b) The notice of termination must be in writing and must contain:

- (1) The reason(s) for termination;
- (2) A statement that the homebuyer or tenant may respond to the landlord in writing or in person regarding the reason given;
- (3) A statement of the time in which the response must be made;
- (4) Where the person giving notice is an Indian Housing Authority, a statement that the person may be represented or accompanied by a person of his choice, including a representative of the Tribe;
- (5) Where the person giving notice is an Indian Housing Authority, a statement that the agreement will terminate on the thirtieth (30th) day after the date of receipt of the notice, but that if within that time the person receiving notice gives satisfactory evidence or assurances he or she will cure the breach and continue to carry out his or her obligations under the agreement, the Indian Housing Authority may rescind or extend the notice. There shall also be a statement that if there is no rescission or extension, the agreement shall terminate on the thirtieth (30th) day after the date of receipt of the notice.
- (6) In situations where the person giving notice is not an Indian Housing Authority, the notice must state the date of termination of the agreement, which must be no sooner than the thirtieth (30) day after delivery of the notice.

(c) In all cases, the notice must be delivered no less than thirty (30) days prior to the termination of the agreement and a reasonable opportunity must be given to the person receiving notice to discuss or contest the reason for termination and to cure any breach.

(d) Notice may be delivered in the same manner as notice to terminate, quit or cancel under Section 8-3-4.3 (b).

8-3-4.6. NOTICE TO QUIT. Following any

notice which terminates or cancels an agreement a tenant may be given a notice to quit possession of the premises. Except by mutual consent of the parties, no landlord may compel a tenant to vacate any premises in a forceful fashion or way which causes a breach of the peace without giving a notice to quit and obtaining a court order of eviction. For purposes of this section, a notice to quit shall be the same as the notice provided in 8-3-4.4.

8-3-5.1. CIVIL ACTION. An eviction action shall be deemed a civil action and the rules established for the prosecution of a civil action shall apply.

8-3-5.2. SUMMONS AND COMPLAINT

FILING. The complaining party shall, prior to a case being deemed instituted, file with the Clerk of Court a Summons and Complaint. Filing fees for the Rosebud Housing Authority are waived.

8-3-5.3. SUMMONS AND COMPLAINT CONTENTS.

(a) The Summons shall contain at least the following:

- (1) The name and venue of the court;
- (2) The name of the parties;
- (3) The length of time to respond to the Complaint;
- (4) That if no response is made to the Complaint, judgment may be obtained for the relief requested in the Complaint;
- (5) Signature and name of the tribal judge or advocate who is representing the Complaint.

(b) The Complaint shall contain at least the following:

- (1) The name and venue of the court;
- (2) The name of the parties;
- (3) The signature, name, address and phone number of the complainant or person representing the complainant;
- (4) Location of the leased premises;
- (5) A description of the obligation the tenant has breached or the reason for the action;
- (6) A statement showing that any required notices and the notice to quit have been served in accordance with the provisions of this code requiring them;
- (7) The relief demanded, including any claims for damages, fees, costs or other special relief.

(c) An authorized agent of the Rosebud Housing Authority may serve all necessary documents on behalf of the Housing Authority provided a proper Affidavit of Service is filed with the court.

(d) No Complaint and Summons may be filed prior to a notice to quit being served upon the tenant.

8-3-5.4. ANSWER. Any party served with a Summons and Complaint shall respond to the person whose signature appears upon the Summons within seven (7) days by serving a copy of their written answer upon the Plaintiff. If that party fails to so answer, a default judgment upon proof being shown may be entered against that party for the relief requested and shown by testimony or affidavit to be valid. The defendant shall answer any eviction allegations as set forth in Section 8-3-5.5 below, unless the situation and conditions dictate an earlier eviction hearing.

Any counterclaim or defenses that the defendant may assert shall be served upon the opposing party within the time period for answering the respective claim in the complaint—e.g., eviction or money damages.

The opposing party shall respond to any counterclaim within fifteen (15) days of service of any counterclaim.

8-3-5.5. APPEARANCE DATE AND JUDGMENT.

(a) If the tenant answers in writing to contest the complaint, the court must set a hearing date. An answer must state any defenses or factual disputes and must be served upon the Plaintiff within five (5) days of any hearing, excluding weekends and holidays.

(b) An eviction case must be given a hearing date which is no more than fifteen (15) days following the date of service of the Summons and Complaint, except when the hearing date would fall on a weekend or holiday, and in such a situation, on the first working day following that date. A separate hearing for damages may be scheduled at a later date.

(c) A party may, for good cause shown, and upon the payment of a reasonable sum for the fair rental value of the premises between the date on which the complaint was filed and the date of hearing, obtain an extension of time beyond the fifteen (15) day period. The court may refuse to extend the date of hearing where the complaint is based upon conduct which is alleged to constitute a serious danger to public health, safety or peace.

(d) If a tenant fails to answer in the time periods set forth above in writing the complainant may after testimony or affidavit to prove that he is entitled to the relief

requested and the court upon such proof shall enter judgment accordingly.

8-3-5.6. PREHEARING CONFERENCES.

The court may require that the parties attend a prehearing conference prior to the hearing in order to simplify the issues and evidence at trial and to discuss a reasonable disposition of the case.

8-3-5.7. JUDGMENT. Within fifteen (15) days of the date of the hearing, the court must grant and enter judgment and the judgment may:

(a) Order the immediate eviction of a tenant and delivery of the premises to the landlord;

(b) Grant actual damages as provided in the agreement of the parties or this code, including interest;

(c) Order the parties to carry out an obligation required by law;

(d) Order the payment of attorney fees, where allowed by law or agreement, costs of expenses of litigation; or

(e) Grant any relief provided in this code or allowed in law or equity.

8-3-5.8. FORM OF JUDGMENT. The judgment shall state the relief granted by the court to any party and shall state findings of fact or conclusion of law in support of the judgment. The prevailing party shall cause to be served upon the losing party a copy of the judgment and notice of entry of judgment by either mailing a copy to the last known address or by hand delivering of the same a minimum of five (5) days prior to executing upon such judgment.

8-3-5.9. EXECUTION OF JUDGMENTS.

No judgment may be executed until fifteen (15) days have passed from the notice of entry of judgment. The judgments and orders of the court shall be enforced by a duly authorized law enforcement officer of the Rosebud Sioux Tribe of the Bureau of Indian Affairs. Any law enforcement officer must, upon receipt of an order of the court, execute the judgment or order made by it within five (5) days of the date of judgment or order to make a report to the court on what was done to enforce it. Any law enforcement officer to whom a judgment or order is given for enforcement who fails or refuses to execute it within five (5) days of receipt may be prosecuted for contempt of court.

8-3-5.10. STAY OF EXECUTION. The losing party may apply for a stay of execution of the judgment or order if:

(a) An appeal bond is paid to the court in the amount of rental arrearage and damages caused.

8-3-5.11. APPEALS. Appeals may be pursuant to the Rosebud appellate code provided there is an authorized escrow account or surety bond sufficient to pay for all rental payments due through judgment and three months thereafter and all assessed costs, fees and expenses plus \$200.00 for costs which might be incurred on appeal. All appeals must be filed within fifteen (15) days of the notice of entry of judgment.

8-3-5.12. PROPERTY EXEMPT FROM JUDGMENTS FOR MONEY. There shall be exempt from the satisfaction or payment of all judgments for money, property is listed in Title 4, Chapter 1, Rule 64 of the Rosebud Sioux Tribal Code.

8-3-5.13. MISCELLANEOUS PROVISIONS. Any provision of law which is in direct conflict with this code shall be deemed repealed, and should any provision of this code be found to be null, void or contrary to law, such a finding will not affect the validity and enforceability of the remainder hereof.

CHAPTER 4 – HABEAS CORPUS

- 8-4-1. Right Of Person Detained or Imprisoned To Apply For Writ
- 8-4-2. Inquiry Into Delay In Bringing Criminal Prosecution To Trial – Powers Of Court On Return Of Writ
- 8-4-3. Contents Of Application For Writ – Documentary Authority For Commitment Attached
- 8-4-4. Counsel Appointed
- 8-4-5. Writ Awarded Unless Application Shows No Right To Relief
- 8-4-6. Forfeiture By Judge For Refusal or Delay In Issuing Writ
- 8-4-7. Writ Used To Produce Prisoners For Testimony In Criminal Proceedings
- 8-4-8. Service Of Writ – Return Of Writ and Production Of Body Before Judge
- 8-4-9. Contempt and Forfeiture By Sheriff or Jailer For Failing

- 8-4-10. To Return Writ and Produce Applicant Day Set For Hearing Of Cause
- 8-4-11. Hearing and Disposition Of Cause By Judge
- 8-4-12. Causes For Discharge Of Applicant Committed On Judicial Process
- 8-4-13. Intertribal Court Of Appeals
- 8-4-14. Remand To Custody or Admission To Bail Pending Review or Order Discharging Writ

8-4-1. RIGHT OF PERSON DETAINED OR IMPRISONED TO APPLY FOR WRIT.

When any person shall be committed or detained, imprisoned or restrained of his or her liberty, under any color or pretense whatever, civil or criminal, he or she may apply to the Court for a writ of habeas corpus.

8-4-2. INQUIRY INTO DELAY IN BRINGING CRIMINAL PROSECUTION TO TRIAL – POWERS OF COURT TO

RETURN WRIT. Any person committed for a criminal offense and not brought to trial, as provided by the provisions of this code, is entitled to have the delay inquired into upon a writ of habeas corpus, and the court or judge, upon the return of such writ, shall have power to remand or discharge the applicant or to admit him to bail, with or without sureties as the case may be.

8-4-3. CONTENTS OF APPLICATION FOR WRIT – DOCUMENTARY AUTHORITY FOR COMMITMENT

ATTACHED. An application for writ of habeas corpus shall be in writing and signed by the applicant or some person on his behalf, setting forth the facts concerning his detention and in whose custody he is detained, and shall be accompanied by a copy of the warrant of commitment or other documentary authority, if any, or by an affidavit that such copy has been demanded of the person in whose custody he is detained and by him refused or not given.

8-4-4. COUNSEL APPOINTED. In any case where a person shall have been committed, detained, imprisoned, or restrained of his or her liberty, under any color or pretense whatever, civil or criminal, and where upon application made in good faith to the court or judge thereof, having

jurisdiction, for a writ of habeas corpus, it is satisfactorily shown that such person is without the means to prosecute the proceeding, the court or judge shall appoint counsel for such indigent person.

8-4-5. WRIT AWARDED UNLESS APPLICATION SHOWS NO RIGHT TO RELIEF.

The court or judge to whom the application for a writ of habeas corpus is made shall forthwith award the writ, unless it shall appear from the application itself or from any document annexed thereto, that the applicant can neither be discharged nor admitted to bail, nor in any other manner relieved.

8-4-6. FORFEITURE BY JUDGE FOR REFUSAL OR DELAY IN ISSUING WRIT.

Any judge empowered by this chapter to issue writs of habeas corpus, who shall corruptly refuse to issue such a writ, when legally applied to, in a case where such writ may lawfully issue, or who shall, for the purpose of oppression, unreasonably delay the issuing of such writ, shall, for every such offense, forfeit to the prisoner or person aggrieved the sum not exceeding five hundred dollars. Recovery of the penalty provided herein shall be no bar to a civil suit for damages.

8-4-7. WRIT USED TO PRODUCE PRISONERS FOR TESTIMONY IN CRIMINAL PROCEEDINGS.

The Tribal Court shall have power to issue writs of habeas corpus for the purpose of bringing any person imprisoned in any prison before any court or magistrate, to testify in any criminal action or proceeding and returning such person to such person.

8-4-8. SERVICE OF WRIT – RETURN OF WRIT AND PRODUCTION OF BODY BEFORE JUDGE.

Whenever a writ of habeas corpus shall, by any person, be served upon the sheriff, jailer, keeper, or other person to whom the same shall be directed, or is brought to him or left with any of his under officers or deputies at the jail or place where the applicant is detained, he or some of his under officers or deputies, shall, make return of such writ, and bring, or cause to be brought, the body of the applicant before the court or judge who granted the writ, and certify the true cause of his detention.

8-4-9. CONTEMPT AND FORFEITURE BY SHERIFF OR JAILER FOR FAILING TO RETURN WRIT AND PRODUCE APPLICANT.

If any officer, sheriff, jailer, keeper, or other person to whom any writ of habeas corpus is directed shall neglect or refuse to make the return, or to bring the body of the applicant according to the command of such writ, he shall be punished for contempt and shall also forfeit to the prisoner or person aggrieved the sum not exceeding five hundred dollars. Recovery of the penalties provided herein shall be no bar to a civil suit for damages.

8-4-10. DAY SET FOR HEARING OF CAUSE.

Upon the return of the writ of habeas corpus, a day shall be set for the hearing of the cause of imprisonment or detainer, not exceeding five days thereafter, unless the applicant shall request a longer time.

8-4-11. HEARING AND DISPOSITION OF CAUSE BY JUDGE.

The court or judge shall proceed in a summary way to settle the facts by hearing the evidence and arguments, as well of all person interested civilly, if any there be, as of the applicant and the person who holds him in custody, and shall dispose of the applicant as the case may require.

8-4-12. CAUSES FOR DISCHARGE OF APPLICANT COMMITTED ON JUDICIAL PROCESS.

If it appears on the return of a writ of habeas corpus that the applicant is in custody by virtue of process from any court legally constituted, he can be discharged only for one or more of the following causes:

(1) Where the court has exceeded the limit of its jurisdiction, either as to the matter, place, sum, or person;

(2) Where, through the original imprisonment was lawful, yet by some act, omission, or event, which has subsequently taken place, the party has become entitled to his discharge;

(3) Where the process is defective in some substantial form required by law;

(4) Where the process, though in proper form, has been issued in a case or under circumstances where the laws do not allow process or orders for imprisonment or arrest to issue;

(5) When, although in proper form, the process has been issued or executed by a person either unauthorized to issue or execute the same, or where the person

having the custody of the applicant, under the process, is not the person empowered by law to detain him;

(6) Where the process appears to have been obtained by fraud, false pretense, or bribery; or

(7) Where there is not general law nor any judgment, order, or decree of a court to authorize the process, if in a civil suit, nor any conviction, if in a criminal proceeding.

8-4-13. INTERTRIBAL COURT OF APPEALS ORDER REQUIRED FOR ADMISSION TO BAIL PENDING APPLICATION FOR WRIT OR PENDING APPELLATE REVIEW. The prisoner shall not be admitted to bail pending application for the writ of habeas corpus, or pending appellate review of an order refusing the writ, except by order of the Intertribal Court of Appeals or one of the judges thereof.

8-4-14. REMAND TO CUSTODY OR ADMISSION TO BAIL PENDING REVIEW OR ORDER DISCHARGING WRIT. Pending appellate review of an order discharging a writ of habeas corpus after it has been issued, the prisoner may be remanded to the custody from which he or she was taken by the writ, or detained in other appropriate custody, or admitted to bail, as to the court of judge rendering the decision may appear fitting in the circumstances of the particular case.

CHAPTER 5 – LIABILITY FOR DEFAMATION

8-5-1.	Obligation To Refrain From Defamation
8-5-2.	Classes Of Defamation
8-5-3.	Libel Defined
8-5-4.	Slander Defined
8-5-5.	Privileged Communications – Malice Not Inferred By Publication

8-5-1. OBLIGATION TO REFRAIN FROM DEFAMATION. Every person is obligated to refrain from infringing upon the right of others not to be defamed.

8-5-2. CLASSES OF DEFAMATION. Defamation is effected by:
(1) Libel; or
(2) Slander

8-5-3. LIBEL DEFINED. Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him or her to be shunned or avoided, or which has a tendency to injure him in his occupation.

8-5-4. SLANDER DEFINED. Slander is a false and unprivileged publication, other than libel, which:

(1) Tends directly to injure him or her in respect to his or her officer, profession, trade, business, either by imputing to him general disqualifications in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profit; or

(2) By natural consequence, causes actual damage.

8-5-5. PRIVILEGED COMMUNICATIONS – MALICE NOT INFERRED BY PUBLICATION. A privileged communication is one made:

(1) In the proper discharge or an official duty;

(2) In any legislative or judicial proceeding, or in any other official proceeding authorized by law;

(3) In a communication, without malice, to a person interested therein, by one who is also interested, or by one who stands in such relation to the person interested as to afford a reasonable ground for supporting the motive for the communication innocent, or who is requested by the person interested to give the information;

(4) By a fair and true report, without malice, of a judicial, legislative, or other public official proceeding or of anything said in the course thereof.

CHAPTER 6 – ACTION FOR DAMAGES GENERALLY

8-6-1.	Right To Damages
8-6-2.	Nominal Damages
8-6-3.	Damages To Be Reasonable
8-6-4.	Punitive Damages
8-6-5.	Interest

8-6-1. RIGHT TO DAMAGES FOR DETRIMENT FROM UNLAWFUL ACT OR OMISSION OF ANOTHER. Every person who suffers detriment from the unlawful act

or omission of another may recover from the person in fault a compensation thereof in money, which is called damages. Detriment is a loss or harm suffered in person or property.

8-6-2. NOMINAL DAMAGES FOR BREACH OF DUTY WITHOUT

DETRIMENT. When a breach of duty has caused no appreciable detriment to the party affected, he or she may yet recover nominal damages.

8-6-3. DAMAGES TO BE REASONABLE.

Damages must in all cases be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly offensive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

8-6-4. PUNITIVE DAMAGES ONLY AS

PROVIDED. The general remedy by damages does not include punitive damages.

8-6-5. INTEREST.

Interest on damages awarded shall be 15% from the date of judgment until paid.

CHAPTER 7 – DAMAGES FOR BREACH OF CONTRACT

- 8-7-1. General Measures Of Damages for Breach Of Contract
- 8-7-2. Damages For Breach Of Obligation
- 8-7-3. Damages For Breach Of Agreement To Buy
- 8-7-4. Damages For Breach Of Agreement To Sell

8-7-1. GENERAL MEASURE OF DAMAGES FOR BREACH OF CONTRACT – UNCERTAIN DAMAGES NOT

RECOVERED. For the breach of an obligation arising from contract, the measure of damages is in the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom. No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and their origin.

8-7-2. DAMAGES FOR BREACH OF OBLIGATION TO PAY MONEY.

The measure of damages for breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation with interest thereon.

8-7-3. DAMAGES FOR BREACH OF AGREEMENT TO SELL REAL

PROPERTY. The detriment caused by the breach of an agreement to convey an estate in real property is deemed to be the price paid, and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon; but adding thereto, in case of bad faith, the difference between the price agreed to be paid, and the value of the estate agreed to be conveyed, at the time of the breach, and the expenses properly incurred in preparing to enter upon the land.

8-7-4. DAMAGES FOR BREACH OF AGREEMENT TO BUY REAL PROPERTY.

The detriment caused by the breach of an agreement to purchase an estate in real property is deemed to be the excess, if any, of the amount which would have been due to the seller under the contract, over the value of the property to him.

CHAPTER 8 – PERSONAL INJURIES

- 8-8-1. General Measure Of Damages for Breach Of Noncontractual Obligation
- 8-8-2. Punitive Damages
- 8-8-3. Presumed Damages
- 8-8-4. General Measure Of Damages For Wrongful Occupation Of Real Property
- 8-8-5. Treble Damages
- 8-8-6. Double Damages For Failure Of Tenant To Give Up Premises after Notice Of Intention
- 8-8-7. Double Damages For Holding Over By Tenant after Expiration Of Term and Notice To Quit

8-8-1. GENERAL MEASURE OF DAMAGES FOR BREACH OF

NONCONTRACTUAL OBLIGATION. For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

8-8-2. PUNITIVE DAMAGES IN DISCRETION OF JURY OR TRIBAL COURT.

In any action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, actual or presumed, or in any case of wrongful and wonton misconduct, in disregard of humanity, the jury or trial court in addition to the actual damage, may give damages for the sake of example, and by way of punishing the defendant.

8-8-3. PRESUMED DAMAGES FOR WRONGFUL CONVERSION OF PERSON PROPERTY.

Presumptions conclusive when possession wrongful from beginning. The detriment caused by the wrongful conversion of personal property is presumed to be:

(1) The value of the property at the time of the conversion, with the interest from that time;

(2) Where the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict, without interest, at the option of the injured party;

(3) A fair compensation for the time and money properly expended in pursuit of the property. Such presumptions cannot be repelled in favor of one whose possession was wrongful from the beginning by his subsequent application of the property to the benefit of the owner, without his consent.

8-8-4. GENERAL MEASURE OF DAMAGES FOR WRONGFUL OCCUPATION OF REAL PROPERTY.

The detriment cause by the wrongful occupation of real property, is deemed to be the value of the use of the property for the time of such occupation, not exceeding six years next preceding the commencement of the action or proceeding to enforce the rights of damages, and the costs, if any, of recovering the possession.

8-8-5. TREBLE DAMAGES FOR FORCIBLE EXCLUSION FROM REAL PROPERTY.

For forcible ejecting or excluding a person from the possession of real property, the measure of damages is three times such a sum as would compensate for the detriment caused to him by the act complained of.

8-8-6. DOUBLE DAMAGES FOR FAILURE OF TENANT TO GIVE UP PREMISES AFTER NOTICE OF INTENTION.

For the failure of a tenant to give the premises held by him, when he has given notice of his intention to do so, the measure of damages is double the rent which he ought to otherwise pay.

8-8-7. DOUBLE DAMAGES FOR HOLDING OVER BY TENANT AFTER EXPIRATION OF TERM AND NOTICE TO QUIT.

For willfully holding over real property, by a tenant after the end of his term, and after notice to quit has been duly given, and demand of possession made, the measure of damages is double the yearly value of the property, for the time of withholding, in addition to compensation for the detriment occasioned thereby.

CHAPTER 9 – SMALL CLAIMS PROCEDURE

- 8-9-1. Purpose and Scope Of Procedure
- 8-9-2. Alternative To Other Actions
- 8-9-3. Filing Fee; Summons Not Required; Statement To Clerk or Justice in Lieu Of Pleading
- 8-9-4. Assistant Clerk Authorized To Act
- 8-9-5. Plaintiff’s Statement Of Claim to Clerk; Entry Of Docket
- 8-9-6. Plaintiff’s Employment
- 8-9-7. Determination of Sufficiency of Plaintiff’s Statement
- 8-9-8. Time Of Hearing; Memorandum To Plaintiff
- 8-9-9. Notice by Mail To Defendant; Form Of Notice
- 8-9-10. Docket Entries On Notices To Defendant
- 8-9-11. Jury Trial and Appeal Waived
- 8-9-12. Docket Entry Of Defense; Contents Of Entry
- 8-9-13. Setoff or Counterclaim Stated By Defendant; Notice To Plaintiff
- 8-9-14. Disposition Of Claim On Failure Of Plaintiff To Appear For Hearing
- 8-9-15. Witnesses and Evidence Received On Hearing
- 8-9-16. After The Determination

8-9-17. Court Order As To Method Of Payment Of Judgment; Stay Of Execution During Compliance

8-9-1. PURPOSE AND SCOPE OF PROCEDURE. The purpose of this chapter is to provide for a simple, informal, and inexpensive procedure for the determination of claims in the nature of contract and tort in which plaintiff does not claim as a debt or damages, more than Two Thousand Dollars (\$2,000.00).

8-9-2. ALTERNATIVE TO OTHER ACTIONS. The procedure set forth herein shall not be exclusive but shall be alternative to the formal procedure for actions begun by summons.

8-9-3. FILING FEE; SUMMONS NOT REQUIRED; STATEMENT TO CLERK OR JUSTICE IN LIEU OF PLEADING. The procedure shall involve the payment of a filing fee but without summons, and without requirement, except by order of the Court, or any other pleading than a statement to the Clerk of Court or Judge, who shall reduce the same to concise written form in a docket kept for the purpose.

8-9-4. ASSISTANT CLERK AUTHORIZED TO ACT. The word "Clerk" in this chapter shall include an assistant Clerk. If the claim is filed with a Judge, the duties to be performed by the Clerk in this Chapter shall be performed by the Judge.

8-9-5. PLAINTIFF'S STATEMENT OF CLAIM TO CLERK; ENTRY IN DOCKET. The Plaintiff or attorney shall also state to the Clerk who, after due inquiry, shall cause the claim to be reduced to writing in the docket in concise, untechnical form, and to be signed by the Plaintiff or attorney. The signature shall be deemed the beginning of the action.

8-9-6. PLAINTIFF'S PLACE OF EMPLOYMENT. The plaintiff or attorney shall also state to the Clerk the Plaintiff's place of employment, or such thereof as the Clerk may deem necessary, and the Clerk shall note the same in the docket.

8-9-7. DETERMINATION OF SUFFICIENCY OF PLAINTIFF'S STATEMENT. If the Clerk deems the

statement of claim insufficient, the Court at the request of the Plaintiff or attorney shall decide whether such claim shall be received.

8-9-8. TIME OF HEARING; MEMORANDUM TO PLAINTIFF. The Clerk shall fix the time set for hearing. The time fixed should be sufficient to enable registered or certified mail by regular course, or person service, to reach defendant and to enable Defendant to appear in person or by attorney before the Court. The Clerk shall give to the person signed the claim a memorandum of the time and place set for hearing.

8-9-9. NOTICE BY MAIL TO DEFENDANT; FORM OF NOTICE. The Clerk shall mail to the Defendant, at one or more of the addresses supplied by the Plaintiff, as the Clerk may deem necessary or proper, by registered or certified mail, return receipt requested, the expense being prepaid by the Plaintiff, or cause to be served upon the Defendant personally, a notice signed by the Clerk which, after setting forth the name of the Court.

8-9-10. DOCKET ENTRIES ON NOTICES TO DEFENDANTS. The Clerk shall note in the docket, the mailing date and address, the date of delivery shown by the return receipt and the name of the addressee or agent signing the receipt. If Defendant is served personally, the Clerk shall note the month, day, and year of service and the name of the person making service.

8-9-11. JURY TRIAL AND APPEAL WAIVED. All actions begun under this procedure shall be decided by the Court without Jury and no right of appeal shall exist.

8-9-12. DOCKET ENTRY OF DEFENSE; CONTENTS OF ENTRY. The Clerk shall enter the substance of the defense in the docket, and the docket entry shall be deemed the answer. The answer shall state fully and specifically, but in concise and untechnical form, what parts of the claim are contested, and grounds of the contest.

8-9-13. SETOFF OR COUNTERCLAIM STATED BY DEFENDANT; NOTICE TO PLAINTIFF. The Defendant within the time for answer may, in the manner provided in 8-9-5 claim any setoff or counterclaim within the jurisdiction of the Court. Upon making of

such claim by Defendant, the Clerk shall give a notice to the Plaintiff similar to that provided in 8-9-9. The Defendant's claim shall be answered in the manner provided in 8-9-9.

8-9-14. DISPOSITION OF CLAIM ON FAILURE OF PLAINTIFF TO APPEAR FOR HEARING.

If the Plaintiff does not appear at the time set for hearing, the Court may dismiss the claim for want of prosecution or enter a finding on the merits for the Defendant or make such other disposition as may be proper.

8-9-15. WITNESSES AND EVIDENCE RECEIVED ON HEARING.

Witnesses shall be sworn, but the Court shall conduct the hearing in such order and form and with such methods of proof as it deems best suited to discover the facts and to determine the justice of the case.

8-9-16. AFTER THE DETERMINATION.

After the determination of the action, the Judge shall affix his signature to the docket card.

8-9-17. COURT ORDER AS TO METHOD OF PAYMENT OF JUDGMENT; STAY OF EXECUTION DURING COMPLIANCE.

The Court may order that the judgment shall be paid to the prevailing party or, if it so orders, into Court for the use of the prevailing party at a certain date or be specified installments, and may stay the issue of execution during compliance with such order.

CHAPTER 10 – REMOVAL OF NON-MEMBERS

8-10-1.	Definitions
8-10-2.	Who May Be Excluded; Extent Of Exclusion
8-10-3.	Grounds For Exclusion
8-10-4.	Request To Tribal Prosecutor
8-10-5.	Prosecutorial Discretion To Bring Exclusion Action
8-10-6.	Filing In Tribal Court – Notice Of Hearing
8-10-7.	Tribal Court Exclusion Hearing
8-10-8.	Tribal Court Findings Of Fact and Recommendation As To Sanction
8-10-9.	Final Action By Tribal Council – Discretionary Hearing

8-10-10.	Enforcement Proceedings
8-10-11.	Physical Removal – Emergency
8-10-12.	Finality Of Exclusion Order

8-10-1. DEFINITIONS. As used in this chapter.

(1) "Rosebud lands" means:

(a) Lands owned by or held in trust for the Rosebud Sioux Tribe, the Tribal Land Enterprise, or any other tribal entity, regardless of whether such lands are located inside or outside the Rosebud Reservation; and

(b) Allotments inside the Rosebud Reservation which are either held in trust by the United States for an individual Indian or Indians, or owned by an individual Indian or Indians and subject to restrictions upon alienation imposed by the United States; provided, that the term does not include public highways on such lands.

(2) "Complaining witness" means the person, acting for himself or as an officer or staff member of a tribal entity, who files a request pursuant to Section 6 that the Tribal Prosecutor bring an exclusion action on behalf of the Tribe.

(3) "Respondent" means the person against whom the exclusion action is filed.

8-10-2. WHO MAY BE EXCLUDED; EXTENT OF EXCLUSION. Any non-member of the Rosebud Sioux Tribe, except a person authorized by federal law to be present on Rosebud lands, may be temporarily or permanently excluded and removed from all or any portion of Rosebud lands.

8-10-3. GROUNDS FOR EXCLUSION.

Any non-member may be excluded and removed from Rosebud lands, as provided in this Ordinance, for commission of one or more of the following acts inside the Reservation or Rosebud lands outside the Reservation:

(1) Disorderly conduct.

(2) Repeated public drunkenness.

(3) Entering an area in violation of any order of the Tribal Council designating such area as closed because of fire hazard or for any other reason.

(4) Failing or refusing to pay any taxes, rents or other charges justly due the Rosebud Sioux Tribe or any tribal entity, after reasonable notice and an opportunity to pay.

(5) Mining, cutting timber or vegetation or other use, abuse or damage to tribal property without authorization from the Tribe or the Secretary of the Interior.

(6) Any act causing physical loss of damage of any nature to the property of the Tribe, its enrolled members, or the other residents of the Reservation or off-Reservation Rosebud lands.

(7) A crime, as defined by South Dakota, federal or tribal law, or any act which, if committed by a member of the Rosebud Sioux Tribe, would be a crime under tribal law.

(8) Violating any law of the Tribe, including any provision of the Tribal Tax code or any rule or regulation of the Tribal Tax Commission.

(9) Forcing entry into any home within the Rosebud Reservation or on off-Reservation Rosebud lands without the consent of the occupant.

(10) Unauthorized prospecting.

(11) Committing a fraud, a confidence game, or usury against any tribal member or any other resident of the Reservation or off-Reservation Rosebud lands.

(12) Inducing any tribal member or other resident of the Reservation or off-Reservation Rosebud lands to enter into an unconscionable or grossly unfair contract of any nature.

(13) Trading or conducting business within the Reservation in violation of tribal or federal law.

(14) Defrauding any tribal member of just compensation for his labor or service of any nature done at the request of the non-member.

(15) Hunting, fishing or trapping without lawful authority or permission or in violation of tribal or federal law.

(16) Entering or remaining upon the Reservation or upon off-Reservation Rosebud lands while afflicted by a serious communicable or contagious disease which poses a substantial threat to the life or health of others.

(17) Unauthorized taking of any property from the Reservation or from off-Reservation Rosebud lands.

(18) Using, possessing or selling of any narcotic drug or controlled substance in violation of tribal, South Dakota, or federal law.

(19) Exploring or excavating items, sites or locations of historic, religious or scientific significance without the lawful authority or permission of the Tribe or in violation of tribal or federal law.

(20) Violating tribal customs.

(21) Threatening to cause disturbances or riots or to conduct any activity prohibited by the Tribe.

(22) Failing to obey an order of the Tribal Court.

8-10-4. REQUEST TO TRIBAL

PROSECUTOR. Any person, acting for himself or as an officer or staff member of a tribal entity, may request that the Tribal Prosecutor bring an exclusion action pursuant to this Ordinance on behalf of the Tribe in Tribal Court. Forms for such requests shall be available to the public in the Office of the Tribal Prosecutor. The complaining witness filing the request must set forth, under oath and penalty of perjury, the grounds on which exclusion is sought. The request shall be valid only if it bears the notarized signature of the complaining witness. After the request has been duly sworn to, signed and notarized, it shall be filed in the Office of the Tribal Prosecutor.

8-10-5. PROSECUTORIAL DISCRETION TO BRING EXCLUSION ACTION.

Whenever a request is filed pursuant to Section 6 of this Ordinance, the Tribal Prosecutor shall cause the matter to be investigated sufficiently to determine whether, in his discretion, an exclusion action should be filed on behalf of the Tribe. No complaint shall be filed unless the Tribal Prosecutor determines that (1) there is reasonable basis to believe that the potential respondent committed one or more acts that constitute grounds for exclusion, as set forth in Section 5, and (2) the alleged acts were of sufficient severity or are sufficiently likely to be repeated to warrant filing of a complaint. Unless a complaint for exclusion is filed in Tribal Court, the Prosecutor shall keep the existence and content of the request for exclusion and all information resulting from the investigation of the request confidential, except to the extent that disclosure is necessary to properly investigate the allegation in the request. The Tribal Council may, however, by resolution, order release of such information to the Tribal Council.

8-10-6. FILING IN TRIBAL COURT –

NOTICE OF HEARING. If, pursuant to Section 7, the Tribal Prosecutor determines that it is appropriate to bring an exclusion action, he shall file in Tribal Court, on behalf of the Tribe, a complaint for exclusion setting forth the identity of the respondent and complaining for exclusion, the Tribal Prosecutor shall promptly cause notice and a copy of the complaint to be served personally or by Registered Mail upon the Respondent and the complaining witness. The notice shall state the time and place at

which a Tribal Court hearing will be held on the complaint.

The hearing shall not be less than ten days after the time of service or mailing; provided, that if a judge of the Tribal Court finds that there is reasonable cause to believe that an emergency exists, and the notice so states, the hearing may be held anytime after 24 hours after the time of service.

8-10-7. TRIBAL COURT EXCLUSION

HEARING. After notice to the respondent and complaining witness, as provided for in Section 8, the Tribal Court shall hold a hearing for the purpose of determining the facts and recommending to the Tribal Court what action, if any, should be taken. The respondent shall be given an opportunity to present his defense at the hearing, including evidence, witnesses and argument, and may be represented by counsel at his own expense. The Tribal Court may, in its discretion, grant a continuance of the hearing on request by the Tribal Prosecutor or respondent, or upon its own motion.

8-10-8. TRIBAL COURT FINDINGS OF FACT AND RECOMMENDATION AS TO SANCTION.

At the time of or after the hearing provided for in Section 9, or at or after the time set for the hearing if the respondent does not appear, the Tribal Court shall make findings of fact regarding the allegation of the complaint and the defenses, if any, presented by the respondent. If the Tribal Court finds that the Tribal Prosecutor has failed to prove by a preponderance of the evidence that respondent committed one or more of the acts set forth in Section 5, the Court shall dismiss the complaint. If the Tribal Court finds by the preponderance of the evidence that the respondent did commit one or more of the acts set forth in Section 5, it shall issue a written recommendation to the Tribal Council as to the appropriate sanction. The recommended sanction may be either permanent or temporary exclusion from either all or a portion of the Rosebud lands. In addition, the Tribal Court may recommend that the exclusion be suspended upon condition that respondent comply with specified requirements which may include, among other things, payment of taxes, interest, and penalties owed to the Tribe, as determined by the Tribal Tax Commission; refraining from the act or acts that give rise to the exclusion action; payment of restitution to the Tribe or to any person for damage caused by the respondent; performance of labor; payment of a civil monetary penalty; and any other

requirements that the Court deems just. Any penalty suggested as a condition for suspension of the exclusion shall not be a criminal fine but shall be a civil penalty for the purpose of defraying costs of enforcing this Ordinance and protecting lives and property on Rosebud lands.

8-10-9. FINAL ACTION BY TRIBAL COUNCIL – DISCRETIONARY HEARING.

Upon receipt from the Tribal Court of finding of fact and a recommendation as to sanction as provided in Section 10, the Tribal Council may, in its sole discretion, conduct a hearing either before the Council as a whole or before a committee designated by the Council. If such a hearing is held, the respondent, the complaining witness, and the Tribal Prosecutor shall be provided with prior notice of the time and place of the hearing, and shall be given an opportunity to be heard, but shall not be allowed to present evidence or witnesses.

No sanction may be imposed pursuant to this Ordinance except upon a majority vote of the Tribal Council. The Tribal Council may impose as a sanction either permanent or temporary exclusion from either all or a portion of the Rosebud lands. The Tribal Council may suspend the exclusion on condition that respondent comply, within a specific time limit, with such requirements as the Council may specify, which may include, without limitation, payment of taxes, interest, and penalties owed to the Tribe as determined by the Tribal Tax Commission; refraining from the act or acts that gave rise to the exclusion action; payment of restitution to the Tribe or to any person for damage caused by respondent; performance of labor; payment of a civil monetary penalty; and any other requirements that the Tribal Council deems just. Any penalty imposed as a condition of suspension of the exclusion shall not be a criminal fine but be a civil penalty for the purpose of defraying costs of enforcing this Ordinance and protecting lives and property on Rosebud lands. The Tribal Council shall in no respect be bound by the recommendations of the Tribal Court as the sanction or conditions for suspension of exclusion, if any, it imposes. The Court shall promptly cause copies of the Exclusion Order to be served personally or by Registered Mail upon the respondent, complaining witness, and Tribal Prosecutor.

8-10-10. ENFORCEMENT

PROCEEDINGS. If any respondent ordered excluded from Rosebud lands pursuant to this Ordinance does not promptly obey the

Exclusion Order, the Tribal court shall issue a Writ of Exclusion which shall order any police officer to (1) remove the respondent from all Rosebud lands covered by the Exclusion order at the respondent's expense, and (2) prevent the reentry of the respondent onto any Rosebud lands covered by the Exclusion Order for so long as the Exclusion Order remains in effect. The police officer executing the Writ shall use only so much force as is necessary to effect the removal or prevent the reentry. The Tribal Court may also refer the matter to the United States Attorney for prosecution of any federal crime committed.

recommendation as to what action the Council should take, but such recommendation shall in no way bind the Council. A prior Exclusion Order may be modified or vacated only by majority vote of the Tribal Council.

8-10-11. PHYSICAL REMOVAL –

EMERGENCY. In cases involving immediate danger to the life, health, morals, or property of the Tribe or any of its members or the non-member proposed for exclusion, or where delay would result in irreparable damage, a judge of the Tribal Court may, either before or after the Tribal Court hearing provided for in Section 9 of this Ordinance, issue an Emergency Writ of Exclusion which shall order any police officer to (1) remove the non-member from all rosebud lands covered by the Emergency Writ at the non-member's expense, and (2) prevent the reentry of the non-member onto any Rosebud lands covered by the Emergency Writ for so long as the Emergency Writ remains in effect. The police officer executing the Writ shall use only so much force as is necessary to effect the removal. If service of the notice provided for in Section 8 of this Ordinance has not already been made on the respondent, the Tribal court shall cause the police officer to serve the notice upon the respondent at the time of removal or as soon after removal as possible. An Emergency Writ of Exclusion shall remain in effect for ten days in order to allow time for an emergency Tribal court hearing, as provided for in Section 8 and 9, and action by the Tribal Council pursuant to Section 11; provided, that the Emergency Writ shall be revoked by the Tribal Court if the Court determines that the emergency no longer exists or if the Court dismisses the complaint pursuant to Section 10.

8-10-12. FINALITY OF EXCLUSION

ORDER. An Exclusion Order entered pursuant to this Ordinance shall be final. Any person so excluded may apply to the Tribal Council to have the order modified or vacated at such time as the order provides, or if the order makes no such provision, after one year. The Tribal Council may refer such application to the Tribal Court for its

TITLE NINE

ADMINISTRATIVE PROVISIONS OF TRIBAL COURT

CHAPTER 1 – COURTS, JUDGES AND COURT PERSONNEL

9-1-1.	Appellate Court
9-1-2.	Tribal Court
9-1-3.	Tribal Juvenile Court
9-1-4.	Tribal Magistrate Court
9-1-5.	Court Personnel
9-1-6.	Juvenile Court
9-1-7.	Magistrates
9-1-8.	Clerk Of Courts
9-1-9.	Additional Court Personnel
9-1-10.	Salaries
9-1-11.	Removal Of Judges
9-1-12.	Powers and Duties Of Judges
9-1-13.	Oath of Office Of Judge
9-1-14.	Duties Of The Clerk
9-1-15.	Oath Of Clerks

The Tribal Court system established by this Code shall consist of a Tribal Appellate Court, Tribal Court, Tribal Juvenile Court and Tribal Magistrate Court.

9-1-1. APPELLATE COURT. The Tribal Appellate Court shall consist of three (3) Justices and shall handle appeals from the Tribal Court and the Tribal Juvenile Court, and the procedures for such appeal shall be determined by the Appellate Court Justices.

9-1-2. TRIBAL COURT. The Tribal Court shall be the Court of general criminal and civil jurisdiction on the Rosebud Reservation and shall hear all matters of a judicial nature not specifically placed with the exclusive jurisdiction of some other judicial forum by this code. The Tribal Court shall also hear appeals from the decisions of any Magistrate Court and all other Tribal Administrative bodies and agencies.

9-1-3. TRIBAL JUVENILE COURT. The Tribal Juvenile Court shall handle all matters set forth in the Tribal Juvenile Code and shall be subordinate to and subject to and subject to the supervision and jurisdiction of the Tribal Code.

9-1-4. TRIBAL MAGISTRATE COURT. At the discretion of the Tribal Judiciary Committee there may be established in each

recognized community on the Rosebud Reservation, a Magistrate Court to be presided over a lay Magistrate said Court to have jurisdiction over all criminal matters involving offense of the C class. Magistrate Court shall have civil jurisdiction over no matters.

9-1-5. COURT PERSONNEL.

(1) There shall be appointed three (3) Appellate Court Justices consisting of two (2) or more attorneys licensed to practice before the Federal Courts and may include one (1) lay person, who shall have the same qualifications as those hereinafter specified for Associate Judges of the Tribal Court. All Appellate Justices are to be selected by the Tribal Judiciary Committee and approved by the Tribal Council.

(2) There shall be appointed for the Tribal Court one (1) Chief Judge and two (2) more associate Judges as the Judiciary and the Tribal Council see fit.

(a) To be eligible to hold the office of Chief Judge or Associate Judge, a Person

(1) Must be at least 30 years of age and not more than 70 years of age.

(2) Must be of high moral character and integrity.

(3) Must have a high school education or equivalent thereof and be capable of preparing the papers and reports incident to the office of Judge.

(4) Must be physically capable of carrying out the duties of the office.

(5) A member of the Rosebud Sioux Tribe shall be given preference.

(6) At least one (1) Associate Judge shall be bilingual in English and Lakota.

(b) Notwithstanding any other provisions in this code to the contrary, no person is eligible to hold the position of Chief Judge of the Rosebud Sioux Tribe unless such person is an attorney at law and admitted to practice in the United States District Courts for the District of South Dakota

(c) All Tribal Court Judges shall be selected by the Judiciary Committee and recommended to the Tribal Council for approval. Appointments of Tribal Judges shall be for a probationary period of one (1) year during which time such appointment can be terminated by written notice from the Judiciary Committee of the Tribal Council. Following the one (1) year probationary period, Tribal Judges shall be appointed for a term of two (2) years.

9-1-6. JUVENILE COURT. There shall be appointed for the Juvenile Court one (1)

Juvenile Judge whose qualifications shall be the same as those of Associate Judges of the Tribal Court. The appointment of the Juvenile Judge shall be for a probationary period of one (1) year during which time such appointment can be terminated by written notice from the Judiciary Committee or the Tribal Council. Following the one (1) year probationary period Juvenile Judge shall be appointed for a term of two (2) years.

9-1-7. MAGISTRATES. Magistrates to serve in the community shall be selected by the Judicial Committee and approved by the Tribal Council. The Judiciary Committee shall in its discretion, determine which persons are suitable to serve as Magistrates. Magistrates shall be appointed for a term of one (1) year and may be terminated by written notice from the Judiciary Committee or the Tribal Council.

9-1-8. CLERK OF COURTS. There shall be a Clerk of the Tribal Court, which Clerk shall also act as the Clerk of the Appellate Court. The Clerk of Courts shall be selected by the Judiciary Committee and approved by the Tribal Council. There may also be appointed additional Deputy Clerks of Court and a Clerk of the Juvenile Court if such are deemed necessary.

(a) The appointment, qualifications, term of office and compensation of such Clerk shall be determined by the Judiciary Committee and the Tribal Council.

9-1-9. ADDITIONAL COURT PERSONNEL. If such are deemed necessary by the Judicial Committee and the Tribal Council there may also be appointed a Court Reporter, a Process Server, a Probation Officer, a Bailiff, and a Typist to assist the other Court personnel. The appointment, qualifications, terms of office and compensation of such additional Court personnel shall be determined by the Judicial Committee and the Tribal Council.

9-1-10. SALARIES. The compensation to be received by all Court personnel shall be determined by the Judiciary Committee and the Tribal Council and shall be negotiated and agree upon at the time of the appointment of the individual officers of the Court. Court personnel shall not have their compensation decrease during their term of office. Court personnel may be appointed to successive terms of office and salary may be renegotiated with each successive appointment.

9-1-11. REMOVAL OF JUDGES. Any Judge may be removed from office prior to the expiration of his or her term by a majority vote of the Tribal Council and upon recommendation of the Judiciary Committee. The grounds for such removal shall be neglect of duty, gross misconduct, incompetence, or other just cause, and only after the holding of a public hearing before the Tribal Council, by giving such Judge no less than five (5) days notice of such hearing. At the hearing the Judge shall be given the opportunity to answer all charges and present evidence in his own behalf. After such hearing removal of a Judge may only be accompanied by a two-thirds (2/3) vote of the Tribal Council members present at the hearing and constitute a quorum. The Judiciary Committee shall have the power to suspend a Judge, after investigation and hearing, for a period not to exceed thirty (30) days pending a hearing before the Tribal Council for dismissal of such Judge.

9-1-12. POWERS AND DUTIES OF JUDGES.

(1) Judges shall administer justice and discharge all duties imposed upon them by law and shall hear and decide matters of a Judicial nature and enter judgments and orders disposing of such matters. In the absence of the Court Clerk, a Judge may perform the Clerk's duties in addition to his own and may receive cash bails or bonds whenever a Clerk or other authorized person is not available.

(2) The Chief Judge shall be responsible for the administrative of all Courts, including the Tribal Juvenile Court, which shall be administered by the Juvenile Court Judge under the supervision of the Chief Judge. The Chief Judge shall supervise all probation and parole officers. In addition, the Chief Judge shall be responsible for the assignment of cases and the management of the court's calendar and business. The Chief Judge shall designate and Associate Judge to act as Chief Judge in his or her absence.

(3) All judges of the Courts of the Rosebud Sioux Tribe shall conform their conduct to the Code of Judicial Conduct as adopted by the American Bar Association.

(4) Every Judicial Officer has Power to:

(a) Preserve and enforce Order to his immediate presence, and in proceedings before him, when he is engaged in the performance of his official duty;

(b) Compel obedience to his lawful orders;

(c) Compel the attendance of persons to testify in a proceeding before him as provided by law;

(d) Administer oaths to persons in proceedings before him and in any other case where such shall be necessary in the exercise of his powers and duties;

(e) Punish for contempt to assure the effectual exercise of these powers.

(5) A Judge shall disqualify himself from hearing any matter in which he has a direct interest or in which any party to the matter is a relative by blood, in the fourth degree (first cousin, or where he feels that he will not be able to render a just decision).

(6) Any party to a legal proceeding may request a change of assignment of Judges to hear the proceedings by filing a written affidavit of Prejudice giving sufficient reasonable grounds why the Judge assigned should not hear the case. Such affidavit shall be presented to the Judge assigned to hear the case, who shall rule on the sufficiency of the Affidavit, and if sufficient, either disqualify himself or turn the Affidavit over to the Chief Judge or some other Judge for a decision as to whether a different Judge should be assigned.

9-1-13. OATH OF OFFICE OF JUDGE.

(1) Every Judge, prior to taking office or acting in such office, shall take the following oath or affirmation:

I, _____, do solemnly swear (affirm) that I will support and defend the laws and the Constitution of the United States; that I will support, defend, and uphold the Constitution, By-Laws and Treaties of the Rosebud Sioux Tribe; that I will support, uphold and enforce the Law and Order Code of the Rosebud Sioux Tribe, and that I will faithfully and impartially discharge the duties of my office to the best of my ability.

(2) Said oath may be administered by a member of the Tribal Council or a Judge of the Court.

9-1-14. DUTIES OF CLERK. It shall be the duty of the Clerks of the Tribal Courts to supervise and keep all records, files, dockets or other records required to be kept by this Code, by rule of the Court, tribal resolution or as otherwise established, and further to keep a written record of all proceedings of the Court, to administer oaths, to collect and account for all fines, bail or bond money, fees or other charges which cause money to come into the Court, to deposit and account for all such moneys in the manner prescribed

by the Tribal Council, and to disburse such money as authorized by law. The Clerks shall further assist the Court in any way required to facilitate the performance of its duties, to aid the police or private citizens in their dealings with the Court, and may render assistance to individual members of the tribe or their counsel in the drafting of documents incidental to proceedings in the Court.

9-1-15. OATH OF CLERKS.

(1) Every Clerk shall take the following oath upon assuming office:

I, _____ having been appointed Clerk of the Rosebud Sioux Tribal (Juvenile) Court, do solemnly swear (affirm) that I will truly, faithfully, honestly, and impartially discharge all the duties of my office to the best of my ability and understanding.

(2) Such oath shall be administered by a Judge of the Tribal Court.

CHAPTER 2 – ATTORNEYS AND LAY COUNSEL

9-2-1.	Admitted To Practice
9-2-2.	Eligibility To Be Admitted
9-2-3.	Tribal Bar Examination
9-2-4.	Application
9-2-5.	Right To Appeal Denial Of Admission
9-2-6.	Right To Counsel
9-2-7.	Representation Of Indigent Clients
9-2-8.	Contempt Of Court By Attorney
9-2-9.	Verified Complaint On Attorney
9-2-10.	Suspensions From Practicing

9-2-1. Any professional attorney or lay counsel who desires to practice before the Courts of the Rosebud Sioux Tribe shall first be admitted to practice before such Courts.

9-2-2. Any professional attorney who is an active member, in good standing, of the South Dakota State Bar, or any attorney certified to practice before the highest Court of any other State or the Supreme State Court of the United States is eligible to be admitted to practice before the Rosebud Sioux Tribal court. An admission fee of \$100.00 shall be paid by professional attorneys to practice before the Tribal Courts.

9-2-3. All counsel shall also take and pass a Tribal Bar Examination testing their knowledge of tribal law and professional ethics. No counsel shall practice in Tribal Court without having first passed such examination, and paying the appropriate admission fee. The Chief Tribal Judge shall be responsible to set up the testing mechanism for all counsel. All attorneys, both lay and professional, shall abide by a Code of Professional Responsibilities which from time to time shall be adopted by the American Bar Association.

9-2-4. Both professional attorneys and lay counsel shall make application for admission to practice before the Courts of the Rosebud Sioux Tribe to the Chief Tribal Judge who shall review the applications and if satisfied that the applicant meets the qualifications necessary to practice before the Court, the Chief Judge shall upon the paying of the proper fees and subscribing and swearing to the following oath issue the proper license to the applicant.

“I, _____, do solemnly swear that I will support and defend the Constitution and laws of the Rosebud Sioux Tribe against all enemies, foreign and domestic, that I have studied and am familiar with the laws of the Rosebud Sioux Tribe, and that I will conduct myself with honor towards those whom I represent and with respect for the Courts of the Rosebud Sioux Tribe”.

9-2-5. Any person denied admission to practice before the Tribal Court shall have right to appeal and to have a due process hearing before the Tribal Council.

9-2-6. Every person appearing as a party in any judicial procedure before a Tribal court shall have the right to be represented either by lay counsel or professional attorneys and have such counsel and attorneys assist in the preparation and presentation of his or her case. The Rosebud Sioux Tribe shall have no obligation to provide or pay for such lay counsel or professional attorneys and only those persons who have first obtained admission to practice before the Tribal Courts shall appear therein.

9-2-7. Any person admitted to practice before the Tribal Court will accept and represent indigent clients without compensation or without full compensation when directed to do so by a Judge of the Tribal Court.

9-2-8. Any Judge of the Tribal Court who finds an attorney admitted to practice before the Tribal Courts to be in contempt of courts may, in addition to any other sanction imposed, order the attorney to appear within five (5) days and show cause why he should not be suspended from practice before the Courts of the Rosebud Sioux Tribe.

9-2-9. The Chief Judge of the Tribal Court may, upon receiving a written, verified Complaint which indicates that an attorney admitted to practice before the Tribal Court has acted in an unethical or otherwise improper manner while functioning as an attorney, order such attorney to appear and defend himself at a hearing to hear all evidence relevant to the matter and may order the suspension of such attorney, if it appears necessary or appropriate.

9-2-10. All suspensions from practicing before the Courts of the Rosebud Sioux Tribe shall be for an indefinite period unless the Judge ordering such suspension specifically orders otherwise. Any attorneys suspended from practice before the Tribal Court may appeal to the Tribal Council and the action of the Tribal Council on said matter shall be final.

TITLE TEN

ROSEBUD SIOUX TRIBAL LIQUOR ORDINANCE

CHAPTER 17 – ALCOHOLIC BEVERAGES

10-17-1. This ordinance shall be cited as the “Rosebud Sioux Tribal Liquor Ordinance”, and under the inherent sovereignty of the Rosebud Sioux Tribe shall be deemed and exercise in the police power of the Tribe for the protection of the welfare, health, peace, morals, and safety of the people of the Tribe, and all its provisions shall be liberally construed for the accomplishment of its purpose, and it is declared to be public policy that the sale of alcoholic beverages is so affected with the public interest that it should be regulated to the extent of prohibiting all traffic in it, except as provided in this ordinance.

10-17-2. It shall be unlawful to sell, offer, keep for sale, or possess intoxicating liquor or low-point beer except upon the terms, conditions, limitations, and restrictions specified in this ordinance.

10-17-3. There is hereby created a Rosebud Sioux Tribal Liquor Commission to administer and enforce the laws of the Tribe concerning intoxicating liquor and low-point beer. The principal place of business of the of the Department shall be at the Rosebud, South Dakota and suitable quarters or offices shall be provided for the Department by the Rosebud Sioux Tribal Council.

10-17-4. There is hereby created with the Department a Rosebud Sioux Liquor Commission composed of three members. No person may be a member of the Commission if such person or any member of his or her immediate family is also a member of the Rosebud Sioux Tribe governing body or has an interest directly or indirectly in the production, transportation, or sale of intoxicating liquor or low-point beer, or in any building or property in any way used in connection with any such business. The Commission shall be held strictly accountable for the enforcement of all the provisions of this Code and shall be directly responsible to the Rosebud Sioux Tribal Council.

(a) Appointment-term-qualification-compensation.

Appointment to the Commission shall be for terms of three (3) years and shall be made by a majority vote of the Rosebud Sioux Tribal Council. Members of the Commission shall be appointed so that one member’s term of office expires on January 1st of each year. Members of the Commission shall be chosen on the basis of ability and may be reappointed for one additional term. Each member appointed shall receive full compensation for their services in addition to reasonable and necessary expenses incurred while attending meetings. Vacancies shall be filled by a majority vote of the Rosebud Sioux Tribal Council only for the unexpired portion of the vacant position.

(b) Bonds.

Each member of the Commission shall post a bond in such amount and with such sureties as the Tribal Council shall approve to guarantee to the Tribe the proper handling and accounting of such monies, merchandise, and other properties as may be required in the administration of this ordinance.

(c) Commission Meetings.

The Commission shall meet at least once per month and once each year shall select one of its members as Chairman, which member shall serve in such capacity for the succeeding year. Special meetings of the Commission may be called by the chairman or when any two (2) members file with the chairman a written request for a meeting. Written notice of the time and place of each meeting shall be given to each member of the Commission and the President of the Rosebud Sioux Tribe. All Commission meetings shall be held within the Reservation. Two members of the Commission shall constitute a quorum.

10-17-5. The Tribal Council shall hire under contract a Director who in no event shall be a member of the Commission nor shall such a person be appointed if he or a member of his or her immediate family is a member of the Rosebud Sioux Tribe governing body or has an interest directly or indirectly in production, transportation, or sale of intoxicating liquor or low-point beer, or in any building or property in any way used in connection with any such business. Such Director’s original contract shall be duration of one year and may be renewed on a yearly basis thereafter. The Director’s salary shall be in such amount as may be determined by the Rosebud Sioux Tribal Council. The Director shall be qualified, in a managerial

ability or in experience to perform his duties; and shall act in the named of and serve at the pleasure of the Tribal Council, but shall be responsible to the Commission.

The Director shall devote such time as necessary to the discharge of his duties. He or she shall not accept or solicit, directly or indirectly, contributions or anything of value on behalf of himself, any special interest group on the reservation, any political party, or any person seeking an elective or appointive office nor use his official position in advance of the candidacy of anyone seeking an elective or appointive office. The Director must physically reside on the Rosebud Reservation. A violation of this section may subject the Director to removal from office.

10-17-6. Members of the Commission, the Director and other employees of the Department shall be allowed their actual and necessary expenses while traveling on business of the Department outside of their place of residence on the Reservation, however, an itemized account of such expenses shall be verified by the claimant and certified by the Director. If such account is paid, copies of the same shall be filed with the Department and be and remain a part of its permanent records. All expenses (and salaries) of Commission members, the Director and other employees, shall be paid from appropriations for such purpose.

10-17-7. Any Commission member or the Director shall be removed for cause and such removal shall not be prescribed by the laws of the Tribe or the United States. Any member or Director so removed shall be entitled to an opportunity to be heard before the Tribal Council before removal.

10-17-8. No Commission member, Director or employee of the Department shall be personally liable for damages sustained by any person due to the act of such member, officer, or employee performed in the reasonable discharge of his duties in accordance with the provisions of this ordinance.

10-17-9. No person responsible for the administration or enforcement of this chapter and any other provisions of this ordinance, shall accept or solicit donations, gratitude's, political advertising, gifts, or other favors directly or indirectly, from any liquor control licensee or vendor.

10-17-10. The Commission shall have the following duties and powers:

(1) To direct the Director to perform any of the functions specified in this ordinance or by the Tribal Council;

(2) To purchase alcoholic beverages for resale by the Department in the manner set forth in this ordinance;

(3) At the direction of the Tribal Council, to establish, maintain, or discontinue Tribal liquor stores and determine the location of such stores;

(4) To rent, lease or equip any building or any land necessary to carry out the provisions of this ordinance;

(5) To lease all plants and lease or buy equipment necessary to carry out provisions of this ordinance;

(6) To appoint vendors, clerks, agents, or other employees required for carrying out the provisions of the Chapter; to dismiss such employees for cause; to designate their title, duties and powers;

(7) To accept applications and grant licenses provided for by this ordinance;

(8) To investigate any violation of the provisions of this Code within twenty (20) days from receipt of information or complaint of such violation; and

(9) The Commission shall have such other powers and duties necessary and proper to carry out the provisions of this ordinance.

10-17-11. The Commission may adopt and promulgate, with the approval of the Tribal Council, such rules and regulations that are necessary to carry out the provisions of this ordinance.

10-17-12. The Rosebud Sioux Tribal Council shall, when it deems advisable to do so, direct the Tribal Liquor Commission to establish and maintain anywhere on the Rosebud Sioux Indian Reservation a tribal liquor store or stores for the sale of alcoholic beverages in accordance with the provisions of this ordinance. The Commission may, from time to time, fix the process of the different classes, varieties, or brands of alcoholic liquor and low-point beer to be sold.

10-17-13. In directing the Rosebud Sioux Tribal Liquor Commission to operate a liquor store within a particular geographical area, the Rosebud Sioux Tribal Council shall indicate whether or not any other liquor stores shall be permitted to operate in the same area. If other licenses are not permitted, no other licenses shall be granted for that area.

10-17-14. Upon the granting of an application for a license by the Rosebud Sioux Tribe, all similar licenses existing in that area terminate thirty (30) days thereafter. No similar licenses shall be granted thereafter for that area unless the Rosebud Sioux Tribal Council specifically permits.

10-17-15. The Rosebud Sioux Tribe shall acquire the stock, equipment, and fixtures from any licensee whose license has been terminated by reason of the tribal monopoly, such a acquisition to be by purchase, condemnation, or arbitration.

10-17-16. In the conduct and management of Tribal Liquor stores the Commission is empowered to employ a person who shall be under the direct supervision of the Director, and who shall observe all provisions of this ordinance and rules and regulations that may be prescribed by the Commission under this ordinance.

10-17-17. There shall be charged a filing fee of \$300 for an application for a Class A license, \$250 for a Class B license, and \$125 for a Class C license.

10-17-18. No license for a Class A, B, or C license as the same are defined and classified under the provisions of this ordinance shall be granted to an applicant for any such license, except after public hearing, upon notices, as provided hereinafter in this Chapter.

The Commission shall make findings of fact in either rejecting or granting the application.

Any person whose application for license is rejected shall have the right to appeal such decision to the Rosebud Sioux Tribal Court. The appeal must be filed within five days after receipt of notice of the Commission. The Commission shall forthwith, upon such appeal being made, certify to the Tribal court the complete record and findings of fact. The Court shall thereupon fix a time and place for hearing and notice of which hearing shall be given to all the parties of the appeal.

The appeal shall be conducted by the Tribal Court in the same manner as an appeal from the termination of a license.

If any reason under law exists for rejection of the application for license, the decision of the Commission must be affirmed.

10-17-19. If any tribal member of any Community as recognized by the Constitution or By-Laws or Ordinance of the Rosebud Sioux Tribe shall file with the Commission a written request that he or she be notified of the time and place for hearing upon any specified application for a liquor license, the Director shall give notice to such person by certified mail and within a sufficient length of time prior to the hearing upon such application as to allow such person a reasonable opportunity to be present. For the purposes of this section, the certified letter must be deposited with the U.S. Post Office at least five (5) days before the scheduled date of the hearing.

10-17-20. The Commission shall fix the time and place for hearing upon all such applications which may come before the Commission and the Director shall publish notice once in the official newspaper of such community which notice shall be headed "Notice of Hearing Upon Application for Sale of Alcoholic Beverages", and shall state the time and place when and where such applications will be considered by the Commission and that any person interested in the approval or rejection of any such application may appear and be heard, which notice shall be published at least one week prior to such hearing. At the time and place so fixed, the Commission shall consider such applications and all objections thereto, if any, prior to final decision thereon.

10-17-21. No license granted pursuant to the provisions of this ordinance shall be transferred. If a transfer to a new location is requested by a licensee, the licensee must make application showing all the relevant facts as to such new location, which application shall take the same course and be acted upon as if an original application. No fee shall be required of a licensee who desires to transfer to a new location, however, such licensee must pay the actual costs involved in the Notification of Hearing as published in the official newspaper.

10-17-22. Any licensee authorized to deal in alcoholic beverages upon termination of its license may at any time within twenty (20) days thereafter sell the whole or any part of the alcoholic beverages included in its stock in trade at the time of termination to any licensee under the provisions of this

ordinance. A complete report of such purchase and sale must be made by both the purchaser and licensee to the Commission. At the discretion of the Commission, and additional twenty (20) days extension to sell may be granted to the licensee by the Commission.

10-17-23. Any person may file with the Commissioner a duly notarized complaint as to any violations of the provisions of this ordinance and immediately upon receipt thereof, the Commission shall cause the Director to make a thorough investigation and, if there is evidence to support the charge made in such complaint, the Commission must cause a revocation of the license in question and/or take other appropriate action.

10-17-24. The Commission shall upon complaint or its own motion, on due notice to such licensee, conduct a hearing and on the basis thereof determine whether such license should be revoked.

10-17-25. For the purpose of conducting the hearing as prescribed above, the Commission shall have the power to subpoena witnesses and to administer oaths. Witnesses so subpoenaed shall be paid at the then prevailing witness rate for the Rosebud Sioux Tribal Court. Criminal proceedings must be filed in Tribal Court and may be instituted by the Commission or Director as complainant against any violator.

10-1-26. If the Commission determines the license should be revoked, and revokes such license, it must make, in writing, findings of fact as to every such violation alleged in such complaint before it revokes such license. It must, in addition, by the time of the next Tribal Council meeting, make a report to the Tribal Council.

10-17-27. The Commission may, if the facts warrant, mitigate the revocation to a suspension.

When in any proceeding upon a verified complaint, the Commission is satisfied that the nature of such violation and the circumstances thereof are such that a suspension of the license would be adequate, it may suspend the license for a period not exceeding sixty (60) days, which suspension shall become effective twenty-four (24) hours after service of notice thereof upon the licensee. During the period of such suspension such license shall exercise no

rights or privileges whatsoever under the license.

10-17-28. All hearings under the provisions of this ordinance shall be public and place of hearing shall be specifically designated in the notice of hearing. It shall be permissible, when due notice has been given, for the Commission to hold hearings in the Community Hall of the Community wherein the license is operative.

10-17-29. In any case where the Commission approves the revocation of a license, it shall forthwith make an order for such revocation and upon service of notice thereof on the licensee all of such licensee's right under the license shall terminate three (3) days after such notice, except in the event of a stay of appeal.

10-17-30. Any license, except for the Rosebud Sioux Tribe, whose license is revoked shall not for a period of two (2) years thereafter be granted any license under the provisions of this ordinance.

10-17-31. Any licensee whose license is revoked by the Commission regardless of how the proceedings were instituted may appeal from such revocation to the Rosebud Sioux Tribal Court within five (5) days after notice to the licensee of such revocation, and such appeal operates to stay all proceedings for a period of fifteen (15) days thereafter and for such an additional period of time that the Rosebud Sioux Tribal Court may in its discretion extend. Under no circumstances may the Tribal Court extend the stay for a period of more than twenty-five (25) days including the original fifteen (15) days stay period. The Commission shall forthwith, upon such appeal being made, certify to the Tribal Court the complete record in the proceedings and the Court shall thereupon fix a time and place for hearing and notice of which hearing shall be given to all concerned parties involved in the appeal.

For the purposes of appeal under this ordinance, the appeal shall be heard by all duly qualified and selected judges of the Rosebud Sioux Tribal Court sitting as one body.

10-17-32. Upon appeal the Tribal Court Judges shall review the record as certified by the Commission and shall then immediately during that Court date enter an order either affirming or reversing the decision revoking such license. In reaching

its determination the Tribal Court Judges shall not hear any testimony, but shall examine the record as certified by the Commission as to whether it disclosed evidence of any violation of law or rules or regulations charged in the complaint, and if the certified record so disclosed a violation of law, the Court is bound to affirm the decision of the Commission.

An appeal will be denied unless a clear majority of the Tribal Judges sitting on the appeal vote for reversal. In the event of a tie vote, the actions of the Commission shall be affirmed and the license revoked.

10-17-33. Any person who, by himself, or through another acting for him shall keep or carry on his person, or in a vehicle, or leave in place for another to secure, any alcoholic liquor or low-point beer with the intent to sell or dispense of such liquor or low-point beer with the intent to sell or dispense of such liquor or low-point beer or otherwise in violation of law, or who shall, within this reservation in any manner, directly or indirectly, solicit, take, or accept any order for the purchase, sale, shipment, or delivery of such alcoholic liquor or low-point beer in violation of law, or aid in delivery and distribution of any alcoholic liquor or low-point beer to any person under legal age for any purpose except as authorized and permitted in this ordinance, **shall be guilty of bootlegging** and upon conviction thereof shall be subject to **a fine of not less than \$300 or no more than \$500 and to a jail sentence of not less than three (3) months nor more than six (6) months or both fine and jail sentence plus costs.**

10-17-34. Any person violating any provision of this ordinance for which a specific penalty is not provided shall be punished by **a fine of not less than \$150 nor more than \$500 or by imprisonment in the Tribal jail for not more than six (6) months, or by both such fine and imprisonment plus costs.**

10-17-35. Terms used in this ordinance, unless the context otherwise plainly requires, shall mean as follows:

(1) Alcoholic Beverages – any intoxicating liquor, low-point beer or any wine.

(2) Application – a formal written request for the issuance of a license supported by a verified statement of facts.

(3) Foreign Corporation – any corporation not incorporated under the laws of the Rosebud Sioux Tribe.

(4) Immediate Family – shall mean and include as defined under both the Anglo-American and Lakota systems of jurisprudence but is not limited to, the following relationships: grandparents, parents, spouses, sons, daughters, grandchildren, father-in-law, mother-in-law, brothers-in-law, sisters-in-law, aunts, uncles, and cousins, in addition to all lineal and collateral relatives whether in the whole or half blood or adopted.

(5) Low-Point Beer. Any liquid commonly used or reasonably adapted to use for beverage purposes and which is produced wholly or in part from brewing of any grain or grains or malt substitute, and which contains any alcohol whatsoever but no more than three and two-tenths per centum of alcohol by weight.

(6) Low-Point License – authority to sell only low-point beer.

(7) On Sale – the selling of any alcoholic beverage for consumption only on the premises where sold.

(8) On Sale License – authority to sell any alcoholic beverage for consumption on the premises where sold.

(9) Package Dealer – any person or corporation that sells or keeps for sale any alcoholic beverage for consumption off the premises where sold.

(10) Package Dealer License – authority to sell any alcoholic beverage off the premises where sold.

(11) Public Place – shall mean any place, building or conveyance to which the public has or is permitted access.

(12) Sale – the transfer, for consideration, of title to any alcoholic beverage.

(13) Wine – any beverage containing alcohol obtained by the fermentation of natural sugar contents of fruits or other agricultural products.

CHAPTER 18 – LOCAL OPTION AND COMMUNITY INVOLMENT REPEALED

CHAPTER 19 – LIQUOR LICENSES AND SALES

10-19-1. The power to establish categories or licenses and levy taxes with respect to the sale of alcoholic beverages is vested exclusively with the Rosebud Sioux Tribal Council.

10-19-2. Classes of licenses under this chapter, with the fee for each class, shall be as follows:

- (a) Class A – Package dealer - \$2,500
- (b) Class B – On sale - \$1,500
- (c) Class C – Low Point - \$750

10-19-3. In accepting or rejecting a request for a license, the Tribal Liquor Commission shall consider the need of the area to be served for such liquor sales, the number of existing licenses businesses covering the area, the desires of the community within the area to be served, any law enforcement problem which may arise because of the sale of liquor, the character and reputation of the person seeking the license, suitability of the physical premises and plan of operation of the person seeking the license, and any other consideration relevant to the request.

10-19-4. Any corporation seeking a license for the sale of liquor must be a corporation organized under the laws of the Rosebud Sioux Tribe, provided, however, that if the applicant is a foreign corporation, it shall be eligible if, prior to the application, it has complied with the laws of the Rosebud Sioux Tribe and the United States concerning doing business within the Rosebud Reservation. Both corporations and individuals, prior to making applications for a liquor license, must have secured an Indian Traders license.

10-19-5. Any license issued must be in the name of one person only.

10-19-6. Applications for licenses under this chapter shall be submitted to the Tribal Liquor Commission as specified and established. The Commission shall have absolute discretion to approve or disapprove the same in accordance with the provisions governing its administration.

10-19-7. Every application for a license, unless exempted by the Tribal Council for good reason, must be accompanied by a bond, which shall become operative and effective upon the issuing of a license unless the licensee already has a continuing bond in force. The bond shall be in the amount of \$10,000 and must be on a form approved by the Tribal Liquor Commission. It shall be conditioned that the licensee will faithfully obey and abide by all the provisions of this ordinance and any costs assessed against it in any judgment or violation of the terms of this ordinance.

All bonds required by this ordinance shall be with a corporate surety as surety, or shall be by cash deposit. If said bond is placed by cash, it shall be kept in a separate escrow account within a legally chartered bank.

10-19-8. Every application for a license must be accompanied by a policy of insurance indicating that the insurance company will promptly pay all sums, not exceeding \$100,000 per person, which the applicant shall become legally obligated to pay as damages because of bodily injury, property damage, or death proximately caused to himself or others by any person intoxicated by the consumption of alcohol sold by the applicant.

10-19-9. Any person injured by reason of the failure of any licensee to faithfully obey and abide by all provisions of this ordinance shall have a direct right of acting upon the bond in Tribal Court for the purpose of recovering the damage sustained by such person, which action may be prosecuted in the name of the person injured.

Any person suffering from bodily injury, property damage, or death proximately caused by any person becoming intoxicated by the consumption of alcohol sold by the applicant have a cause of action against the application for such damage sustained.

10-19-10. Every application for a license under this ordinance must include an agreement by the applicant that his premises, for the purpose of search and seizure laws of the Rosebud Sioux Tribe, shall be considered public premises, and that such premises and all buildings, safes, cabinets, lockers, and store rooms thereon will at all times on demand of the Tribal Liquor Commission or a duly appointed tribal or federal policeman, be opened to inspection, and that all its books and records dealing with the sale or ownership of alcohol beverages shall be open to said person or persons for such inspection, and that the application and the license issued thereon shall constitute a contract between licensee and the Rosebud Sioux Tribe entitling the Tribal Liquor Commission, for the purpose of enforcing the provisions of this ordinance, to inspect the premises and books at any time.

10-19-11. The period covered by licenses under this ordinance shall be for a period of one year from the date that the license was first issued.

10-19-12. The provisions of this ordinance, except as otherwise provided, shall not apply to the purchase and sale of sacramental wine. Ordained rabbis, priests, ministers, or pastors of any church or established religious organizations within the Rosebud Sioux Indian Reservation may buy sacramental wines from any person in such quantities as necessary for their religious purposes only.

10-19-13. No license under this ordinance shall make any delivery or alcoholic beverages outside the premises described in the license.

10-19-14. No license shall buy or sell any package which has previously contained alcoholic beverages sold under the provisions of this ordinance or refill any such package.

10-19-15. No licensee shall sell any alcoholic liquor to: **(1)** any person under the age of 19 years **(2)** any person who is intoxicated at the time or who is known to the licensee or his help to be a habitual drunkard **(3)** any person to whom the licensee has been requested in writing not to make any sale of alcoholic liquor, where such request is by the Tribal Court or the husband or wife of the person **(4)** any mentally ill or mentally retarded person.

10-19-16. No licensee shall permit any person under the age of 19 years on the premises covered by the licensee; however an on-sale licensee may permit persons sixteen years old or older to be employed in a department if not less than fifty percent of the gross business transacted by that establishment is from the sale of foods and the licensee or an employee that is at least twenty-one years of age is on the premises when alcoholic beverages are sold or dispensed. For the purposes of this section, the term, 'to be employed in a department,' means to take orders for alcoholic beverages but not deliver alcoholic beverages to customers when waiting tables. The term does not include tending bar or drawing or mixing alcoholic beverages. "Customers under the age of sixteen year may be allowed in the restaurant area when accompanied by an adult twenty one years of age or older."

10-19-17. No licensee shall sell, serve, or allow to be consumed on the premises

covered by the license, alcoholic beverages other than in the hours permitted by its license.

10-19-18. No licensee shall allow any gambling or gambling devices on its premises, unless authorized by Tribal Council.

10-19-19. No fighting shall be allowed on the premises covered by the license.

10-19-20. All sales of alcoholic liquor shall be for cash only. No licensee shall engage in any pawn business of any kind.

10-19-21. No licensee of an on-sale establishment shall allow to be sold any alcoholic beverages in a package, whether sealed or unsealed, or whether full or partially full. Licensee herein includes low-point beer.

10-19-22. No licensee of a package establishment shall allow to be consumed on the premises covered by the license any alcoholic beverages.

10-19-23. No licensee shall sell liquor within 500 feet of any elementary or secondary elementary.

CHAPTER 20 – LOW-POINT BEER REPEALED

CHAPTER 21 – SALES TAX REPEALED

CHAPTER 22 – AGE REQUIREMENTS

10-22-1. FURNISHING BEVERAGES TO A CHILD. It shall be unlawful to sell or give any alcoholic beverage, except low-point beer, to any person under the age of 21 years, or sell or give to any person under the age of 19 years any low-point beer. Any person who violates this section **shall be guilty of an offense** and upon conviction thereof shall be punished by **a fine of not less than \$100 nor more than \$360 or by imprisonment in the Tribal Jail for not less than 30 days or more than 180 days, or by both such fine and imprisonment with costs.**

10-22-2. PURCHASE, POSSESSION BY MINOR. It shall be unlawful for any person under the age of 21 to purchase attempt to purchase or possess or consume intoxicating liquor, or to misrepresent his age for the purpose of purchasing or attempting to purchase such intoxicating liquor. Any person who violates any of the provisions of this section shall be guilty of an offense and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$360 or by imprisonment in the Tribal Jail for a period not less than 30 days or more than 120 days, or by both such fine and imprisonment with costs.

10-22-3. PURCHASE OR POSSESSION OF LOW POINT BEER. It shall be unlawful for any person under the age of 19 years to purchase, attempt to purchase, possess or consume low-point beer, or to misrepresent his age for the purpose of purchasing or attempting to purchase low-point beer. Any person who violates the provisions of this section shall be guilty of an offense and upon conviction shall be punished by a fine of not less than \$50 nor more than \$360 or by imprisonment in the Tribal Jail for not less than 30 days nor more than 120 days, or both such fine and imprisonment with costs.

10-22-4. EVIDENCE OF LEGAL AGE DEMANDED. Upon attempt to purchase any alcoholic beverages in any Tribal or Community liquor store by any person who appears to the vendor to be under legal age, such vendor shall ask the prospective purchaser upon such demand shall display satisfactory evidence that he is legal age.

Any person under legal age who represents to any vendor falsified evidence as to his age shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties specified in Section 3 above.

CHAPTER 23 – PROFITS, REPEALING, AMENDMENTS AND MISCELLANEOUS

10-23-1. PROFITS FROM ALL LIQUOR RESTRICTED. The expenditures of the Tribal Council of all profits realized by the Rosebud Sioux Tribe under the provisions of this ordinance shall be limited to the following in order of priority:

(1) Programs designed to care and provide for the elderly members of the Rosebud Sioux Tribe, PROVIDED, that such expenditures shall be supplemental to any funds now provided by the Federal Government regardless of whether such funds are channeled directly from the Federal Government to the Tribe or through the State of South Dakota.

(2) Programs designed to upgrade the Law and Order Department of the Rosebud Sioux Reservation, PROVIDED, that such expenditures shall be supplemental to the those provided by the Bureau of Indian Affairs and other federal agencies regardless of whether such funds are channeled directly from the Federal Government to the Tribe or through the State of South Dakota.

(3) Supplemental Grants to tribal members for education; preference to be given in the areas of special and professional education. Grants will stipulate such conditions as are deemed advisable by the Rosebud Sioux Tribal Council.

(4) Programs designed for Community Development.

10-23-2. SEVERABILITY. If any section of any chapter of this ordinance or the application thereof to any party or class, or to any circumstances, shall be held to be invalid for any cause whatsoever, the remainder of the chapter and ordinance shall not be affected thereby and shall remain in full force and effect as though to no part thereof had been declared invalid.

10-23-3. ALL PRIOR ORDINANCES AND RESOLUTIONS REPEALED. All prior ordinances and resolutions or provisions thereof that are repugnant or inconsistent to any provisions of this ordinance are hereby repealed.

10-23-4. AMENDMENT OR REPEAL OF ORDINANCE. This ordinance may be amended or repealed by only a ¾ vote of the Tribal Council in regular session.

10-23-5. APPLICABLE LAW. All acts and transactions under authority of any liquor license issued pursuant to this ordinance shall be conformity with the laws of the State of South Dakota and shall also be in conformance with this ordinance and the tribal license issued.

10-23-6. DISCLAIMER. Nothing set forth in this ordinance shall be construed to authorize criminal jurisdiction by any entity created thereunder or by the Rosebud Sioux

Tribal Court over any non-Indian for any violation of any provision of this ordinance.

TITLE ELEVEN

TAX CODE

CHAPTER 1 – LEGISLATIVE FINDINGS AND PURPOSE

- | | |
|------|---|
| 101. | Sovereign Power To Tax |
| 102. | Benefits Of Tribal
Government |
| 103. | Tribal Need For
Governmental Revenue |

101. SOVEREIGN POWER TO TAX.

The power to levy taxes and similar exactions is an inherent and essential part of the authority of any government. This power is therefore an aspect of the retained sovereignty of Indian tribes except where it has been limited or withdrawn by federal authority. The Rosebud Sioux Tribe is a sovereign Indian Tribe organized pursuant to the Act of June 18, 1934, 48 Stat. 948, as amended, and governed pursuant to a Constitution and By-Laws ratified on November 23, 1935, and approved by the Commissioner of Indian Affairs on December 20, 1935, as amended from time to time thereafter. This Code is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Tribal Council in Article IV, Section 1 (h) of the Tribal Constitution, which authorizes the Tribal Council to levy taxes upon members of the tribe and to levy taxes or license fees upon non-members doing business within the Reservation.

102. BENEFITS OF TRIBAL

GOVERNMENT. Among the benefits provided by the tribal government to tribal members and to non-members residing or conducting business within the Rosebud Reservation are the following: the provision of governmental services, including sewer and water systems, police and fire protection, and a Tribal Court system of general jurisdiction; the promotion and regulation of economic activities within the Tribe's sovereign jurisdiction; and the protection of Reservation lands and resources.

103. TRIBAL NEED FOR

GOVERNMENTAL REVENUE. Without

the exercise of the Tribe's sovereign authority to tax, as implemented by this Code, it is not possible for the Tribe to provide the governmental and other services essential to persons, both Indian and non-Indian, on the Reservation. Absent the enactment of tribal taxes, tribal members bear the financial burden of providing most governmental services through the expenditure of tribal income. The taxes levied under this Code will more equitably distribute the burden of financing tribal governmental services among all persons who engage in business activities within the Reservation or lease Indian lands, and who thus benefit from tribal governmental services.

CHAPTER 2 – GENERAL PROVISIONS

- | | |
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| 201. | Definitions |
| 202. | Tribal Council To Determine
All Tax Rates |
| 203. | Effective Dates |
| 204. | Sovereign Immunity |
| 205. | Tribal Tax Account
Established |
| 206. | Savings Clause |

201. DEFINITIONS. The following definitions apply throughout this Code, except in any Chapter in which an inconsistent definition expressly set forth:

(1) "Business" means any activity engaged in by any person, or caused to be engaged in by any person, with the object of gain, benefit, or advantage, either direct or indirect.

(2) "Commission" or "Tax Commission" means the Tribal Tax Commission of the Rosebud Sioux Tribe established pursuant to Chapter 3 of this Code.

(3) "Department of Revenue" or "Department" means the Department of Revenue of the State of South Dakota.

(4) "Indian" means an individual who is a member, either enrolled or eligible for enrollment, in any Indian tribal entity recognized by the United States. "Indian tribal entity" includes an Indian, Eskimo, Aleut tribe, band village, community, pueblo, or organization.

(5) "Non-Indian" means any person other than an Indian.

(6) "Person" means any individual, receiver, assignee, trustee in

bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, corporation, association, society, political entity, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise; provided, that the term does not include: (a) the government of the Rosebud Sioux Tribe and any governmental entities of the Tribe, and (b) any of the above listed forms of business entities that are wholly owned and operated by the Rosebud Sioux Tribe.

(7) "Reservation" means the Rosebud Reservation, including all lands within the exterior boundaries of the Rosebud Reservation, regardless of ownership of such lands.

(8) "SDCL" means the South Dakota Codified Laws, as amended.

(9) "State" means the State of South Dakota.

(10) "Tribal Council" or "Council" means the Rosebud Sioux Tribal Council, established pursuant to Article III of the Constitution and By-Laws of the Rosebud Sioux Tribe, as the governing body of the Tribe.

(11) "Tribal member" or "member" means an individual Indian who is enrolled in the Rosebud Sioux Tribe.

(12) "Tribal territory" means all lands under the taxing or civil regulatory jurisdiction of the Rosebud Sioux Tribe.

(13) "Tribe" means the Rosebud Sioux Tribe.

Throughout this Code, words in the singular shall include the plural, and words in the plural shall include the singular. Words in one gender shall include all other genders.

202. TRIBAL COUNCIL TO DETERMINE ALL TAX RATES. All tax rates not expressly set forth in this Code and all amendments to the tax rates set forth in this Code shall be set by the Tribal Council after consideration of the recommendation, if any, of the Tribal Tax Commission; provided, that as to any Chapter which provides for its amendment upon amendments of the laws of the State of South Dakota, the tax rates set forth in such Chapter shall be amended in accordance with such provision.

203. EFFECTIVE DATES: CODIFICATIONS OF EXISTING TAX ORDINANCES AND NEW PROVISIONS. Chapters 7, 8, 9, 10, 11 of this Code are codifications of existing tax ordinances previously enacted by the Rosebud Sioux Tribal Council and, where applicable, approved by the Secretary of the Interior. The effective dates of the taxes codified in those Chapters of this Code, except where otherwise expressly provided, are effective as of the date of enactment by the Tribal Council.

204. SOVEREIGN IMMUNITY. The Rosebud Sioux Tribe, and all its constituent parts, including the Tribal Tax Commission established pursuant to this Code, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived by the Tribe or the United States. Nothing in this Code shall be construed as waiving the sovereign immunity of the Rosebud Sioux Tribe or any of its constituent parts, including the Tribal Tax Commission, except that after exhaustion of administrative remedies as provided in Section 401, a taxpayer aggrieved by the decision of the Tax Commission on a petition for redetermination may petition the Tribal Court pursuant to Section 402, for review of the decision by the Tax Commission. Nothing in Chapter 5 of this Code, and no enforcement action taken pursuant to Chapter 5 of this Code, including without limitation the filing of suit by the Tax Commission for the collection of taxes, penalties, or interest, and for recovery of reasonable attorneys fees and expenses incurred in bringing such action, shall constitute a waiver of sovereign immunity, either as to any counterclaim, regardless of whether the asserted counterclaim arises out of the same transaction or occurrence, or in any other respect.

205. TRIBAL TAX ACCOUNT ESTABLISHED.

(1) There is hereby authorized and directed to be established an account in some federally-insured financial banking institution or the Bureau of Indian Affairs to be known as the Rosebud Sioux Tribal Tax Account.

(2) The Tribal Tax Account shall be in an interest-bearing account and the funds therein may be invested and

reinvested as may be approved by the Tribal Council.

(3) No monies shall be released or expended from the Tribal Tax Account, except upon written resolution of the Tribal Council appropriating a specific amount of the monies contained therein for the use of a particular department, agency, or program of the Tribe. Such appropriated amount shall be directly transferred to the account of the receiving department, agency, or program named in the appropriation resolution.

(4) All tax monies, license fees, penalties, interest, service fees or changes, or other monies collected by the Tax Commission in the administration and enforcement of this Code shall be deposited in the Tribal Tax Account, except as provided in Subsection (5) of this Section.

(5) The Tax Commission may establish one or more refund accounts in which a portion of the monies described in Subsection (4) of this Section may be deposited, and from which refunds to taxpayers who are lawfully determined by the Tax Commission or Tribal Court to be entitled thereto shall be paid.

206. SAVINGS CLAUSE. In event that any provision of this Code shall be found or declared to be invalid, the remaining provisions of this Code shall be unaffected thereby, and shall remain in full force and effect.

CHAPTER 3 – TRIBAL TAX **COMMISSION**

- 301. Establishing Tax Commission
- 302. Quorum and Voting Tax Commission Members - **Amendment**
- 303. Recusal Of Tax Members
- 304. Temporary Members and Acting Chairman
- 305. Rules Of The Tax Commission
- 306. Powers Of The Tax Commission
- 307. Tax Commission Employees and Expenses
- 308. Bonds
- 309. Records Of The Tax Commission
- 310. Compensation Of Tax Commission Members

- 311. Temporary and Permanent Removal From Office - **Amendment**

301. ESTABLISHING TAX

COMMISSION. There is hereby established the Tribal Tax Commission.

(1) The Commission shall consist of five members, one of whom shall be designated by the Tribal Council as Chairman of the Commission; provided, that the Chairman of the Budget and Finance Committee of the Tribal Council may not be designated as Chairman of the Commission.

(2) One member of the Tax Commission shall be the Chairman of the Budget and Finance Committee of the Tribal Council, who shall serve as liaison between the Commission and the Council. The Chairman of the Commission, the other three members of the Commission, and two alternate members of the Commission shall be appointed by the Tribal Council from a list of nominees recommended jointly by the President of the Tribe and the Budget and Finance Committee of the Tribal Council. The President and the Budget and Finance Committee, in recommending nominees, and the Council, in appointing such officials, shall choose members of the Rosebud Sioux Tribe who have appropriate education or business experience, and who are neither elected nor appointed officials of the Tribe, nor otherwise employed on the staff of the Tribe, provided, that non-members may be nominated and appointed when the members possess education, experience, or background which makes them uniquely qualified to serve. Initial appointments shall be made for the following terms: Chairman of the Commission – four years; one Commission member – three years; one Commission member – two years; one Commission member – one year; one alternate Commission member – three years; one alternate Commission member – one year. Thereafter, all appointments shall be for four-year terms, provided that if a permanent vacancy occurs because of removal or resignation or for any other reason, appointment of a replacement shall be for the remainder of the term of the person being replaced. The Chairman of the Budget and Finance Committee of the Tribal Council shall serve on the Tax

Commission for a term concurrent with his term as chairman of the Budget and Finance Committee.

(3) The Revenue Director shall be a full-time paid employee of the Tribe, selected jointly by the President of the Tribe and the Budget and Finance Committee of the Tribal Council, with the approval of the Tribal Council. The Revenue Director shall be subject to the provisions of the Tribal Personnel and Policy Manual. The Tribal Council may assign the Revenue Director additional duties, to the extent that such additional duties do not conflict with the performance of his duties as Revenue Director.

(4) The Revenue Director shall have primary responsibility for day-to-day oversight of the operation of the Tribal Tax Commission and all employees and advisors of the Tax Commission, but shall not be a member of the Commission.

302. QUORUM AND VOTING TAX COMMISSION MEMBERS.

(1) A quorum of the Tax Commission shall consist of three (3) members.

(2) The Chairman or Acting Chairman of the Tax Commission shall not vote except when necessary to break a tie vote.

(3) Action by the Tax Commission shall be by majority vote.

(4) In voting upon a petition for redetermination filed pursuant to Section 401, any abstention by a member of the Commission shall be counted as a vote to deny the petition.

(5) There will be monthly meetings of the commission to be held on the third (3rd) Thursday of every month.

303. RECUSAL OF TAX MEMBERS.

(1) For purposes of this Section, "immediate family" means brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half brother, half sister, or brother, sister, son, daughter, mother or father by adoption.

(2) No member of the Tax Commission shall participate in any action or decision by the Commission directly involving his own tax liability, or the tax liability of a member of his immediate family, or the tax liability of any person, business or other entity of which he or a member of his immediate family is an employee, or in which he or a member of his

immediate family has substantial ownership interest, or with which he or a member of his immediate family has a substantial contractual relationship.

(3) Nothing in this Section shall preclude a Commission member from participating in any action or decision by the Commission which:

(a) Generally affects a class of taxpayers, regardless of whether the Commission member or a member of this immediate family is a member of the affected class;

(b) Affects the Rosebud Sioux Tribe, a tribal enterprise, or a person or entity in a contractual relationship with the Tribe or a tribal enterprise, regardless of whether the Commission member is also a member of the Tribe.

(4) A member of the Tax Commission may voluntarily recuse himself and decline to participate in any action or decision by the Commission when the members, in his own discretion, believes:

(a) That he cannot act fairly or without biases; or

(b) That there would be an appearance that he could not act fairly or without bias.

304. TEMPORARY MEMBERS AND ACTING CHAIRMAN OF THE TAX COMMISSION.

The Tax Commission shall select one of its members to serve as Vice Chairman. Whenever the Chairman of the Commission is unavailable because of his recusal or any other reason, the Vice Chairman shall serve as Acting Chairman of the Tax Commission. If the Vice Chairman is also unavailable, the Tax Commission shall provide by regulation for another of its members to serve as Acting Chairman. Alternate members of the Commission shall serve temporarily as members of the Commission only when necessary for the Commission to achieve a quorum of three members.

305. RULES OF THE TAX COMMISSION.

(1) The Commission shall promulgate and enforce such written rules and regulations as are necessary to carry out the orderly performance of its duties, including but not limited to rules and regulations relating to:

(a) Internal operational procedures of the Commission and its staff;

(b) Interpretation and application of this Code as may be necessary to

ascertain or compute the tax owed by any taxpayer;

(c) The filing of any reports or returns required by, or necessary to implement, this Code; and

(d) The conduct of inspections, investigations, hearings, enforcement actions, and other authorized activities of the Commission.

(2) Such rules shall provide for a hearing for all interested persons prior to a recommendation by the Commission to interested persons prior to a recommendation by the Commission to the Tribal Council that a tax be established or a tax rate be adjusted, unless the Commission determines that a fiscal emergency exists. Such rules shall provide for reasonable notice to interested persons of the hearing and their right to present oral or written testimony.

(3) No rule or regulation of the Tax Commission shall be of any force or effect until and unless copies of the rules or regulation has been filed for record in the office of the Secretary of the Tribe and in the office of the Clerk of the Tribal Court. The copies shall bear the signature of at least two Commission members, certifying that the rule or regulation was duly adopted by the Commission pursuant to this Code.

(4) The Tribal Court shall take judicial notice of rules and regulation of the Tax Commission promulgated pursuant to this Code.

306. POWERS OF THE TAX

COMMISSION. The Tribal Tax Commission shall have the following powers:

(1) To promulgate and enforce rules and regulations consistent with this Code as provided in Section 305.

(2) To determine, levy, and collect all taxes authorized by this Code.

(3) To employ and consult with such advisors regarding the setting of tax rates for all taxes authorized by this Code, and regarding the amendment of this Code.

(4) To make recommendations to the Tribal Council regarding the setting of tax rates for all taxes authorized by this Code, and regarding the amendment of this Code.

(5) To hear and rule upon a petition by any taxpayer for redetermination of any taxes levied pursuant to this Code, as provided in Section 401; but the Tax

Commission shall have no power to alter tax rates established by the Tribal Council pursuant to this Code or to declare any portion of this Code void for any reason.

(6) To publish and make available to the public standard forms, and to require by regulation the filing of any forms or reports necessary implementation of this Code.

(7) To administer oath, conduct hearings, and, by subpoena, to compel the attendance of witnesses and the production of any books, records, papers, vouchers, accounts, documents, and financial statements of any taxpayer or any other person relating to the enforcement of this Code.

(8) To make, or cause to be made, by its agents or employees, an examination or investigation of the place of business, equipment facilities, tangible personal property, and the books, records, papers, vouchers, accounts, documents, and financial statements of any taxpayer, during normal business hours, or at any other time agreed by the taxpayer, or at any time whatsoever pursuant to a search warrant issued by the Tribal Court.

(9) To examine, under oath, either orally or in writing, any taxpayer or agent, officer, or employee of any taxpayer, or any other witness with respect to any matter related to this Code.

(10) To enter into and to renew tax collection and enforcement agreements with the State of South Dakota, provided, that any such agreement shall have an effective date no less than thirty days after its approval by the Commission unless the Tribal Council by resolution approves an earlier effective date, and provided further, that during the period between approval by the Commission and the effective date, such agreement may by resolution be vetoed by the Tribal Council, in which case the agreement shall have no effect.

(11) To delegate to an individual member of the Commission, to an individual member of the Tribal Council or to the Revenue Director or other members of the Commission staff or tribal staff, such of its functions as may be necessary to administer this Code efficiently, provided that the Commission may not delegate its powers to promulgate rules and regulation, to hear and rule upon petitions for redetermination of taxes, or to enter into

tax collection agreements with the State of South Dakota.

(12) To adopt by regulation a schedule of fees and changes for services rendered relation to transcripts and the furnishings or certifying of copies of proceedings, files, and records. Such fees and charges shall be credited to miscellaneous receipts of the Commission and deposited in the Tribal Tax Account.

(13) To exercise all other authority delegated to or conferred upon it by law, or as may be reasonably necessary in the administration or enforcement of any provisions of this Code.

307. TAX COMMISSION EMPLOYEES AND EXPENSES.

(1) The Tax Commission may employ such employees and incur such expenses as may be necessary for the proper discharge of its duties subject to the limitations and restrictions set out in this Section.

(2) The Tax Commission may utilize regular tribal staff in exercising the duties and responsibilities set out in this Code, and may delegate to the tribal staff by rule such of its functions as may be necessary to administer this Code efficiently, consistent with the limitations of Section 306 (11).

(3) The total amount disbursed by the Tax Commission in any one fiscal year for the payment of salaries, expenses, and incidentals shall not exceed the amount appropriated thereof by the Tribal Council, a line item proposed budget for the next fiscal year not later than August 15 each year.

308. BONDS.

(1) The Tax Commission may require its members and each of its officials and employees who may handle tribal monies or revenues, or who are responsible therefore, to give a bond for the honest and faithful performance of their duties, in such amounts and may be fixed by the Commission.

(2) The premiums on any bonds required of the Tax Commission members, officials, and its employees shall be paid from funds authorized in the Tax Commission budget.

309. RECORDS OF TAX COMMISSION.

(1) The Tax Commission shall keep and maintain accurate, complete, and

detailed records which reflect all taxes, penalties, and interest levied, due, and paid, and each and every official transaction, communication, or action of the Commission.

(2) Such records shall be maintained at the Office of the Tax Commission and shall not be removed from that location without consent of the Tax Commission by formal resolution.

(3) Such records shall be subject to audit at any time upon the direction of the Tribal Council, and shall be audited not less than once each year by an independent auditor selected by the Tax Commission with the approval of the Tribal Council.

(4) Any records of the Tax Commission, except the records or administrative appeals which relate to the individual business or person activities appeals, which relate to the individual business or personal activities of a named particular taxpayer or taxpayers, shall not be opened to public inspection and shall be released only to the taxpayer involved, persons duly authorized by the taxpayer in writing to have access to such records, or upon the order of the Tribal Court for good cause shown.

(5) Any records of the Tax Commission which do not relate to the individual business or person activities of a named particular taxpayer or taxpayers, and any records of administrative appeals, shall be public records of the Tribe and shall be available for public inspection during regular business hours. Copies of such records may be obtained by payment of such copying cost as may be established by rule of the Commission, provided, that names and other identification of any taxpayer appearing in such records shall be rendered unreadable prior to release of such copies unless the provisions of Subsection (2) and (4) of this Section would allow release of such information.

(6) Any disclosure of records or their contents in violation of this Section shall be punishable by all of the following sanctions that are applicable to the individual making of causing the disclosure.

(a) If the disclosure is by an elected or appointed tribal official and is intentional-permanent removal from office;

(b) If the disclosure is by an elected or appointed tribal official and is

intentional-permanent removal from office;

(c) If the disclosure is by a member of the Tribe and is intentional-imprisonment for not more than six months or a fine of not more than \$500, or both such imprisonment and fine.

(d) If the disclosure is by non-member of the Tribe and is intentional-temporary or permanent exclusion from the Reservation pursuant to the tribal Exclusion Ordinance, if any, and a civil penalty of not more than \$500, or both such exclusion and civil penalty.

(e) If the disclosure is inadvertent-civil penalty of at least \$25 but not more than \$250.

The Tribal Court shall determine the applicability of Subsections (a) through (e) to the individual making or causing the unauthorized disclosure, and shall impose the appropriate sanction or sanctions.

310. COMPENSATION OF TAX COMMISSION MEMBERS. Commission members and alternate Commission members shall be compensated and shall be reimbursed for official expenses at rates established by the Tribal Council. No compensation shall be paid when they are not performing official duties or actually attending a meeting of the Commission. Alternate Commission members shall not be compensated for attending Commission meeting unless their attendance is requested by the Commission or Revenue Director or they are actually serving as temporary members of the Commission pursuant to Section 304.

311. TEMPORARY AND PERMANENT REMOVAL FROM OFFICE-REPLACEMENT.

(1) Any Commission member and any alternate Commission member may be permanently removed from office on the same basis and under the same procedures that apply to removal of a member of the Tribal Council pursuant to Article VII of the Constitution and By-Laws of the Rosebud Sioux Tribe except the Tribal Council may remove a Commission member after three (3) unexcused absences.

(2) The Revenue Director, any Commission member, or any alternate Commission member shall automatically be removed temporarily from office whenever such official has failed to pay

when due any taxes owed by him or has failed to file as a taxpayer. The temporary removal shall remain in effect until the official has filed any returns, forms, and reports due, and has paid in full all taxes due, together with any penalties and interest due.

(3) Upon permanent removal of any such official, as provided in Subsection (1) of this Section, the Tribal Council shall appoint a replacement for the remainder of the official's term of office, as provided in Subsection (2) of this Section.

CHAPTER 4 – APPEALS

- 401. Petitions For Redetermination By Tax Commission
- 402. Review By Tribal Court

401. PETITIONS FOR REDETERMINATION BY TAX COMMISSION.

(1) If any taxpayer, having paid the taxes levied pursuant to this Code and any applicable penalties and interest, feels aggrieved thereby or discovers that the taxes were incorrectly, calculated, he may, within one year after the due date of such return and payment, apply the Tax Commission by petition in writing for a redetermination of the amount of tax so paid. The petition for redetermination shall set forth the facts and arguments supporting the petition and the amount by which the tax should be reduced. Any refund of taxes that were due more than one year prior to the filing of the petition is forever barred.

(2) Upon receipt of a petition for redetermination, the Tax Commission shall give notice and an opportunity to be heard to the taxpayer seeking redetermination.

(3) The Commission may redetermine taxes based on correction of tax computation, or corrections to the classification of property or income; but the Tax Commission shall have no power to alter tax rates established pursuant to this Code or to declare any portion of this Code void for any reason.

(4) Refunds ordered by the Commission as a result of any redetermination shall bear simple interest at the rate of 10% per year from the date of the overpayment to the date of refund; provided, that no interest shall be paid on a refund when the

Commission determines that the refund is for an overpayment that resulted from the negligence of the taxpayer.

402. REVIEW BY TRIBAL COURT.

(1) Within 30 days after notice of any decisions by the Tax Commission on a petition for redetermination, any taxpayer aggrieved thereby may petition the Rosebud Sioux Tribal Court for review of the decision by the Tax Commission.

(2) Upon such review, which shall be by the Court sitting without jury, no new or additional evidence may be introduced, but the matter shall be heard on the record established before the Tax Commission as certified by the Commission.

(3) Before making such petition to the Tribal Court, the full amount of taxes, interest, penalties, and any other charges determined to be due by the Tax Commission must be deposited with the Commission or an undertaking filed in such amount and with such sureties and the Commission shall require, sufficient to satisfy any taxes, interest and penalties, and any charges incident to the appeal.

(4) The Tribal Court shall uphold all factual findings by the Commission unless the Court determines that such findings are not supported by substantial evidence in the record established before the Tax Commission, the Court shall give proper weight to the Commissions interpretation of this Code and any regulations promulgated thereunder.

(5) The determination of the Tribal Court is final, and no further appeal shall be allowed.

(6) In no event is the Court authorized to alter tax rates established pursuant to this Code, to enjoin the collection of any taxes pursuant to this Code, or to award or order the payment of damages or to fashion any remedy except to order a refund of the amount of taxes, penalties, interest, or other charges in controversy, plus interest on the refund as provided in Subsection (7) of this Section, unless an additional remedy is specifically provided by this Code.

(7) Refunds ordered by the Court shall bear simple interest at the rate of 10% per year from the date of the overpayment to the date of the refund; provided, that no interest shall be paid on a refund when the Court determines

that the refund is for an overpayment that resulted from the negligence of the taxpayer.

CHAPTER 5 – ENFORCEMENT

- 501. Suit To Collect Taxes, Penalties and Interest
- 502. Injunctions
- 503. Seizure Of Property
- 504. Inventory Of Seized Property
- 505. Public Sale Forfeited Property
- 506. Exempt Property
- 507. Enforcement Of Subpoenas
- 508. Liens
- 509. Exclusion of Non-Members from Rosebud Lands
- 510. Violation As Criminal Offenses – *Amendment*

501. SUIT TO COLLECT TAXES, PENALTIES AND INTEREST. The Tax Commission is hereby authorized to bring any necessary actions in the Tribal Court or any other appropriate court of the collection of any taxes, penalties, or interest assessed and unpaid, and for recovery of reasonable attorneys fees and expenses incurred in bringing such action. Such actions shall be civil in nature and all penalties, interest, attorney fees, and expenses shall be in the form of civil damages, unless otherwise expressly provided in this Code. Any civil remedies, including but not limited to garnishment, attachment, and execution, shall be available for the collection of any monies due the Tribe. The Tax Commission may request the tribal attorney to bring such actions when the approval of the Tribal Council has been previously obtained. In all other cases, the Tax Commission shall be represented in the Tribal Court by the Tribal Prosecutor or Assistant Prosecutor.

502. INJUNCTIONS. In addition to all other remedies provided for in this Chapter, the Tax Commission is authorized to bring an action in the Tribal Court or any other appropriate court to enjoin the beginning or operation of any unlicensed business, activity, or function when tribal law requires a license to be issued for such business, activity, or function willfully fails to comply with any provision of this Code or any of the rules

and regulations which the Tax Commission is authorized by this Code promulgate.

503. SEIZURE OF PROPERTY. In addition to all other remedies provided for in this Chapter, whenever the Tax Commission determines that taxes, interest, or penalties are owed by a taxpayer and are delinquent, and that delay may prejudice the recovery of such overdue taxes, interest, or penalties, the Commission may apply to the Tribal Court for issuance of a distress warrant authorizing the seizure of any personal property and real property located within the Reservation and belonging to the taxpayer, except exempt property as listed in Section 506. Such application for a distress warrant may be made without notice to the delinquent taxpayer. The Tribal Court shall forthwith issue the distress warrant unless the Court finds (a) that there is no basis whatsoever for the determination by the Commission that delay may prejudice the recovery of such overdue taxes, interest, or penalties. Seizure pursuant to the distress warrant may be carried out by a member, employee, or agent of the Tax Commission, when accompanied by a law enforcement officer of the Tribe or the Bureau of Indian Affairs. Within ten days of such seizure, the Tax Commission shall cause an action to be filed in the Tribal Court or other court of competent jurisdiction against such property alleging the nonpayment of tax or other lawful reason for such seizure and forfeiture. Upon proof, the Court shall order such property forfeited for non-payment of taxes and title thereto vested in the Rosebud Sioux Tribe. Any person claiming ownership, the right to possession, or other interest in such seized property may intervene in such court action and raise any defenses that he may have, and any such person shall be served with process if he is known prior to the beginning of the action. Any such person may redeem seized property at any time prior to the entry of a final judgment of forfeiture by depositing with the court all taxes, penalties, interest, attorney's fees and expenses and other fees or charges assessed against or owed by the taxpayer.

504. INVENTORY OF SEIZED PROPERTY.

(1) Upon entry of a final order of forfeiture by the Court, the Tax Commission shall circulate an inventory of forfeited property to all divisions of the tribal government. Any agency of the tribal government may submit a request to the Tribal Council that such portion of the forfeited property as it can use be retained for the benefit of the Tribe. The Tribal Council shall determine which property will be retained and shall order the Tax Commission to conduct a public sale of the remainder, or to destroy any property which cannot be legally possessed.

(2) The property to be sold shall be sold at public action at the headquarters of the Rosebud Sioux Tribe. Notice of such sale shall be posted in the tribal headquarters at least 20 days before the sale and published at least twice in a newspaper of general circulation in the vicinity of the Rosebud Reservation at least ten days before the sale. All funds received at the sale, in excess of the costs of the sale, shall be deposited in the Tribal Tax Account except as provided in Subsection (4) of this Section.

(3) The Tax Commission may conduct a sale at such times as it deems sufficient property has accumulated to make the sale profitable, and shall also conduct a sale upon direction of the Tribal Council.

(4) The seizure, forfeiture, and sale of any property which is not destroyed as contraband pursuant to Subsection (1) of this Section, shall reduce the liability for payment of taxes, penalties, interest and other fees and charges of the person from whom such property was seized, by the sale price, less costs of the sale and attorney's fees and expenses incident to the forfeiture action, or in the case property retained for the benefit of the Tribe, by the fair market value of such property, less attorney's fees and expenses incident to the forfeiture action. Any excess shall be credited to the taxpayer's account, to be applied toward future tribal taxes, unless the taxpayer demonstrates to the Tax Commission by convincing evidence that no future taxes will be owed to the Tribe by the taxpayer, in which case such excess shall be refunded to the taxpayer.

506. EXEMPT PROPERTY. The following property shall be exempt from garnishment, attachment, execution, and sale for the payment of taxes, penalties, and interest due the Rosebud Sioux Tribe.

(1) Three-fourths of the net wages earned per week by the person or an amount equivalent to 40 times the federal minimum hourly wage per week, whichever is greater.

(2) One automobile of fair market value equity not exceeding \$2,000.

(3) Tools, equipment, utensils, or books necessary to the conduct of the person's business but not including stock or inventory.

(4) Trust or restricted title to any lands held in trust by the United States or subject to restrictions against alienation imposed by the United States, but not including lease or hold or other possessory interests in such property.

(5) Any dwelling used as the actual residence of the taxpayer including up to five acres of land upon which such dwelling is located, regardless of whether such dwelling is owned or leased by the taxpayer.

(6) Household goods, furniture, wearing apparel, personal effects, and up to two firearms, but not including television, radios phonographs, tape and video recorders, more than two firearms, works of art and other recreational or luxury items.

(7) One horse, one bridle, and one saddle.

(8) All implements of husbandry used upon a homestead.

(9) All ceremonial or religious items.

507. ENFORCEMENT OF

SUBPOENAS. Upon the failure of any person to comply with a subpoena issued by the Tax Commission pursuant to Section 306 (7), the Commission shall apply to the Tribal Court for issuance of a show cause order. The show cause order shall be issued by the Tribal Court forthwith, without notice of hearing, unless the Court finds that the subpoena lawfully issued or that the subpoena was not properly served. The show cause order, which shall be promptly served, shall state that the person against whom the subpoena was issued shall comply with the subpoena within ten days or show cause why he should not be held in contempt of court.

508. LIENS.

(1) Any tax, interest or penalty due from any person shall be a lien in favor of the Rosebud Sioux Tribe upon all property, whether real or personal, belonging to the taxpayer, except real property held in trust by the United States or real property owned by an Indian and subject to federally imposed restrictions against alienation. In order to preserve the lien against subsequent mortgages, judgment creditors or purchasers for value, who do not have actual notice of the lien, the Tax Commission shall file with the Tribal Court, the Superintendent, Rosebud Agency, and the register of deeds of the county in which the property is located, a notice of the lien in such form as it shall elect.

(2) Upon payment of the tax, interest, and penalty, the Tax Commission shall file forthwith with the Tribal Court, the Superintendent, Rosebud Agency, and the register of deeds in any county in which the lien was recorded, a notice of satisfaction of lien.

509. EXCLUSION OF NON-MEMBERS FROM ROSEBUD LANDS.

In addition to all other remedies provided for in this Chapter, the Tax Commission is authorized to request that an action be brought pursuant to the Tribal Exclusion Ordinance, if any, to temporarily or permanently exclude from all or any portion of Rosebud lands, any non-member of the Rosebud Sioux Tribe who willfully fails to comply with any provision of this Code or any of the rules and regulation which the Tax Commission is authorized by this Code to promulgate, provided, that such action may not be brought against a person authorized by federal law to be present on such lands. As used in this Section, "Rosebud Lands" means the Tribal Land Enterprise, or any other tribal entity, regardless of whether such lands are located inside or outside the Rosebud Reservation, and allotments inside the Rosebud Reservation which are either held in trust by the United States for an individual Indian or Indians, or owned by an individual Indian or Indians and subject to restrictions upon alienation imposed by the United States; provided, that the term does not include public highways on such lands.

510. VIOLATION AS CRIMINAL OFFENSES – CLASSIFICATION. For the purposes of this chapter:

(1) Class 1 Crime carries a maximum penalty of a fine not to exceed one thousand dollars (\$1,000) or a jail term not to exceed six (6) months.

(2) Class 2 Crimes carries a maximum penalty of a fine not to exceed five thousand dollars (\$5,000) or a jail term not to exceed one (1) year.

Any person who:

(1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed by this chapter **is guilty of a Class 2 Crime.**

(2) Fails to pay tax due under this Title within thirty days from the date of the tax becomes due **is guilty of a Class 1 Crime.**

(3) Fails to keep the records and books required by Title 11, Chapter 7, Sec. 769 or refuses to exhibit these records to the Tax Commission or its agents for the purpose of examination **is guilty of a Class 1 Crime.**

(4) Fails to file a return required by this Title within thirty days from the date of the return is due **is guilty of a Class 1 Crime.**

(5) Engages in business as a retailer under this Title without obtaining a sales tax license **is guilty of a Class 1 Crime.**

(6) Engages in business as a retailer under this Title after his sales tax license has been revoked by the Tax Commission **is guilty of a Class 2 Crime.**

(7) Willfully violates any rule of the Tax Commission for his administration and enforcement of the provisions of this Title **is guilty of a Class 1 Crime.**

(8) Violates either subdivision (2) or subdivision (4) two or more times in any twelve (12) month period **is guilty of a Class 2 Crime.**

(9) Engages in business as a retailer under this Title without obtaining a sales tax license after having been notified in writing by the Tax Commission or its agents that the person is a retailer subject to the provisions of the sales and use tax laws **is guilty of a Class 2 Crime.** It is not a violation of this subdivision if the person engaging in business as a retailer files an application for a sales tax license and meets all

lawful prerequisites for such license within three days from the receipt of written notice from the Tax Commission. For purposes of this section “person” includes corporate officers having control, supervision of or charges with the responsibility for making tax returns or payments pursuant to section 770; and includes members and non-members of the Rosebud Sioux Tribe.

CHAPTER 6 – PENALTIES AND INTEREST

601. Imposition Of Penalties and Interest Charges
602. Waiver Of Penalties

601. IMPOSITION OF PENALTIES AND INTEREST CHARGES.

The following civil penalties and interest charges are imposed with respect to all taxes levied pursuant to this Code:

(1) Penalty for late filing of any form or return: 5% of net tax due, per month or portion thereof, up to a maximum of 25% of net tax due, but not less than \$25, in addition, to any other penalties and any interest charges imposed pursuant to this Chapter.

(2) Penalty for late payment or underpayment of any tax: 1% of net tax due, per month or portion thereof, up to a maximum of 25% of net tax due, in addition to any other penalties and any interest charges imposed pursuant to this Chapter.

(3) Penalty for willful failure to file any form of return or to pay any tax when due, or willful filing of a frivolous form or return: 25% of net tax due or \$250, whichever is greater, in addition to any other penalties and any interest charges imposed pursuant to this Chapter.

(4) Penalty for willful misrepresentation which results in underpayment of any tax, or any other act of fraud: 50% of net tax due or \$500, whichever is greater, in addition to any other penalties and any interest charges imposed pursuant to this Chapter.

(5) Interest on all late payments and underpayments: 1-1/2% of net tax due per month or any portion thereof.

(6) Attorney’s fees and costs incident to any administrative or judicial proceeding brought to enforce the provisions of this Code.

602. WAIVER OF PENALTIES. For good cause, the Tax Commission may waive any penalties imposed pursuant to Section 601, except the penalty for willful misrepresentation or fraud contained in Section 601 (4), but shall not waive interest charges pursuant to Section 601 (5).

**CHAPTER 7 – RETAIL SALES
AND SERVICE TAX**

701. Definitions - **Amendment**
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 703. Tax On Sale of Sectional Homes
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776. Exemption Of Parking – Association With State, County or Tribal Fair - **Amendment**
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778. Exemption Of Gaming Proceeds - **Amendment**

701. DEFINITIONS. The definitions in Section 201 apply to this Chapter. In addition, in this Chapter, except where context clearly indicates a different meaning:

(1) “Gross receipts” means the amount received in money, credits, property, or other money’s worth in consideration of sales at retail within the Rosebud Reservation, without any deduction on account of the cost of the property sold, the cost of materials used, the cost of labor or services purchased, amounts paid for interest or discounts, or any other expenses whatsoever, no shall any deduction be allowed for losses. Discount for any purpose allowed and taken on sales shall not be included as gross receipts, nor shall the sale price of property returned by customers when the full sale price thereof is refunded either in case or by credit. On all sales of retailers, valued in money, when such sales are made under conditional sales contract, or under other forms of sale wherein the payment of the principal sum thereunder be extended over a period longer than sixty days from the date of sale thereof, only such portion of the sale amount thereof shall be accounted, for the purpose of imposition of tax imposed by this Chapter, as has actually been received in cash by the retailer during each quarterly period as defined herein;

(2) “Relief agency” means the Tribe, State any county, city and county, city, or district thereof, or any agency engaged in actual relief work;

(3) “Retail sale” or “Sale at retail” means the sale of either tangible personal property or services, or both tangible personal property and services to the consumer or user thereof, or to any person for any purpose other than for resale; the sale of natural or artificial

gas, electric energy, water, and communication service to consumer or users; and the sale of tickets or admissions to places of amusement or athletic contests;

(4) "Retailer" includes every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or the furnishing of gas, electricity, water, and communication service, and tickets or admissions to places of amusement and athletic events as provided in this Chapter. "Retailer" also includes every person subject to the tax imposed by Section 706 and 708. The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself out as engaging in the business of selling such tangible personal property at retail does not constitute such person a retailer;

(5) "Sale" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;

(6) "Agricultural purposes" means the producing, raising or growing and harvesting of food or fiber upon agricultural land, including dairy products, livestock and crops. The services of custom harvesters, chemical applicators, fertilizer spreaders, hay grinders and cultivators are considered agricultural purposes.

702. TAX ON SALE OF TANGIBLE PROPERTY. There is hereby imposed a tax upon the privilege of engaging in business as a retailer, a tax of 4% upon the gross receipts of all sales of tangible personal property consisting of goods, wares, or merchandise, except as taxed by Section 705 and except as otherwise provided in this Chapter, sold at retail within the Reservation to consumers or users.

703. TAX ON SALES OF SECTIONAL HOMES – SECTIONAL HOMES DEFINED. Sales of sectional homes are subject to sales tax, which shall be based upon the fair market value of the raw materials used to construct each home. For the purpose of this section, "Sectional homes" means any home pre-built in whole or in part for the purpose of permanent placement on a foundation. Mobile homes as defined in subdivision (1) of SDCL 34-34A-1 are not sectional.

704. MATERIALS INCORPORATED IN CONSTRUCTION WORK – RESTRICTION ON APPLICATION OF RATE INCREASE. No tax increase imposed after March 9, 1984 may be levied on materials incorporated in construction work pursuant to construction contracts bid or entered into on or before the effective date of the tax increase.

705. TAX ON SALE OF FARM MACHINERY AND IRRIGATION EQUIPMENT. There is hereby imposed a tax of 3% on the gross receipts from the sale or resale of farm machinery and attachment units other than replacement parts; or irrigation equipment used exclusively for agricultural purposes by licensed Reservation retailers; provided, however, that whenever any trade-in or exchange of used farm machinery is involved in the transaction, the tax shall only be due and collected on the cash difference.

706. TAX ON RECEIPTS FROM BUSINESS SERVICES. There is hereby imposed a tax at the same rate as that imposed upon sales of tangible personal property within the Reservation upon the gross receipts of any person from the engaging or continuing in the practice, within the Reservation, of any business in which a service is rendered. Any service as defined in Section 707 shall be taxable, unless the service is specifically exempt from the provisions of this Chapter.

707. SERVICES SUBJECT TO TAXATION. "Service" means all activities engaged in for other persons for a fee, retainer, commission, or other monetary charge, which activities involve predominately the performance of a service as distinguished from selling property. In determining what a service is, the intended use, principle objective or ultimate objective of the contraction parties shall not be controlling. For the purpose of this Chapter, services rendered by an employee for his employer are not taxable.

708. TAX ON RECEIPTS FROM SPECIFIC ENUMERATED BUSINESSES AND SERVICES. There is imposed a tax at the rate of 3% upon

the gross receipts of any person from engaging in the business of leasing farm machinery or irrigation equipment used for agricultural purposes and 4% upon the gross receipts of any person from engaging or continuing in any of the following businesses or services within the Reservation: abstractors; accountants; architects; barbers; beauty shops; bill collection services; blacksmith shops; car washing; dry cleaning; dyeing; exterminators; garage and service stations; garment alteration; cleaning and pressing; janitorial services and supplies; specialty cleaners; laundry; linen and towel supply; membership or entrance fees for the use of a facility or for the right to purchase tangible personal property or services; photography; photo developing and enlarging; tire recapping; welding and all repair services; cable television; and rentals of tangible personal property except leases of tangible personal property between one telephone company and another telephone company, motor vehicles as defined by SDCL 32-5-1 leased under a single contract for more than twenty-eight days and mobile homes; provided, however, that the specific enumeration of businesses and professions made in this section does not, in any way, limit the scope and effect of Section 706.

709. COIN OPERATED WASHERS AND DRYERS – LICENSE IN LIEU OF TAX – FAILURE TO PAY FEE INTEREST – COLLECTION.

The annual license fee for each coin operated washer and dryer within the Reservation is \$10.00. However, in municipalities having a population of one thousand persons or less, the annual license fee is \$8.00. The license fee is in lieu of any sales or gross receipts taxes from the operation or ownership of coin operated washers and dryers. Any person who fails to pay the fee prescribed on or before December thirty-first of the year prior to the year for which the fee is due is subject to the interest and penalty charges set forth in Chapter 6.

710. SERVICES ENUMERATED IN STANDARD INDUSTRIAL CLASSIFICATION MANUAL

SUBJECT TO TAX. The following services enumerated in the Standard

Industrial Classification Manual, 1972, as prepared by the statistical policy division of the Office of Management and Budget, Office of the President of the United States, are specifically subject to the tax levied by this Chapter: metal mining services (group no. 108); anthracite mining services (industry no. 1112); bituminous coal and lignite mining services (no. 1213); nonmetallic minerals (except fuels) services (group no. 148); services industries for the printing trade (group no. 279); coating, engraving and allied services (group no. 347); communication, electric and gas services (division E); hotels, motels, and tourist courts (group no. 701); rooming and boarding houses (group no. 702); camps and trailer parks (group no. 703); personal services (major group no. 72); business services (major group no. 75); miscellaneous repair services (major group no. 76); amusement and recreation services (major group no. 79); legal services (major group no. 81); landscape and horticultural services (group no. 78); engineering, architectural, and surveying services (group no. 891); and accounting, auditing, and bookkeeping services (group no. 893). In addition, the following services are also specifically subject to the tax levied in this Chapter: livestock slaughtering services; dog grooming services; abstractor's services; collection agent's services; real estate agent's services; all appraiser's services; funeral services and crematories (group no. 726) except that purchases of goods or services with money advanced as an accommodation are retail purchases and not includable in gross receipts for funeral services and fees paid or donated for religious ceremonies are not includable in gross receipts for funeral services; and loan broker's services. The services enumerated in this section shall not be construed as a comprehensive list of taxable services but rather a representative list of services intended to be taxable under this Chapter.

711. TAX ON OIL AND GAS FIELD SERVICE.

There is imposed, at the rate of 2%, an excise tax on the gross receipts of any person engaging in oil and gas field service (group no. 138) as enumerated in the standard Industrial Classification Manual, 1972, as prepared by the statistical policy division of the

Office of Management and Budget, Office of the President of the United States.

712. RENTED PROPERTY USED OR DELIVERED WITHIN THE

RESERVATION. The tax imposed upon persons engaging or continuing in the business of renting tangible personal property applies if the rented property is used within the Reservation or is delivered to the lessee or sublessee within the Reservation.

713. TAX ON UTILITY SERVICES.

There is hereby imposed a tax of 4% upon the gross receipts from sales, furnishings, or service of gas, electricity, and water, including the gross receipts from such sales by any municipal corporation furnishing gas, and electricity, to the public in its proprietary capacity, except as otherwise provided in this Chapter, when sold at retail within the Reservation to consumers or users.

714. TAX ON UTILITY SERVICES.

There is hereby imposed on amounts paid for local telephone services, toll telephone services and teletypewriter services, a tax of 4% of the amount so paid. The taxes imposed by this section shall be paid by the person paying for the services. If a bill is rendered the taxpayer for local telephones service or toll telephone service, the amount on which the tax with respect to such services shall be based from the sum of all charges for such services included in the bill and computing the tax, then the amount on which the tax for each such group shall be based from the sum of all items within that group, and the tax on the remaining items not included in any such group shall be based on the charge for each item separately. If the tax imposed by this section with respect to toll telephone service is paid by inserting coins in coin operated telephones, the tax shall be computed to the nearest multiple of five cents, except that, where the tax is midway between multiples of five cents, the next higher multiple shall apply. The tax so paid shall be remitted at the same time as the sales tax imposed by this Chapter.

715. TAX ON ROOM OR PARKING SITE RENTALS TO TRANSIENT

GUESTS. There is hereby imposed a tax at the same rate as that imposed upon

sales of tangible personal property within the Reservation upon the gross receipts from rentals of rooms or parking sites by lodging establishments or campgrounds received from transient guests. Lodging establishment shall mean any building, structure, property or premise kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished in two or more rental units to transient guests, campgrounds shall mean any property or premises kept, used, maintained, advertised or held out to the public to be a place where sites are available for the placing of tents, campers, trailers, mobile homes or other mobile accommodations in two or more rental units to transient guests. Transient guests mean any person who resides in a lodging establishment or campground less than twenty-eight as otherwise provided in this Chapter.

716. TAX ON ADMISSIONS TO AMUSEMENTS AND ATHLETIC

EVENTS. There is imposed a tax of 4% upon the gross receipts from all sales of tickets or admissions to places of amusement and athletic events, except as otherwise provided in this Chapter.

717. TAX ON VENDING MACHINE

RECEIPTS. There is hereby imposed a tax of 3% upon the gross receipts from the operation of all vending machines.

718. EXEMPTION OF CIGARETTE

SALES. Section 716 and 717 do not apply to gross receipts derived from the sale of cigarettes through vending machines.

719. AMUSEMENT DEVICE TAX.

There is imposed upon owners and operators a special amusement excise tax of 3% of the gross receipts from the operation of any mechanical or electronic amusement device.

720. CONSTITUTIONAL AND STATUTORY EXEMPTIONS FROM

TAXATION. There are hereby specifically exempted from the provisions of this Chapter and from computation of the amount of tax imposed by it, the gross receipts from sales of tangible personal property which the Tribe is prohibited from taxing

under the Constitution or laws of the United States or under the Constitution and By-Laws of the Rosebud Sioux Tribe.

721. EXEMPTION OF PROPERTY

SOLD FOR LEASE. Gross receipts from the sale of tangible personal property to a person who intends to lease the property to persons within the Reservation and actually does so are exempted from the provisions of this Chapter and the tax imposed by it.

722. EXEMPT SALES TO STATES, MUNICIPALITIES, CHARITIES AND INDIAN TRIBES.

There are hereby specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, the gross receipts from sales of tangible personal property and the sale, furnishings or service of electrical energy, natural and artificial gas and communication service to the United States, to the state of South Dakota or to any other state of the United States or the District of Columbia, to public or municipal corporations of the state of South Dakota or of any other state of the United States or the District of Columbia, to any nonprofit charitable organization which devotes its resources exclusively to the relief of the poor, distressed or underprivileged, and has been recognized as an exempt organization under Section 501 (c) (3) of the Internal Revenue Code, or to any Indian Tribe.

723. EXEMPTION OF SALES

OTHERWISE TAXED. There are hereby specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, gross receipts from the sale of gasoline, motor fuel, and special fuel subject to tax under SDCL Chapter 10-48 or Tribal law, and cigarette already taxed or exempt under the laws of the Tribe.

724. EXEMPTION OF GOODS AND SERVICES FURNISHED TO MEET WARRANTY OBLIGATIONS

WITHOUT CHARGE. There are hereby specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, the gross receipts from

furnishing goods or services to the purchaser or his successor in interest of tangible personal property to fulfill a warranty obligation of the manufacture to the extent that such goods or services are not charged to such purchaser or his successor in interest.

725. SERVICES SPECIFICALLY

EXEMPT FROM TAX. The following services enumerated in the Standard Industrial Classification Manual, 1972, as prepared by the statistical policy division of the Office of Management and Budget, Office of the President of the United States are exempt from the provisions of this Chapter: health service (major group no. 80); educational services (major group no. 82); social services (major group no. 83); agricultural services (major group 07); forestry services (group no. 085); radio and television broadcasting (group no. 483); railroad transportation (major group no. 40); local and suburban passenger transportation (major group no. 411); taxicabs (group no. 412); intercity and rural highway passenger transportation (group no. 413); passenger transportation charger service (group no. 414); school buses (group no. 415); establishments primarily engaged in trucking, local and long distance (group no. 421); farm product warehousing and storage (industry no. 4221); establishment primarily engaged in transportation on rivers and canals (group no. 444); establishment primarily engaged in air transportation, certified carriers (group no. 451); establishments primarily engaged in air transportation, non-certified carriers (group no. 452); pipe lines, except natural gas (major group no. 46); freight forwarding (group no. 471); arrangement of transportation (group no. 472); rental of railroad cars (group no. 474); water supply (industry no. 4941); sewerage systems (industry no. 4952); and refuse systems (industry no. 4953). The following are also specifically exempt from the provisions of this Chapter: financial services including loan origination fees, late payment charges, nonsufficient fund check charges, stop payment charges, safe deposit box rent, exchange charges, commission on travelers checks, and charges for administration of trusts; interest charges, and "points" charged on loans; commissions earned or service fees paid by an insurance company to an agent or representative

for the sale of a policy; stock and commodity brokers service; services of brokers and agents licensed under SDCL Title 47; the sale of trading stamps; veterinarians services; construction services (division C); rentals of motor vehicles as defined by SDCL 32-5-1 leased under a single contract for more than twenty-eight days; advertising services; services provided by any corporation to another corporation which is centrally assessed having identical ownership and services provided by any corporation to a wholly owned subsidiary which is centrally assessed; newspaper sales and subscriptions and motion picture rentals; bill collection services or collection agent's service, if the debt was incurred outside the Reservation and the client does not reside within the Reservation.

726. EXEMPTION OF ENGINEERING, ARCHITECTURAL AND SURVEYING SERVICES.

There are specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by Sections 706 and 708, the gross receipts from engineering, architectural and surveying services (group no. 891, Standard Industrial Classification Manual, 1972, as prepared by the statistical policy division of the Office of Management and Budget, Office of the President of the United States) rendered for a project entirely outside the Reservation.

727. EXEMPTION OF SERVICES USED ENTIRELY OUTSIDE RESERVATION.

The tax imposed by this Chapter upon persons performing services does not apply to transactions if the beneficial use of the service occurs entirely outside the Reservation.

728. EXEMPTION OF RECEIPTS USED FOR CIVIC AND NON-PROFIT ASSOCIATIONS AND PURPOSES.

There are specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, the gross receipts from the following:

(1) Sales of tickets or admissions to the grounds and grandstand attractions of tribal, state, county, district, regional and local fairs and pow-wows;

(2) Admissions to nonprofit historic sites and repertory theater performances operated by nonprofit organizations;

(3) Admissions to community operated celebrations and shows sponsored by a chamber of commerce or other similar nonprofit organization if the Tribe, or the county, city or town in which the activity takes place, officially sponsors the activity and no charge is made to the operators of the celebration or show for the use of tribal, county, city or town facilities or services;

(4) Admissions to events or receipts from activities sponsored and operated by colleges or elementary or high schools or related clubs or supporting organizations approved or supervised by a school or college when the entire net proceeds are spent for educational purposes and any associations of them and receipts from tangible personal property sold at such event. However, receipts from tangible personal property sold at such events or activities are included in the measure of sales tax at the time of purchase by the college or school or related club or supporting organization.

(5) Religious, benevolent, fraternal, or charitable activities, where the entire amount of such receipts after deducting all costs directly related to the conduct of such activities is expended for religious, benevolent, fraternal or charitable purposes, and the receipts are not the result from tangible personal property or services purchased for use in the activity are included in the measure of sales tax.

729. EXEMPTION OF MEMBERSHIP ORGANIZATIONS. Membership organizations, major group no. 86, as enumerated in the Standard Industrial Classification Manual, 1972, as prepared by the statistical policy division of the Office of Management and Budget, Office of the President of the United States, are exempt from the tax imposed by this Chapter on receipts from sales of services by them and their membership fees. This exemption does not apply to the tax imposed upon the gross receipts of sales of tangible personal property by such organizations. This section does not exempt the gross receipts of a retailer which are the result of sales to organizations in major group no. 86 or exempt such organizations from

payment of use tax on goods and services used in the conduct of their activities.

730. EXEMPTION OF SALES TO EDUCATIONAL INSTITUTIONS AND HOSPITALS – PURCHASES FOR MEMBERS OR EMPLOYEES TAXABLE – MOTOR VEHICLE REGISTRATION FEE – QUARTERLY REPORTS BY EXEMPT INSTITUTIONS.

There are specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, the gross receipts from sales of tangible personal property and the gross receipts from sales, furnishing or service of electrical energy, natural and artificial gas, water and communication service to and for use by religious education institutions, private education institutions currently recognized as exempt under Section 501 (c) (3) of the Internal Revenue Code as in effect on January 1, 1983 and nonprofit, charitable hospitals when purchases are made by authorized officials, payment made from the institution funds and title to the property for the personal use of officials, members or employees of such institution funds and or to the sales to or purchases of tangible personal property used in the operation of a taxable retail business. The exemption provided in this section does not, in any manner, relieve the institution from the payment of any additional and further license fee imposed on the registration of motor vehicles. All institutions claiming this exemption shall, at the end of each quarter of each calendar year, file with the Tax Commission a list of all purchases on which exemption was claimed, fully itemized, showing name and address of vendors, description of property purchased, purchase price and brief explanation of use or intended use.

731. EXEMPTION OF DRUGS, MEDICINES AND MEDICAL DEVICES PRESCRIBED FOR HUMAN USE.

There are specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, nutritional supplements (as defined by rule adopted by the Department of Revenue of the State of South Dakota) if dispensed by a chiropractor, all drugs and medicines as

those terms are defined by SDCL 36-11-2, and medical devices as that term is defined below to the extent used by humans, when such drugs, medicines or medical devices are prescribed by prescription, dispensed or administered by a physician, chiropractor, optometrist, dentist or podiatrist. "Medical device" as used in this Section and Section 825 means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, which is:

(1) Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, detection or prevention of illness or disease, or in the prevention of death; or

(2) Intended to affect the structure or any function of the human body; or

(3) Intended for use in the mobility of persons.

732. INK AND NEWSPRINT EXEMPT WHEN USED TO PRODUCE SHOPPER'S GUIDES DEFINED.

Ink and newsprint when used in the production of shopper's guides are hereby exempt from the tax imposed under this Chapter. For the purposes of this section the term "shopper's guide" includes advertising publications whose advertisements are solicited from the general public and whose publications are for free distribution to the general public and are published regularly at least once a month, consisting of printed sheets containing advertising, bearing a date of issue, and devoted to advertising of general interest.

733. EXEMPTION OF OSTOMY CARE SUPPLIES.

The gross receipts from furnishing devices and supplies designed or intended for ostomy care and management are specifically exempt from the provisions of this Chapter and from the computation of the amount of tax imposed by it. These devices are supplies include collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies designed for use of ostomates.

734. PACKAGING AND CONTAINER MATERIALS AS TAX-EXEMPT RAW MATERIAL.

Containers, labels,

cartons, packing cases, wrapping paper, twine, glue, bags, bottles, shipping cases, wrapping film, strapping, rope, tape, cans, lids, boxes, pads, dividers, stockinet's, casings, and similar articles and receptacles used or consumed by manufacturers, processors or fabricators of raw material within the meaning of Section 815 and are not subject to sales or use tax.

735. PACKAGING AND CONTAINER MATERIALS SOLD TO RETAILERS

EXEMPT. There are specifically exempted from the provisions of this Chapter, and from the computation of tax imposed by it, gross receipts from the sale of paper and plastic bags, wrapping paper, twine, tape and similar articles sold to retailers as wrappers or containers to hold other tangible property sold by the retailer and subject to sales or use tax and the articles are supplied free by the retailers as a convenience to the customer.

736. EXEMPTION OF HOSPITAL MEALS PAID FOR BY PUBLIC ENTITY.

There are specifically exempted from the provisions of this Chapter, and from the computation of tax imposed by it, the gross receipts from the sale of meals to inpatients of hospitals if such meals are paid for, by law or by contract, by the United States, the Rosebud Sioux Tribe, the State of South Dakota or a political subdivision, including, but not limited to meals, provided to Medicare, Medicaid, Campus, Indian Health Services or County Poor Relief patients.

737. EXEMPTION OF SEED USED FOR AGRICULTURAL PURPOSES.

There are hereby specifically exempted from the provision of this Chapter and from the computation of the amount of tax imposed by it, gross receipts from the sale of seed legumes, seed grasses and seed grains, when twenty-five pounds or more are sold in a single sale to be used exclusively for agricultural purposes.

738. EXEMPTION OF CATTLE SEMEN USED FOR AGRICULTURAL PURPOSES.

There are hereby specifically exempted from the provisions of this Chapter and from the

computation of the amount of tax imposed by it, gross receipts from the sale of cattle semen for the artificial insemination of domestic animals whenever the vendee has made the purchase exclusively for agricultural purposes.

739. EXEMPTION OF COMMERCIAL FERTILIZER USED FOR

AGRICULTURAL PURPOSES. There are hereby specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, gross receipts from the sale of commercial fertilizers, either liquid or solid, when five hundred pounds or more are sold in a single sale to be used exclusively for agricultural purposes.

740. EXEMPTION OF PESTICIDES USED FOR AGRICULTURAL

PURPOSES. There is hereby specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, gross receipts from the sale of insecticides, herbicides, pesticides, rodenticides and fumigants to be used exclusively by the purchaser for agricultural purposes.

741. EXEMPTION OF EXCHANGE OF AGRICULTURAL PRODUCTS.

There are hereby specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, gross receipts from the exchange processed agricultural products for unprocessed agricultural products, of kind required for such processing when such exchange is between the producer and processor, and, provided such processed articles are for consumption by the producer's family, household or employees.

742. EXEMPTION OF LIVESTOCK AND POULTRY SALES OTHER THAN

ULTIMATE RETAIL SALES. No gross receipts from sales of livestock or live poultry, when such sales are a part of a series of transactions incident to producing a finished product intended to be offered for an ultimate retail sale, shall be taxable under this Chapter, except that an ultimate retail sale interrupting the series of transactions

with an intended final use or consumption shall be taxable.

743. EXEMPTION OF FUEL USED FOR AGRICULTURAL OR RAILROAD PURPOSES.

Motor fuel, including kerosene, tractor fuel, liquefied petroleum gas, natural and artificial gas, diesel fuels, and distillate, when used for agricultural or railroad purposes, is exempt from excise taxes imposed under this Chapter. For the purposes of this section, agricultural purposes includes hay grinding but does not include the lighting, or heating of a farm residence or residences. For the purposes of this section, railroad purposes included only locomotives or track motor cars being operated on railroad tracks in road services within the Reservation.

744. POWER CHARGES FOR IRRIGATION PUMPS EXEMPT.

There are hereby specifically exempted from the provisions of this Chapter and from the amount of tax imposed by it, gross receipts from the sale of electricity used to power irrigation pumps and the gross receipts from the horsepower charge on electric motors powering irrigation pumps whenever the purchaser has made the purchase exclusively for agricultural purposes.

745. EXEMPTION OF WOOD PRODUCTS USED IN CREATING ENERGY FOR INDUSTRIAL PURPOSES.

There are hereby specifically exempted from the provisions of this Chapter and from the computation of tax imposed by it, gross receipts from the sale of wood products used in creating power, light, heat or steam for manufacturing or industrial purposes.

746. EXEMPTION OF BULK WATER FOR DOMESTIC USE.

There are specifically exempted from the provisions of this Chapter and from the computation of tax imposed by it, the gross receipts from the sales of bulk water delivered for domestic use.

747. EXEMPTIONS APPLIED TO TAXABLE SERVICES.

The exemptions from sales relative to sales of tangible personal property shall apply to services included in Section 706 – 708.

748. EXEMPTION OF PAYMENTS BETWEEN MEMBERS OF CONTROLLED GROUP-EXPENSES OF OFFICERS OF GROUP.

Payments made by one member of a controlled group to another member of a controlled group which represents an allocation reimbursement or charge for salary, travel and related central office expenses for the executive officers of the controlled group may not be considered as payments for management services so long as the executive officers provide no services to other members of the controlled group beyond the execution of such duties as they may have as officers of other members of the controlled group.

749. CONTROLLED GROUP DEFINED.

For the purpose of this Chapter, a controlled group consists of such corporations or other entities which are eligible to file a consolidated federal income tax return under the Internal Revenue Code as in effect on January 1, 1983, or entitled to only a single surtax exemption for federal corporate income tax purposes under the Internal Revenue Code as in effect on January 1, 1983.

750. EXECUTIVE OFFICER DEFINED.

For purposes of this Chapter, “executive officer” shall include every officer who participates or has authority to participate, other than in the capacity of a director, in the major policy making functions of the controlled group, regardless of whether the officers’ title contains a designation of assistant. The chairman of the board, the president, every vice-president, the controller, the secretary and the treasurer of a corporation are assumed to be executive officers unless the officer is excluded from participation in major policy making functions and does not actually participate therein. However, no controlled group may have more than six executive officers.

751. TAX ADDITIONAL TO OTHER OCCUPATION AND PRIVILEGE TAXES.

The taxes imposed under this Chapter shall be in addition to all occupation or privilege taxes imposed by the Rosebud Sioux Tribe unless

otherwise specifically exempted by this Chapter.

752. ADDITION TO TAX TO PRICE OF PRODUCT OR SERVICE. Retailers may add the tax imposed by this Chapter to the price of their products or service as provided by law. If no provision is made, the average equivalent of the tax may be added. Any person or retailer subject to taxation under this Chapter may add the tax under this Chapter, or the average equivalent thereof, to this price or charge.

753. SCHEDULE FOR COLLECTION OF TAX FROM CONSUMER. Except when a section in this Chapter expressly provides for a rate other than 4%, the schedule for collection of the tax imposed by this Chapter is:

.01	to	.12	None
.13	to	.37	.01
.38	to	.62	.02
.63	to	.87	.03
.88	to	1.12	.04
1.13	to	1.37	.05
1.38	to	1.62	.06
1.63	to	1.87	.07
1.88	to	2.12	.08

and on each additional dollar or fraction thereof an increment in tax according to this schedule.

The rate prescribed herein is applicable to all excise or use taxes whose rates are fixed to or determined by the rate prescribed in a section in this Chapter, except when such section expressly provides for a rate other than 4%.

754. APPLICATION FOR RETAILER PERMIT – CONTENTS AND EXECUTION. Every retailer or person engaging in a business within the Reservation whose receipts are subject to sales tax shall file with the tax commission, an application for a sales tax permit or permits. Every application for such a permit shall be made upon a form prescribed by the Commission and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of businesses, and such other information as the Commission may require. The application shall be signed by the owner, if a natural person; in the case of an association or

partnership, by a member or partner thereof; or in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority. The applicant must have a sales tax permit for each place of business.

755. ISSUANCE OF RETAILER PERMIT – LIMITED TO PERSON AND PLACE DESIGNATED – DISPLAY IN PLACE OF BUSINESS – EFFECTIVE UNTIL CANCELED OR REVOKED.

The Tax Commission shall grant and issue to each applicant a sales tax permit for each place of business within the Reservation. A permit is not assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued. Permits issued shall be valid and effective without further payment of fees until canceled or revoked. Compliance with the permit requirements in this Chapter in no way waives the requirements of Chapter 12 regarding tribal business licenses or the requirements of federal law regarding Indian trader licenses and permits.

756. REFUSAL OF PERMIT TO DELINQUENT TAXPAYER – BOND TO SECURE PAYMENT OF TAX. The Tax Commission may, at its discretion, refuse to issue a permit to any person who is delinquent in payment of any taxes levied by the Rosebud Sioux Tribe. It may also, in its discretion, require an applicant to furnish a bond to the Tribe, or other adequate security, as security for payment of any sales tax that may become due, or require a bond of security as a condition precedent to remaining in business as a retailer.

757. EFFECTIVE THROUGH JUNE 30, 1986 – BIMONTHLY RETURN AND REMITTANCE - EXTENSION TO TIME – DELINQUENCY. On or before the last day of the month following each two-month period, every person who is a holder of a sales tax permit, or is a retailer whose receipts are subject to sales tax within the Reservation during the two-month period, shall make a

return and remittance to the Tax Commission on forms prescribed and furnished by the Commission. The Tax Commission may grant an extension of not more than five days for filing a return and remittance. Unless an extension is granted, penalties and interest pursuant to Chapter 6 of this Code shall be paid if a return or remittance is not made on time.

Effective July, 1986, on or before the last day of the month following each two-month period, every person who is a holder of a sales tax permit, or is a retailer whose receipts are subject to sales tax within the Reservation during the two-month period, shall make a return and remittance to Tax Commission on forms prescribed and furnished by the Commission. The Tax Commission may grant an extension of not more than five days for filing a return and remittance. Unless an extension is granted, penalties and interest pursuant to Chapter 6 of this Code shall be paid if a return of remittance is not made on time. In addition to the above requirements any person who tax liability exceeds six hundred dollars in any two month period shall file returns and make remittance on a monthly basis for the next twelve months. Monthly reports and remittance are due on the last day of the following month.

758. RETURNS FILED ON OTHER THAN QUARTERLY BASIS. The Tax Commission, at its discretion, may require or allow some or all returns and remittances to be filed on a monthly, semi-annual, or annual basis and the return and remittance is due the last day of the month following the reporting period.

759. DEDUCTION ALLOWED FOR SALES REFUNDS. Refunds made by a retailer during the reporting period shall be allowed as a deduction in case the retailer included the receipts, for which a refund is made, in the net taxable sales or has previously paid the sales tax.

760. DEDUCTION ALLOWED ATTORNEYS AND ACCOUNTANTS FOR AMOUNTS SPENT ON BEHALF OF CLIENTS. In determining the amount of tax due under this Chapter, attorneys licensed pursuant to SDCL Chapter 16-16 and accountants licensed

pursuant to SDCL Chapter 36-20A may deduct from gross receipts amounts which represent charges to clients for tangible personal property or services purchased by the attorney or accountant on behalf of a client. However, the sale of the property or service to the attorney of accountant is not a sale for resale if this deduction is taken. This deduction may only be taken if the amount to be deducted represents an expense specifically incurred for a particular client and the amount is itemized and separately billed as a reimbursable expense by the attorney or accountant.

761. CREDIT FOR TAXES PAID ON WORTHLESS ACCOUNTS – TAX PAID IF ACCOUNT COLLECTED.

Taxes paid on gross receipts represented by accounts found to be worthless and actually charged off for income tax purposes, may be credited upon a subsequent payment of the tax herein provided; if such accounts are thereafter collected by the retailer, a tax shall be paid upon the amount so collected.

762. CASH BASIS REPORTING AND PAYMENT. Notwithstanding other provisions of this Chapter, the Tax Commission shall allow retailers to report and pay taxes measured by gross receipts upon a cash basis if:

- (1) The retailer has not charged his basis in the previous calendar year;
- (2) The retailer's records are kept in a manner which may be audited to determine whether sales tax is paid upon all taxable sales;
- (3) The retailer has made a written request to the Commission for authority to pay tax on the cash basis; and
- (4) Authority to pay tax on the cash basis applies only to sales made after the authority is granted.

763. ACCRUAL BASIS REPORTING AND PAYMENT. If the Tax Commission has granted a retailer the authority to report and pay sales tax on the cash basis and a retailer request in writing for the authority to report and pay sales tax upon the accrual basis, the Commission may grant such authority if assessment and collection of taxes are not jeopardized.

764. RECEIPT NOT ISSUED FOR TAXES REMITTED. The Tax Commission shall not be required to issue receipts for sales tax remitted to the Commission.

765. CORRECTION OF INCORRECT RETURN BY TAX COMMISSION – APPEAL. If the Tax Commission has reason to believe that a return is incorrect, after notice to the person and a hearing there on, it shall correct the return to its best judgment and information. A return so corrected is prima facie correct. Appeals from the decision of the Tax Commission are governed by Chapter 4 of this Code, except as otherwise provided in Section 773.

766. DETERMINATION OF AMOUNT OF TAX IN ABSENCE OF RETURN – NOTICE TO PERSON FAILING TO MAKE RETURN – APPEAL. If a person subject to tax fails to make a return as required, the Tax Commission, after notice to the person and a hearing thereon, shall determine the amount of the tax according to its best judgment and information. The amount so fixed is prima facie correct. Appeals from the decision of the Tax Commission are governed by Chapter 4 of this Code, except as otherwise provided in Section 773.

767. REVOCATION OF RETAILER'S PERMIT FOR FAILURE TO FILE RETURN OR PAY TAX – PENALTY FOR CONTINUATION IN BUSINESS. Every person who is the holder of a sales tax permit and who has failed to file a return, or who has filed a return and has failed to pay the tax due the Tribe under this Chapter on or before the fifteenth of the second month following the quarter, or any other reporting period authorized, shall no longer continue as a retailer and his sales tax permit is hereby revoked and canceled. Any person, who shall continue a taxable business after his permit has been revoked or canceled, as herein provided, shall:

(1) If a member of the Tribe, be guilty of a crime, and upon conviction be sentenced to labor for a period not to exceed one year, or to a fine not to exceed five thousand dollars (\$5,000), or

(2) If a non-Indian, be assessed a civil penalty not to exceed five thousand dollars, or be temporarily or permanently excluded from the Reservation, or be both so assessed and so excluded, with costs.

768. REINSTATEMENT OF REVOKED RETAILER'S PERMIT – FEE. The sales tax permit of a retailer which has been canceled or revoked as provided in Section 767, shall not be reinstated by the Tax Commission until all the sales tax due the Tribe, together with any interest and penalties, and a \$10.00 reinstatement fee has been paid.

769. RECORDS PRESERVED BY PERSONS SUBJECT TO TAX – INSPECTION BY COMMISSION. Every person subject to tax under this Chapter shall keep records and books of all receipts and sales, together with invoices, bills of lading, copies of bills of sale, and other pertinent papers and documents. Such books and records and other papers and documents shall, at all times business hours of the day, or as otherwise provided in Section 306 (8), be subject to inspection by the Tax Commission or its duly authorized agents and employees to determine the amount of tax due. Such books and records shall be preserved for a period of three years unless the Tax Commission, in writing, authorizes their destruction or disposal at an earlier date.

770. PERSONAL LIABILITY OF OFFICERS OF CORPORATION FAILING TO FILE RETURNS OR PAY TAX – SECURITY IN LIEU OF LIABILITY – BONDED MUNICIPAL OFFICIALS EXEMPT. If a corporation subject to tax under this Chapter fails for any reason to file the required returns or to pay the tax due, any of its officers having control, or supervision of, or charged with the responsibility for making such returns and payments shall be personally liable for such failure. The dissolution of a corporation shall not discharge an officer's liability and may be assessed and collected as provided by law. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation shall provide the Tax Commission with a surety bond or

certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section shall be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise tax rate. This section does not apply to elected or appointed officials of a municipality if they are bonded pursuant to SDCL § 9-14-6 and § 9-14-6.1.

771. RETAIL SALES AND SERVICE TAX COLLECTION AGREEMENT

WITH STATE. The Tax Commission, pursuant to Section 306 (10), may enter into an agreement with the Department of Revenue of the State of South Dakota for the collection of the taxes, issuance of sales tax permits and licenses, supervision of the keeping of records and filing of reports, and the collection of fees required by this Chapter on behalf of the Tribe by the Department. Such agreement may provide that the collection of taxes, issuance of permits and licenses, supervision of the keeping of records and filing of reports, and collection of fees shall be substantially in the same manner as conducted by the State of South Dakota under SDCL 10-45 and other applicable State law. The agreement may also provide for the retention by the Department of a collection fee not to exceed 1% of the total taxes collected pursuant to such agreement, and for the retention by the State and additional portion of such taxes collected in lieu of the collection of taxes under SDCL 10-45 on activities within the Reservation, as agreed upon by the Tax Commission and the Department. So long as such an agreement remains in effect, the collection of taxes, issuance of permits and licenses, supervision of the keeping of records and filing of reports, and collection of fees pursuant of such agreement shall, notwithstanding any other provision of this Chapter, constitute the manner of such collection, issuances and supervision required by this Chapter, except as provided in Section 773; provided, that any reports, applications or other filing filed with the Department pursuant to this section shall also be filed with the Tax Commission.

722. AMENDMENTS TO RETAIL SALES AND TAX LAWS.

(1) Except as provided in Subsection (2), any changes by the Legislature of the State of South Dakota to SDCL 10-45 shall constitute an amendment to this Chapter unless the Rosebud Sioux Tribal Council disapproves the same no later than thirty days prior to its effective date. In the case of an emergency enactment by the South Dakota Legislature amending SDCL 10-45, the enactment shall constitute an amendment to this Chapter unless the Rosebud Sioux Tribal Council disapproved the same no later than thirty days following the enactment by the South Dakota Legislature and approved thereof, which thirty-day limit shall begin to run from the date a certified letter is received by the Tax Commission from the Department of Revenue notifying the Tribe of the emergency enactment. The Tax Commission shall promptly notify the Tribal Council of all changes in State law affecting this Chapter. The Commission shall forward any changes which have been approved to the Superintendent of the Rosebud Agency for consideration by the Secretary of the Interior. If the Tribal Council disapproves a change made in SDCL 10-45 or disapproves any such emergency enactment, the Tax Commission shall notify the Department of Revenue, in writing, within ten days of the disapproval.

(2) Changes in State law shall have no effect on the appeal and enforcement procedures contained in this Code, or in the interest or penalty provisions of this Code, except as provided in Subsections (1) and (2) of Section 773.

773. ENFORCEMENT, PENALTIES, AND APPEALS – APPLICATION OF STATE AND TRIBAL LAW. So long as the collection agreement provided for in Section 771 remains in effect:

(1) Appeals by any taxpayer from whom the State is collecting the taxes imposed by this Chapter pursuant to such collection agreement shall be filed with the State in accordance with the procedures contained in SDCL 10-45 and other applicable State law in effect at the time of the appeal, which laws are incorporated herein by reference as tribal law.

(2) Enforcement actions for violation of this Chapter brought by the State pursuant to such collection agreement shall be in accordance with SDCL 10-45 and other applicable State law in effect

at the time of the enforcement action, including State law regarding enforcement procedures, interest, and penalties, which laws are incorporated herein by reference as tribal law.

(3) Enforcement actions for violation of this Chapter brought by the Tax Commission pursuant to such collection agreement shall be accordance with this Code and other applicable Tribal law regarding enforcement procedures, interest, and penalties.

774. EXEMPTION OF COAL USED FOR AGRICULTURAL PURPOSES.

There is specifically exempted from the provisions of this Chapter and the tax imposed by it, gross receipts from the sale of coal when used for agricultural purposes. For the purposes of this section, agricultural purposes do not include the lighting or heating of any farm residence.

775. EXEMPTION OF CREDIT CARD PROCESSING SERVICE.

There are specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, gross receipts from the sale of credit card processing services to retailers

776. EXEMPTION OF PARKING – ASSOCIATION WITH STATE, COUNTY OR TRIBAL FAIR.

There are specifically exempted from the provisions of this Chapter and from the computation of the tax imposed by it, the use of rental parking on a daily basis in association with any state, country or tribal fair. The provisions of this section apply only to parking where the daily gross receipts from such parking are one hundred dollars or less.

777. EXEMPTION OF NATURAL GAS TRANSPORTATION.

The provision of natural gas transportation services by a pipeline is exempted from the provisions of this Chapter and from the computation of the tax imposed by this Chapter.

778. EXEMPTION OF GAMING

PROCEEDS. There are specifically exempted from the provision of this Chapter and from the computation of the tax imposed by it gross proceeds of gaming allowed by SDCL 42-7B.

CHAPTER 8 – USE TAX

- 801. Definitions
- 802. Tax On Tangible Personal Property Purchased For Use Within Reservation
- 803. Tax Imposed On Use Of Services – Exemption
- 804. Tax On Use Of Rented Property
- 805. Exemption Of Use Of Property Leased
- 806. Tax On Tangible Personal Property Not Purchased For Use Within Reservation – Rate Based On Fair Market Value
- 807. Tax Imposed On Person Using Property
- 808. Contractors and Subcontractors Taxes On Property Used In Performance Of Contract
- 809. Sectional Homes Not Vehicles – Contractors Taxed on Materials Used In Construction – Sectional Homes Defined
- 810. Materials Incorporated In Construction Work – Restriction On Application Of Rate Increase
- 811. Exemption Of Property and Service Subject To Sales Tax
- 812. Credit For Sales or Use Tax Paid To Another Taxing Jurisdiction – Reciprocity Required
- 813. Constitutional Exemptions From Tax – Property Of Public Agencies – Railroad Operating Property
- 814. Exemption Of Property Brought In For Personal Use of Nonresident
- 815. Exemption Of Raw Material, Parts and Newsprint For Manufacture of Products To Be Sold At Retail
- 816. Ink and Newsprint Used To Produce Shopper’s Guides – Shoppers’ Guide Defined
- 817. Brokers’ and Agents’ Services Exempt From Tax
- 818. Packaging and Container Materials As Tax Exempt Raw Material

- 819. Packaging and Container Materials Sold To Retailer Exempt
- 820. Exemption Of Credit Card Processing Service - *Amendment*
- 821. Exemption Of Gaming Proceeds - *Amendment*
- 822. Exemption Of Natural Gas Transportation - *Amendment*
- 823. Exemption Of Coal Used For Agricultural - *Amendment*
- 824. Exemption For Motor Fuel Used For Agricultural Purposes - *Amendment*

801. DEFINITIONS. The definitions in Section 201 apply to this Chapter. In addition, in this Chapter unless the context otherwise plainly requires.

(1) "Storage" means and included any keeping or retention within the Reservation for use or other consumption within the Reservation for any purpose except sale in the regular course of business.

(2) "Use" means and includes the exercise of right or power over tangible personal property incidental to the ownership of that property, except that it shall not include the sale of the property in the regular course of business. "Use" shall also include the use of the types of services, the gross receipts from the sale of which are to be included in the measure of the tax imposed by Chapter 7 of this Code, and any amendments thereto.

(3) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for consideration. A transaction, whereby the possession of a property is transferred but the seller retains the title as security for the payment of the price, shall be deemed a purchase.

(4) "Purchase price" or "sale price" means the total amount for which personal property is sold, including any services that are part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses or any other expense whatsoever, provided that cash discounts allowed and taken on sales shall not be included.

(5) "Tangible personal property" means tangible goods, wares, merchandise, gas and electricity when furnished or delivered to consumers or users within the Reservation.

(6) "Retailer" means and includes every person performing services within the Reservation or engaged in the business of selling tangible personal property for use, storage or other consumption within the meaning of this Chapter. However, if in the opinion of the Tax Commission, it is necessary for the efficient administration of this Chapter to regard any salesmen, representative, truckers, peddlers or canvassers as agents of the dealers, distributors, supervisors, employees or person under whom they operate or from whom they obtain the tangible personal property sold by them irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers or persons, the Tax Commission may so regard them and may regard the dealers, distributors, supervisors, employers or persons as retailers for purpose of this Chapter.

(7) "Retailer maintaining a place of business within the Reservation" or any like term shall mean and include any retailer having or maintaining within the Rosebud Reservation, directly or by a subsidiary, an officer, distribution house, sales house, warehouse or other place of business, or any agents operating within the Reservation under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily or whether such retailer or subsidiary is admitted to do business within the Reservation pursuant to the laws of the United States or the Rosebud Sioux Tribe.

(8) "Within the Reservation" means within the exterior boundaries of the Rosebud Reservation and includes all territory within such boundaries regardless of ownership.

(9) "Included in the measure of tax" means that the tangible personal property or the service was purchased from a retailer licensed under Chapter 7 of this Code and that retailer has included the tax in the amount received from the sale.

(10) For the purpose of this Chapter and Chapter 7 of this Code, "fair market value" means the price at which a willing seller and willing buyer will trade. Fair

market value shall be determined at the time of purchase. If a public corporation is supplying tangible personal property that will be used in the performance of a contract, fair market value shall be determined pursuant to SDCL 5-18-5.1.

802. TAX ON TANGIBLE PERSONAL PROPERTY PURCHASED FOR USE WITHIN RESERVATION – RATE

BASED ON PURCHASE PRICE. An excise tax is hereby imposed on the privilege of the use, storage, and consumption within the Reservation of tangible personal property purchased on or after July 1, 1939, for use within the Reservation at the same rate of percent of the purchase price of said property as is imposed by Sections 702 and 705 or amendment which may here after be made thereto.

803. TAX IMPOSED ON USE OF SERVICES – EXEMPTION. For the privilege of using services within the Reservation, except those types of services exempted by Section 829, there is imposed on the person using the service an excise tax equal to 4% of the value of the services at the time they are rendered. However, this tax may not be imposed on any service rendered by a related corporation as defined in subdivision (13) of SDCL 10-43-1 for use by a financial institution as defined in subdivision (12) of SDCL 10-43-1. For the purpose of this Chapter, services rendered by an employee for the use of his employer are not taxable.

804. TAX ON USE OF RENTED PROPERTY. An excise tax is imposed upon the privilege of the use of rented tangible personal property within the Reservation at the rate of 4% of the rental payments upon the property.

805. EXEMPTION OF USE OF PROPERTY LEASED. The use, storage or consumption of tangible property actually leased to persons within the Reservation is exempted from the provisions of this Chapter and the tax imposed by it.

806. TAX ON TANGIBLE PERSONAL PROPERTY NOT PURCHASED FOR USE WITHIN RESERVATION – RATE BASED ON FAIR MARKET VALUE.

An excise tax is imposed on the privilege of the use, storage and consumption within the Reservation of tangible personal property which is seven or less years old not originally purchased for use within the Reservation, but thereafter used, stored, and consumed within the Reservation, at the same rate of percent of the fair market value of said property as is imposed by Sections 702 and 705.

807. TAX IMPOSED ON PERSON USING PROPERTY. In addition, said tax is hereby imposed upon every person using, storing, or otherwise consuming such property within the Reservation until such tax has been paid directly to a retailer or the Tax Commission as hereinafter provided.

808. CONTRACTORS AND SUBCONTRACTORS TAXES ON PROPERTY USED IN PERFORMANCE OF CONTRACT – FABRICATION COSTS EXCLUDED.

If a contractor or subcontractor uses tangible personal property in the performance of his contract or to fulfill contract or subcontract obligations, whether the titleholder of such property would be subject to pay the sales or use tax, such contractor or subcontractor shall pay a tax at the rate prescribed by Section 702, measured by the purchase price or fair market value of such property, whichever is greater, unless such property has been previously subjected to a sales or use tax within the Reservation and the tax due thereon has been paid. However, if the contractor or subcontractor fabricates tangible personal property for use in the performance of his contract, fair market value excludes the value of the contractor's or subcontractor's fabrication costs.

809. SECTIONAL HOMES NOT VEHICLE – CONTRACTORS TAXED ON MATERIALS USED IN CONSTRUCTION – SECTIONAL HOMES DEFINED.

When a sectional home is permanently affixed to real property, it is not a vehicle subject to registration under SDCL Chapter 32-3, and shall be classified as real property. A contractor who erects such a home must hold a sales tax or use tax license

and pay use tax based upon the fair market value of the raw materials used to construct and erect the home. For the purpose of this section, "sectional home" means any home pre-built in part or in whole for the purpose of permanent placement on a foundation. A mobile home is defined by subdivision (1) of SDCL 34-34A-1 is not a sectional home.

810. MATERIALS INCORPORATED IN CONSTRUCTION WORK – RESTRICTION ON APPLICATION OF RATE INCREASE. No tax increase imposed after March 9, 1984 may be levied on materials incorporated in construction work pursuant to construction contracts bid or entered into on or before the effective date of the tax increase.

811. EXEMPTION OF PROPERTY AND SERVICE SUBJECT TO SALES TAX. The use within the Reservation of tangible property or services, the gross receipts from the sale of which are to be included in the measure of the tax imposed by Chapter 7 of this Code, and any amendments made or which may hereafter be made thereto, is hereby specifically exempted from the tax imposed by this Chapter.

812. CREDIT FOR SALES OR USE TAX PAID TO ANOTHER TAXING JURISDICTION – RECIPROCITY REQUIRED. The amount of any use tax imposed with respect to tangible personal property or services shall be reduced by the amount of any sales or use tax previously paid by the taxpayer with respect to the property on account of liability to another taxing jurisdiction. Provided, however, no credit shall be given under this section where taxes are paid on tangible personal property or services in another taxing jurisdiction which does not reciprocally grant a credit for taxes paid to the Tribe on similar tangible personal property.

813. CONSTITUTIONAL EXEMPTIONS FROM TAX – PROPERTY OF PUBLIC AGENCIES – RAILROAD OPERATING PROPERTY. Tangible personal property, the storage, use or other consumption of which the Tribe is prohibited from taxing under the

Constitution or laws of the United States of America or under the Constitution and By-Laws of the Rosebud Sioux Tribe, or tangible property sold to the United States, the state of South Dakota, any public or municipal corporation of the State, or the Rosebud Sioux Tribe or any tribal entity which is for the use, storage, or consumption of such public corporations or which is sold to, used or to be used as or in operating or maintaining any type of railroad company property which is classified by SDCL 10-28-1 as "operating property," is hereby specifically exempt from the tax imposed by this Chapter, provided, however, the exemption as to railroad operating property shall be limited to one-half of such imposed by this Chapter.

814. EXEMPTION OF PROPERTY BROUGHT IN FOR PERSONAL USE OF NONRESIDENT. The used within the Reservation of all articles of tangible personal property brought onto the Reservation by a nonresident individual thereof for his or her personal use or enjoyment while within the Reservation is hereby specifically exempted from the tax imposed by this Chapter.

815. EXEMPTION OF RAW MATERIAL, PARTS AND NEWSPRINT FOR MANUFACTURE OF PRODUCTS TO BE SOLD AT RETAIL. The use within the Reservation of tangible personal property including containers, labels and shipping cases thereof which is intended shall, by means of fabrication, compounding or manufacture becomes a part of other tangible personal property intended to be sold ultimately at retail within or without the Reservation, is hereby specifically exempted from the tax imposed by this Chapter. The term tangible personal property shall be construed to include without limiting the meaning of said term, raw material and newspaper print.

816. INK AND NEWSPRINT USED TO PRODUCE SHOPPERS' GUIDES – SHOPPERS' GUIDES DEFINED. Ink and newsprint when used in the production of shoppers' guides are hereby exempt from the tax imposed under this Chapter. For the purposes of this section the term "shoppers' guide"

includes advertising publications whose advertisements are solicited from the general public and whose publications are for free distribution to the general public and are published regularly at least once a month, consisting of printed sheets contained advertising, bearing a date of issue, and devoted to advertising of general interest.

817. BROKERS' AND AGENTS' SERVICES EXEMPT FROM TAX. The tax imposed by this Chapter shall not apply to services and brokers and agents licensed under SDCL Title 47.

818. PACKAGING AND CONTAINER MATERIALS AS TAX EXEMPT RAW MATERIAL. Containers, labels, cartons, packing cases, wrapping paper, twine, glue, bags, bottles, shopping cases, wrapping film, strapping, rope, tape, cans, lids, boxes, pads, dividers, stockinettes, casings and similar articles and receptacles used or consumed by manufacturers, processors or fabricators are raw materials within the meanings of Section 815 and are not subject to sales or use tax.

819. PACKING AND CONTAINER MATERIALS SOLD TO RETAILERS EXEMPT. There are specifically exempted from the provisions of this Chapter, and from the computation of tax imposed by it, gross receipts from the sale of paper and plastic bags, wrapping paper, twine, tape and similar articles sold at retailers as wrappers or containers to hold other tangible personal property sold by the retailer and subject to sales or use tax and the articles are supplied free by the retailer as a convenience to the customer.

820. EXEMPTION OF CREDIT CARD PROCESSING SERVICE. There are specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, gross receipts from the sale of credit card processing services to retailers.

821. EXEMPTION OF GAMING PROCEEDS. There are specifically exempted from the provisions of this Chapter and from the computation of the

tax imposed by it gross proceeds of gaming allowed by SDCL 42-7B.

822. EXEMPTION OF NATURAL GAS TRANSPORTATION. The provisions of natural gas transportation services by a pipeline are exempt from the provisions of this Chapter and from the computation of the tax imposed by this Chapter.

823. EXEMPTION OF COAL USED FOR AGRICULTURAL PURPOSES. The use in this reservation of coal when used for agricultural purposes is specifically exempted from the tax imposed by this Chapter. For the purposes of this section, agricultural purposes do not include the lighting or heating of any farm residence.

824. EXEMPTION OF MOTOR FUEL USED FOR AGRICULTURAL PURPOSES. Motor fuel, including kerosene, tractor fuel, natural and artificial gas, liquefied petroleum gas and distillate, when used for agricultural purposes, is exempt from taxes imposed under this Chapter. For the purposes of this section, agricultural purposes include hay grinding but do not include the lighting or heating of a farm residence or residences.

CHAPTER 9 – CIGARETTE TAX

901.	Definitions
902.	Tax Imposed On Cigarettes Held for Sale – Rates Of Tax
903.	Unlawful Sales
904.	Impact Of Tax Borne By Consumer – Separate Statement On Invoice – Method Of Collection Unaffected
905.	License Required Of Distributors and Wholesalers
906.	License Agreement
907.	Preservation Of Records
908.	Resale of Stamp Prohibited – Penalties For Use or Possession Of Counterfeit Stamp – Recuse of Stamp – Penalty
909.	Records and Reports Agreement
910.	Display or Possession Of Unstamped Cigarettes As Evidence Of Intent To Sell

- 911. Enforcement Powers Of Tax Commission Personnel – Arrest – Complaint – Seizure Of Counterfeit License or Stamp
- 912. Unstamped Cigarettes As Contraband – Seizure Without Warrant
- 913. Forfeiture Of Contraband Cigarettes – Sale By Tax Commission – Proceeds Of Sale – Purchaser To Pay Tax
- 914. Confiscation Of Unstamped Cigarettes Not Required If No Intentional Evasion
- 915. Act Of Agent as Act Of Principal
- 916. Examination Of Distributions, Wholesalers’ and Dealers’ Records By Revenue Agents – Inspection Of Premises
- 917. Cigarette Tax Collection Agreement With State

901. DEFINITIONS. The definitions in Section 201 apply to this Chapter. In addition, in this Chapter, unless the context otherwise plainly requires:

- (1) “Dealer” or “retailer” means any person other than a distributor or a wholesaler, as defined herein, who is engaged within the Reservation in the business of selling cigarettes at retail;
- (2) “Distributor” means any person engaged within the Reservation in the business of producing or manufacturing cigarettes or imposing into the Reservation cigarettes, at least 75% of which are purchased directly from manufacturing thereof;
- (3) “Wholesaler” means any person who purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purposes of bona fide resale to retail dealers or to other persons for the purpose of bona fide resale to retail dealers and any person who services retail outlets, including, but not limited to, the maintenance of a warehousing facility for the storage and distribution of cigarettes;
- (4) “Licensed distributor” or “licensed wholesaler” means a distributor or wholesaler licensed under the provisions of this Chapter; and
- (5) “Sale” or “sell” shall also include or apply to gifts, exchanges and barter.

902. TAX IMPOSES ON CIGARETTES HELD FOR SALE – RATES OF TAX. (Reserved)

903. UNLAWFUL SALES. It shall be unlawful for any distributor to sell, and for any other person to sell, offer to sale, display for sale or possess with intent to sell, any cigarette within the Reservation unless the tax imposed thereon by this Chapter has been paid and such cigarette or the package containing such cigarette has been stamped to evidence such payment pursuant to regulation issued by the Tax Commission or as otherwise provided in this Chapter. So long as the agreement referred to in Section 917 remains in effect, stamps of the State evidencing payment of the tax imposed by Section 902 shall constitute the stamps required by this section. Any person who shall violate the provisions of this Section shall be subject to a civil penalty of not more than \$100 for the first offense and for each subsequent offense shall be subject to a civil penalty of not less than \$50 or more than \$500.

904. IMPACT OF TAX BORNE BY CONSUMER – SEPARATE STATEMENT ON INVOICE – METHOD OF COLLECTION UNAFFECTED. The impact of the tax levied by this Chapter is hereby declared to be on the vendee, user, consumer or possessor of cigarettes within the Reservation and when this tax is paid by any other person such payment shall be considered as an advance payment and shall thereafter be added to the price of the cigarettes and recovered from the ultimate consumer or user. In making a sale of cigarettes within the Reservation, a distributor may separately state and show upon the invoice covering such sale the amount of tax on the cigarettes sold. The provisions of this Section shall no way affect the method of collection of such tax on cigarettes.

905. LICENSE REQUIRED OF DISTRIBUTORS AND WHOLESALERS. Each person, except a retailer, engaging in the business of selling cigarettes within the Reservation, including any distributor or wholesaler, shall secure license from the Tax Commission, pursuant to regulations issued by it, or as otherwise provided by

this Chapter. Each license issued under this section shall be prominently displayed on the premises covered by such license. Any person who shall violate the provisions of this section shall be subject to a civil penalty of not less than \$25.00 or more than \$200, and all cigarettes in his possession shall be seized and forfeited to the Tribe. Compliance with this section in no way waives the requirements of Chapter 12 regarding tribal business licenses.

906. LICENSE AGREEMENT. The agreement referred to in Section 917 may also provide for the issuance of the license required by Section 905 and the collection of fees therefore on behalf of the Tribe by the State. This agreement may provide that the issuance of such licenses and collection of fees therefore shall be substantially in the same manner as conducted by the State with respect to state licenses to sell cigarettes under SDCL Chapter 10-50. Such agreement may further provide for the payment of a fee by the Tribe to the State for the issuance of such licenses and the collection of such license fees. So long as such agreement with the State remains in effect, a license issued by the State of South Dakota in accordance with such agreement shall constitute the license required by Section 905.

907. PRESERVATION OF RECORDS. Every person subject to the payment of the tax levied by Section 902 shall keep such records and file such reports as the Tax Commission may prescribe by regulation, or as otherwise provided by this Chapter.

908. RESALE OF STAMP PROHIBITED – PENALTIES FOR USE OR POSSESSION OF COUNTERFEIT STAMP – REUSE OF STAMP – PENALTY. No distributor shall sell or transfer any stamps issued under the provision of this Chapter. Any person who shall fraudulently make or utter or shall forge or counterfeit any stamp prescribed under this Chapter, or who shall cause or procure the same to be done, or who shall willfully utter, publish, pass or render as true, any false, altered, forged or counterfeited stamp, or who shall knowingly possess any such false, altered, forged or counterfeited stamp, or who shall use more than once any

stamp provided for and required by this Chapter, for the purpose of evading the tax thereby imposed, shall: (1) if a member of the Tribe, is guilty of a crime and, upon conviction, be sentenced to labor for a period not to exceed six months, or to a fine not to exceed five hundred dollars, or both such imprisonment and fine, with costs; or (2) if a non-member of the Tribe, be assessed to a civil penalty not to exceed five hundred dollars plus costs, or be temporarily or permanently excluded from the Reservation, or be both so assessed and so excluded.

909. RECORDS AND REPORTS AGREEMENT. The agreement referred to in Section 917 may provide for the keeping of records and filing of reports under the supervision of the State on behalf of the Tribe in accordance with SDCL Chapter 10-50. Copies of all reports filed with the State of South Dakota pursuant to such agreement shall also be filed with the Tax Commission. So long as such agreement with the State remains in effect, the records and reports required by the State shall constitute the records and reports required by this Chapter.

910. DISPLAY OR POSSESSION OF UNSTAMPED CIGARETTES AS EVIDENCE OF INTENT TO SELL. The display or possession, except in original unopened shipping package, container or case, of cigarettes by any dealers unless fully stamped as required by this Chapter shall constitute prima facie evidence of possession with intent to sell the same.

911. ENFORCEMENT POWERS OF TAX COMMISSION PERSONNEL – ARREST – COMPLAINT – SEIZURE OF COUNTERFEIT LICENSE OR STAMP. The Tax Commission and its duly authorized agents and employees are charged with the duty of enforcing the provisions of this Chapter and are given the power of peace officers and authorized and empowered to arrest any Tribal member who is a violator of the provisions of this Chapter, to enter complaint before any court of competent jurisdiction, and to seize without formal warrant and use as evidence any forged, counterfeited, spurious, or altered

license or stamp found in possession of any person in violation of this Chapter.

912. UNSTAMPED CIGARETTES AS CONTRABAND – SEIZURE WITHOUT WARRANT.

Any cigarettes found at any place within the Reservation without stamps affixed thereto as required by this Chapter, unless such cigarettes shall be in the possession of a licensed distributor or wholesaler in the original unopened shipping package or unless they shall be in a course of transit found outside the Reservation and consigned to a licensed distributor or a licensed wholesaler, are declared to be contraband goods and may be seized by the Tax Commission, its agents, or employees, or by any peace officer of the Tribe when directed by the Tax Commission to do so, without a warrant.

913. FORFEITURE OF CONTRABAND CIGARETTES – SALE BY TAX COMMISSION – PROCEEDS OF SALE – PURCHASER TO PAY TAX.

Any cigarettes seized under the provisions of this Chapter shall be confiscated and forfeited to the Tribe and the Tax Commission shall sell such confiscated property to a licensed dealer or distributor to the best advantage to the Tribe. The proceeds from such sale shall be forthwith remitted to the Tax Commission as part of the income from the enforcement of this Chapter. Such sales by the Tribe shall not relieve the purchaser from paying the tax and stamping the articles so sold to him, as in this Chapter otherwise provided.

914. CONFISCATION OF UNSTAMPED CIGARETTES NOT REQUIRED IF NO INTENTIONAL EVASION.

Nothing in Section 911 and 912 shall be construed to require the Tax Commission to confiscate unstamped cigarettes when it shall have reason to believe that the owner thereof is not willfully or intentionally evading the tax imposed by this Chapter.

915. ACT OF AGENT AS ACT OF PRINCIPAL.

For the purpose of this Chapter, the act or omission of any officer, agent or other person acting for or employed by any person, corporation, association or partnership within the scope of his office, agency or

employment shall be deemed to be the act or omission of such person, corporation, association or partnership as well as his own.

916. EXAMINATION OF DISTRIBUTORS', WHOLESALERS' AND DEALERS' RECORDS BY REVENUE AGENTS – INSPECTION OF PREMISES.

The Tax Commission and its authorized employees and agents may examine the books, papers and records of any distributor, wholesaler or dealer within the Reservation for the purpose of determining whether the tax imposed by this Chapter has been fully paid, and may investigate and examine the stock of cigarettes in or upon any premises where such cigarettes are possessed, stored or sold, for the purpose of determining whether the provisions of this Chapter are being obeyed. The Tax Commission or its employees or agents shall have the right and authority to make such inspections and examinations at any time during ordinary business hours or as otherwise provided in Section 306, and it or they shall have the further authority to inspect at such times the premises and all desks, safes, vaults and other fixtures and furniture contained in or upon such premises for the purpose of ascertaining whether cigarettes are held or possessed in violation of this Chapter.

917. CIGARETTE TAX COLLECTION AGREEMENT WITH STATE.

The Tax Commission, pursuant to Section 306 (10), may enter into an agreement with the Department of Revenue of the State to provide for the collection of tax imposed by Section 902 of this Chapter on behalf of the Tribe by such Department and for the affixing of stamps of the State evidencing the payment of such tax. Such agreement may provide that the collection of the tax and the affixing of stamps shall be substantially in the same manner as conducted by the State with respect to state cigarette taxes under SDCL Chapter 10-50. The agreement also may provide for the retention by the State of a collection fee not to exceed 1% of the total taxes collected pursuant to such agreement, and for the retention by the State of an additional portion of such taxes collected, in lieu of the collection of taxes under SDCL 10-50 on activities

within the Reservation, as agreed upon the Tax Commission and the Department. So long as such agreement remains in effect, stamps of the State evidencing payment of the tax imposed by Section 902 of this Chapter shall constitute the stamps required by Section 903 of this Chapter.

CHAPTER 10 – CONTRACTORS
EXCISE TAX

- 1001. Definitions
- 1002. Excise Tax Upon Gross Receipts Of All Utilities Contractors
- 1003. Excise Tax Upon Gross Receipts Of All Other Prime Contractors
- 1004. Effective Date Of Tax
- 1005. Contractors Subject To Tax
- 1006. Subcontractors
- 1007. Prime Contractors
- 1008. Total Contract Price As Basis of Tax – Purchased Materials
- 1009. Gross Receipts Defined – Materials Not Deductible
- 1010. Improvements Without Contract Taxable When Sold Within Four Years After Completion
- 1011. Tax Imposed On Improvements Built For Lease – Credit against Tax on Sale – Due Date – Exemptions
- 1012. Report and Payment Of Tax
- 1013. Enforcement and Administration
- 1014. Contractors May List Excise and Use Taxes As Separate Line Item on Contracts and Bills
- 1015. Contractors Excise Tax Collection Agreement With State
- 1016. Amendments To Contractors Excise Tax Laws
- 1017. Enforcement, Penalties and Appeals – Application Of State and Tribal Law

1001. DEFINITIONS. The definitions in Section 201 apply to this Chapter.

1002. EXCISE TAX UPON GROSS RECEIPTS OF ALL UTILITIES CONTRACTORS. There is hereby

imposed an excise tax of 1-1/2% upon the gross receipts of both the prime contractors and subcontractors engaged in contracts for realty improvements within the Reservation performed for utility companies. Utility companies included: railroad companies, telephone companies, telegraph companies, electric, heating, water and gas companies, rural electric companies, rural water systems; also included are municipal facilities and sewer systems are not utility companies.

1003. EXCISE TAX UPON GROSS RECEIPTS OF ALL OTHER PRIME CONTRACTORS. A 2% contractor’s excise tax is imposed on the total gross receipts of prime contractors engaged in contracts for realty improvements within the Reservation except for those qualifying contractors taxed pursuant to Section 1002. Except as provided in Section 1002 and 1006, subcontractor’s gross receipts will not be subject to the contractors excise tax.

1004. EFFECTIVE DATE OF TAX. This Chapter is effective on May 1, 1984, and applies to:
 (1) All realty improvement contracts bid after April 30, 1984;
 (2) All realty improvement contracts under which construction commences after April 30, 1984, if there is no bid;
 (3) Receipts from sales of real property pursuant to Section 1010 if the contract to sell the property is executed after April 30, 1984.

1005. CONTRACTORS SUBJECT TO TAX. Contractors engaged in contracts for realty improvements include without limitation those enumerated in the Standard Industrial Classification Manual of 1972 as prepared by the statistical policy division of the Office of Management and Budget, Office of the President: building construction – general contractors and operative builders (major group no. 15); construction other than building construction – general contractors (major group no. 16); construction – special trade contracts (major group no. 17).

1006. SUBCONTRACTORS. For the purpose of this Chapter, a subcontractor is a person contracting with a prime

contractor to perform all or part of a realty improvement the prime contractor has contracted to perform. A prime contractor subject to the tax imposed by Section 1003 shall issue a certificate to a subcontractor showing the prime contractor's valid contractor's excise tax license number. The form shall be prescribed by the Tax Commission. Any subcontractor who fails to obtain a certificate and a record of project designations is considered a prime contractor and is subject to tax imposed by Section 1003 unless it is subject to the tax imposed by Section 1002. Any person accepting the certificate would have been liable for it if the certificate had been issued. The tax is due at the time the person accepting the certificate would have been required to pay the tax. In addition to any tax and interest due, persons providing certificates, who are not prime contractors, are liable for a civil penalty of ten percent of the tax. The United States, the Rosebud Sioux Tribe, the State of South Dakota, or any other state, or any public or municipal corporation within the Rosebud Reservation may not issue a certification.

1007. PRIME CONTRACTORS. For the purpose of this Chapter, a prime contractor is a person entering into a realty improvement contract with another person. Operative builders, industry number 1531, an enumerated in the Standard Industrial Classification Manual, 1972, as prepared by the statistical policy division of the Office of Management and Budget, Office of the President, are prime contractors regardless of whether they perform construction work themselves or contract with other contractors. A person who is not primarily in the business of making realty improvements and regularly employs persons for the purpose of repairing, maintaining or making realty improvements for his own use and who repairs, maintains or makes a realty improvement for his own use with his regular employees is not a prime contractor and is not liable for the taxes herein.

1008. TOTAL CONTRACT PRICE AS BASIS OF TAX – PURCHASED MATERIALS. The taxes imposed by this Chapter apply to the total contract price including all labor and materials.

Materials include those purchased by the contractor and those purchased by the person who let the contract or his designee.

1009. GROSS RECEIPTS DEFINED – MATERIALS NOT DEDUCTIBLE. For the purpose of this Chapter, the term "gross receipts" means the amount received directly or indirectly in money, credits, property or other money's worth in consideration of the performance of realty improvement contracts within the Reservation, without any deduction on account of the cost of property sold, the cost of materials used, the cost of services or labor purchased, amount of paid for interest or discounts or any other expenses whatsoever, nor may any deduction be allowed for losses. Gross receipts include those materials furnished to the prime contractor or subcontractor by the owner or the lessee of the realty improvement. For the purpose of measuring the taxes imposed by this Chapter, gross receipts include the greater of the cost or fair market value of materials used by a contractor or subcontractor in the performance of a contractor regardless of whether the contractor or subcontractor owns or furnishes the materials.

1010. IMPROVEMENTS WITHOUT CONTRACT TAXABLE WHEN SOLD WITHIN FOUR YEARS AFTER COMPLETION. If any person, except for a person making an isolated or occasional realty improvement and who does not hold himself out as engaging in the business of making realty improvement within the Reservation without a realty improvement contract and subsequently sells the realty improvement or the property containing the realty improvement at any time subsequent to the commencement of the project and within four years of its completion, the gross receipts from the sale of the realty improvement shall be subject to the excise tax imposed by Sections 1002 or 1003. In determining the gross receipts from the sale of such realty improvements when land or land and improvements completed four years prior to sale are included in the sale, land and such improvements shall be valued at cost or fair market value, which is greater, and the portion of the gross receipts attributable to land or land and

improvements completed four years prior to sale shall be deducted from the sale price.

1011. TAX IMPOSED ON IMPROVEMENTS BUILT FOR LEASE – CREDIT AGAINST TAX ON SALE – DUE DATE – EXEMPTIONS. There is imposed a tax at the rate provided in Section 1003, on the fair market value of the improvement, upon any person who builds a building for lease to himself or others with a value of over one hundred dollars. If the realty improvement becomes subject to tax under Section 1010, credit tax due under that section is given for any tax paid under this section. The tax imposed by this section is due the next reporting date after the improvement is first used or leased. The tax imposed by this section does not apply to the United State, the Rosebud Sioux Tribe, the State of South Dakota and its subdivision, or public, tribal or municipal corporations within the Reservation. This section applies only to improvements substantially completed after April 30, 1984.

1012. REPORT AND PAYMENT OF TAX. The tax imposed by this Chapter shall be reported and paid as provided in Sections 757 and 758 of this Code, upon the receipts received under the contract during the period.

1013. ENFORCEMENT AND ADMINISTRATION. The Tax Commission is hereby charged with enforcement and administration of the provisions of this Chapter. With respect to all permits, recordkeeping, reports and enforcement, this Chapter shall be administered in the same manner as Chapter 7 of this Code, and the provisions thereof are incorporated herein.

1014. CONTRACTORS MAY LIST EXCISE AND USE TAXES AS SEPARATE LINE ITEM ON CONTRACTS AND BILLS. A contractor may list the contractors excise tax and any sales or use tax imposed under Chapter 7 and 8 of this Code as a separate line item on all contracts and bills, both for public and private entities. The line item for such taxes is a part of the contractor's total

bill and is collectible from all entities, both public and private.

1015. CONTRACTORS EXCISE TAX COLLECTION AGREEMENT WITH STATE. The Tax Commission, pursuant to Section 306 (10), may enter into an agreement with the Department of Revenue of the State of South Dakota to provide for the collections of the taxes, issuance of permits, supervision of the keeping of records and filing of reports, and collection of fees required by this Chapter on behalf of the Tribe by the Department. Such agreement may provide that the collection of taxes, issuance of permits, supervision of the keeping of records and filing of reports, and collection of fees.

1016. AMENDMENTS TO CONTRACTORS EXCISE TAX LAWS.

(1) Except as provided in Subsection (2), any change by the legislature of the State of South Dakota to SDCL 10-46A or SDCL 10-46 shall constitute an amendment to this Chapter, unless the Rosebud Sioux Tribal Council disapproves the same no later than thirty days prior to its effective date. In the case of an emergency enactment by the South Dakota Legislature amending SDCL 10-46A or 10-46B, the enactment shall constitute an amendment to this Chapter unless the Rosebud Sioux Tribal Council disapproves the same no later than thirty days following the approval thereof, which thirty day limit shall begin to run from the date a certified letter is received by the Tax Commission for the Department of Revenue notifying the Tribe of the emergency enactment. The Tax Commission shall promptly notify the Tribal Council of all changes in State Law affecting this Chapter. The Tax Commission shall forward any such changes which have been approved to the Superintendent of the Rosebud Agency for consideration by the Secretary of the Interior. If the Tribal Council disapproves a change made in SDCL 10-46A or 10-46B or disapproves any such emergency enactment the Tax Commission shall notify the Department of Revenue, in writing ten days of the disapproval.

(2) Changes in State law shall have no effect on the appeal and enforcement procedures contained in this Code, or on the interest or penalty provisions of this

Code, except as provided in Subsection (1) and (2) of Section 1017.

1017. ENFORCEMENT, PENALTIES, AND APPEALS – APPLICATION OF STATE AND TRIBAL LAW. So long as the collection agreement provided for in Section 1015 remains in effect:

(1) Appeals by any taxpayer from whom the State is collecting the taxes imposed by this Chapter pursuant to such collection agreement shall be filed with the State in accordance with the procedures contained in SDCL 10-46A and other applicable State law in effect at the time of the appeal, which laws are incorporated herein by reference as tribal law.

(2) Enforcement actions for violation of this Chapter, brought by the State pursuant to such collection agreement, shall be in accordance with SDCL 10-46A and 10-46B and other State law in effect at the time of the enforcement action, including State law regarding enforcement procedures, interest, penalties, which laws are incorporated herein by reference as tribal law.

(3) Enforcement actions for violation of this Chapter, brought by the Tax Commission pursuant to such collection agreement, shall be in accordance with this Code and other applicable Tribal law regarding enforcement procedures, interest, and penalties.

CHAPTER 11 – LESSEE’S TAX

1101.	Definitions
1102.	Date Due
1103.	Lessor Not Obligated To Pay Tax
1104.	Payment of Taxes By Sublessees and Others
1105.	Delinquency As Grounds For Cancellation Of Lease

1101. DEFINITIONS. The definitions contained in Section 201 apply to this Chapter. In addition, in this Chapter:

(1) “Agricultural use” means grazing, farming, or any related activity.

(2) “Indian lands” means all lands within the original boundaries of the Rosebud Reservation that are (a) owned by or held in trust for the Rosebud Sioux Tribe, (b) owned by or held in trust for the Tribal Land Enterprise of the Rosebud Sioux Tribe, or (c) allotment held in trust by the United States for an

individual Indians, or owned by an individual Indian or Indians and subject to restriction upon alienation imposed by the United States.

(3) “Lessee” means the person or persons who have obtained any possessory interest in Indian lands, and the assignees and successors in interest of such person or persons. This term does not apply to a sublessee where the lessee retains an interest in the leasehold.

Grazing land: 25 per acre
Farm land: 50 per acre

1102. DATE DUE. The taxes imposed by this Chapter are due in advance, on or before November 1 of each year on or before March 1 of each year, as billed by the Tax Commission provided, that no interest or penalty shall be charged when payments are received by the Tax Commission within thirty days after the due date. Failure of the lessee to receive a bill from the Tax Commission shall in no way relieve the lessee of this duty to pay the taxes imposed by this Chapter.

1103. LESSOR NOT OBLIGATED TO PAY TAX. The incidence of the taxes imposed by this Chapter shall be upon the lessee, and the lessor and his interest in such Indian lands shall in no respect be liable for payment of the taxes.

1104. PAYMENT OF TAXES BY SUBLESSEES AND OTHERS.

(1) Any sublessee or other person interested in any possessory interest upon which the taxes imposed by this Chapter are due and unpaid may file a return and pay on behalf of the lessee any taxes due in order to protect his rights in such possessory interest.

(2) Upon payment of such taxes, the payer shall be entitled to recover from the lessee the amount of such payment with interest thereon at the rate of 12% per annum.

(3) If the lessee shall make payment of the taxes due after they have been paid by some other person, the person making such payment on behalf of the lessee shall be entitled to a refund of the amount paid.

1105. DELINQUENCY AS GROUNDS FOR CANCELLATION OF LEASE.

Delinquency in the payment of any taxes

imposed by this Chapter or any interest or penalties imposed pursuant to Section 601 for a period of six months shall be grounds for cancellation of the lessee's lease. Such cancellation shall not relieve the lessee or his obligation to pay any taxes, penalties, or interest, nor shall it relieve the lessee of any of his duties or obligations to the lessor.

CHAPTER 12 – BUSINESS LICENSES

1201.	Definitions
1202.	License Required Of All Businesses
1203.	Application For Business License
1204.	Term Of Licenses
1205.	License Fees
1206.	Denial Of License or Renewal
1207.	Revocation Of License
1208.	Reinstatement Of License
1209.	Penalties and Enforcement
1210.	License Not Transferable
1211.	Posting Of Licenses

1201. DEFINITIONS. The definitions in Section 201 apply to this Chapter. In addition, in this Chapter:

(1) "Business" means any activity engaged in by any person, or caused to be engaged in by any person, with the object of gain, benefit, or advantage either direct or indirect.

(2) "Engage in Business" means to commence, conduct, continue, or liquidate a business.

1202. LICENSE REQUIRED OF ALL BUSINESSES. A tribal business license, as provided for in this Chapter, shall be required prior to engaging in any business within the Rosebud Reservation, provided, that as to any business being engaged in on the effective date of this Chapter, a business license shall be required within thirty days of the effective date. The tribal business license provided for in this Chapter is required of every business within the Reservation, whether temporary or permanent, and regardless of whether such business is required to obtain a federal trader's license or permit, or any other license or permit required by this Code or other tribal law.

1203. APPLICATION FOR BUSINESS LICENSE. Application for tribal business license shall be made to the Tax Commission on such form as it shall prescribe prior to engaging in any business within the Reservation, or if engaged in such business on the effective date of this Chapter, within thirty days of the effective date. An application for annual renewal of a permanent tribal business license shall be filed with the Tax Commission prior to the expiration date of the license.

1204. TERM OF LICENSES. Permanent tribal business licenses shall be effective for a term of one year from the date of issuance, and may upon application and payment of the annual license fee, be renewed annually except as provided in Section 1206. Temporary tribal business licenses shall be effective for a period of thirty days commencing with the date of issuance.

1205. LICENSE FEES. The fees of permanent and temporary business licenses shall be established by the Tribal Council, after consideration of the recommendation of the Tax Commission.

1206. DENIAL OF LICENSE OR RENEWAL. The Tax Commission shall deny any application or renewal application for a tribal business license if the applicant is, at the time of the application or renewal application, delinquent in the payment of any taxes, interest, or penalties provided for in this Code, or if the applicant is in any other respect in violation of tribal law. Any applicant whose application or renewal application is denied by the Tax Commission may appeal pursuant to Chapter 4 of this Code in the same manner and under same terms as provided for petitions for redetermination to the Tax Commission.

1207. REVOCATION OF LICENSE. If any business is more than sixty days delinquent in the payment of any taxes, interest, or penalties imposed by this Code, or is otherwise not in compliance with tribal law, the Tax Commission may after notice and opportunity for hearing, revoke the tribal business license of such business. Appeal from the a decision by the Tax Commission revoking a business license may be

taken in the same manner and under the same terms as provided in Chapter 4 of this Code for petitions for redetermination.

1208. REINSTATEMENT OF

LICENSE. The Tax Commission may, upon application, reinstate a business license that has been revoked pursuant to Section 1207 upon the payment of all taxes, penalties, and interest owed by the business pursuant to this Code, provided the business is otherwise in compliance with tribal law, and provided further that the Tax Commission may require as a condition of such reinstatement that the applicant furnish a bond to the Tribe, or other adequate security, as security for payment of any tribal taxes that may become due.

1209. PENALTIES AND

ENFORCEMENT. Whenever any person engages in business without a valid tribal business license, as provided in this Chapter:

(1) The Tax Commission may bring an action for an injunction pursuant to Section 502;

(2) The Tax Commission may request that an Exclusion Action be brought pursuant to Section 509; and

(3) (a) If the person is a member of the Tribe he shall be guilty of a crime, and on conviction thereof, shall be sentenced to not more than six months labor, or fined not more than five hundred dollars, or both such imprisonment and fine, plus costs; or (b) if the person is a non-member of the Tribe, the Tribal Court in a civil action shall assess against him a civil penalty of not more than five hundred dollars, or shall permanently or temporarily exclude him from the Reservation, or shall impose both such civil penalty and exclusion, plus costs.

1210. LICENSE NOT

TRANSFERABLE. The license provided for in this Chapter is not transferable, and is valid only for the person in whose name it is issued and for transaction of business at the place designated therein.

1211. POSTING OF LICENSES. Each business shall post its tribal business license in a conspicuous location at its place of business.

CHAPTER 13 – LUXURY TAX ON LIQUOR

- 1301. Luxury Tax On Retail Purchase Of Alcoholic Beverages - **Amendment**
- 1302. Monthly Return, Collection and Remittance Of Luxury Tax On Retail Purchase Of Alcoholic Beverages - **Amendment**
- 1303. Reports Required Of Retail Alcoholic Beverage Dealers - **Amendment**
- 1304. Addition Of Tax To Price Of Product - **Amendment**
- 1305. Penalty and Interest On Delinquency In Collection and Remittance Of Tax – False Return – Collection Of Tax and Penalties - **Amendment**
- 1306. Dedication Of Tax Revenue - **Amendment**
- 1307. General Remedial Penalties - **Amendment**
- 1308. Contraband Alcoholic Beverages – Containers – Forfeiture - **Amendment**
- 1309. Seizure Of Contraband Alcoholic Beverages – Containers – Search Warrant - **Amendment**
- 1310. Judicial Determination As To Nature Of Alcoholic Beverages Seized - **Amendment**
- 1311. Exceptions To This Ordinance - **Amendment**
- 1312. Agreement By Licenses To Grant Access For Inspection Purposes - **Amendment**

1301. LUXURY TAX ON RETAIL PURCHASE OF ALCOHOLIC BEVERAGES.

There is hereby imposed a ten-percent (10%) luxury tax on the retail sale price of alcoholic beverage within the Rosebud Sioux Indian Reservation. This tax shall be levied and collected in addition to any tribal sales tax.

1302. MONTHLY RETURN, COLLECTION AND REMITTANCE OF LUXURY TAX ON RETAIL PURCHASE OF ALCOHOLIC BEVERAGES.

Retail alcoholic beverage dealers shall be liable for the collection

and remittance of the luxury tax on the retail sale price of alcoholic beverages. Retail alcoholic beverage dealers shall keep accurate records of all sales of alcoholic beverages and shall file monthly returns with the Tax Commission on such forms as the Tax Commission may require. Said return with remittance covering on or before the twentieth day of the month following the close of the reporting period.

1303. REPORTS REQUIRED OF RETAIL ALCOHOLIC BEVERAGE DEALERS.

All records of retail alcoholic beverage dealers shall be kept in accordance with Section 769 of this Code. In the event that retail alcoholic beverage dealer fails or refuses to furnish any other reports or information referred to upon request therefore, the Tax Commission may enter the premises of such licensee where the records are kept and make such examination as to necessary to compile the required report. The cost of such examination shall be paid by the licensee whose reports are in default.

1304. ADDITION OF TAX TO PRICE OF PRODUCT.

Retail alcoholic beverage dealers may add the tax imposed by this chapter to the price of their product as provided by law. If no provision is made, the average equivalent of the tax may be added. Any person or retailer is subject to taxation under this Chapter or the average equivalent thereof, to this price or change.

1305. PENALTY AND INTEREST ON DELINQUENCY IN COLLECTION AND REMITTANCE OF TAX-FALSE RETURN- COLLECTION OF TAX AND PENALTIES.

If any person responsible for the collection and remittance of the luxury tax on retail alcoholic beverages sales fails to remit the tax on the date that payment is due, there shall be added to the amount of the tax due penalty and interest charges in accordance with Section 601 of this Code. If any licensee files a false or fraudulent return, there shall be added to the tax an amount equal to the tax evaded or attempted to be evaded. All such taxes and civil penalties may be collected in accordance with Chapter Five of this Code.

1306. DEDICATION OF TAX REVENUE. All tax revenue collected pursuant to this Chapter shall be dedicated to

1307. GENERAL REMEDIAL PENALTIES. Anyone violating this Chapter shall be subject to revocation of their tribal business license and/or tribal liquor license in accordance with the law.

1308. CONTRABAND ALCOHOLIC BEVERAGES – CONTAINERS – FORFEITURE. The introduction of alcoholic beverages into, and possession, sales of use of alcoholic beverages within the Rosebud Sioux Indian Reservation contrary to tribal law is mimical to the public interest. All alcoholic beverages introduced into, or possessed, offered for sale or use within the Rosebud Reservation contrary to tribal law, and any receptacle or container of any kind in which said alcoholic are found, are hereby declared to be contraband. No property right shall exist in contraband alcoholic beverages or any receptacle or container wherein such alcoholic beverages are found. Contraband alcoholic beverages and any receptacle or container in which such alcoholic beverages are found are hereby declared forfeit and shall be seized forthwith.

1309. SEIZURE OF CONTRABAND ALCOHOLIC BEVERAGES – CONTAINERS – SEARCH WARRANT.

When a police officer of the Tribe has probable cause to believe that a person has contraband alcoholic beverages within the Rosebud Sioux Indian Reservation and a search warrant is required under tribal law or under the Federal Indian Civil Rights Act, 25 U.S.C Section 1301 et seq., he may apply to the Rosebud Sioux Tribal Court for a warrant to authorize the search of said person and any places, containers, conveyance, and receptacles, etc... which the officer has probable cause to believe contain said contraband alcoholic beverages. If the Rosebud Sioux Tribal Court determines that the probable cause exists that a person has contraband

alcoholic beverages within the territory of the Tribe, then the Court shall issue a search warrant describing the person, places and things to be searched and the things to be seized. The officer shall execute the search warrant and seize any and all alcoholic beverages and any receptacles and any containers in which said contraband alcoholic beverages are found. The officer shall turn the contraband over to the Tax Commission which shall store the contraband for at least thirty (30) days prior to disposition.

1310. JUDICIAL DETERMINATION AS TO NATURE OF ALCOHOLIC BEVERAGES SEIZED.

(A) Within ten calendar days after the seizure of any alcoholic beverages or any receptacle or container in which said alcoholic beverages are found, on the grounds that they are contraband, any person claiming an interest therein may initiate an action for a determination as to whether the items seized are contraband by filing a claim with the Superior Court and serving the notice of the claim on the Director of the Revenue Department. The Superior Court shall then schedule a hearing on the matter within fifteen (15) calendar days after the filing of the claim.

(B) The Superior Court shall, upon good cause shown, permit discovery to be taken on an expedited basis. The Superior Court shall regulate the manner and timing of such discovery; provided that when the Superior Court orders expedited discovery, the time for a hearing may be postponed for a period of sixty (60) day. All discovery shall be completed prior to the hearing date.

(C) The Tribe shall have the burden to establish a prima facie case that items seized are contraband, and after such proof is preponderance of the evidence that items seized are not contraband.

(D) If the Superior Court determines that the items seized by the Tribe are not contraband, the Court shall order the return of the items to the claimant after the time for filing an appeal has elapsed. If the Superior Court determines that the items seized are contraband and the Tribe may dispose of the contraband as it deems fit after the time filing an appeal has elapsed.

(E) The Tribe may appeal an adverse decision of the Superior Court under this section to the Appellate Court by filing notice of appeal within ten calendar days

of the date of the decision of the Superior Court. Filing of the notice of appeal by the Tribe shall automatically stay the decision of the Superior court unless it is clearly erroneous.

(F) The claimant may appeal an adverse decision of the Superior Court under this section to the Appellate Court by filing a notice of appeal within ten calendar days of the date of the decision of the Superior Court and posting an appeal bond in the amount set by the Superior Court. The Superior Court shall set the appeal bond in an amount sufficient to pay for the storage of the items in dispute during the pendency of the appeal and any court costs which may be incurred by the claimant and payment of the appeal bond shall automatically stay the decision of the Superior Court. The Appellate Court shall uphold the decision of the Superior Court unless it is clearly erroneous.

1311. EXCEPTIONS TO THIS ORDINANCE. The provisions of this Ordinance shall not apply to the sale of alcoholic beverages, or to ethanol, used or intended for use for the following purposes:

(A) For scientific research or manufacturing products other than liquor;

(B) Medical use under the direction of a physician, medical or dental clinic or hospital;

(C) In preparations not fit for human consumption such as cleaning compounds and toilet products or flavoring extracts;

(D) By persons exempt from regulations in accordance with the laws of the United States or

(E) For sacramental use such as wines delivered to priests, rabbis and ministers.

1312. AGREEMENT BY LICENSEE TO GRANT ACCESS FOR INSPECTION PURPOSES. Every licensee under this Ordinance as a condition of the grant of a tribal license, consents to the inspection of his premises, including all buildings, safe cabinets, lockers and storerooms thereon. Such inspection shall be available upon the demand of the Tax Commission. These inspections shall be conducted by a duly appointed designee of the Tax Commission or Tribal or Federal police. All books and records

dealing with the sale and ownership of alcoholic beverages shall be open for inspection purposes by the Tax Commission.

CHAPTER 14 – MOTOR FUEL TAX

- 1401. Title - **Amendment**
- 1402. Definitions - **Amendment**
- 1403. Tribal Motor Fuel Tax Fund - **Amendment**
- 1404. Motor Fuel Tax Rates - **Amendment**
- 1405. Motor Fuel Tax On The Sale Of Gasoline and Blends - **Amendment**
- 1406. Motor Fuel Tax License - **Amendment**
- 1407. Monthly Report - **Amendment**
- 1408. Addition To Tax To Price Of Product – Collection Of Tax At Retail Level - **Amendment**
- 1409. State Motor Fuel Excise Tax Pre-Empted - **Amendment**
- 1410. Failure To Remit Taxes – Penalty For Failure To File Return - **Amendment**
- 1411. Refund Of Motor Fuel Tax For Non-Highway Use Of Tribal Members - **Amendment**
- 1412. Tax Exemption Of Fuel To Approved Tribal Indian School – **Amendment**

1401. TITLE. This Ordinance will be cited as the Rosebud Sioux Tribe’s Motor Fuel Tax Ordinance.

1402. DEFINITIONS. Terms used in this Chapter shall mean:

(1) “Blends”, one or more petroleum product, mixed with or without another product regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, an airplane, or a motorboat. The term does not include those blends that occur in the process of refining by the original refiner of crude petroleum or by the blend of products know as lubricating oil and greases. The term does not apply to fuel additives which have been subject to sales or use tax imposed by Chapters 7 and 8, or to dye;

(2) “Ethanol blend”, a blended motor fuel, commonly referred to as gasohol, containing a minimum of ten percent by volume of ethyl alcohol of at least ninety-nine percent purity derived from cereal grain which is blended exclusively with a product commonly or commercially known or sold as gasoline. The blending of casinghead or natural gasoline is not permitted in an ethanol blend fuel product in quantities larger than required to denature the ethyl alcohol;

(3) “Exporter”, any person, who purchases or owns motor fuel or special fuel in this reservation and transport or delivers or causes the fuel to be transported or delivered to another state, reservation, or country by any means other than a pipeline;

(4) “Fuel additive”, a product purchased or acquired for the purpose of adding it to motor fuel for special fuel which was formulated and produced exclusively to enhance the performance or quality of the fuel. The term does not include kerosene;

(5) “Gallon”, for purposes of fuel taxation, a United States gallon measured on a gross volume basis;

(6) “Gasoline”, a fuel product commonly or commercially known or sold as gasoline or reformulated gasoline, which has not been blended with alcohol, naphtha, or any other fuel products such as casinghead, absorption, drip, or natural gasoline’s;

(7) “Import”, with respect (a) to a seller, when the seller’s motor fuel or special fuel is delivered into the reservation from out-of-reservation by or for the seller and (b) to a purchaser, when the purchaser’s motor fuel or special fuel is delivered into the Rosebud Reservation from out-of-reservation by or for the purchaser;

(8) “Importer”, any person who purchases or owns motor fuel or special fuel in another state or country and transports or delivers or causes the fuel to be transported or delivered into this reservation by any means other than a pipeline;

(9) “Motor fuel”, all products commonly or commercially known or sold as gasoline, ethyl alcohol, methyl alcohol, and all gasoline blends;

(10) “Wholesaler”, any person who purchases motor fuel or special fuel from a supplier or another wholesale distributor, or removes the fuel from a terminal at the rack for subsequent sale

to another wholesale distributor or retail dealer.

1403. TRIBAL MOTOR FUEL TAX FUND.

(1) There is hereby authorized and directed to be established an account in a FDIC financial banking institution or the Bureau of Indian Affairs to be known as the Motor Fuel Tax Fund.

(2) This fund will be administered in the same manner as the Tribal Tax Account, pursuant to Title 11, Chapter 2, Section 205.

(3) All tax monies, license fees, penalties, interest, service fees or other charges or monies collected by the Tax Commission in the administration and enforcement of this chapter shall be deposited into this account and dedicated towards highway construction and road repair, and general maintenance of the reservation highway system.

(4) The Tax Commission may establish one or more refund accounts in which a portion of the money described in (3) may be deposited, and from which refunds to taxpayers as described by Section 1411 may be entitled to a refund.

1404. MOTOR FUEL TAX RATES.

The motor fuel tax rates for the tax imposed by this chapter are as follows:

(1) Motor fuel, except ethanol blends
\$.22 per gallon;

(2) Ethanol blends \$.20 per gallon;

(3) Motor fuel for aircrafts 4.06 per gallon;

(4) Special fuels (including diesel)
\$.22 per gallon

1405. MOTOR FUEL TAX ON THE SALE OF GASOLINE AND BLENDS.

There is hereby imposed a motor fuel tax on the sale of gasoline and gasoline blends at the rate established in Section 1404 upon consumers purchasing motor fuel on the reservation, as defined by 18 U.S.C. 1151 and included the original boundaries of the Rosebud Indian Reservation.

1406. MOTOR FUEL TAX LICENSE.

All persons selling motor fuel on the reservation shall obtain a motor fuel tax license. Every application for such a permit or license shall be made upon a form prescribed by the Commission and shall set forth the name under which the

applicant transacts or intends to transact business, the location of this place or places of business, and such other information as the Commission may require. The application shall be signed by the owner, if a natural person, in the case of an association or partnership, by a member or partner thereof, or in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority. The applicant must have a motor fuel tax license for each place of business.

1407. MONTHLY REPORT. Such motor fuel excise tax shall be collected by the motor fuel tax retailer offering the fuel for sale or use to the ultimate consumer. Such fuel retailer shall keep accurate and complete records of all motor fuel sales or transactions which occur within the Rosebud Reservation.

1408. ADDITION OF TAX TO PRICE OF PRODUCT – COLLECTION OF TAX AT RETAIL LEVEL. Motor fuel retail licensee may add the tax imposed by this Chapter to the price of their product as provided by law. Such motor fuel excise tax shall only be collected once on any gallon of fuel.

1409. STATE MOTOR FUEL EXCISE TAX PRE-EMPTED. No state motor fuel excise tax shall be collected on motor fuel sold to or used within the territory of the Rosebud Indian Reservation upon Indians under the jurisdiction of the Rosebud Sioux Tribe.

1410. FAILURE TO REMIT TAXES – PENALTY FOR FAILURE TO FILE RETURN. Enforcement of this Chapter will be adhered by Chapter 5, of Title 11, and other remedies found in the Rosebud Sioux Tribe's Law and Order Code. Any person who:

(a) Fails to pay tax due under this Chapter within thirty (30) days from the date the tax becomes due is subject to a penalty of 10% of tax due or \$100.00, whichever is greater;

(b) Fails to file a return required by this Chapter within thirty (30) days from the date of the return are subject to penalty of \$1,000.00 for first offense; and \$5,000.00 thereafter.

1411. REFUND OF MOTOR FUEL TAX FOR NON-HIGHWAY USE OF TRIBAL MEMBERS. Any motor fuel consumer may apply for and obtain a refund of fuel taxes imposed and paid to this reservation, for motor fuel purchased and used by consumers in motor vehicles, recreation vehicles, and farm equipment used for nonhighway agricultural purposes or used in motor vehicles or equipment used for nonhighway commercial purposes. The portion of this refund attributed to nonhighway use of motor vehicles shall be calculated by multiplying the motor vehicle's average miles per gallon during the claim period times and the number of nonhighway miles the vehicle was operated. The average miles per gallon and nonhighway miles shall be supported by actual individual vehicle fuel disbursement records and odometer readings. The portion of this refund attributed to nonhighway machinery and equipment shall be supported by individual vehicle fuel disbursement records.

1412. TAX EXEMPTION OF FUEL TO APPROVED TRIBAL INDIAN SCHOOL. The tax imposed by this Ordinance shall not be collected from or paid by any entity owned by the Rosebud Sioux Tribe or any tribally controlled school.

CHAPTER 15 – CONTRACTOR’S EXCISE TAX ON NEW OR EXPANDED POWER PRODUCTION FACILITIES

- 1501. Certain Power Production Facilities Using Renewable Resources Subject To Chapter - *Amendment*
- 1502. Definitions – *Amendment*
- 1503. Rate Of Tax On New or Expanded Power Production Facilities – *Amendment*
- 1504. Filing Of Tax Return – Payment Of Taxes Due – *Amendment*
- 1505. Permit Required For New or Expanded Facility Tax Rate – Application – *Amendment*
- 1506. Hearing Available On Denial Of Permit – *Amendment*

- 1507. Promulgation Of Rules – Scope Of Rules – *Amendment*
- 1508. Tax Commission’s Remedy If Tax Collection Jeopardized – Lien – Distress – *Amendment*
- 1509. Records To Be Kept By Taxpayer – Inspection Of Tax Commission – Retention – *Amendment*

1501. CERTAIN POWER PRODUCTION FACILITIES USING RENEWABLE RESOURCES SUBJECT TO CHAPTER. Any commercial power production facility, utilizing renewable resources, such as sun, wind, geothermal, or biomass, that begins generating electricity after June 30, 2002, and produced more than ten megawatts of electricity as measured by nameplate rating, and is owned by a natural person, corporations, nonprofit or for profit business organization or Rosebud Sioux Tribe (if the facility is located outside the boundaries of the reservation), irrigation district, drainage district, or other political subdivision or agency of the state or tribe authorized by statute to carry on the business of developing, transmitting, utilizing, or distributing electric power is subject to the provisions of this chapter for any new or expanded facility.

1502. DEFINITIONS. Terms used in this chapter mean:

- (1) “New or expanded facility”, a new commercial power production facility as defined by Section 1501 or an addition to an existing commercial power production facility, the construction or installation of which is subject to contractor’s excise tax pursuant to Chapter Ten or Title 11;
- (2) “Project”, the installation or construction of generation capacity of a new or expanded facility, excluding any associated transmission facilities;
- (3) “Project cost”, the amount of money incurred and paid after July 1, 2002 for a project.

1503. RATE OF TAX ON NEW OR EXPANDED POWER PRODUCTION FACILITIES. Notwithstanding the rate of taxation imposed by Title 11, Chapter 10, the tax imposed under Title 11, Chapter 10 on a new or expanded facility shall be imposed at a rate of one

percent, and remitted to the Tribe by the holder of the permit issued pursuant to this Chapter.

1504. FILING OF TAX RETURN – PAYMENT OF TAXES DUE. The owner shall file a tax return on or before December thirty-first of each year reporting the project costs subject to tax under Chapter 10 incurred during the previous twelve months. The tax due from such return shall be paid in four equal annual payments with the first payment due no later than December thirty-first following the filing of tax return. Each subsequent annual payment shall be made no later than December thirty-first following the last payment.

1505. PERMIT REQUIRED FOR NEW OR EXPANDED FACILITY TAX RATE – APPLICATION. A person may pay the contractor's excise tax pursuant to Section 1504 if the person applies for and obtained a permit from the secretary at least thirty days prior to commencement of the project. The application for a permit shall be submitted on a form prescribed by the Tax Commission. A separate application shall be made and submitted for each project. Upon approval of the application, the Tax Commission shall issue a permit to the applicant. The permit is not assignable or transferable except as collateral or security pursuant to appropriate law.

1506. HEARING AVAILABLE ON DENIAL OF PERMIT. Any person aggrieved by the denial of a permit, may within thirty-days after service of the notice of a denial by the Tax Commission demand and is entitled to a hearing, upon notice, before the Tax Commission.

1507. PROMULGATION OF RULES – SCOPE OF RULES. The Tax Commission may promulgate rules, pursuant to this Code concerning:

- (1) Permitting, including the permit application;
- (2) The filing of returns and payment application;
- (3) Determining the application of the tax and exemptions;
- (4) Taxpayer and owner record-keeping requirements; and
- (5) Determining auditing methods.

1508. TAX COMMISSION'S REMEDY IF TAX COLLECTION JEOPARDIZED – LIEN – DISTRESS WARRANT. If the Tax Commission finds that the assessment or collection of the tax required to be paid under this chapter is in jeopardy, the Tax Commission may immediately make an assessment of the estimated tax, penalty, or interest and demand payment from the owner. If the payment is not made, a lien may be filed on the owners real and personal property located in the reservation and a distress warrant issued.

1509. RECORDS TO BE KEPT BY TAXPAYER – INSPECTION BY TAX COMMISSION – RETENTION OF RECORDS. Each person subject to tax or responsible for payment of tax under this chapter shall keep records and books of all receipts and sales, together with invoices, bills of lading, copies of bills of sale, and other pertinent papers and documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be subject to inspection by the Tax Commission or the Tax Commission's duly authorized agents and employees to determine the amount of tax due. Such books and records shall be preserved for a period of three years unless the Tax Commission, in writing, authorized their destruction or disposal at an earlier date.

TITLE 12

COMMUNITY ORGANIZATION

CHAPTER 1 – COMMUNITY ORGANIZATIONS

12-1-1.	Title
12-1-2.	Authority and Purpose
12-1-3.	Definition Of Terms
12-1-4.	Applicability Of Tribal Law 12-1 To Recognized Communities and Communities Requesting Tribal Recognition Of Reorganization
12-1-5.	Adoption Of Uniform Community Organization Law
12-1-6.	Model Uniform Community Organization Of Article V
12-1-7.	Amendments By Community Organization Of 12-1-6
12-1-8.	Community Officers Review Commission
12-1-9.	Appeal and Review To RST Attorney General
12-1-10.	Effective Date Of Tribal Law 12-1
12-1-11.	Amendments and Recession Of Tribal Law 12-1

12-1-1. TITLE. This law shall be known as the Uniform Community Organization Law.

12-1-2.1. AUTHORITY. The governing body of the Rosebud Sioux Tribe is exercising its authority pursuant to Article III, Section 2; Article IV, Section 1 (t) and (u); and Article V of the Constitution and By-Laws of the Rosebud Sioux Tribe.

(1) Article III, Section 2, and Article V grants to the governing body the authority to reorganize and thereby establish community organization pursuant to the Constitution of the Rosebud Sioux Tribe.

(2) Article IV, Section 1 (t) grants, in part, the authority to adopt resolutions regulating the procedure of other tribal agencies and tribal officials.

(3) Article IV, Section 1 (u), and Article V grants the governing body the authority to delegate its enumerated powers; provided such delegation of enumerated powers is the right of review of any action taken by virtue of such

delegated power and the actions of the community councils shall not be inconsistent with the Constitution, By-Laws and tribal laws of the Rosebud Sioux Tribe.

12-1-2.2. PURPOSES. The purpose of this tribal law is:

(1) To foster and promote the development of the community organizations to their fullest in health, education, security, and economic welfare of its community members.

(2) To provide basic uniformity among community organizations pursuant to Article V of the Constitution.

(3) To encourage greater community cooperation, from within or without, and among the several community organizations.

(4) To provide the greatest degree of self-determination of each community by recognizing that each respective community organization is unique.

(5) To provide decentralization of services to citizens of the Rosebud Sioux Tribe pursuant to the delegation of power to community organizations and to ensure that the purposes herein stated are fulfilled.

12-1-3. DEFINITIONS OF TERMS.

The following definitions of terms shall apply throughout this chapter:

(1) "Affiliated" shall mean the definition used by each respective community organization for purposes participating in community affairs.

(2) "Benefit of the community" shall mean services provided to community members by a community organization.

(3) "Community by-laws" shall mean any documents, prior to this Tribal Law 12-1, which governs the actions of a community organizations' community council.

(4) "Community councils" shall mean the governing body of each respective community organization for the purposes of conducting and transacting community affairs.

(5) "Community officers review commission" shall mean the body established to review actions arising under 12-1 and other provisions of this tribal law.

(6) "Community organization" shall mean an established community's structural organization for community members at the community level.

(7) "Community treasury" shall mean a duly designated financial institution where community funds shall be deposited in behalf of the community organization.

(8) "Consult" shall mean solicitation of advice, opinions, or information for the purposes of making recommendations pursuant to Article V of the Constitution of the Rosebud Sioux Tribe.

(9) "Delegated" shall mean those enumerated powers of Article IV which may be exercised by community organizations upon application to the Tribal Council.

(10) "Duly approved community resolutions" shall mean a resolution approved and certified by a community council.

(11) "Each community established" shall mean recognized communities pursuant to Article III, Section 2 of the Constitution of the Rosebud Sioux Tribe.

(12) "Exhaustion of remedies" shall mean community organization's procedural remedies to resolve matters inconsistent with their respective community governing document(s).

(13) "Legitimate petition" shall mean a petition not inconsistent with RST Resolution 86-61.

(14) "Levy Assessments" shall mean to impose or collect money for any services or the administration of services provided by the community organization.

(15) "Local enterprises" shall mean any activity managed by a community organization for the benefit of said community.

(16) "Matters of local interest" shall mean the internal affairs of a community.

(17) "Popular meetings" shall mean regular or special meetings of the community organization's community council.

(18) "Qualified voter" shall mean any person who has met the provisions of Article VI, Section 1 of the Constitution.

(19) "Recommendations" shall mean an official course of action by a community council.

(20) "Representatives of the interior department" shall mean the cabinet level post of the United States or the Secretary of Interior's delegated representative.

(21) "Right of Review" shall mean the Tribal Council's right to review of community council's to ensure such actions are not inconsistent with the

Constitution, By-Laws and tribal laws of the Rosebud Sioux Tribe.

(22) "Roll" shall mean a community census of those members who are affiliated with said community.

12-1-4. APPLICATION OF TRIBAL LAW 12-1 RECOGNIZED COMMUNITIES AND COMMUNITIES REQUESTING TRIBAL RECOGNITION OR REORGANIZATION.

12-1-4.1. EXISTING COMMUNITY ORGANIZATIONS ESTABLISHED.

Any community recognized pursuant to Article III, Section 2 of the Constitution having a document governing their respective community organization prior to the enactment of this law shall be exempt from the provisions of this law; provided, however, each respective community organization may exercise the option of reorganizing pursuant to the Uniform Community Organization Law 12-1 as provided.

12-1-4.2. NEW COMMUNITIES. Any future non-recognized community requesting official tribal recognition, by the Tribal Council, pursuant to Article III, Section 2 of the Constitution shall adopt all provisions of this tribal law as requisite to such recognition.

12-1-5. ADOPTION OF UNIFORM COMMUNITY ORGANIZATION LAW.

12-1-5.1. APPLICATION BY COMMUNITY RESOLUTION. Each respective community council may request to the Tribal Council the application of 12-1 and all provisions of this tribal law.

12-1-5.2. COMMUNITY TASK

FORCE. A Task Force shall be established for the purpose of framing the necessary articles and sections pursuant to 12-1-6 and all provisions thereof.

(1) The Task Force shall be composed of community members of said community in question. The membership of the Task Force shall be at least three, provided the membership shall be appointed by the community council.

12-1-5.3. COMMUNITY HEARING(S).

The Task Force shall hold at least two (2) community hearings on the proposed draft of said Uniform Community Organization Law for the purposes of receiving tribal input into final draft to be voted upon by the community in question.

12-1-5.4. ADOPTION.

The adoption of the Uniform Community Organization Law 12-1-6 shall be by a vote of those members of the community organization who are qualified to vote in tribal election; provided the question of adoption shall be placed on the same ballot as the candidates for community or tribal office or as a separate ballot. The Tribal Election Board or the Community Election Board shall assist each respective community organization to prepare the question.

12-1-5.5. APPROVAL.

A majority vote of those members of the community organization voting shall be required for adoption.

12-1-6. MODEL UNIFORM COMMUNITY ORGANIZATION LAWS OF ARTICLE V.

Each community organizing or reorganizing pursuant to this tribal law shall have incorporated, as a minimum, the following pertinent Articles and Sections.

ARTICLE I. Each community established under the constitution shall elect, annually, a president and such other officers as may be advisable.

Section 1. We, the enrolled members of the Rosebud Sioux Tribe, a tribe of the Oceti Sakowin Nation, in order to establish a united community organization to promote the health, education, tranquility, and economic interest of our community members do hereby ordain this governing document.

Section 2. This community organization shall be known as (community name) Community and shall comply with all provisions of the Constitution and By-Laws of the Rosebud Sioux Tribe in the development of (community name) Community.

Section 3. Members of the community council shall be defined by community resolution.

Section 4. The community president and other community officers

shall be elected pursuant to the Rosebud Sioux Tribal Election.

Section 5. The community president shall call and preside over popular meetings of the community and perform other duties as may be delegated to him by the (community name) community council; provided the community council may establish duties for other officers of the community organization by community resolution.

Section 6. The (community name) community council shall by majority vote remove any of its community officers for neglect of duty or gross misconduct after due notice of charges and an opportunity to be heard; provided the community council shall define neglect of duty or gross misconduct by community resolution.

Section 7. Each community officer-elect shall take an oath of office prior to assuming their duties.

ARTICLE II – The president shall call and preside over popular meetings of the community whenever necessary for the consideration of matters of local interest.

Section 1. The community council shall promulgate rules as are necessary for transacting and conducting business of the community.

ARTICLE III - The various communities may consult with representatives of the interior department on all matters of local interest and make recommendations thereon to the tribal council or the superintendent or commissioners of Indian affairs.

Section 1. All community resolutions on matters of local interest, or community resolutions with recommendations to the Tribal Council, Superintendent, or the Commissioner of Indian Affairs shall be approved by a majority vote of the community council.

Section 2. Community councils, by community resolution, shall establish such committees, commissions, or boards as they may deem necessary.

ARTICLE IV – May undertake and manage local enterprises for the benefit of the community. (Reserved)

ARTICLE V - May levy assessments upon members of the community. (Reserved)

ARTICLE VI – May expend moneys in the community treasury for the benefit of the community.

Section 1. No debt shall be contracted by or in behalf of the (community name) Community unless such debt shall be authorized in accordance for projects or objects specified in the community.

Section 2. The community council shall submit a budget estimate for the fiscal year setting forth all proposed expenditures and anticipated income of the community.

Section 3. No money shall be withdrawn from the community treasury except as provided in the community budget.

ARTICLE VII – May keep a roll of those members of the Tribe affiliated with the community.

Section 1. Membership of the (community name) Community shall consist of all persons who are members of the Rosebud Sioux Tribe, affiliated with said community organization.

ARTICLE VIII – May exercise such further powers as may be delegated to the communities by the Tribal Council.

Section 1. Each community organization shall specify each enumerated power pursuant to Article IV for delegation to the community organization by a duly approved community resolution, provided the governing body of the Rosebud Sioux Tribe shall approve or disapprove any delegation of power.

ARTICLE IX – The actions of the community councils shall not be inconsistent with the constitution, by-laws, and ordinances of the tribe.

Section 1. The governing body of the Rosebud Sioux Tribe shall have, under the right of review, the authority to retrocede any enumerated power so delegated if a community council is in violation of the Constitution of the Rosebud Sioux Tribe.

12-1-7. AMENDMENTS BY COMMUNITY ORGANIZATIONS OF 12-1-6.

12-1-7.1. AMENDMENTS.

Amendments to 12-1-6 shall be by petition, provided said petition is not inconsistent with RST 86-61.

12-1-7.2. ADOPTION. If a majority of the qualified voters of a community organization sign a petition pursuant to

12-1-7.1, the proposed amendment shall become effective within thirty days unless otherwise specified.

12-1-8. COMMUNITY OFFICERS REVIEW COMMISSION.

12-1-8.1. MEMBERSHIP. The Review Commission shall consist of four (4) members, provided three (3) members shall be community officers and the remaining member shall be appointed at large.

12-1-8.2. APPOINTMENT. The Tribal Council shall appoint the Review Commission members, provided no community officer shall be appointed from a community organization in question or from community organization that has not adopted the provisions of Tribal Law 12-1.

12-1-8.3. TERMS. The terms of the Review Commission shall begin upon their appointment and shall expire within sixty (60) calendar days or until such time the Review Commission officially discharges its duties, whichever is sooner.

12-1-8.4. QUORUM. A simple majority shall be required to transact business. Each member shall have one (1) vote. A simple majority vote shall be required on all matters.

12-1-8.5. DUTIES AND RESPONSIBILITIES.

The Review Commission shall be responsible for carrying out the purpose of this Tribal Law and shall have the following duties:

(1) Hear appeals among the several communities arising from the disputes of this Tribal Law, 12-1, provided:

(a) The exhaustion of remedies at the community level shall have been pursued prior to the Review Commission accepting any appeals.

(b) In no case shall the Review Commission hear appeals unless a community organization has formally adopted the provisions of 12-1, except:

1. An established community organization exempt from this tribal law may request, by a community resolution, the Review Commission to hear appeals arising from their governing document of the community, provided however the Review Commission may, at its sole

discretion, accept or not accept to hear such appeals pursuant to 12-1-8.5 (1) (b) 1.

(2) To render decisions consistent with this Tribal Law and the Constitution of the Rosebud Sioux Tribe.

(3) All decisions by the Review Commission shall be in writing and shall cite the finding of facts and conclusions of law thereof.

(4) Decisions by the Review Commission shall be final, conclusive, and binding by the community organization in question.

12-1-9. APPEAL AND REVIEW TO RST ATTORNEY GENERAL.

12-1-9.1. APPEAL. An appeal of the Review Commission decisions may be made to the RST Attorney General, by the community organization involved, if the decision rendered is inconsistent with this Tribal Law or the Constitution of the Rosebud Sioux Tribe.

(1) The appeal shall be in writing and shall state the decision rendered by the Review Commission and the applicable tribal laws which the Commission's decision is inconsistent with.

12-1-9.2. REVIEW. The RST Attorney General, upon review, shall determine any violation(s) as cited by the community organization.

(1) The RST Attorney General shall remand the matter back to the Review Commission for further deliberations provided the ruling is in favor of the appealing community, otherwise the Review Commission's decision is final, conclusive, and binding on the community organization in question.

12-1-10. EFFECTIVE DATE OF

TRIBAL LAW 12-1. This Tribal Law shall be effective pursuant to Title 4-3, Amendments to the Law and Order Code, and Tribal Law 86-08, the Legislative Procedure law of the Governing Body.

12-1-11. AMENDMENTS OR RECISSION OF TRIBAL LAW 12-1.

This Tribal Law shall be amended or rescinded pursuant to Tribal Law 86-08, the Legislative Procedure law.

TITLE 13

GAMING

CHAPTER 1 – PURPOSE

13-1-101. Purpose - **Amendment**

13-1-101. PURPOSE. The Rosebud Sioux Tribal Council empowered by their Constitution hereby enacts this ordinance in order to regulate gaming activities within the Tribe's jurisdiction.

CHAPTER 2 – DEFINITIONS

13-2-101. Definitions - **Amendment**

13-2-101. DEFINITIONS. Unless a different meaning is clearly indicated in this Ordinance, the terms used herein shall have the same meaning as defined in the Indian Gaming Regulatory Act (ICRA), 25 U.S.C. § 2701 et seq., and its regulation, 25 C.F.R. § 500 et seq. Specifically:

(1) "Board of directors" means the Tribal Gaming Board of Directors, who shall serve as primary management officials who shall work closely with the General Manager in the development of policies governing the management aspects of the Tribally-owned gaming operation(s).

(2) "Class I gaming" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations.

(3) "Class II gaming" has the definition as laid out in 25 U.S.C. § 2703 (7) (A) and means:

(a) The game of chance commonly known as bingo (whether or not electric), computer, or other technologic aids are used in connection therewith):

i. which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

ii. in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

iii. in which the game is won by the first person covering a previously designated arrangement of numbers or

designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(b) Card games that;

i. are explicitly authorized by the laws of the State, or

ii. are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(c) The term "class II gaming" does not include:

i. any banking card games, including baccarat, chemin de fer, or blackjack (21), or

ii. electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

(4) "Class III gaming" means all forms of gaming that are not class I gaming or class II gaming.

(5) "Commission" means the Tribal Gaming Commission established to perform regulatory oversight and to monitor compliance with Tribal, Federal, and applicable State regulations.

(6) "Commissioner" means a Tribal Gaming Commissioner.

(7) "Compact" means a Tribal-State Compact concerning class III gaming approved pursuant to 25 U.S.C. § 2710 (d).

(8) "Complimentary" means a service or item provided at no cost, or at a reduced cost, to a customer.

(9) "Directly related to" means a spouse, common law partner, sibling, child, parent, grandparent, grandchild, brother-in-law, sister-in-law, mother-in-law and father-in-law.

(10) "Director" means a Member of the Tribal Gaming Board of Directors.

(11) "Indian lands" means:

(a) All lands within the limits of any Indian reservation; and

(b) Any lands title to which is either held in trust by the United States for the benefit of any Indian Tribe or individual or held by any Indian Tribe or individual subject to restriction by the United States against alienation and over which an Indian Tribe exercises governmental power.

(12) "Indian tribe" means the Rosebud Sioux Tribe.

(13) "Key employee" means:

(a) A person who performs one or more of the following functions:

- i. bingo caller;
- ii. counting room supervisor;
- iii. chief of security;
- iv. custodian of gaming supplies or cash;
- v. floor manager
- vi. pit boss
- vii. dealer
- viii. croupier
- ix. approver of credit; or
- x. custodian of gambling devices including person with access to cash and accounting records within such devices.

(b) If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year; or

(c) If not otherwise included, the four most highly compensated persons in the gaming operation.

(14) "Net revenues" means gross gaming revenues of an Indian gaming operation less:

(a) Amounts paid out as, or paid for, prizes; and

(b) Total gaming-related operating expenses, excluding management fees.

(15) "Per capita payment" means the distribution of money or other thing of value of all members of the Tribe, or to identified groups of members, which is paid directly from the net revenues of any tribal gaming activity.

(16) "Primary management official" means:

(a) The person(s) having management responsibility for a management contract;

(b) Any person who has authority:

- i. to hire and fire employees; or
- ii. to set up working policy for the gaming operation; or

(c) The chief financial officer or other person who has financial management responsibility.

CHAPTER 3 – GAMING AUTHORIZED

13-3-101. Gaming Authorized - **Amendment**

13-3-101. GAMING AUTHORIZED. Class II and Class III gaming are hereby authorized.

CHAPTER 4 – OWNERSHIP

13-4-101. Ownership - **Amendment**

13-4-101. OWNERSHIP. The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by this ordinance.

CHAPTER 5 – USE OF GAMING REVENUE

13-5-101. Purposes Of Gaming Revenue - **Amendment**

13-5-102. Payment Plan For Per Capita - **Amendment**

13-5-103. Per Capita Payments For Minors and Incompetent Persons – **Amendment**

13-5-101. PURPOSES OF GAMING REVENUE. Net revenues from tribal gaming shall be used only for the following purposes:

- (a) To fund tribal government operations and programs;
- (b) To provide for the general welfare of the Tribe and its members;
- (c) To promote tribal economic development;
- (d) To donate to charitable organizations; or
- (e) To help fund operations of local government agencies.

13-5-102. PAYMENT PLAN FOR PER CAPITA. Any Tribal per capita payments to tribal members shall be in accordance with a plan submitted to and approved by the Secretary of the Interior under 25 U.S.C. § 2710 (b) (3).

13-5-103. PER CAPITA PAYMENTS FOR MINORS AND INCOMPETENT PERSONS. The Tribe shall ensure that the interests of minors and other legally incompetent person who are entitled to receive any per capita payments under a Tribal per capita payment plan are protected and preserved, and that the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare of the minor or other legally incompetent person, under

a plan approved by the Tribal Council and the Secretary of Interior.

CHAPTER 6 – BOARD OF DIRECTORS

- 13-6-101. Tribal Gaming Board Of Directors - *Amendment*
- 13-6-102. Requirements For Appointment - *Amendment*
- 13-6-103. Duties - *Amendment*
- 13-6-104. Appointment - *Amendment*
- 13-6-105. Conflicts Of Interest - *Amendment*
- 13-6-106. Removal - *Amendment*
- 13-6-107. Compensation - *Amendment*

13-6-102. TRIBAL GAMING BOARD OF DIRECTORS. In addition to the General Manager for the facility, there shall be established a Tribal Gaming Board of Directors which shall serve in policy oversight role over the non-regulatory operations of the gaming operation. In event the Tribe enters into a management contract approved by the NIGC, the Board may delegate some of their duties to the approved management contractor. Regulation of the gaming operation shall be the sole responsibility of the Tribal Gaming Commission.

13-6-102. REQUIREMENTS FOR APPOINTMENT. The Board of Directors shall consist of three (3) members; a Chairperson, Vice-Chairperson, and Director. Terms of office for members of the Tribal Gaming Board of Directors shall be as follows: the Chairperson shall serve an initial term of one year, with subsequent Chairpersons serving three-year terms. The Vice-Chairperson and other Director(s) shall serve an initial term of two years, with subsequent Vice-Chairpersons and Directors serving three-year terms. The members of the Board shall be subject to the same background requirements as key employees and primary management officials, and must be licensed accordingly. The minimum requirements for appointment as a member of the Board of Directors are as follows:

- (a) One of the following:
 - i. degree in Business Administration, Accounting, Marketing, or an equivalent field;
 - ii. minimum five (5) years experience in business management;

- iii. minimum two (2) years experience in casino management; or
- iv. demonstrated knowledge of federal Indian Gaming Regulatory Act, and related statutes and regulations.

13-6-103. DUTIES. The Board of Directors shall perform the following non-regulatory duties:

- (1) Approve non-regulatory policies of the gaming facility, whether managed by a tribal employee or by an approved management contractor;
- (2) Inspect and examine on a periodic basis all books, records, and papers of the gaming facility;
- (3) Approve hours of operation for the gaming facility;
- (4) Approve wager limits;
- (5) Approve marketing plans;
- (6) Approve policies regarding interviews, selection, and training of the gaming operation employees;
- (7) Approve employee policies, rate of pay, and hours of work;
- (8) Approve annual operating budget, subject to Tribal Council approval;
- (9) Any other duties necessary to monitor and oversee the policies of the gaming operation.

13-6-104. APPOINTMENT. Board of Director positions shall be filled through appointment by the Tribal Council.

13-6-105. CONFLICTS OF INTEREST. The Tribe recognizes the importance of an independent Tribal Gaming Board of Directors maintaining a well-managed gaming operation. To avoid potential conflicts of interest between the operation and regulation of the gaming facility, the Tribe hereby finds that, at a minimum:

- (1) No more than one member of the Tribal Council may serve on the Board of Directors. No member of the Tribal Gaming Commission may serve on the Board of Directors;
- (2) No person directly related to or living with a Tribal Gaming Commissioner may serve on the Board of Directors as defined in Chapter 2 (1). Within thirty (30) days of the origination of a conflict, one of the affected parties must resign;
- (3) Members of the Board of Directors are prohibited from gambling in the facility; and
- (4) Members of the Board of Directors are prohibited from accepting

complimentary items from the gaming operation.

13-6-106. REMOVAL. Members of the Board of Directors may be removed from office by the Tribal Council prior to the expiration of their respective terms only for neglect of duty, misconduct, malfeasance, or other acts that would render the Director unqualified for the position. When the Tribal Council believes that removal is appropriate, it shall so notify the Director(s) and hold a hearing on the matter. A vote of the Tribal Council on the validity of the removal shall be final and not subject to further appeal.

13-6.107. COMPENSATION. Members of the Tribal Gaming Board of Directors shall be compensated at a level determined by the Tribal Council.

CHAPTER 7 – GAMING COMMISSION

- 13-7-101. Tribal Gaming Commission - *Amendment*
- 13-7-102. Purpose - *Amendment*
- 13-7-103. Conflicts Of Interest – *Amendment*
- 13-7-104. Appointment - *Amendment*
- 13-7-105. Nominee and Standards – *Amendment*
- 13-7-106. Authorities - *Amendment*
- 13-7-107. Background Investigation Records - *Amendment*
- 13-7-108. Terms Of Office – *Amendment*
- 13-7-109. Eligibility - *Amendment*
- 13-7-110. Removal - *Amendment*
- 13-7-111. Majority Constitutes Quorum - *Amendment*
- 13-7-112. Compensation - *Amendment*
- 13-7-113. Records Of Meetings – *Amendment*

13-7-101. TRIBAL GAMING COMMISSION. The Tribe hereby establishes a Tribal Gaming Commission whose duty it is to regulate tribal gaming operations. The Tribal Gaming Commission shall consist of five (5) members. There shall be among them a Chairperson, Vice-Chairperson, and at least one additional Commissioner.

13-7-102. PURPOSE. The purpose of the Tribal Gaming Commission is regulatory and does not include

managerial duties at the gaming operation. The Commission will conduct oversight to ensure compliance with Tribal, Federal, and, if applicable, State laws and regulations. The Commission will serve as the licensing authority for individuals employed in the gaming operation and administer background investigations as part of the licensing process. The Commission will also have a role in monitoring compliance with the internal control standards for the gaming operation and in tracking revenues. In order to carry out its regulatory duties, the Commission shall have unrestricted access to all areas of the gaming operation and to all records. The Commission shall have authority to take enforcement actions, including suspension or revocation of an individual gaming license when appropriate.

13-7-103. CONFLICTS OF INTEREST. The Tribe recognizes the importance of an independent Tribal Gaming Commission in maintaining a well-regulated gaming operation. The Commission shall be and act independently and autonomously from the Tribe in all matters within its purview. No prior or subsequent review by the Tribal Council of any actions of the Commission shall be required or permitted except as otherwise explicitly provided in this Ordinance. To avoid potential conflicts of interest between the operation and regulation of the gaming facility, the Tribe hereby finds that, at a minimum:

(1) No member of the Tribal Council or Tribal Gaming Board of Directors shall serve on the Gaming Commission;

(2) No member directly related to or living with any Tribal Council member or Tribal Gaming Board of Directors member may serve on the Gaming Commission as defined in Chapter 2 (5). Within thirty (30) days of the origination of a conflict, one of the affected parties must resign;

(3) Members of the Gaming Commission are prohibited from accepting complimentary items from the gaming operation.

13-7-104. APPOINTMENT. Tribal Gaming Commissioner positions shall be filled through appointment by the Tribal Council.

13-7-105. NOMINEES AND STANDARDS. Nominees for positions of Tribal Gaming Commissioner must satisfy suitable standards set forth for key employees and primary management officials, found in Chapter 13 of this Ordinance. Such background investigations shall be performed under the direction of the Tribal Council or designated official.

13-7-106. AUTHORITIES. The Tribal Gaming Commission authorities shall include:

- (1) Conduct or cause background investigations to be conducted on, at a minimum, primary management officials and key employees;
- (2) Review and approve all investigative work conducted;
- (3) Report results of background investigations to the NIGC;
- (4) Obtain and process fingerprints, or designate a law enforcement agency to obtain and process fingerprints;
- (5) Make suitability determinations, which shall be signed by the Chairperson of the Gaming Commission;
- (6) Issue gaming licenses to management officials and any other employee of the operation the Gaming Commission deems licensing appropriate, consistent with the suitability determination;
- (7) Inspect, examine and monitor all gaming activities, and have immediate access to review, inspect, examine, photocopy and audit all records of the gaming establishment;
- (8) Ensure compliance with all Tribal, State, and Federal laws, rules and regulations regarding Indian gaming;
- (9) Investigate any suspicion of wrongdoing associated with any gaming activities;
- (10) Hold hearings on patron and/or employee complaints, in compliance with procedures established in this Ordinance and other Tribal gaming regulations;
- (11) Comply with any and all reporting requirements under the IGRA, Tribal-State compact to which the Tribe is a party, and any other applicable law;
- (12) Promulgate and issue regulations necessary to comply with the Tribe and the NIGC's Minimum Internal Control Standards (MICS);
- (13) Promulgate and issue regulations on the levying of fees and/or taxes

associated with gaming license applications;

(14) Promulgate and issue regulations on the levying of fines and/or suspension or revocation of gaming licenses for violations of the gaming ordinance, or any other Tribal, Federal, or State, if applicable, gaming regulations;

(15) Hire, supervise, and terminate all Gaming Commission staff, including the Executive Director. The Commission's authority to supervise Gaming Commission staff is absolute and shall not be subject to Tribal Council or Tribal Administration intervention; and

(16) Perform such other duties the Commission deems appropriate for the proper regulation of the Tribal gaming operation.

13-7-107. BACKGROUND INVESTIGATION RECORDS. The Gaming Commission shall ensure that all records and information obtained as a result of all employees background investigations shall remain confidential and shall not be disclosed to persons who are not directly involved in the licensing process. Under no circumstances shall information obtained during the course of an employee background investigation be disclosed to members of management, human resource personnel or others employed by the tribal gaming operation. This Section does not apply to requests for such information or records from any Tribal, Federal or State law enforcement or regulatory agency, or for the use of such information or records by the Commission and staff in the performance of their official duties.

13-7-108. TERMS OF OFFICE. Terms of office for Tribal Gaming Commissioners shall be as follows: the Chair shall serve an initial term of one year, with subsequent Chairs serving three-year terms. The Vice-Chair and Commissioner(s) shall serve an initial term of two years, with subsequent Vice-Chairs and Commissioners serving three-year terms.

13-7-109. ELIGIBILITY. The following persons are not eligible to serve as Tribal Gaming Commissioners: Tribal Council members, while serving as such; employees of the gaming operation, while serving as such; gaming contractors (including any principle of a

management or other contracting company); persons directly related to or sharing a residence with any of the above; persons ineligible to be key employees or primary management officials. Tribal members previously convicted of a felony, of embezzlement, of theft, or of any other money-related crime or honesty-related crime (such as fraud) will only be allowed if the Tribal Council specifically finds a significant amount of time has passed and that the person's character has been reformed. The Tribal Council shall require a criminal history check with appropriate law enforcement agencies and shall review this criminal history report and make an appropriate suitability determination before appointing an individual in a position as a Tribal Gaming Commissioner.

13-7-110. REMOVAL. The independence of the Tribal Gaming Commission is essential to a well-regulated gaming operation. For that reason, Commissioners may only be removed from office by the Tribal Council prior to the expiration of their respective terms: neglect of duties, misconduct, malfeasance, or other acts that would render a Commissioner unqualified for the position. Any allegations of neglect of duty, misconduct, malfeasance, or other acts that would render the Commissioner unqualified for the position must be substantiated by a preponderance of the evidence. Commissioners will be given an opportunity to provide evidence rebutting the grounds for their proposed removal before the removal is considered. A vote of the Tribal Council on the validity of the removal shall be final and not subject to further appeal.

3-7-111. MAJORITY CONSTITUTES QUORUM. A majority of the Commission shall constitute a quorum. The concurrence of a majority of the members appointed to the Commission shall be required for any final determination by the Commission. The Commission may act in its official capacity even if there are vacancies on the Commission.

3-7-112. COMPENSATION. Tribal Gaming Commissioners shall be compensated at a level determined by the Tribal Council. This compensation

shall be included in the gaming operation's annual estimated budget, and shall be approved by the Tribal Council. Commissioner compensation shall not be based on a percentage of gaming revenue to ensure the Commission is not improperly influenced.

13-7-113. RECORDS OF MEETINGS. The Commission shall keep a written record of all meetings.

CHAPTER 8 – ETHICS

13-8-101. Ethical Standards –
Amendment

13-8-101. ETHICAL STANDARDS. The Tribe recognizes that the duties of the Gaming Board of Directors and the Tribal Gaming Commission include making important decisions on highly sensitive issues. As such, the Tribe has determined that the Board of Directors and the Gaming Commission shall be held to extremely high ethical standards. Prior to taking their positions on the Board and Commission (Members), the Members shall agree to be bound by the following principles:

(1) Members shall not hold financial interests that conflict with the conscientious performance of their duties as managers and regulators.

(2) Members shall not engage in financial transactions using nonpublic information or allow the improper use of such information by others on their behalf to further any private interest.

(3) Members shall not solicit or accept any gift or other item of monetary value including complimentary items (see Chapter 9, below), from any person or entity seeking official action or inaction from, doing business with, or conducting activities regulated by the member's organization, or whose interests may be substantially affected by the performance of nonperformance of the Member's duties.

(4) Members shall make no authorized commitments or promises of any kind purporting to bind the Tribe.

(5) Members shall not use their positions for private gain.

(6) Members shall act impartially, in accordance with all relevant Tribal, Federal, and State laws (where applicable via class III gaming compact), and shall not give preferential treatment

to any private organization or individual, including to any persons related to members.

(7) Members shall ensure that Tribal property and gaming assets shall be properly segregated and safeguards, and that such property and assets shall not be used for unauthorized activities.

(8) Members shall not engage in outside employment of activities, including seeking or negotiating for future employment, which conflict with their official duties and responsibilities.

(9) Members shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(10) Members shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards listed herein.

(11) Members shall execute a confidentiality agreement and shall be bound by the terms therein.

CHAPTER 9 – COMPLIMENTARY ITEMS

13-9-101. Complimentary Items – *Amendment*

13-9-101. COMPLIMENTARY ITEMS.

(1) The use of complimentary items shall be governed by regulation established by the Tribal Gaming Commission, which shall be in accord with the NIGC's Minimum Internal Control Standards, found at 25 C.F.R. § 542.17.

(2) No Key Employee, Primary Management Official, Tribal Council member, member of the Gaming Board of Directors or Tribal Gaming Commission or any person directly related to or sharing a residence with the persons, shall be authorized to receive complimentary items.

(3) Complimentary Items shall be included in the annual budget for the gaming operation, with maximum limits specified, and shall be subject to approval by the Tribal Council.

CHAPTER 10 – AUDIT

13-10-101. Audit - *Amendment*

13-10-101. AUDIT.

(1) The Tribe shall cause an annual outside independent audit of gaming operations to be conducted, and shall

submit the resulting audit reports to the National Indian Gaming Commission.

(2) All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000.00 annually, except contracts for professional legal and accounting services shall be specifically included within the scope of the audit that is described in subsection 1 above.

CHAPTER 11 – ENVIRONMENT AND PUBLIC HEALTH AND SAFETY

13-11-1. Protection Of Environment – *Amendment*

13-11-1. PROTECTION OF ENVIRONMENT. Gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety. [25 C.F.R. § 522.4 (b) (7)].

CHAPTER 12 – DISPUTE RESOLUTIONS

13-12-101. Dispute Resolution - *Amendment*

13-12-101. DISPUTE RESOLUTION. Patrons who have complaints against the gaming establishment, a gaming employee, or a management contractor shall have as their sole remedy the right to file a petition for relief with the Tribal Gaming Commission. Complaints shall be submitted in writing, and at the discretion of the Commission, the petitioner may be allowed to present evidence. The Gaming Commission shall hold a hearing within thirty (30) days of receipt of petitioner's complaint. The Commission shall render a decision in a timely fashion and all such decisions will be final when issued.

CHAPTER 13 – LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

13-13-101. Scope - *Amendment*

13-13-102. Application Forms - *Amendment*

- 13-13-103. Background Investigations - **Amendment**
- 13-13-104. Eligibility Determination - **Amendment**
- 13-13-105. Procedures - **Amendment**
- 13-13-106. Report To The National Indian Gaming Commission - **Amendment**
- 13-13-107. Granting Of Gaming License - **Amendment**
- 13-13-108. License Suspension - **Amendment**
- 13-13-109. Board Of Review Of Disputes – **Amendment**

13-13-101. SCOPE. The Tribe shall ensure that the policies and procedures set out in this section are implemented with respect to key employees and primary management officials employed at any gaming enterprise operated on Indian lands.

13-13-102. APPLICATION FORMS.

(1) The following notice shall be placed on the application form for a key employee or a primary management official. In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by the Tribe and the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when necessary pursuant to a requirement by a Tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigation of activities while associated with a Tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a Tribe being unable to hire you in a primary management official or key employee position. The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

(2) The following additional notice shall be placed on the application form for key employee or a primary official: “A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work”. Also, you may be punished by fine or imprisonment (U.S. Code, Title 18, Section 1001).

(3) The Commission shall notify in writing existing key employees and primary management officials who have not completed an application containing the notices set forth above that they shall either:

(a) Complete a new application form that contains both the Privacy Act and false statement notices; or

(b) Sign a statement that contains the Privacy Act and false statement notices and consent to the routine uses described in that notice.

(4) The Tribe may charge a license fee, to be set by the Tribal Gaming Commission to cover its expenses in investigating and licensing Key Employees and Primary Management Officials of the gaming operation.

13-13-103. BACKGROUND INVESTIGATIONS.

(1) The Tribal Gaming Commission is responsible for conducting background investigations, collecting fingerprints, and making eligibility determinations.

(2) The Tribal Gaming Commission shall request from each primary management official and from each key employee all of the following information:

(a) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, and languages (spoken or written);

(b) Currently and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver’s license numbers;

(c) The names and current addresses of at least three personal references, including one personal reference that was acquainted with the applicant during each period of residence listed on the application;

(d) Current business and residence telephone numbers;

(e) A description of any existing and previous business relationships with

Indian Tribes, including interests in those businesses;

(e) A description of any existing and previous business relationships with the gaming industry generally, including ownership interest in those businesses;

(f) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(g) For each felony for which there was an ongoing prosecution or a conviction, the charge, the name and address of the court involved and the date and disposition.

(h) For each misdemeanor conviction or ongoing prosecution (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application; the name and address of the court involved and the date and disposition;

(i) For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to paragraph 2 (g) or 2 (h) of this section, the criminal charge, the name and address of the court involved and the date and disposition;

(j) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

(k) A photograph taken within the last year; and

(l) Any other information the Tribe deems relevant.

(3) Each applicant for a Key Employee or Primary Management official shall be required to have fingerprints taken by the Tribal Gaming Commission as part of the license application procedure.

(4) As part of its review procedure, the Tribal Gaming Commission or its authorized agent shall conduct a background investigation on each applicant sufficient to allow the Tribal Gaming Commission to make an eligibility determination under section 13-13-4 below. The investigator shall:

(a) Verify the applicant's identity through items such as a social security card, driver's license, birth certificate or passport;

(b) Contact each personal and business reference provided in the license application, when possible;

(c) Obtain a personal credit check;

(d) Conduct a civil history check;

(e) Conduct a criminal history check which shall include a criminal check of the history and information maintained by the Federal Bureau of Investigation, and further obtain information from the appropriate court regarding past felony and/or misdemeanor convictions and criminal charges;

(f) Inquire into any previous or existing business relationships with the gaming industry and Indian tribes by contacting the entities or tribes;

(g) Verify the applicant's history and status with any licensing agency by contacting the agency; and

(h) Take other appropriate steps to verify the accuracy of the information, focusing on problem areas noted.

(5) The investigator shall create an investigative report noting the steps taken, information gained, potential problems areas, and disqualifying information.

(6) The Tribal Gaming Commission and its investigator shall promise to keep confidential the identity of each person interviewed in the course of the investigation, other than disclosure as required under Federal, Tribal, or State law.

13-13-104. ELIGIBILITY

DETERMINATION. The Tribal Gaming Commission shall review a person's prior activities, criminal record, if any, reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. If the Tribal Gaming Commission determines that employment of the person poses a threat to the public interest or to the effective regulations of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a management contractor or a tribal gaming operation shall not employ that person in a key employee or primary management official position.

13-13-105. PROCEDURE FOR FORWARDING APPLICATIONS AND REPORTS FOR KEY EMPLOYEES

AND PRIMARY MANAGEMENT OFFICIALS TO THE NATIONAL INDIAN GAMING COMMISSION.

(1) When a key employee or primary management official is employed to work at a gaming operation authorized by this Ordinance, the Commission shall forward to the National Indian Gaming Commission a completed application for employment and conduct the background investigation and make the determination referred to in 13-13-4 of this section.

(2) The gaming operation shall not employ as a key employer or primary management official a person who does not have a license after ninety (90) days.

13-13-106. REPORT TO THE NATIONAL INDIAN GAMING COMMISSION.

(1) The Tribal Gaming Commission shall prepare and forward a report on each background investigation to the National Indian Gaming Commission. An investigative report shall include all of the following:

- (a) Steps taken in conducting a background investigation;
- (b) Results obtained;
- (c) Conclusions reached; and
- (d) The basis for those conclusions.

(2) The Commission shall forward the completed investigative reports to the National Indian Gaming Commission within sixty (60) days after an employee begins work or within sixty (60) days of the approval of this Ordinance by the Chairman of the National Indian Gaming Commission.

(3) The Commission shall submit, with the investigative report, a copy of the eligibility determination, unless the NIGC shall have advised the Tribe that the submission of the eligibility determination is not necessary. This determination shall include a Statement describing how the information submitted by the applicant was verified; a Statement of results following an inquiry into the applicant's prior activities, criminal record, if any, and reputation, habits and associations; a Statement showing the results of interviews of a sufficient number of knowledgeable people (such as former employers, personal references, and others referred to by the applicant) in order to provide basis for the Tribe to make a finding concerning the eligibility

for employment in a gaming operation; and a Statement documenting the disposition of all potential problem areas noted and disqualifying information obtained.

(4) If a license is not issued to an applicant, the Tribal Gaming Commission:

- (a) Shall notify the NIGC; and
- (b) Shall forward copies of its eligibility determination and investigative report (if any) to the NOGC for inclusion in the Indian Gaming Individuals Records System.

(5) With respect to all employees, and in particular Key Employees and primary management officials, the Tribal Gaming Commission shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman of the NIGC or his or her designee for no less than three (3) years from the date of termination of employment.

13-13-107. GRANTING A GAMING LICENSE.

(1) If within a thirty (30) day period after the National Indian Gaming Commission receives a report, the National Indian Gaming Commission notifies the Tribe that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or primary management official for whom the Tribe has provided an application and investigative report to the National Indian Gaming Commission, the Tribal Gaming Commission, acting for the Tribe, may issue a license to such applicant.

(2) The Tribal Gaming Commission shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the thirty (30) day period under paragraph 1 of this section until the Chairman of the National Indian Gaming Commission receives the additional information.

(3) If, within the thirty (30) day period described above, the National Indian Gaming Commission provides the Tribe with a Statement itemizing objections to the issuance of a license to a key employee or primary management official for whom the Tribal Gaming Commission has provided an application

and investigative report to the National Indian Gaming Commission the Tribe shall reconsider the application taking into account the objections itemized by the decision whether to issue a license to such applicant.

13-13-108. LICENSE SUSPENSION.

(1) If, after the issuance of a gaming license, the Tribal Gaming Commission receives from the National Indian Gaming Commission reliable information indicating that a key employee or primary management official is not eligible for employment, the Tribal Gaming Commission shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

(2) The Tribal Gaming Commission shall notify the licensee of a time and place for a hearing on the proposed revocation of a license.

(3) After revocation hearing, the Tribal Gaming Commission shall decide to revoke or to reinstate a gaming license. The Commission shall notify the NIGC of its decision.

13-13-109. BOARD OF REVIEW FOR DISPUTES.

(1) The Tribe has determined that, in order to adhere to this Ordinance and all gaming regulations there shall be established a Tribal Gaming Board of Review (Board of Review). The Board of Review shall serve as the final review body for employee disputes. Employee disputes shall include disputes with management, terminations, fines or other internal employee disputes, not to include actions taken by the Commission.

(2) The Board of Review shall consist of five (5) members. The membership shall be comprised of one member of the Tribal Gaming Commission, one member from the Tribal Council, one primary management official or key employee, one enrolled Tribal member not employed by the gaming operation, and one employee of the gaming operation. The members shall be elected from their representative group and shall serve staggered terms. The two Tribal members shall serve three-year terms. The primary management official or key employee shall serve a two-year term. The members from the Tribal Gaming Commission and the Tribal Council shall serve one-year terms. Tribal Council

shall determine the level of compensation. However, compensation shall never be tied to tribal gaming revenues.

(3) The Board of Review members shall elect a Chairperson from among them, whose duty it shall be to preside over all meetings and hearings. In addition, the members shall elect a Vice-Chair who shall be the custodian of any evidence submitted, and who shall preside in the Chairperson's absence. The Board of Review shall meet as needed and shall keep official records of the meetings. No Board of Review shall issue its findings. Findings of the Board shall be final when issued and a copy of the same will be provided to the Tribal Secretary and the director of the casino human resources department.

(4) No Board of Review member shall be removed prior to the end of their term without cause. Removal shall be effectuated by a majority vote of the entire Tribal Council, and shall be a final decision.

(5) No Board Member shall serve as a member of the Tribe's Ethics Commission.

CHAPTER 14 – LICENSES FOR VENDORS

13-14-101. License For Vendors - *Amendment*

13-14-101. LICENSES FOR VENDORS.

(1) Vendors for services or supplies with a value of \$25,000 or more annually must have a vendor license from the Tribal Gaming Commission in order to transact business with the Tribal gaming operation. Contracts for professional legal and accounting services are excluded from this section.

(2) In order to obtain a vendor license, the business must complete a vendor application and submit to background checks of itself and its principals. Principals of a business include its officers, directors, management, owners, partners, non-institutional stockholders that either own 10% or more of the stock or are the ten (10) largest stockholders, and the onsite supervisor or manager under the agreement with the Tribe, if applicable.

(3) Applications for vendor licenses must include the following:

(a) Name of business, business address, business phone, federal tax ID Number (or SSN if a sole proprietorship), main office address if different from business address, any other names the applicant has done business under, type of service applicant will provide;

(b) Whether the applicant is a partnership, corporation, limited liability company, sole proprietorship, or other entity;

(c) If the applicant is a corporation, the state of incorporation, and the qualification to do business in the State of South Dakota if the gaming operation is in a different State than the State of incorporation;

(d) Trade name, other names ever used, names of any wholly owned subsidiaries or other businesses owned by the vendor or its principals;

(e) General description of the business and its activities;

(f) Whether the applicant will be investing in or loaning money to the gaming operation and, if so, how much;

(g) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(h) A description of any existing and previous business relationships with Indian tribes, including ownership, financial, management interests in non-gaming activities;

(i) Names, addresses, and phone numbers of three business references with whom the company had regularly done business for the last five years;

(j) The name and address of any licensing or regulatory agency with which the business has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(k) If the business has ever had a license revoked for any reason, the circumstances involved;

(l) A list of lawsuits to which the business has been a defendant, including the name and address of the court involved, and the date and disposition if any;

(m) List the business funding sources and any liabilities of \$50,000 or more;

(n) A list of the principals of the business, their social security numbers, addresses and telephone numbers, title, and percentage of ownership in the company; and

(o) Any further information the Tribe deems relevant.

(4) The following notice shall be placed on the application form for a vendor and its principals:

(a) Inclusion of false or misleading information on the vendor application may be grounds for denial or revocation of the Tribe's vendor license.

(5) The Tribe may charge a license fee, to be set by the Tribal Gaming Commission, to cover its expenses in investigating and licensing vendors of the gaming operation.

CHAPTER 15 – MINIMAL INTERNAL CONTROL STANDARDS

13-15-101. Minimal Internal Control Standards - *Amendment*

13-15-101. MINIMAL INTERNAL CONTROL STANDARDS. The Tribe acknowledges its obligation to adopt and implement Minimum Internal Control Standards (MICS) for the operation of its Tribal gaming operation no less stringent than those found in the regulations of the NIGC at 25 C.F.R. Part 542. The Tribe's MICS shall be set out in separate regulations to be reviewed and approved by the Tribal Council.

CHAPTER 16 – LICENSE LOCATIONS

13-16-101. License Locations – *Amendment*

13-16-101. LICENSE LOCATIONS. The Tribal Gaming Commission shall issue a separate license to each place, facility, or location on Indian lands where gaming is conducted under this Ordinance.

CHAPTER 17 – AGENT FOR SERVICE OF PROCESS

13-17-101. Agent For Service of Process - *Amendment*

13-17-101. AGENT FOR SERVICE OF PROCESS. The Tribe hereby designates the Tribe's President as agent for

service of process, who may be
contacted at:
President
Rosebud Sioux Tribe
PO Box 430
Rosebud SD 57570

**CHAPTER 18 – COMPLIANCE
WITH FEDERAL LAW**

13-18-101. Compliance With Federal
Law - *Amendment*

**13-18-101. COMPLIANCE WITH
FEDERAL LAW.** The Tribe will comply
with all applicable federal law, including
the Bank Secrecy Act, 31 U.S.C. § 5311
et seq.

CHAPTER 19 – REPEAL

13-19-101. Repeal - *Amendment*

13-19-101. REPEAL. To the extent
that they are inconsistent with this
Ordinance, all prior gaming ordinances
are hereby repealed.

TITLE 14

ROSEBUD SIOUX COMMERCIAL CODE

CHAPTER 1 – GENERAL COMMERCIAL PROVISIONS

PART 1 – SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THIS TITLE

- 14-1-101. Short Title
- 14-1-102. Purposes; Rules Of Construction; Variation By Agreement
- 14-1-103. Supplementary General Principles Of Law Applicable
- 14-1-104. Construction Against Implicit Repeal
- 14-1-105. Territorial Application Of This Title; Parties' Power To Choose Applicable Law
- 14-1-106. Remedies To Be Liberally Administered
- 14-1-107. Waiver or Renunciation Of Claim or Right after Breach
- 14-1-108. Severability
- 14-1-109. Section options
- 14-1-110. Application To Pre-Existing Transactions

14-1-101. SHORT TITLE. This title shall be known and may be cited as the Rosebud Sioux Commercial Code and consists of the following chapters: General Commercial Provisions, Sales and Secured Transaction.

14-1-102. PURPOSES; RULES OF CONSTRUCTION; VARIATION BY AGREEMENT.

(1) This Title shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this Title are:

(a) to simplify, clarify and modernize the law governing commercial transactions on the Rosebud Sioux Reservation.

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties.

(3) The effect of provisions of this Title may be varied by agreement, except as otherwise provided in this Title and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Title may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this Title of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this Title unless the context otherwise requires

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

**14-1-103. SUPPLEMENTARY
GENERAL PRINCIPLES OF LAW**

APPLICABLE. Unless displaced by the particular provisions of this Title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

14-1-104. CONSTRUCTION

AGAINST IMPLICIT REPEAL. This Title being a general law intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

**14-1-105. TERRITORIAL
APPLICATION OF THIS TITLE'
PARTIES' POWER TO CHOOSE
APPLICABLE LAW.**

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this Reservation and also another reservation, state or nation the parties may agree that the law either of this Reservation or of such

other reservation, state or nation shall govern their rights and duties. Failing such agreement of this Title applies to transactions bearing an appropriate relation to this Reservation.

(2) Where one of the following provisions of this Title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified. Rights of creditors against sold goods. Sales Chapter Section 402. Perfection provisions of the Chapter on Secured Transactions.

14-1-106. REMEDIES TO BE LIBERALLY ADMINISTERED.

(1) The remedies provided by this Title shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this Title or by other rule of law.

(2) Any right or obligation declared by this Title is enforceable by action unless the provision declaring it specified a different and limited effect.

14-1-107. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER BREACH.

Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

14-1-108. SEVERABILITY. If any provisions or clause of this Title or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Title which can be given effect without the invalid provision or application, and to this end the provisions of this Title are declared to be severable.

14-1-109. SECTION CAPTIONS.

Section captions are parts of the laws contained in this Title.

14-1-110. APPLICATION TO PRE-EXISTING TRANSACTIONS. Except as provided in this Title to the contrary, this Title shall not apply to any pending

disputes or legal proceeding or any transaction entered into prior to the effective date of this Title.

PART 2 – GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

- 14-1-201. General Definitions
- 14-1-202. Prima Facie Evidence By Third Party Documents
- 14-1-203. Obligation Of Good Faith
- 14-1-204. Time; Reasonable Time Seasonably
- 14-1-205. Course of Dealing and Usage of Trade
- 14-1-206. Reserved
- 14-1-207. Performance or Acceptance Under Reservation Of Rights
- 14-1-208. Option To Accelerate At Will
- 14-1-209. Subordinated Obligations

14-1-201. GENERAL DEFINITIONS.

Subject to additional definitions contained in the subsequent Chapters of this Title which are applicable to specific Chapters or Parts thereof, and unless the context otherwise requires, in this Title:

(1) “Action” in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) “Aggrieved party” means a party entitled to resort to a remedy.

(3) “Agreement” means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Title (Section 205 of this Chapter and 208 of the Sales Chapter). Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts (Section 103). (Compare “Contract.”)

(4) “Bank” means any person engaged in the business of banking.

(5) “Bearer” means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) “Bill of lading” means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. “Airbill” means a document serving for air transportation as a bill of lading does for marine or rail

transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a son in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous" a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADINS) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Title and any other applicable rules of law. (Compare "Agreement.")

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel

paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also other documents which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purpose of this Title to the extent that under a particular agreement or document unlike units is treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or a certified investment security drawn, issued, or indorsed to him or his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person “knows” or has “knowledge” of a fact when he has actual knowledge of it. “Discover” or “learn” or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Title.

(26) A person “notifies” or “gives” a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person “receives” a notice or notification when

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place of receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) “Organization” includes a corporation, government or governmental subdivision agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) “Party” as distinct from “third party” means a person who has engaged in a transaction or made an agreement within this Title.

(30) “Person” includes an individual or an organization (See Section 102).

(31) “Presumption” or “presumed” means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its non-existence.

(32) “Purchase” includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) “Purchaser” means a person who takes by purchase.

(34) “Remedy” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) “Representative” includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) “Rights” includes remedies.

(37) “Security interest” means an interest in person property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Sales Chapter Section 401) is limited in effect to a reservation of a “security interest”. The term also includes any interest of a buyer of accounts or chattel paper which is subject to the Secured Transaction Chapter. The special property interest of a buyer of goods on identification of such goods to a contract for sale under Sales Chapter Section 401 is not “security interest” but a buyer may also acquire a “security interest” by complying with the Secured Transaction Chapter. Unless a lease or consignment is intended as security, reservation of title thereunder is not a “security interest” but a consignment sale (Sales Chapter Section 326). Whether a lease is intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) “Send” in connection with any writing or notice of means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for an properly addressed and

in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) Reserved

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) Reserved

(44) "Value" a person gives "value" for rights if he acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of pre-existing claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

14-1-202. PRIMA FACIE EVIDENCE BY THIRD PARTY DOCUMENTS. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

14-1-203. OBLIGATION OF GOOD FAITH. Every contract or duty within

this Title imposes an obligation of good faith in its performance or enforcement.

14-1-204. TIME; REASONABLE TIME; SEASONABLY.

(1) Whenever this Act requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed, or if not time is agreed, at or within a reasonable time.

14-1-205. COURSE OF DEALING AND USAGE OF TRADE.

(1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties, and any usage of trade in the vocation or trade in which they are engaged or if which they are or should be aware, give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other: but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage or trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

14-1-206. RESERVED

14-1-207. PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OF RIGHTS. A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as “without prejudice”, “under protest” or the like are sufficient.

14-1-208. OPTION TO ACCELERATE AT WILL. A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or “when he deems himself insecure” or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

14-1-209. SUBORDINATED OBLIGATIONS. An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate his right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such subordination does not create a security interest as against either the common debt or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.

CHAPTER 2 – SALES

PART 1 – SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

- 14-2-101. Short Title
- 14-2-102. Scope; Certain Security and Other Transactions Excluded From This Chapter
- 14-2-103. Definitions and Index Of Definitions
- 14-2-104. Definitions: Merchant; between Merchants; Financing Agency
- 14-2-105. Definitions: Transferability; Goods; Future Goods; Lot; Commercial Unit
- 14-2-106. Definitions: Contract; Agreement; Contract For Sale; Sale; Conforming To Contract; Termination; Cancellation
- 14-2-107. Goods To Be Severed From Realty: Recording

14-2-101. SHORT TITLE. This Chapter shall be known and may be cited as the Rosebud Sioux Commercial Code – Sales Chapter.

14-2-102. SCOPE; CERTAIN SECURITY AND OTHER TRANSACTIONS EXCLUDED FROM THIS CHAPTER.

(1) Unless the context otherwise requires, this Chapter applies to transactions in goods: it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Chapter impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

(2) In the absence of other applicable law, the provisions of this Chapter may be applied by analogy to a transaction which is primarily or totally a sale of services rather than goods, if court determines that

- (a) The policy underlying the provision apply to the transaction, and
- (b) Application of provisions is
 - i. commercially reasonable, and
 - ii. not contrary to the reasonable expectations of the parties.

14-2-103. DEFINITIONS AND INDEX OF DEFINITIONS.

(1) In this Chapter unless the context otherwise requires

- (a) “Buyer” means a person who buys or contracts to buy goods.
- (b) “Good faith” in the case of a merchant means honesty in fact and the

observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this Chapter or to specified Parts thereof, and the sections in which they appear are:

"Acceptance." Section 606.

"Banker's credit." Section 325

"Between merchants." Section 104.

"Cancellation." Section 106 (4).

**14-2-104. DEFINITIONS:
MERCHANT; BETWEEN
MERCHANTS; FINANCING AGENCY.**

(1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge of skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or be merely taking it for collection whether or not documents of title accompany the draft. "Financial agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 707).

(3) "Between merchants" means in any transactions with respect to which both parties are chargeable with the knowledge or skill of merchants.

**14-2-105. DEFINITIONS:
TRANSFERABILITY; GOODS;
FUTURE GOODS; LOT;
COMMERCIAL UNIT.**

(1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale

other than the money in which the price is to be paid, investment securities and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Section 107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An individual share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such bulk or any quantity thereof agree upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purpose of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be single article (as a machine) or a set of articles (as suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

**14-2-106. DEFINITIONS:
CONTRACT; AGREEMENT;
CONTRACT FOR SALE; SALE;
CONFORMING TO CONTRACT;
TERMINATION; CANCELLATION.**

(1) In this Chapter unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sales of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are “conforming” or conform to the contract when they are in accordance with the obligations under the contract.

(3) “Termination” occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On “termination” all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) “Cancellation” occurs when either parties puts an end to the contract for breach by the other and its effect is the same as that of “termination” except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

14-2-107. GOODS TO BE SEVERED FROM REALTY: RECORDING.

(1) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this Chapter if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this Chapter whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can be identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer’s rights under the contract for sale.

(4) Nothing in this Chapter shall be construed as affecting the responsibilities of the parties to comply with Tribal laws and regulations concerning the use of land or federal laws and regulations concerning the sale

of goods such as timber, minerals, oil or gas from land which is held in trust or which is subject to restrictions against alienation.

PART 2 – FORM, FORMATION AND READJUSTMENT OF CONTRACT

- 14-2-201. Formal Requirements; Statute and Frauds
- 14-2-202. Final Written Expression: Parol or Extrinsic Evidence
- 14-2-203. Seals Inoperative
- 14-2-204. Formation In General
- 14-2-205. Firm Offers
- 14-2-206. Offer and Acceptance in Formation Of Contract
- 14-2-207. Additional Terms In Acceptance or Confirmation
- 14-2-208. Course Of Performance or Practical Construction
- 14-2-209. Modification, Rescission and Waiver
- 14-2-210. Delegation Of Performance; Assignment Of Rights

14-2-201. FORMAL REQUIREMENTS; STATUTE OF FRAUDS.

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable.

(a) If the goods are to be specifically manufactured for the buyer

and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) If the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond quantity of goods admitted; or

(c) With respect to goods for which payment has been made and accepted or which have been received and accepted (Section 606).

14-2-202. FINAL WRITTEN EXPRESSION: PAROL OR EXTRINSIC EVIDENCE.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) By course of dealing or usage of trade (Section 205) or by course of performance (Section 208); and

(b) By evidence of consistent additional terms unless the court finds that writing to have been intended also a complete and exclusive statement of the terms of the agreement.

14-2-203. SEALS OF INOPERATIVE.

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

14-2-204. FORMATION IN GENERAL.

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be

found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

14-2-205. FIRM OFFERS. An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

14-2-206. OFFER AND ACCEPTANCE IN FORMATION OF CONTRACT.

(1) Unless otherwise unambiguously indicated by the language or circumstances

(a) An offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) An order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

14-2-207. ADDITIONAL TERMS IN ACCEPTANCE OR CONFIRMATION.

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those

offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) The offer expressly limits acceptance to the terms of the offer;

(b) They materially alter it; or

(c) Notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Title.

14-2-208. COURSE OF PERFORMANCE OR PRACTICAL CONSTRUCTION.

(1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (Section 205).

(3) Subject to the provision of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

4-2-209. MODIFICATION, RECISSION AND WAIVER.

(1) An agreement modifying a contract within this Chapter needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this Chapter (Section 201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modifications or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

14-2-210. DELEGATION OF PERFORMANCE; ASSIGNMENT OF RIGHTS.

(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden of risk imposed on him by his contract, or impair materially his chance of obtaining return performances. A right to damage for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation of the assignee of the assignor's performance.

(4) An assignment of "the contract" or of "all my rights under the contract" or

an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (Section 609).

PART 3 – GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

- 14-2-301. General Obligations Of Parties
- 14-2-302. Unconscionable Contract or Clause
- 14-2-303. Allocation or Division Of Risks
- 14-2-304. Price Payable In Money, Goods, Realty, or Otherwise
- 14-2-305. Open Price Term
- 14-2-306. Output, Requirements and Exclusive Dealings
- 14-2-307. Delivery In Single Lots or Several Lots
- 14-2-308. Absence of Specified Place for Delivery
- 14-2-309. Absence Of Specific Time Provisions; Notice Of Termination
- 14-2-310. Open Time For Payment or Running Of Credit; Authority To Ship Under Reservation
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14-2-301. GENERAL OBLIGATIONS OF PARTIES. The obligations of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

14-2-302. UNCONSCIONABLE CONTRACT OR CLAUSE.

(1) If the Rosebud Sioux Tribal Court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the Court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the Court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

14-2-303. ALLOCATION OR DIVISION OF RISKS. Where this Chapter allocates a risk or a burden as between the parties "unless otherwise agreed" the agreement may not only shift

the allocation by may also divide the risk or burden.

14-2-304. PRICE PAYABLE IN MONEY, GOODS, REALTY, OR OTHERWISE.

(1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and seller's obligation with reference to them are subject to this Chapter, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

14-2-305. OPEN PRICE TERM.

(1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

- (a) Nothing is said as to price; or
- (b) The price is left to be agreed by the parties and they fail to agree; or
- (c) The price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price on account.

14-2-306. OUTPUT, REQUIREMENTS AND EXCLUSIVE DEALINGS.

(1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate

to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

14-2-307. DELIVERY IN SINGLE LOT OR SEVERAL LOTS.

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

14-2-308. ABSENCE OF SPECIFIED PLACE FOR DELIVERY.

Unless otherwise agreed:

(a) The place for delivery of goods is the seller's place of business or if he has none his residence; but

(b) In a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) Documents of title may be delivered through customary banking channels.

14-2-309. ABSENCE OF SPECIFIC TIME PROVISIONS; NOTICE OF TERMINATION.

(1) The time for shipment or delivery or any other action under a contract if not provided in this Chapter or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performance but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

14-2-310. OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT; AUTHORITY TO SHIP UNDER RESERVATION. Unless otherwise agreed:

(a) Payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) If the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (Section 513; and

(c) If delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(d) Where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

14-2-312. WARRANTY OF TITLE AND AGAINST INFRINGEMENT; BUYER'S OBLIGATION AGAINST INFRINGEMENT.

(1) Subject to subsection (2) there is a contract for sale a warranty by the seller that:

(a) The title conveyed shall be good, and its transfer rightful; and

(b) The goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has not knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer

who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specification.

14-2-313. EXPRESS WARRANTIES BY AFFIRMATION, PROMISE, DESCRIPTION, SAMPLE.

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warranty" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

14-2-314. IMPLIED WARRANTY: MERCHANTABILITY; USAGE OF TRADE.

(1) Unless excluded or modified (Section 316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as:

(a) Pass without objection in the trade under the contract description; and

(b) In the case of fungible goods, are of fair average quality within the description; and

(c) Are fit for the ordinary purposes for which such goods are used; and

(d) Run, within the variations permitted by the agreement, of even

kind, quality and quantity within each unit and among all units involved; and

(e) Are adequately contained, packages, and labeled as the agreement may require; and

(f) Conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 316) other implied warranties may arise from the course of dealing or usage of trade.

(4) Notwithstanding this section or section 315 of this Chapter there is no implied warranty on the sale of cattle, hogs, sheep, horses, mules, goats, poultry or rabbits that such cattle, hogs, sheep, horses, mules, goats, poultry or rabbits are free from disease.

(5) Notwithstanding this section or section 315 of this Chapter there are not implied warranties which arise on the sale of human blood, blood plasma, or other human tissue or organs from a blood bank, clinic, hospital or other reservoir of such blood, tissue or organs.

14-2-315. IMPLIED WARRANTY: FITNESS FOR PARTICULAR

PURPOSE. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

14-2-316. EXCLUSION OR MODIFICATION OF WARRANTIES.

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Chapter on parol or extrinsic evidence (Section 202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient

if it states, for example, that "there are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2)

(a) Unless the circumstances indicate otherwise, all implied warranties are excluded by expression like "as is," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) When the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) An implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this Chapter on liquidation or limitation of damages and on contractual modification of remedy (Sections 718 and 719).

14-2-317. CUMULATION AND CONFLICT OF WARRANTIES

EXPRESS OR IMPLIED. Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

14-2-318. THIRD PARTY BENEFICIARIES OF WARRANTIES

EXPRESS OR IMPLIED. A seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume

or be affected by the goods and who is injured by breach of warranty. A seller may not exclude or limit the operation of this section with respect to injury to the person of an individual to whom the warranty extends.

14-2-319. F.O.B. AND F.A.S. TERMS.

(1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the state price, is a delivery term under which

(a) When the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Chapter (Section 504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) When the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Chapter (Section 503);

(c) When under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Chapter on the form of bill of lading (Section 323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the state price, is a delivery term under which the seller must

(a) At his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) Obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1) (a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this Chapter (Section 311). He may also at

his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

4-2-320. C.I.F AND C. & F. TERMS.

(1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the state price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) Put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) Load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) Obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and provided for payment of loss to the order of the buyer or for the amount of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) Prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) Forward and tender with commercial promptness all the documents in due form and with any endorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F.

term except the obligation as to insurance.

(4) Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

14-2-321. C.I.F. OR C. & F.: NET LANDED WEIGHTS; PAYMENTS ON ARRIVAL; WARRANTY OF CONDITION ON ARRIVAL.

Under a contract containing a terms C.I.F. or C. & F.

(1) Where the price is based on or is to be adjusted according to “net landed weights,” “delivered weights,” “out turn” quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

14-2-322. DELIVERY EX-SHIP.

(1) Unless otherwise agreed a term for delivery of goods “ex-ship” (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed:

(a) The seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) The risk of loss does not pass to the buyer until the goods leave the ship’s tackle or are otherwise properly unloaded.

14-2-323. FORM OF BILL OF LADING REQUIRED IN OVERSEAS SHIPMENT ; OVERSEAS.

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(a) Due tender of a single part is acceptable within the provisions of this Chapter on cure of improper delivery (subsection (1) of Section 508);

(b) Even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is “overseas” insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

14-2-324. NO ARRIVAL, NO SALE TERM. Under a term “no arrival, no sale” or terms like meaning unless otherwise agreed.

(a) The seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(b) Where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (Section 613).

14-2-325. LETTER OF CREDIT TERM; CONFIRMED CREDIT.

(1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on reasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

14-2-326. SALE ON APPROVAL AND SALE OR RETURN; CONSIGNMENT SALES AND RIGHTS OF CREDITORS.

(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(a) A "sale on approval" if the goods are delivered primarily for use; and

(b) A "sale or return" if the goods are delivered primarily for resale.

(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under the name other than the name of the person making delivery, when with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum." However, this subsection is not applicable if the person making delivery

(a) Complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) Establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of other, or

(c) Complies with the filing provisions of the Chapter on Secured Transactions.

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Chapter (Section 201) and as contradicting the sale aspect of the contract within the provisions of this Chapter on parol or extrinsic evidence (Section 202).

14-2-327. SPECIAL INCIDENTS OF SALE ON APPROVAL AND SALE OR RETURN.

(1) Under a sale on approval unless otherwise agreed

(a) Although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) Use of the goods consistent with the purpose of trial is not acceptable but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) After due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

(a) The option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) The return is at the buyer's risk and expense.

14-2-328. SALE BY AUCTION.

(1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) A sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given the liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

PART 4 – TITLE, CREDITORS AND GOOD FAITH PURCHASES

- 14-2-401. Passing of Title; Reservation For Security; Limited Application Of This Section
- 14-2-402. Rights Of Seller's Creditors Against Sold Goods
- 14-2-403. Power To Transfer; Good Faith Purchase Of Goods; Entrusting

14-2-401. PASSING OF TITLE; RESERVATION FOR SECURITY; LIMITED APPLICATION OF THIS SECTION. Each provision of this Chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Chapter and matters concerning title becomes material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this Title. Any retention or reservation by the seller of the title

(property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of this Chapter on Secured Transactions, title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) If the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) If the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods:

(a) If the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) If the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a "sale."

14-2-402. RIGHTS OF SELLER'S CREDITORS AGAINST SOLD GOODS.

(1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Chapter (Sections 502 and 716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is

fraudulent under any rule of law of the jurisdiction where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this Chapter shall be deemed to impair the rights of the creditors of the seller:

(a) Under the provisions of the Chapter on Secured Transaction; or

(b) Where the identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for pre-existing course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Chapter constitute the transaction a fraudulent transfer or voidable preference.

14-2-403. POWER TO TRANSFER; GOOD FAITH PURCHASE OF GOODS; ENTRUSTING.

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction or purchase the purchaser has such power even though:

(a) The transferor was deceived as to the identity of the purchase, or

(b) The delivery was in exchange for a check which is later dishonored, or

(c) It was agreed that the transaction was to be a "cash sale," or

(d) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition

of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the Chapter on Secured Transactions, or other applicable laws.

PART 5 – PERFORMANCE

- 14-2-501. Insurable Interest In Goods; Manner Of Identification Of Goods
- 14-2-502. Buyer's Right To Goods On Seller's Insolvency
- 14-2-503. Manner Of Seller's Tender Of Delivery
- 14-2-504. Shipment Of Seller
- 14-2-505. Seller's Shipment Under Reservation
- 14-2-506. Rights Of Financing Agency
- 14-2-507. Effect Of Seller's Tender; Delivery Of Condition
- 14-2-508. Cure By Seller Of Improper Tender or Delivery; Replacement
- 14-2-509. Risk Of Loss In The Absence Of Breach
- 14-2-510. Effect Of Breach On Risk Of Loss
- 14-2-511. Tender Of Payment By Buyer; Payment by Check
- 14-2-512. Payment By Buyer Before Inspection
- 14-2-513. Buyer's Right To Inspection Of Goods
- 14-2-514. When Documents Deliverable On Acceptance; When On Payment
- 14-2-515. Preserving Evidence Of Goods In Dispute

14-2-501. INSURABLE INTEREST IN GOODS; MANNER OF IDENTIFICATION OF GOODS.

(1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs:

(a) When the contract is made if it is for the sale of goods already existing and identified;

(b) If the contract is for the sale of future goods other than those described in paragraph (c), when goods are

shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) When the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

14-2-502. BUYER'S RIGHTS TO GOODS ON SELLER'S INSOLVENCY.

(1) Subject to subsection (2) and even though the goods have not shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

14-2-503. MANNER OF SELLER'S TENDER OF DELIVERY.

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this Chapter, and in particular

(a) Tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) Unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved:

(a) Tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) Tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents:

(a) He must tender all such documents in correct form, except as provided in this Chapter with respect to bills of lading in a set (subsection (2) of Section 323); and

(b) Tender through customary banking channel is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection.

14-2-504. SHIPMENT BY SELLER.

Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must:

(a) Put the goods in the possession of such a carrier and make such a contract for their transportation as may be

reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) Obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) Promptly notify the buyer of the shipment.

Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues.

14-2-505. SELLER'S SHIPMENT UNDER RESERVATION.

(1) Where the seller has identified goods to the contract by or before shipment:

(a) His procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectations of transferring that interest to the person named.

(b) A non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of Section 507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

14-2-506. RIGHTS OF FINANCING AGENCY.

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop

delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which as in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant documents which was apparently regular on its face.

14-2-507. EFFECT OF SELLER'S TENDER; DELIVERY ON CONDITION.

(1) Tender of delivery is a condition to the buyer's duty to accept the goods and unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

14-2-508. CURE BY SELLER OF IMPROPER TENDER OR DELIVERY; REPLACEMENT.

(1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

14-2-509. RISK OF LOSS IN ABSENCE OF BREACH.

(1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) If it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 505); but

(b) If it does require him to deliver them at a particular destination and the goods are there duly tendered while in

the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer.

(a) On his receipt of a negotiable document of title covering the goods; or

(b) On acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) After his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection (4) (b) of Section 503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipts of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provision of this section are subject to contrary agreement of the parties and to the provisions of this Chapter on sale on approval (Section 327) and on effect of breach on risk of loss (Section 510).

14-2-501. EFFECT OF BREACH ON RISK OF LOSS.

(1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

14-2-511. TENDER OF PAYMENT BY BUYER; PAYMENT BY CHECK.

(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of

business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of any applicable law on the effect of an instrument on an obligation, payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

14-2-512. PAYMENT BY BUYER BEFORE INSPECTION.

(1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) The non-conformity appears without inspection; or

(b) By agreement payment is to be made pursuant to a letter of credit and, despite tender of the required documents, under applicable law the issuer of the credit may be excused from honoring a demand of payment.

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

14-2-513. BUYER'S RIGHT TO INSPECTION OF GOODS.

(1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this Chapter on C.I.F. contracts (subsection (3) of Section 321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(a) For delivery "C.O.D." or on other like terms; or

(b) For payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be

exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

14-2-514. WHEN DOCUMENTS DELIVERABLE ON ACCEPTANCE;

WHEN ON PAYMENT. Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment.

14-2-515. PRESERVING EVIDENCE OF GOODS IN DISPUTE.

In furtherance of the adjustment of any claim or dispute

(a) Either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample goods including such of them as may be in the possession or control of the other; and

(b) The parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

PART 6 – BREACH, REPUDIATION AND EXCUSE

- 14-2-601. Buyer's Rights On Improper Delivery
- 14-2-602. Manner and Effect or Rightful Rejection
- 14-2-603. Merchant Buyer's Duties As To Rightfully Rejected Goods
- 14-2-604. Buyer's Options As To Salvage Of Rightfully Rejected Goods
- 14-2-605. Waiver Of Buyer's Objections By Failure To Particularize
- 14-2-606. What Constitutes Acceptance Of Goods
- 14-2-607. Effect Of Acceptance; Notice Of Breach; Burden Of Establishing Breach After Acceptance; Notice Of Claim

- 14-2-608. or Litigation To Person Answerable Over Revocation Of Acceptance In Whole or In Part
- 14-2-609. Right To Adequate Assurance Of Performance
- 14-2-610. Anticipatory Repudiation
- 14-2-611. Retraction Of Anticipatory Repudiation
- 14-2-612. Installment Contract; Breach
- 14-2-613. Casualty To Identified Goods
- 14-2-614. Substituted Performance
- 14-2-615. Excuse by Failure Of Presupposed Conditions
- 14-2-616. Procedure On Notice Claiming Excuse

14-2-601. BUYER'S RIGHTS ON IMPROPER DELIVERY.

Subject to the provisions of this Chapter on breach in installment contracts (Section 612) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections 718 and 719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

- (a) Reject the whole; or
- (b) Accept the whole; or
- (c) Accept any commercial unit or units and reject the rest.

14-2-602. MANNER AND EFFECT OF RIGHTFUL REJECTION.

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (Sections 603 and 604),

- (a) After rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and
- (b) If the buyer has before rejection taken physical of goods in which he does not have a security interest under the provision of this Chapter (subsection (3) of Section 711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) The buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Chapter on

seller's remedies in general (Section 703).

14-2-603. MERCHANT BUYER'S DUTIES AS TO RIGHTFULLY REJECTED GOODS.

(1) Subject to any security interest in the buyer (subsection (3) of Section 711), when the seller has not agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

14-2-604. BUYER'S OPTIONS AS TO SALVAGE OF RIGHTFULLY REJECTED GOODS.

Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

14-2-605. WAIVER OF BUYER'S OBJECTIONS BY FAILURE TO PARTICULARIZE.

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him

from relying on the unstated defect to justify rejection or to establish breach

(a) Where the seller could have cured it if states seasonably; or

(b) Between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

14-2-606. WHAT CONSTITUTES ACCEPTANCE OF GOODS.

(1) Acceptance of goods occurs when the buyer

(a) After a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or

(b) Fails to make an effective rejection (subsection (1) of Section 602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) Does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

14-2-607. EFFECT OF ACCEPTANCE; NOTICE OF BREACH; BURDEN OF ESTABLISHING BREACH AFTER ACCEPTANCE; NOTICE OF CLAIM OR LITIGATION TO PERSON ANSWERABLE OVER.

(1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Chapter for non-conformity.

(3) Where a tender has been accepted

(a) The buyer must within a reasonable time after he discovers or should have discovered any breach

notify the seller or breach or be barred from any remedy; and

(b) If the claim is one for infringement or the like (subsection (3) of Section 312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of warranty or other obligation for which his seller is answerable over

(a) He may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after reasonable receipt of the notice does come in and defend he is so bound.

(b) If the claim is one for infringement or the like (sub-section (3) of Section 312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after reasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsection (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of Section 312).

14-2-608. REVOCATION OF ACCEPTANCE IN WHOLE OR IN PART.

(1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

(a) On the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(b) Without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

14-2-609. RIGHT TO ADEQUATE ASSURANCE OF PERFORMANCE.

(1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

14-2-610. ANTICIPATORY REPUDIATION.

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(a) For a commercially reasonable time await performance by the repudiating party; or

(b) Resort to any remedy for breach (Section 703 or Section 711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) In either case suspend his own performance or proceed in accordance with the provision of this Chapter on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (Section 704).

14-2-611. RETRACTION OF ANTICIPATORY REPUDIATION.

(1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changes his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provision of this Chapter (Section 609).

(3) Retraction reinstates the repudiating party's right under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

14-2-612. INSTALLMENT CONTRACT; BREACH.

(1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is non-conforming if the non-conforming substantially impairs the value of that installment and cannot be cured or if the non-conforming is a defect in the required documents; but if the non-conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

14-2-613. CASUALTY TO IDENTIFIED GOODS. Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (Section 324) then

(a) If the loss is total the contract is avoided; and

(b) If the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and it his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

14-2-614. SUBSTITUTED PERFORMANCE.

(1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

14-2-615. EXUSE BY FAILURE OF PRESUPPOSED CONDITIONS. Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance.

(a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the

occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

14-2-616. PROCEDURE ON NOTICE CLAIMING EXCUSE.

(1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Chapter relating to breach of installment contracts (Section 612), then also as the whole,

(a) Terminate and thereby discharge any unexecuted portion of the contract; or

(b) Modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliverable affected.

(3) The provision of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section.

PART 7 – REMEDIES

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14-2-701. REMEDIES FOR BREACH OF COLLATERAL CONTRACTS NOT

IMPAIRED. Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Chapter.

14-2-702. SELLER'S REMEDIES ON DISCOVERY OF BUYER'S INSOLVENCY.

(1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Chapter (Section 705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this Chapter (Section 403). Successful reclamation of goods excludes all other remedies with respect to them.

14-2-703. SELLER'S REMEDIES IN GENERAL.

Where the buyer wrongfully rejects or revokes acceptance of goods for fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (Section 612), then also with respect to the whole undelivered balance, the aggrieved seller may

(a) Withhold delivery of such goods;

(b) Stop delivery by any bailee as hereafter provided (Section 705);

(c) Proceed under the next section respecting goods still unidentified to the contract;

(d) Resell and recover damages as hereafter provided (Section 706);

(e) Recover damages for non-acceptance (Section 708) or in a proper case of price (Section 709);

(f) Cancel.

14-2-704. SELLER'S RIGHT TO IDENTIFY GOODS TO THE CONTRACT NOTWITHSTANDING BREACH OR TO SALVAGE UNFINISHED GOODS.

(1) An aggrieved seller under the preceding section may:

(a) Identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) Treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

14-2-705. SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE.

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (Section 702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) Receipt of the goods by the buyer; or

(b) Acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) Such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

(d) Negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop a delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuring charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obligated to obey a notification to stop until surrender of the document.

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

14-2-706. SELLER'S RESALE INCLUDING CONTRACT FOR RESALE.

(1) Under the conditions stated in Section 703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Chapter (Section 719), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at a public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale

(a) Only identified goods can be sold except where there is a recognized market for a public sale or futures in goods of the kind; and

(b) It must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable

notice of the time and place of the resale; and

(c) If the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) The seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Section 707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of Section 711).

14-2-707. PERSON IN THE POSITION OF A SELLER.

(1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this Chapter withhold or stop delivery (Section 705) and resell (Section 706) and recover incidental damages (Section 710).

14-2-708. SELLER'S DAMAGES FOR NON-ACCEPTANCE OR REPUDIATION.

(1) Subject to subsection (2) and to the provisions of this Chapter with respect to proof of market prices (Section 723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time a place for tender and the unpaid contract price together with any incidental damages provided in this Chapter (Section 710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit

(including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Chapter (Section 710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

14-2-709. ACTION FOR THE PRICE.

(1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) Of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) Of goods identified to the contract, if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (Section 610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section.

14-2-710. SELLER'S INCIDENTAL DAMAGES. Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commission incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

14-2-711. BUYER'S REMEDIES IN GENERAL' BUYER'S SECURITY INTEREST IN REJECTED GOODS.

(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Section 612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid.

(a) "Cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) Recover damages for non-delivery as provided in this Chapter (Section 713).

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) If the goods have been identified recover them as provided in this Chapter (Section 502); or

(b) In a proper case obtain specific performance or replevy the goods as provided in this Chapter (Section 716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 706).

14-2-712. COVER; BUYER'S PROCUREMENT OF SUBSTITUTE GOODS.

(1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section; does not bar him from any other remedy.

14-2-713. BUYER'S DAMAGES FOR NON-DELIVERY OR REPUDIATION.

(1) Subject to the provisions of this Chapter with respect to proof of market price (Section 723), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Chapter (Section 715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

14-2-714. BUYER'S DAMAGES FOR BREACH IN REGARD TO ACCEPTED GOODS.

(1) Where the buyer has accepted goods and given notification (subsection (3) of Section 607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

14-2-715. BUYER'S INCIDENTAL AND CONSEQUENTIAL DAMAGES.

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting has reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

14-2-716. BUYER'S RIGHT TO SPECIFIC PERFORMANCE OR REPLEVIN.

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

14-2-717. DEDUCTION OF DAMAGES FROM THE PRICE. The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contracts.

14-2-718. LIQUIDATION OR LIMITATION OF DAMAGES; DEPOSITS.

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of other of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer's is entitled to restitution of any amount by which the sum of his payments exceeds

(a) The amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) In the absence of such terms, twenty percent of the value of the total

performance for which the buyer is obligated under the contract or \$500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

(a) A right to recover damages under the provisions of this Chapter other than subsection (1), and

(b) The amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the condition laid down in this Chapter on resale by an aggrieved seller (Section 706).

14-2-719. CONTRACTUAL MODIFICATIONS OR LIMITATION OF REMEDY.

(1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) The agreement may provide for remedies in addition to or in substitution for those provided in this Chapter and may limit or alter the measure of damages recoverable under this Chapter, as by limited the buyer's remedies to return of the goods and repayments of the price or to repair and replacement of non-conforming goods or parts; and

(b) Resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Title.

(3) Consequential damages may be limited or excluded unless the limitations or exclusions is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

14-2-720. EFFECT OF CANCELLATION OR RESCISSION ON

CLAIMS FOR ANTECEDENT

BREACH. Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

14-2-721. REMEDIES FOR FRAUD.

Remedies for material misrepresentation or fraud include all remedies available under this Chapter for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

14-2-722. WHO CAN SUE THIRD PARTIES FOR INJURY TO GOODS.

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) A right to action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) Either party may with the consent of the other sue for the benefit of whom it may concern.

14-2-723. PROOF OF MARKET PRICE: TIME AND PLACE.

(1) If an action based on anticipatory comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (Section 708 or Section 713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this Chapter is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this Chapter offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

14-2-724. ADMISSIBILITY OF MARKET QUOTATIONS. Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

14-2-725. STATUTE OF LIMITATIONS IN CONTRACTS FOR SALE.

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same

breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which accrued before this Title became effective.

CHAPTERS 3 THROUGH 8
[RESERVED]

CHAPTER 9 – SECURED
TRANSACTION

**PART 1 – SHORT TITLE,
APPLICABILITY AND DEFINITIONS**

- 14-9-101. Short Title
- 14-9-102. Policy and Scope Of Chapter
- 14-9-103. Perfection Of Security Interests In Transaction Involving More Than One Jurisdiction
- 14-9-104. Transactions Excluded From Chapter
- 14-9-105. Definitions and Index Of Definitions
- 14-9-106. Definitions: Account; General Intangible
- 14-9-107. Definitions: Purchase Money Security Interest
- 14-9-108. When After-Acquired Collateral is Not Security For an Antecedent Debt
- 14-9-109. Classification Of Goods: Consumer Goods; Equipment; Farm Products; Inventory
- 14-9-110. Sufficiency Of Description
- 14-9-111. Applicability of Bulk Transfers Laws
- 14-9-112. Where Collateral Is Not Owned By The Debtor
- 14-9-113. Security Interests Arising Under Chapter On Sales
- 14-9-114. Consignment

14-9-101. SHORT TITLE. This Chapter shall be known and may be cited as the Rosebud Sioux Commercial Code – Secured Transactions Chapter.

14-9-102. POLICY AND SCOPE OF CHATER.

(1) Except as otherwise provided in Section 104 on excluded transactions, this Chapter applies:

(a) To any transaction (regardless of its form) which is intended to create a security interest in personal property of fixtures, including: goods, documents, instruments, general intangible, chattel paper or accounts, and

(b) To any sale of accounts or chattel paper.

(2) This Chapter applies to security interests created by contract including: a pledge, and assignment, a chattel mortgage, a chattel trust, a trust deed, a factor's lien, an equipment trust, a conditional sale, a trust receipt, a lien or title retention contract and a lease or consignment intended as security. This Chapter does not apply to statutory liens except as provided in Section 310.

(3) The applicant of this chapter to a security interest in a second obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Chapter does not apply.

14-9-103. PERFECTION OF SECURITY INTERESTS IN TRANSACTIONS INVOLVING MORE THAN ONE JURISDICTION.

(1) **Documents, instruments and ordinary goods.**

(a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is located when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or non-perfection

of the security interest. This security interest runs from the time it attaches until 30 days after the debtor receives possession of the goods, and it becomes permanent if the goods are, in fact, taken to the other jurisdiction before the end of the 30-day period.

(d) When collateral is brought into and kept within the Rosebud Indian Reservation, while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected. However, if action is required, by Part 3 of this Chapter to perfect the security interest,

(i) and the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into the Rosebud Indian Reservation, whichever period first expires, the security interest becomes unperfected at the end of that period and its thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) and the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of section 307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(2) **Certificate of title.**

(a) This subsection applies to goods covered by a certificate of title issued pursuant to Rosebud tribal law or a statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of the security interest are governed by the law (including the conflict of law rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into the Rosebud Indian Reservation and thereafter covered by a certificate of title issued pursuant to Rosebud tribal law, is subject to the rules states in paragraph (d) of subsection (1).

(d) If goods are brought into the Rosebud Indian Reservation while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed, and a certificate of title is issued pursuant to Rosebud tribal law, and the certificate does not show that goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) Accounts, general intangible and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertified securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of law rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or non-perfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of a security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the

effect of perfection or non-perfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangible or money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possession including the Rosebud Indian Reservation, other federally-recognized Indian reservations and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business, if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, he shall be deemed located at the designated office of the agent upon whom service or process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after the debtor relocates to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires, it becomes unperfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who becomes a purchaser after the change.

(4) Chattel Paper. The rules states for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules states for accounts in subsection (3) apply to non-possessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals. Perfection and the effect of perfection or non-perfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of law rules) of the jurisdiction wherein the well head or minehead is located.

(6) Uncertificated securities.

The law (including the conflict of law rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or non-perfection of a security interest in uncertificated securities.

14-9-104. TRANSACTIONS

EXCLUDED FROM CHAPTER. This Chapter does not apply

- (a) To a security interest which is subject to any statute of the United States, to the extent that such statute governs the rights of parties to and third parties affected by, transactions in particular types of property; or
- (b) To a landlord's lien; or
- (c) To a lien given by statute or other rule of law for services or materials except as provided in Section 310 on priority of such liens; or
- (d) To a transfer of a claim for wages, salary or other compensation of an employee; or
- (e) To a transfer by a government or governmental subdivision or agency; or
- (f) To a sale of accounts, contract rights or chattel paper sold as part of a sale of the business out of which they arose, or an assignment of accounts, contract rights or chattel paper which is for purpose of collection only, or to a transfer of a contract right to an assignee who is also to do the performance under the contract; or
- (g) To a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds (Section 306) and priorities (Section 312); or
- (h) To a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or
- (i) To any right of setoff; or
- (j) Except to the extent that provision is made for fixtures in Section 313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or
- (k) To a transfer in whole or in part of any claim arising out of tort; or
- (l) To a transfer of an interest in any deposit account (Subsection (1) of Section 105), except as provided with respect to proceeds (Section 306) and priorities in proceeds (Section 312); or
- (m) To an equipment trust covering railway rolling stock.

14-9-105. DEFINITIONS AND INDEX OF DEFINITIONS.

(1) In this Chapter unless the context otherwise requires:

- (a) "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general intangible;
- (b) "Chattel Paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;
- (c) "Collateral" means the property subject to a security interest and includes accounts, contract rights and chattel paper which have been sold;
- (d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the Chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;
- (e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;
- (f) "Document" means document of title defined in the general definitions of Gen. Com. Prov. Chap. Section 201;
- (g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;
- (h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (Section 313) but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas before extraction) "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the

unborn young of animals and growing crops;

(i) "Improvement" means goods which are so incorporated into a permanent structure on real estate that they lose their essential separate nature and become an integral part of the structure itself, and includes permanent structures but does not include goods which are whole structures brought unto real estate and permanently affixed thereto and which retain their essential separate nature except for such permanent affixation. Examples of structures which are usually not considered "improvements" under this subsection, assuming they qualify as "goods" under subsection (h) above, include but are not limited to mobile homes and movable buildings;

(j) "Instrument" means a negotiable instrument or a certified security or any other writing which evidences a right to payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment;

(k) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(l) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(m) "Security agreement" means an agreement which creates or provides for a security interest;

(n) "Security party" means a lender, seller or other person in whose favor there is a security interest including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreements or the like are represented by a trustee or other person, the representative is the secured party;

(o) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provisions of sewer service.

(2) Other definitions applying to this Chapter and the sections in which they appear are:

"Account"	Section 106
"Attach"	Section 203
"Construction Mortgage"	Section 313 (1)
"Consumer Goods"	Section 109 (1)
"Equipment"	Section 109 (2)
"Farm Production:"	Section 109 (3)
"Fixtures"	Section 313 (1)
"Fixture Filing"	Section 313 (1)
"General Intangibles"	Section 106
"Inventory"	Section 109 (4)
"Lien Creditor"	Section 301 (3)
"Proceeds"	Section 306 (1)
"Purchase Money Security Interest"	Section 107
"United States"	Section 103

(3) The following definitions in other Chapters apply to this Chapter of the code:

"Contract for Sale"	Sales Section 106
"Sale"	Sales Section 106

(4) In addition the General Commercial Provisions Chapter contains general definitions and principles of construction and interpretation applicable throughout this Chapter.

14-9-106. DEFINITIONS: ACCOUNT; GENERAL INTANGIBLES. "Account" means any right to payment of goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, and money. "Contract right" means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper.

14-9-107. DEFINITIONS: PURCHASE MONEY SECURITY INTEREST. A security interest is a "purchase money security interest" to the extent that it is:

(a) Taken or retained by the seller of the collateral to secure all or part of its purchase price; or

(b) Taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

14-9-108. WHEN AFTER-ACQUIRED COLLATERAL IS NOT SECURITY FOR AN ANTECEDENT DEBT. Where

a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property, his security interest in the after-acquired collateral is deemed to be taken for new value, and not as security for an antecedent debt, if and only if the debtor acquires his rights in that collateral either in the ordinary course of business or under a purchase contract made pursuant to the security agreement within a reasonable time after new value is given.

14-9-109. CLASSIFICATION OF GOODS: CONSUMER GOODS; EQUIPMENT; FARM PRODUCTS; INVENTORY. Goods are

(1) "Consumer goods" if they are used or brought for use primarily for personal, family or household purposes;

(2) "Equipment" if they are used or brought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "Farm Products" if they are crops, or livestock, or supplies used or produced in farming operations, or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, woolclip, maple syrup, milk and eggs) and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory.

(4) "Inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used for consumed in a business. The inventory of a person is not be classified as his equipment.

14-9-110. SUFFICIENCY OF DESCRIPTION. For the purpose of this Chapter any description of personal property or real estate is Uniform Commercial Code or Chapter 57A-6 of the South Dakota Code.

14-9-111. APPLICABILITY OF BULK TRANSFERS LAWS. The creation of a security interest is not bulk transfer as defined in Chapter 6 of the Uniform Commercial Code 57A-6 of the South Dakota Code.

14-9-112. WHERE COLLATERAL IS NOT OWNED BY THE DEBTOR.

Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under Section 502 (20) or under Section 504 (1) and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor

(a) To receive statements under Section 208;

(b) To receive notice of and object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under Section 505;

(c) To redeem the collateral under Section 507 (1); and

(d) To recover losses caused to him under Section 208 (2).

14-9-113. SECURITY INTERESTS ARISING UNDER CHAPTER ON SALES.

A security interest arising under the Chapter on Sales is subject to the provisions of this Chapter except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

(a) No security agreement is necessary to make the security interest enforceable; and

(b) No filing is required to perfect the security interest; and

(c) The rights of the secured party on default by the debtor are governed by the Chapter on Sales.

14-9-114. CONSIGNMENT.

(1) A person who delivers goods under a consignment which is not a security interest and who would be required to file under this Chapter by paragraph (3) (c) of Section 326 of the Sales Chapter has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee. This consignor also has priority with respect to identifiable cash

proceeds received on or before delivery of the goods to the buyer, if

(a) The consignor complies with the filing provision of the Chapter on Sales with respect to consignments

(paragraph (3) (c) of Section 326 of the Sales Chapter) before the consignee receives possession of the goods; and

(b) The consignor gives notification in writing to the holder of the security interest of the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor; and

(c) The holder of the security interest receives the notification within five years before the consignee receives possession of the goods; and

(d) The notification states that the consignor expects to deliver goods on consignment to the consignee and describes the goods by item or types.

(2) In the case of a consignment which is not a security interest and in which the requirements of the preceding subsection have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor.

PART 2 – VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

- 14-9-201. General Validity Of Security Agreements
- 14-9-202. Title To Collateral Immaterial
- 14-9-203. Enforceability Of Secured Interest; Proceeds; Formal Requisites
- 14-9-204. After-Acquired Property; Future Advances
- 14-9-205. Use or Disposition Of Collateral Without Accounting Is Permissible
- 14-9-206. Agreement Not to Assert Defenses Against an Assignee; Modification Of Sales Warranties Where A Security Agreement Exists
- 14-9-207. Rights and Duties When Collateral Is In the Secured Party's Possession
- 14-9-208. Request For Statement Of Account or List Of Collateral

14-9-201. GENERAL VALIDITY OF SECURITY AGREEMENTS. Except as

otherwise provided by this title, the terms of a security agreement are effective against the purchasers of the collateral and against the creditors of the debtor. Nothing in this chapter is intended, however, to validate any practice illegal under any present or future tribal statute or regulation dealing with usury, small loans, retail installment or the like, nor to extend the application of any such statute or regulation to any transaction not otherwise subject to it.

14-9-202. TITLE TO COLLATERAL IMMATERIAL. Each provision of this Chapter with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

14-9-203. ENFORCEABILITY OF SECURITY INTERESTS; PROCEEDS; FORMAL REQUISITES.

(1) Subject to the provisions of any applicable law regulating the security interests of a collecting bank and Section 113 on a security interest arising under the Chapter on Sales a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless

(a) The collateral is in the possession of the secured party pursuant to an agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops which are either growing or to be grown or timber to be cut, the agreement must contain a description of the land concerned; and

(b) Value has been given; and

(c) The debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless an agreement explicitly postpones the time of attaching.

(3) Unless otherwise agreed, a security agreement gives the secured party the rights to proceeds provided by Section 306.

(4) A transaction, although subject to this Chapter, is also subject to all applicable consumer finance laws, and in the case of a conflict between the provisions of this Chapter and any such

statutes, the provisions of the consumer finance laws control. Failure to comply with any applicable statute has only the effect which is specified in that statute.

14-9-204. AFTER-ACQUIRED PROPERTY; FUTURE ADVANCES.

(1) Except as provided in subsection (2), a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (as defined in Section 314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(3) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (Subsection (1) of Section 105).

14-9-205. USE OR DISPOSITION OF COLLATERAL WITHOUT ACCOUNTING IS PERMISSIBLE.

A security interest is not invalid or fraudulent against creditors simply because the debtor is at liberty to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel papers, or to accept the return of goods or make repossessions, or to use commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

14-9-206. AGREEMENT NOT TO ASSERT DEFENSES AGAINST AN ASSIGNEE; MODIFICATION OF SALES WARRANTIES WHERE A SECURITY AGREEMENT EXISTS.

(1) Subject to any applicable statute or court decision which establishes a different rule for buyers or lessees of consumer goods, and agreement by a buyer or lessee that he will not assert against an assignee any claim or defense

which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and against a holder in due course of a negotiable instrument. A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the Sales Chapter governs the sale and any disclaimer, limitation or modification of the seller's warranties.

14-9-207. RIGHTS AND DUTIES WHEN COLLATERAL IS IN THE SECURED PARTY'S POSSESSION.

(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(a) Reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) The risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) The secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) The secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) The secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of the Tribal Court or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

14-9-208. REQUEST FOR STATEMENT OF ACCOUNT OR LIST OF COLLATERAL.

(1) A debtor may sign a statement indicating what he believes to be the aggregate amount of his unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and he need not approve or correct an itemized list of such collateral. If the secured party, without reasonable excuse, fails to comply he is liable for any loss caused to the debtor as a result of his failure; and if the debtor has properly included in his request a good faith statement of the obligations or a list of the collateral or both, the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received, he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of his failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding \$10 for each additional statement furnished.

PART 3 – RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

- 14-9-301. Persons Who Take Priority Over Unperfected Security Interests; Rights Of The Lien Creditor
- 14-9-302. When Filing Is Required To Perfect A Security Interest;

- 14-9-303. Security Interest To Which The Filing Provisions Of This Chapter Do Not Apply When A Security Interest Is Perfected; Continuity Of Perfection
- 14-9-304. Perfection Of Security Interest In Instruments, and Goods Covered By Documents; Perfection By Permissive Filing; Temporary Perfection Without Filing or Transfer Of Possession
- 14-9-305. When Possession by Secured Party Perfect Security Interest Without Filing
- 14-9-306. Proceeds; The Secured Party's Rights On Disposition Of Collateral
- 14-9-307. Protection Of Buyers Of Goods
- 14-9-308. Purchase Of Chattel Paper and Instruments
- 14-9-309. Protection Of Purchasers Of Instruments, Documents, and Securities
- 14-9-310. Priority Of Certain Liens Arising By Operation Of Law
- 14-9-311. Alienability Of Debtor's Rights: Judicial Process
- 14-9-312. Priorities Among Conflicting Security Interests In TSame Collateral
- 14-9-313. Priority Of Secured Interests In Fixtures
- 14-9-314. Accessions
- 14-9-315. Priority When Goods Are Commingled or Processed
- 14-9-316. Priority Subject To Subordination
- 14-9-317. Secured Party Not Obligated On Contract Of Debtor
- 14-9-318. Defenses Against an Assignee; Modification Of A Contract after Notification Of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof Of Assignment

14-9-301. PERSONS WHO TAKE PRIORITY OVER UNPERFECTED SECURITY INTERESTS; RIGHTS OF THE LIEN CREDITOR.

- (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of
 - (a) A person entitled to priority under Section 312;

(b) A person who becomes a lien creditor before the security interest is perfected;

(c) In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) In the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within 20 days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arises between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who was acquired a lien on the property involved by attachment, levy or the like and includes an assignee for the benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secured advances made before the becomes a lien creditor or within 45 days thereafter, or made without knowledge of the lien, or pursuant to a commitment entered without knowledge of the lien.

14-9-302. WHEN FILING IS REQUIRED TO PERFECT A SECURITY INTEREST; SECURITY INTERESTS TO WHICH THE FILING PROVISIONS OF THIS CHAPTER DO NOT APPLY.

(1) A financing statement must be filed to perfect all security interests except the following:

(a) A security interest in collateral in possession of the secured party under Section 305;

(b) A security interest temporarily perfected in instruments or documents without delivery under Section 304 or in proceeds for a 10 day period under Section 306;

(c) A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) A purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in Section 313;

(e) An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) A security interest of a collecting bank or in securities or arising under the Sales Chapter (See Section 113) or covered in subsection (3) of this section;

(g) An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(2) If a secured party assigns a perfected security interest, no filing under this Chapter is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this Chapter is not necessary or effective to perfect a security interest in property subject to

(a) A statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Chapter for filing of the security interest; or

(b) Any applicable tribal laws governing certificates of title for automobiles, trailers, mobile homes, boats, farm tractors, or the like; but during any period in which the collateral is inventory held for sale by a person who is in business of selling goods of that kind, the filing provisions of this Chapter (Part 4) apply to a security interest in that collateral created by him as debtor; or

(c) A certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition

of perfection (subsection (2) of Section 103).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this Chapter, and a security interest in property subject to that statute or treaty can be perfected only by compliance therewith except as provided in Section 103 on multiple jurisdictional transactions. The duration and renewal of perfection of a security interest perfected by compliance with a statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interests is subject to this Chapter.

14-9-303. WHEN A SECURITY INTEREST IS PERFECTED; CONTINUITY OF PERFECTION.

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in Sections 302, 304, 305 and 306. If such steps are taken before the security interests attaches, it becomes perfected at the time when it attaches

(2) If a security interest is originally perfected in any way permitted under this Chapter is subsequently re-perfected in some other way also permitted by this Chapter, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Chapter.

14-9-304. PERFECTION OF SECURITY INTEREST IN INSTRUMENTS, DOCUMENTS, AND GOODS COVERED BY DOCUMENTS; PERFECTION BY PERMISSIVE FILING; TEMPORARY PERFECTION WITHOUT FILING OF TRANSFER OF POSSESSION.

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than certified securities or instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of Section 306 on proceeds.

(2) During the period while goods are in the possession of the issuer of a negotiable documents representing those goods, a security interest in the goods is perfected by perfecting a security interest in the documents, and any security interests in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document representing those goods is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments (other than certified securities) or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument (other than a certificated security), a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document representing those goods

(a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection (3) of Section 312; or

(b) Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21 day period in subsections (4) and (5), perfection depends upon compliance with applicable provisions of this Chapter.

14-9-305. WHEN POSSESSION BY SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING. A security interest in letters of credit and advice of credit, goods,

instruments (other than certified securities), money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral, other than goods covered by a negotiable document, is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time the possession is taken without a relation back and continues only so long as possession is retained, unless otherwise specified in this Chapter. The security interest may be otherwise perfected as provided in other provisions in this Chapter before or after the period of possession by the secured party.

14-9-306. PROCEEDS; THE SECURED PARTY'S RIGHTS ON DISPOSITION OF COLLATERAL.

(1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payments received as a result of the loss of damage to collateral are proceeds, except to the extent that they are payable to a person who is not a party to the security agreement. Money, checks, deposit accounts, and the like are "cash proceeds."

(2) Except where this Chapter otherwise provides, a security interest continues in collateral even if it is sold, exchanged, or otherwise disposed of, unless the disposition was authorized by the secured party in the security agreement or otherwise. In addition, a security interest continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected 20 days after receipts of the proceeds by the debtor unless

(a) A filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in

the financing statement indicates the types of property constituting the proceeds; or

(b) A filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(c) The security interest in the proceeds is perfected before the expiration of the 20 day period. Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this Chapter for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) In identifiable non-cash proceeds and in separate deposit accounts containing only proceeds;

(b) In identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) In identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) In all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

(i) subject to any right to set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within 20 days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determines priorities:

(a) If the goods were collateral at the time of sale, for an indebtedness of

the seller which is still unpaid, the original security interest attaches again to the goods and continues as perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under Section 308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

14-9-307. PROTECTION OF BUYERS OF GOODS.

(1) A buyer in the ordinary course of business (subsection (9) of Gen. Com. Prov. Chap. Section 201), other than a person buying farm products from a person engaged in farming operations, take free of a security interest created by his seller even though that security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest for value and for his own personal, family or household purposes unless, prior to the purchase, the secured party has filed a financing statement cover such goods.

(3) A buyer other than a buyer in the ordinary course of business (subsection (1) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than 45 days after the purchase, whichever first occurs, unless those advances are made pursuant to a

commitment entered into without knowledge of the purchase and before the expiration of the 45 day period.

14-9-308. PURCHASE OF CHATTEL PAPER AND INSTRUMENTS. A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of business has priority over a security interest in the chattel paper or instrument.

(a) Which is perfected under Section 304 (permissive filing of temporary perfection) or under Section 306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

(b) Which is claimed merely as proceeds of inventory subject to a security interest (Section 306) even though he knows that the specific paper or instrument is subject to the security interest.

14-9-309. PROTECTION OF PURCHASER OF INSTRUMENTS, DOCUMENTS, AND SECURITIES.

Nothing in this Chapter limits the rights of a holder in due course of a negotiable instrument or a holder to whom a negotiable document of title has been duly negotiated to a bona fide purchaser of a security, and the holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Chapter does not constitute notice of the security interest to such holders or purchasers.

14-9-310. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW.

When a person in the ordinary course of business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

14-9-311. ALIENABILITY OF DEBTOR'S RIGHTS: JUDICIAL PROCESS.

The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of a

sale, the creation of a security interest, an attachment, a levy, a garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

14-9-312. PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN THE SAME COLLATERAL.

(1) The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: Section 103 on security interests related to other jurisdictions, Section 114 on consignments.

(2) A perfected security interest in crops for new value is given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise, takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory. It also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

(a) The purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder has filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the 21 day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of Section 304); and

(c) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) The notification states that the person giving the notice has or expects to acquire a purchase money security interests in the inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules;

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates form the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For purposes of subsection (5), a date of filing or perfection as to collateral is also a date of filing or perfection as to its proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under the law of securities, the security interest has the same priority for the purpose of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

14-9-313. PRIORITY OF SECURED INTERESTS IN FIXTURES.

(1) In this section and in the provisions of Part 4 of this Chapter referring to fixture filing, unless the context otherwise requires

(a) Goods are “fixtures” only when they become so related to particularly real estate by virtue of permanent affixation thereto that a legally enforceable deed to the real estate would transfer title to goods. Fixtures become real estate whenever

(i) their removal causes damages to the real estate which could only be repaired at a cost exceeding the value of the fixtures, excluding from such computation any diminution in value of the real estate caused by the absence of the fixtures removed or by any necessity of replacing them, or

(ii) they are improvements.

(b) A “fixture filing” is the filing in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of Section 402.

(c) A mortgage is a “construction mortgage” to the extent that it secures an obligation incurred for the construction of or an improvement on land, including the acquisition cost of the land, if the recorded writing so indicates.

(2) A security interest under this Chapter may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this Chapter in ordinary building materials incorporated into an improvement on land.

(3) This Chapter does not prevent the creation of an encumbrance upon fixtures pursuant to real estate law; provided, however, that an encumbrance upon real estate of the Rosebud Sioux Tribe or an individual which is held in trust by the United States or subject to a restriction against alienation pursuant to federal law, shall be valid only if it is approved by the Secretary of the Interior or his duly authorized representative.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(a) The security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods becomes fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within 10 days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(b) The security interest is perfected by a fixture filing before the interest of the encumbrance or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(c) The fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this Chapter; or

(d) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Chapter.

(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(a) The encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) The debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor’s right terminates, the priority of the security interest continues for a reasonable time.

(6) Notwithstanding paragraph (a) of subsection (4) but otherwise subject to subsections (4) and (5), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrance or owner of the related real estate who is not the debtor.

(8) When the secured party has priority over all owners and encumbrances of the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real

estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permissions to remove until the secured party gives adequate security for the performance of this obligation.

14-9-314. ACCESSIONS.

(1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to Section 315 (1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3), but is invalid against any persons with an interest in the whole at the time the security interest attaches to the goods who has not, in writing, consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over

(a) A subsequent purchaser for value of any interest in the whole; or

(b) A creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) A creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsection (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to

the provisions of Part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

14-9-315. PRIORITY WHEN GOODS ARE COMMINGLED OR PROCESSED.

(1) If a security interest in goods is perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if

(a) The goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) A financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled. In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under Section 314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

14-9-316. PRIORITY SUBJECT TO SUBORDINATION. Nothing in this Chapter prevents subordination by agreement by any person entitled to priority.

14-9-317. SECURED PARTY NOT OBLIGATED ON CONTRACT OF DEBTOR. The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

14-9-318. DEFENSES AGAINST AN ASSIGNEE; MODIFICATION OF A CONTRACT AFTER NOTIFICATION OF ASSIGNMENT; TERM PROHIBITING ASSIGNMENT INEFFECTIVE; IDENTIFICATION AND PROOF OF ASSIGNMENT.

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in Section 206, the rights of an assignee are subject to

(a) All the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest.

PART 4 – FILING

14-9-401. Filing Requirements

14-9-402. Place Of Filing On Trust or Restricted Land

14-9-401. FILING REQUIREMENTS.

(1) Except as provided in section 402 of this chapter, a secured party or his assignee who complies in all respects with the requirements of South Dakota Codified Laws, Title 57A, Article 9, Part 4, as it now exists or shall be amended hereafter (“SDCL Chapter 57A-9 Part 4”), including but not limited to the time, place and manner of filing and the form of financing statements or any assignment thereof, shall be recognized as having obtained a perfected security interest in accordance with this Chapter.

(2) A security interest in vehicles or other property described in Chapter 32-2 of South Dakota Codified Laws, as it now exists or shall be amended hereafter, which has been perfected in accordance with that Chapter shall be recognized as a perfected security interest in accordance with this Chapter.

(3) A person having rights in property subject to a security interest which has been perfected under subsections (1) or (2) above the section 402 of this chapter shall be entitled to enforce all of the obligations provided by SDCL Chapter 57A-9 Part 4, or Chapter 32-3, against the secured party of his assignee, including the right to require the filing of a termination statement or other release of the security interest.

14-9-402. PLACE OF FILING FOR FIXTURES ON TRUST OR RESTRICTED LAND.

Financing statements relating to goods which are to become fixtures on land which is held in trust by the federal government or land which is held subject to a restriction against alienation under federal law shall be filed in the land title mortgage records maintained by the Bureau of Indian Affairs, United States Department of the Interior.

PART 5 – DEFAULT

14-9-501. Default; Procedure When Security Agreement Covers Both Real and Personal Property

14-9-502. Collection Rights Of Secured Party

14-9-503. Repossession Of Person Property

- 14-9-504. Secured Party's Right To Dispose Of Collateral After Default; Effect Of Disposition
- 14-9-505. Compulsory Disposition Of Collateral; Acceptance Of The Collateral As A Discharge Of Obligation
- 14-9-506. Debtor's Right To Redeem Collateral
- 14-9-507. Secured Party's Liability For Failure To Comply With The Past

14-9-501. DEFAULT; PROCEDURE WHEN SECURITY AGREEMENT COVERS BOTH REAL AND PERSONAL PROPERTY.

(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this Chapter and except as limited by subsection (3), those provided and remedies provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents, the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in Section 207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this Part, those provided in the security agreement and those provided in Section 207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied, except as provided with respect to compulsory disposition of collateral (subsection (3) of Section 504 and Section 505) and with respect to redemption of collateral (Section 506), but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) Subsection (2) of Section 502 and subsection (2) of Section 504 insofar as they required accounting for surplus proceeds of collateral;

(b) Subsection (3) of Section 504 and subsection (1) of Section 505 which deal with disposition of collateral;

(c) Subsection (2) of Section 505 which deals with acceptance of collateral as discharge of obligation;

(d) Section 506 which deals with redemption of collateral; and

(e) Subsection (1) of Section 507 which deals with the secured party's liability for failure to comply with this Part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this Part do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Chapter.

14-9-502. COLLECTION RIGHTS OF SECURED PARTY.

(1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under Section 306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors, must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is

liable for any deficiency only if the security agreement so provides.

14-9-503. REPOSSESSION OF PERSONAL PROPERTY.

(1) Except as provided in subsection (2) below and unless otherwise agreed, a secured party has the right to take possession of the collateral on default. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under Section 504.

(2) The personal property of a Rosebud Sioux tribal member or a member of the immediate family of a Rosebud tribal member who lives in the same dwelling as a Rosebud tribal member shall not be repossessed within the exterior boundaries of the Rosebud Indian Reservation under the procedures of repossession except in strict compliance with the following:

(a) Written consent to remove the property from lands within the exterior boundaries of the Rosebud Indian Reservation shall be secured from the debtor at the time repossession is sought. If such permission is granted and the security agreement so provides the secured party may

(i) require the debtor to assemble the collateral and make it available to him or his agent at a place to be designated by the secured party which is reasonably convenient to both parties, or

(ii) without removal, render equipment unusable, or dispose of the collateral on the debtor's premises under Section 504.

(b) Written consent shall be retained by the creditor and shall be exhibited to any official of the Rosebud Sioux Tribe upon proper demand.

(c) Where a debtor who is a Rosebud tribal member or a member of his immediate family refuses to sign a written consent to permit removal of the property from lands within the exterior boundaries of the Rosebud Indian

Reservation, the property shall be removed only by order of the Tribal Court in an appropriate legal proceeding.

(d) Any person attempting to repossess property located on lands within the exterior boundaries of the Rosebud Indian Reservation who fails to follow these procedures shall be subject to the following sanctions:

(i) any nonmember of the Rosebud Tribe, except persons authorized by Federal law to be present on Tribal land, found to be in willful violation of these provisions may be excluded from Reservation lands of the Tribe or any enrolled tribal member within the exterior boundaries of the Reservation in accordance with procedures set forth by tribal law.

(ii) any business whose employees are found to be in willful violation of these laws may be denied the privilege of doing business within Reservation.

(iii) any Indian who violates any provision of this section shall be guilty of a crime, and upon conviction shall be punished by a fine of not more than \$100.

(iv) any non-member of the Rosebud Tribe who violates any provision of this section shall be liable for a civil penalty of not more than \$100.

(v) any person who violates any provision of this section shall also be liable under the provisions of Section 507.

(3) Any person who intentionally hinders the lawful repossession of property subject to a valid security interest under this Chapter shall be liable to the secured party for any damages and may in addition be subject to any applicable criminal penalties under Title Five of the Rosebud Law and Order Code for defrauding creditors.

14-9-504. SECURED PARTY'S RIGHT TO DISPOSE OF COLLATERAL AFTER DEFAULT; EFFECT OF DISPOSITION.

(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation of processing. Any sale of goods is subject to the provisions of the Chapter on Sales. The proceeds of disposition shall be applied in the order following to

(a) The reasonable expenses of retaking, holding, preparing for sale or

lease and the like and, to the extent provided for in the agreement and not prohibited by tribal or federal law, the reasonable attorney's fees and legal expenses incurred by the security party;

(b) The satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefore is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must be seasonably furnish reasonable proof of this interest, and unless he does so the secured party need not comply with his demand.

(2) If the security interest secures indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor if he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall be sent to any other secured party from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale, and if the collateral is of a type

customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this Part or of any judicial proceedings

(a) In the case of public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) In any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, endorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights, has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this Chapter.

14-9-505. COMPULSORY DISPOSITION OF COLLATERAL; ACCEPTANCE OF THE COLLATERAL AS A DISCHARGE OF OBLIGATION.

(1) If the debtor has paid sixty per cent of the cash price in the case of a purchase money security interest in consumer goods or 60% of the loan in the case of another security interest in consumer goods, and has not signed, after default, a statement renouncing or modifying his rights under this Part, a secured party who has taken possession of collateral must dispose of it under Section 504 and if he fails to do so within ninety days after he takes possession, the debtor, at his option, may recover in conversion or under Section 507 (1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed, after

default, a statement renouncing or modifying his rights under this subsection. In the case of consumer goods no other notice need be given. In other cases, notice shall be sent to any other secured party from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one days after the notice was sent, the secured party must dispose of the collateral under Section 504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

14-9-506. DEBTOR'S RIGHT TO REDEEM COLLATERAL. At any time before the secured party has disposed of collateral or entered into a contract for its disposition under Section 504 or before the obligation has been discharged under Section 505 (2), the debtor or any other secured party may, unless otherwise agreed in writing after default, redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding, preparing the collateral for disposition, in arranging for the sale or lease, and to the extent provided in the agreement and not prohibited by tribal or federal law, his reasonable attorney's fees and legal expenses.

14-9-507. SECURED PARTY'S LIABILITY FOR FAILURE TO COMPLY WITH THIS PART.

(1) If it is established that the secured party is not proceeding in accordance with the provisions of this Part, disposition may be ordered or restrained by the Tribal Court on appropriate terms and conditions. If the disposition has occurred, the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition, has a right to recover from the secured party any loss caused by his failure to comply with the provisions of this Part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit

service charge plus 10 percent of the principle amount of the debt or the time price differential plus 10 percent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefore, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold, he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any duly authorized tribal body shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

TITLE 15
CORPORATIONS AND
TRIBAL ENTITIES

CHAPTER 1 – GENERAL
PROVISIONS

15-1-101.	Short Title
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15-1-101. SHORT TITLE. This title shall be known and may be cited as the Rosebud Law and Order Code – Corporations and Tribal Entities.

15-1-102. SCOPE. The provisions of this Title shall apply to all corporations formed under the laws and sovereign power of the Rosebud Sioux Tribe, whether before or after the enactment hereof.

15-1-103. PURPOSE AND CONSTRUCTION.

(a) The purpose of this Title are:

- (1) To encourage commerce by providing limitations on the liability of participants in incorporated enterprises;
- (2) To reform the laws of business corporations by allowing greater flexibility in the organization and operation of close corporations;
- (3) To ensure that corporate assets are available for the satisfaction of valid claims of corporate creditors; and
- (4) To simplify, clarify and modernize the laws applicable to for-profit and non-profit corporations created under the sovereign powers of the Rosebud Sioux Tribe.

(b) The provisions of the chapters of this Title shall be liberally construed and applied to promote its underlying purposes and policies.

15-1-104. DEFINITIONS. In the Chapters of this Title:

(1) “Article” means the articles of incorporation, charter or other documents evidencing the creation of a corporate entity pursuant to sovereign powers.

(2) “Close Corporation” means corporations, the shares of which is not publicly traded and are subjected to restrictions on transfer.

(3) “Controlled” as used in reference to corporations controlled by the Rosebud Sioux Tribal Council, includes any corporation where the majority of its Board of Directors are chosen by the Tribal Council or are required to be Tribal Council members.

(4) “Deliver” includes delivery by mail.

(5) “Distribution” means a direct or indirect transfer of money or other property (except its own shares) or the incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption or other acquisition of shares; or otherwise.

(6) “For-Profit Corporation” means a corporation of which the income is distributable for the benefit of its shareholders, and whose assets, upon dissolution, are distributable to its shareholders.

(7) “Individual” includes the estate of an incompetent or deceased individual.

(8) “Interrogatories” means formal written questions seeking information in the form of a written response.

(9) “Non-Profit Corporation” means one in which no part of the income of the corporation is distributable to any person by reason of that person’s status as a member, director, officer or employee, except for reasonable wages for work performed.

(10) “Notice” means written notice unless oral notice is reasonable under the circumstances.

(11) “Quorum” means the number of members of a board or other body which must be present in order to make the board or other body competent to transact business in the absence of the other members.

(12) “Shares” means the units into which the proprietary interests in a for-profit corporation are divided.

(13) "Shareholder" means the person in whose name shares are registered in the records of the corporation.

(14) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

15-1-105. OFFICE OF CORPORATIONS.

(a) The Tribal Revenue Department shall serve as the Office of Corporations, and the Tribal Revenue Director shall also serve as the Director of Corporations under this Title. All actions of the Director of Corporations shall be subject to review by the Tribal Council.

(b) The Director of Corporations shall have authority to do all things necessary and proper in order to administer and enforce the provisions of this Title, including but not limited to the power:

(1) To review applications for incorporation and grant certificates of incorporation under Chapter 2 and 3 of this Title;

(2) To review amended articles of incorporation and issue certificates of amendments;

(3) To review proposed articles of dissolution and to dissolve corporations administratively;

(4) To accept for filing such other notices, report and other documents from corporations for the purpose of making such documents available to the public upon request;

(5) To furnish, on request, copies of articles of incorporation, notices, reports and other documents to the public upon the payment of reasonable fees;

(6) To issue interrogatories and demands for inspection or production of documents to corporations in accordance with the provisions of this Title;

(7) To supervise the orderly dissolution of corporations formed under tribal law;

(8) To bring actions or participate in actions in Tribal Court or any other court of competent jurisdiction for the enforcement of any of the provisions of this Title;

(9) To promulgate regulations pursuant to this Title, formulate recommendations to submit to the Council for revisions of or amendments to this Chapter, and take other actions necessary for the administration of the provisions of this Title.

Provided, however, that the Director of Corporations shall not have authority to regulate with respect to for-profit corporations which are owned, in whole or in part, directly by the Rosebud Sioux Tribe, nor shall it have the authority to regulate with respect to non-profit corporations which are controlled by the Rosebud Sioux Tribal Council.

15-1-106. STATUS OF CORPORATIONS.

(a) For the sole purposes of taxation, regulatory jurisdiction and civil jurisdiction, the following corporate entities shall be entitled to all of the privileges and immunities of members of federally-recognized Indian tribes:

(1) All for-profit corporations formed pursuant to the sovereign powers of the Rosebud Sioux Tribe which are managed by members of federally recognized Indian tribes and which are at least 51% owned by Indians who are members of federally recognized tribes.

(2) All non-profit corporations formed pursuant to the sovereign powers of the Rosebud Sioux Tribe which are managed by members of federally recognized Indian tribes and which have as the primary purpose benefiting the people of the Rosebud Sioux Reservation or any group of people which comprises primarily members of federally recognized Indian tribes.

(b) In the case of any corporation having its principal place of business on the Rosebud Sioux Reservation which has been incorporated under the laws of any state and also pursuant to the sovereign powers of the Rosebud Sioux Tribe, the ordinances and resolutions of the Tribal Council, the Constitution of the Rosebud Sioux Tribe and the tribal charter documents shall take precedence over any conflicting state laws or charter documents in any dispute concerning the status of the corporation or the rights and obligations of any persons with respect to the corporation.

(c) The Rosebud Sioux Tribal Court shall have jurisdiction to decide all questions with respect to the status of corporation formed pursuant to the sovereign powers of the Rosebud Sioux Tribe.

15-1-107. REPORTING REQUIREMENTS. The Director of

Corporations may propound to any corporation subject to the provisions of this Chapter, such interrogatories or demands to inspect documents as may be reasonably necessary or proper to enable the Director to ascertain whether such corporation is complying with all the provisions of this Title chapter. Such interrogatories or demands for inspection shall be answered within 30 days after mailing thereof, and the answers thereto shall be full and complete and shall be under oath.

15-1-108. JURISDICTION OF TRIBAL COURT.

(a) To the maximum extent consistent with due process of law, all corporations formed pursuant to the sovereign power of the Rosebud Sioux Tribe and all directors, officers and shareholders of such corporations shall be subject to the jurisdiction of the Rosebud Sioux Tribal Court in all actions which arise out of the acts, omissions or participation of such persons in connection with the affairs of such corporations; provided, however that this section shall not apply to corporations which are owned in whole or in part by the Rosebud Sioux Tribe or which are controlled by the Rosebud Sioux Tribal Council, or to the directors or officers of such corporations.

(b) This section shall not be construed as a waiver of sovereign immunity.

15-1-109. REGISTERED AGENT. All corporations formed pursuant to the sovereign power of the Rosebud Sioux Tribe shall appoint a person to accept the service of judicial process on the corporation. All corporations shall notify the Director of Corporations of any change in the name or address of the corporation's registered agent. All corporations formed pursuant to the sovereign powers of the Rosebud Sioux Tribe are hereby deemed to consent to the appointment of the Director of Corporations as their agent for the acceptance of service of process in the event the corporation shall have failed to notify the Director of Corporations of any change in the name or the address of its registered agent. In such cases, service upon the Director of Corporations shall be deemed to be service on such corporation within 10 days thereof, provided, the Director of Corporations shall mail notice of such service to any incorporator, director, officer or

shareholder of the corporation at the most recent address noted in the files of the Director of Corporations.

15-1-110. LIABILITY OF SHAREHOLDERS OR MEMBERS. No shareholder or member of any corporation formed pursuant to the sovereign powers of the Rosebud Sioux Tribe, including those formed pursuant to Chapters Two or Three of this Title, shall be liable to any creditor of the corporation by reason of his or her status as a shareholder or member, except insofar as said shareholder or member may be indebted to the corporation for unpaid loans or indebtedness for the purchase of shares.

15-1-111. CORPORATE NAME.

(a) The name of any for-profit corporation shall contain the words, "Corporation," "Incorporated" or "Limited," or shall contain an abbreviation of one of such words.

(b) The name of any non-profit corporation may contain the words "Incorporated," "Corporation," "Limited," "Association," "Fund," "Society," "Club," "Foundation," or "A Non-profit Corporation."

(c) No corporation under Chapters Two or Three of this Title shall use any corporate name which is the same as, or deceptively similar to, any other corporation formed pursuant to the sovereign powers of the Rosebud Sioux Tribe.

(d) No corporation which is privately owned or controlled shall use any name or make any representation which implies that it is a subdivision or enterprise of the Rosebud Sioux Tribe.

15-1-112. FEES. The Director of Corporations shall charge

(1) For filing an application for incorporation and proposed articles of incorporation, \$50.00;

(2) Filing an application for an amendment to the article of incorporation \$25.00;

(3) Filing a statement of change of name or address of registered agent \$10.00;

(4) Filing any other statement or report of a corporation \$10.00;

(5) For furnishing a certified copy of any document, instrument report or other paper relating to a corporation \$5.00; and

(6) For furnishing a certificate as to the status of a corporation or as to the existence or non-existence of facts relating to corporations \$25.00.

CHAPTER 2 – BUSINESS CORPORATIONS

PART A – FORMATION OF CORPORATIONS

- 15-2-101. Scope of Chapter
- 15-2-102. General Powers Of Business Corporations
- 15-2-103. Defense Of Ultra Vires
- 15-2-104. Articles Of Incorporation
- 15-2-105. Filing Of Articles Of Incorporation
- 15-2-106. Effect Of Filing The Articles Of Incorporation – Certificates Of Incorporation
- 15-2-107. Organization Meeting Of Directors

15-2-101. SCOPE OF CHAPTER.

(a) Unless otherwise provided, the provisions of this Chapter apply to all for-profit corporations formed under the sovereign powers of the Rosebud Sioux Tribe, except those corporations owned in whole or in part by the Rosebud Sioux Tribe. Only close corporations may be formed under the provisions set forth in this Chapter, and provisions which are stated to be applicable only to “corporations formed under this Chapter” refer to close corporations which comply with subsection (b) below.

(b) Any person or persons over the age of 18 years wishing to incorporate a for-profit business or for-profit cooperative may apply to the Director of Corporations for the issuance of a certificate of incorporation under this Chapter, provided that the articles of incorporation shall provide that all of the issued shares of the corporation are to be subject to one or both of the following restrictions on transfer:

(1) Obligating a shareholder to offer to the corporation or to one or more shareholders of the corporation or to any designated person or to any combination of the foregoing, a prior opportunity to acquire such shares; or

(2) Requiring the corporation, or the holders of shares of a particular class of the corporation, to consent to any proposed transferee of the shares.

(c) The Rosebud Sioux Tribal Council retains the authority to issue corporate charters for business corporations not eligible to be formed under this Chapter.

15-2-102. GENERAL POWERS OF BUSINESS CORPORATIONS. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power:

(1) To sue and be sued, complain and defend in its corporate name;

(2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(3) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Rosebud Sioux Tribe, for managing the business and regulating the affairs of the corporation;

(4) To purchase, receive, lease, or acquire, whether by gift, devise, bequest or otherwise, and to own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligation of, any other entity;

(7) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;

(8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust or other entity;

(10) To conduct its business, locate offices, and exercise the powers granted by this Chapter within or without the Rosebud Sioux Reservation and the State of South Dakota;

(11) To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share optional plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) To make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) To transact any lawful business that will aid governmental policy;

(15) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation;

(16) To cease its corporate activities and surrender its corporate franchise.

15-2-103. DEFENSE OF ULTRA

VIRES. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfers sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the

performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation.

(3) In a proceeding by the Director of Corporations, as provided in this chapter, to dissolve the corporation, or to enjoin the corporation from the transaction of unauthorized business.

15-2-104. ARTICLES OF INCORPORATION.

(1) The name of the corporation.

(2) The period of duration, which may be perpetual or for a stated term of years.

(3) The purpose or purposes for which the corporation is organized which may be states to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this title.

(4) The aggregate number of shares which the corporation shall have authority to issue and if such shares are to be divided into classes, the number of shares of each class.

(5) If the shares to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class.

(6) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.

(7) Any provisions limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation.

(8) The name and address of its initial registered agent and the address of its principal office.

(9) A description of any election to operate without a board of directors under Section 122 of this Chapter.

(10) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify; provided however, that if all the persons who have agreed to purchase shares shall enter into a written agreement under Section 122 of this chapter to operate the corporation without a board of directors, that fact shall be recited in the Articles of Incorporation and the names and addresses of the persons who are to be voting shareholders shall be listed instead.

(11) The name and address of each incorporator.

(12) One or more of the restrictions on the transfer of shares described in Section 101 of this Chapter and all other restrictions on the transfer of shares.

(13) The following notice, conspicuously displayed:

THIS IS A CLOSE CORPORATION FORMED PURSUANT TO CHAPTER II OF THE CORPORATIONS TITLE OF THE ROSEBUD LAW AND ORDER CODE (Section 15-2). THE RIGHTS OF SHAREHOLDERS IN THIS CORPORATION MAY DIFFER MATERIALLY FROM THE RIGHTS OF SHAREHOLDERS IN OTHER CORPORATIONS. COPIES OF DOCUMENTS WHICH RESTRICT TRANSFERS AND AFFECT VOTING AND OTHER RIGHT MAY BE OBTAINED BY A SHAREHOLDER ON WRITTEN REQUEST TO THE CORPORATION.

In addition to the provisions required under this section, the articles of incorporation may also contain provisions not inconsistent with law regarding:

(a) The direction of the management of the business and the regulation of the affairs of the corporation;

(b) The definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders, or any class of the shareholders;

(c) The par value of any authorized shares or class of shares; and

(d) Any provision which under this title is required or permitted to be set forth in the bylaws.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Chapter.

15-2-105. FILING OF ARTICLES OF INCORPORATION. Duplicate originals of the articles of incorporation shall be delivered to the Director of Corporations. If the Director of Corporations finds that the articles of incorporation conform to this Chapter, he shall, when all the fees have been paid as in this title described:

(1) Endorse on each of such originals the word "filed," and the effective date of the filing thereof.

(2) File one of such originals.

(3) Issue a certificate of incorporation together with the originals of the articles of incorporation affixed thereto shall be returned to the incorporators or their representative.

15-2-106. EFFECT OF FILING THE ARTICLES OF INCORPORATION – CERTIFICATES OF INCORPORATION.

Upon the filing of the articles of incorporation, the corporate existence shall begin, and the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Chapter, except as against the Tribe in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

15-2-107. ORGANIZATION MEETING OF DIRECTORS.

After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held at the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting bylaws not inconsistent with this Title, electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of meeting. Any action permitted to be taken at the organization meeting of the directors may be taken without a meeting if each

director signs an instrument which states the action so taken.

PART B – SHARES, SHAREHOLDERS AND DISTRIBUTIONS

- 15-2-108. Authorized Shares
- 15-2-109. Certificates Representing Shares
- 15-2-110. Subscription For Shares
- 15-2-111. Determination Of Price – Payment Of Shares
- 15-2-112. Expenses Of Organization, Reorganization and Financing
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- 15-2-114. Stated Capital; Determination Of Amount
- 15-2-115. Payment of Deficits Out Of Capital Surplus or Earned Surplus
- 15-2-116. Insolvent Corporation Prohibited From Purchasing Own Shares
- 15-2-117. Share Transfer Restrictions
- 15-2-118. Offer To Sell Shares
- 15-2-119. Notice Of Transfer Restrictions On Issued Shares
- 15-2-120. Transfer Of Shares In Breach Of Transfer Restrictions
- 15-2-121. Sale Of Assets
- 15-2-122. Election Not To Have A Board Of Directors
- 15-2-123. Agreements Among Shareholders
- 15-2-124. Shareholders’ Rights To Inspect Records
- 15-2-125. Annual Meeting
- 15-2-126. Special Meetings Of Shareholders
- 15-2-127. Notice Of Shareholders’ Meetings
- 15-2-128. Shareholder Sale Option At Death
- 15-2-129. Actions by Shareholders Of Close Corporations
- 15-2-130. Limited Liability

15-2-108. AUTHORIZED SHARES.

Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes with such designations, preferences, limitations, and relative rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provision of this

title. Unless otherwise provided in the Articles of Incorporation, such shares shall carry preemptive rights. Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(1) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof.

(2) Entitling the holders thereof to cumulative, non-cumulative or partially cumulative dividends.

(3) Having preference over any other class or classes of shares as to the payment of dividends.

(4) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation.

(5) Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preference as to dividends or distribution of assets upon liquidation.

15-2-109. CERTIFICATES REPRESENTING SHARES.

(a) Shares of a corporation may but need to be represented by certificates. Unless this Chapter or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum each share certificate must state on its face:

(1) The name of the issuing corporation and that it is organized under the laws of the Rosebud Sioux Tribe;

(2) The name of the person to whom issued; and

(3) The number and class of shares and the designation of the series, if any, the certificate represents.

(c) All restrictions on the transfer of shares must be summarized on the back or front of each certificate; provided, however, that the notice described in Section 119 of this Chapter may be used instead if authorized under the provisions of that Section.

(d) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights,

preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series (and the authority of the board of directors to determine variations for future series) must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(e) Each share certificate (1) must be signed (either manually or in facsimile) by two officers designated in the bylaws or by the board of directors and (2) may bear the corporate seal or its facsimile.

(f) If the person who signed (either manually or in facsimile) a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

(g) No certificate shall be issued for any share until the consideration established for its issuance shall have been received by the Corporation.

(h) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholders a written statement of the information required on certificates by this section.

15-2-110. SUBSCRIPTION FOR SHARES. A subscription for shares of a corporation to be organized shall be in writing and shall be irrevocable for a period of six months, unless otherwise provided by the terms of subscription agreement or unless all of the subscribers consent to the revocation of such subscription.

15-2-111. DETERMINATION OF PRICE – PAYMENT FOR SHARES.

(1) The powers granted in this section are subject to restrictions by the articles of incorporation.

(2) Shares may be issued at price determined by the board of directors, or the board may set a minimum price or establish a formula or method by which the price may be determined.

(3) Consideration for shares may consist of cash, promissory notes, services performed, contracts for services to be performed, or any other tangible or intangible property. If shares are issued for other than cash, the board of directors shall determine the value of the consideration.

(4) Shares issued when the corporation receives the consideration determined by the board are validity issued, fully paid, and nonassessable.

(5) A good faith judgment of the board of directors as to the value of the consideration received for shares is conclusive.

(6) The corporation may place shares issued for a contract for future services or a promissory note in escrow, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed or the note is paid. If the services are not performed or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

15-2-112. EXPENSES OF ORGANIZATION, REORGANIZATION AND FINANCING.

The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by such corporations out of the consideration received by it in payment for its shares without thereby rendering such shares assessable.

15-2-113. STOCKHOLDER'S LIABILITY – CONSIDERATION FOR SHARES.

A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or were to be issued, except that he or she may become personally liable by reason of his or her own acts or conduct.

15-2-114. STATES CAPITAL; DETERMINATION OF AMOUNT.

(a) The consideration received by a corporation for its shares shall constitute stated capital. If the shares have been assigned a par value, the consideration received shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus.

(b) The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or part of the surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares.

(c) Dividends shall not be paid out of stated capital.

15-2-115. PAYMENT OF DEFICITS OUT OF CAPITAL SURPLUS OR EARNED SURPLUS.

A corporation may, by resolution of its board of directors, apply any part or all of its capital surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus.

15-2-116. INSOLVENT CORPORATION PROHIBITED FROM PURCHASING OWN SHARES.

No purchase of or payment for its own shares shall be made by a corporation at a time when the corporation is insolvent or when such purchase or payment would make it insolvent.

15-2-117. SHARE TRANSFER RESTRICTIONS.

(a) Except as otherwise provided in the articles of incorporation, no interest in shares of a corporation formed under this Chapter may be transferred, by operation of law or otherwise, whether voluntary or involuntary.

(b) Subsection (a) above shall not apply to a transfer:

(1) To the corporation or to any other holder of the same class of shares;

(2) To members of the holder's immediate family, or to a trust, all of whose beneficiaries are members of the holder's immediate family. A holder's immediate family shall include only his spouse, parents, lineal descendants (including any adopted children and stepchildren) and spouse of any lineal descendants, and brothers and sisters;

(3) Which has been consented to in writing by all of the holders of the corporation's common shares having voting rights;

(4) To an executor or administrator upon the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

(5) By merger, consolidation or a share exchange of existing shares for other shares of a different class or series in the corporation;

(6) By a pledge as collateral for a loan that does not grant the pledge any voting rights possessed by the pledgor.

15-2-118. OFFER TO SELL SHARES.

(a) Any person desiring to transfer shares in a transaction which is prohibited by Section 117 (a) and is not exempt under Section 117 (b) shall obtain a written offer from a third party who meets the requirements in paragraphs (1) and (2) of this subsection to purchase such shares for cash and shall deliver written notice of the third party offer to the corporation's registered office stating the number and kind of shares, the offering price, the other terms of the offer, and the name and address of the third party offeror. No transfer shall be made to a third party unless:

(1) The third party is eligible to become a qualified shareholder under the provisions of any federal, state or Tribal tax statute that the corporation has elected to be subject to and the third party shall agree in writing not to take any action to terminate the election without the approval of the remaining shareholders;

(2) The transfer to the third party will not result in the imposition of the personal holding company tax or any similar Tribal, state or federal penalty tax on the corporation.

(b) The notice specified in subsection (a) shall constitute an offer to sell the shares to the corporation on the terms of the third party offer. Within 20 days after the corporation receives the notice, the corporation shall call a special meeting of shareholders, which shall be held not more than 40 days after the call, for the purpose of determining whether to purchase all (but not less than all) of the offered shares. Approval of action to purchase shall be by affirmative vote of

the holders of a majority of the shares entitled to vote excluding the offered shares. With the consent of all the shareholders entitled to vote for the approval, the corporation may allocate some or all of the shares to one or more shareholders or to other persons, but if the corporation has more than one class of shares, the remaining holders of the class of shares being offered for sale shall have a first option to purchase the shares that are not purchased by the corporation, in proportion to their shareholdings or in such proportion as shall be agreeable to those desiring to participate in the purchase.

(c) Written notice of the acceptance of the shareholder's offer shall be delivered or sent to the offering shareholder at the address specified in his notice to the corporation, or in the absence of any specification, at his last known address as reflected in the records of the corporation, within 75 days after receipt of the shareholder's offer. Notice sent by U.S. mail shall be timely if it is deposited in the mail prior to midnight of the 75th day following the date the offer from the shareholder was received by the corporation. If the notice contains terms of purchase different from those contained in the shareholder's notice, the different terms shall be deemed a counter offer and unless the shareholder wishing to transfer his stock accepts in writing the counter offer, or the shareholder and the purchaser(s) otherwise resolve by written agreement the differences between the offer and counter offer within 15 days of receipt by the shareholder of the notice of acceptance, the notice containing the counter offer shall be ineffective as an acceptance.

(d) If a contract to sell is created under subsection (c), the shareholder shall make delivery of all the certificates for the stock so sold, duly endorsed, within 20 days of receipt of the notice of acceptance, or in the case of uncertificated securities, shall within the 20 day period or deliver to the corporation the required instruction requesting that the transfer be made. Breach of any of the terms of the contract shall entitle the non-breaching party to any remedy at law or equity allowed for breach of a contract, including, without limitation, specific performance.

(e) If the offer to sell is not accepted pursuant to subsection (c) and (d), the

shareholder shall be entitled to transfer to the third party offeror all (but not less than all) of the offered shares within 120 days after delivery of the shareholder's notice specified in subsection (c) in accordance with the terms specified in the shareholder's notice.

15-2-119. NOTICE OF TRANSFER RESTRICTIONS ON ISSUED SHARES.

(a) If the summary of share transfer restrictions required by Section 109 (c) of this Chapter to be printed on share certificates is too long to fit practicably on the certificates, the following notice may be used instead.

CAUTION: SHARES IN THIS CORPORATION CANNOT BE TRANSFERRED (BY SALE, GIFT OR OTHERWISE) EXCEPT AS ALLOWED BY THE ARTICLES OF INCORPORATION, BYLAWS, AND SHAREHOLDERS' AGREEMENTS. COPIES OF DOCUMENTS WHICH DESCRIBE HOW SHARES CAN BE TRANSFERRED MAY BE OBTAINED BY A SHAREHOLDER ON WRITTEN REQUEST TO THE CORPORATION.

(b) All persons claiming an interest in shares of a statutory close corporation complying with the notice requirements of Section 109 (c) or the notice requirement of subsection (a) above shall be bound by the documents referred to in the notice. All persons claiming an interest in shares of a statutory close corporation not complying with the requirement of this section shall be bound by any documents of which they, or any person through whom they claim, have knowledge or notice.

15-2-120. TRANSFER OF SHARES IN BREACH OF TRANSFER RESTRICTIONS.

Any attempted transfer of shares in a corporation formed under this Chapter in violation of any transfer restriction binding on the transferee shall be ineffective. Any attempted transfer of shares in a corporation formed under this Chapter in violation of any transfer restriction not binding on the transferee because the notice required by Sections 109 or 119 of this Chapter has not been given shall give the corporation the option,

exercisable by notice and payment within 30 days after presentation of the shares for registration in the name of the transferee, to purchase the shares from the transferee for the same price and terms.

15-2-121. SALE OF ASSETS. Unless otherwise provided in the articles of incorporation, a sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation formed under this Chapter, if not made in the usual and regular course of its business, shall require the affirmative vote of all of the holders of outstanding shares of each class of shares of the corporation, whether or not otherwise entitled to vote thereon.

15-2-122. ELECTION NOT TO HAVE A BOARD OF DIRECTORS.

(a) A corporation formed under this Chapter may operate without a board of directors if the articles of incorporation contain a statement to that effect. While this statement is effective:

(1) All corporate powers shall be exercised by or under authority of and the business affairs of the corporation shall be managed under the direction of the shareholders of the corporation, and all powers and duties conferred or imposed upon the board of directors by this Chapter shall be exercised or performed by the shareholders.

(2) No liability that would otherwise be imposed on the directors shall be imposed on a shareholder by virtue of any act or failure to act unless the shareholder was entitled to vote on the action.

(3) Any requirement that an instrument filed with any governmental agency contain a statement that a specified action has been taken by the board of directors shall be satisfied by a statement that the corporation is formed under this Chapter having no board of directors and that the action was duly approved by the shareholders.

(4) The shareholders by resolution may appoint one or more shareholders to sign any documents as "Designated Directors."

(5) Unless the articles of incorporation otherwise provide, any action requiring director approval or both director and shareholder approval shall be sufficiently authorized by

shareholder approval and any action otherwise requiring a vote of a majority or greater percentage of its board of directors shall require the affirmative vote of the holders of a majority, or such greater percentage, of the shares entitled to vote thereon.

(b) Any amendment to the articles of incorporation to include the provisions authorized by subsection (a) must be approved by the holders of all the shares of the corporation whether or not they are otherwise entitled to vote thereon, or all the subscribers to such shares, or the incorporators, as the case may be. Any amendments to the articles of incorporation to delete the election must be approved by the affirmative vote of the holders of all of the shares of the corporation whether or not they are otherwise entitled to vote thereon.

15-2-123. AGREEMENTS AMONG SHAREHOLDERS.

(a) The shareholders of a corporation formed under this Chapter may by unanimous action enter into one or more written agreements to regulate the exercise of the corporate powers and the management of the business and affairs of the corporation or the relations among the shareholders of the corporation.

(b) Any agreement authorized by this section shall be valid and enforceable according to its terms notwithstanding the elimination of a board of directors, any restriction on the discretion or powers of the board of directors, or any proxy or weighted voting rights given to directors and notwithstanding that the effect of the agreement is to treat the corporation as if it were a partnership or that the arrangement of the relations among the shareholders or between the shareholders and the corporation would otherwise be appropriate only among partners.

(c) If the corporation has a board of directors, the effect of an agreement authorized by this section restricting the discretionary powers of the directors shall be to relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, the liability for acts or omissions imposed by law upon directors to the extent that the discretion or powers of the directors are controlled by the agreements.

(d) An election not to have a board of directors in an agreement authorized by

this section shall not be valid unless the articles of incorporation contain a statement to that effect in accordance with Section 122 of this Chapter.

(e) A shareholder agreement authorized by this section shall not be amended except by the unanimous written consent of the shareholders unless otherwise provided in the agreement.

(f) Any action permitted by this section to be taken by shareholders may be taken by the subscribers to shares of the corporation if no shares have been issued at the time of the agreement authorized by the section.

(g) Provisions otherwise required to be stated in corporate bylaws may be contained with equal effect in a shareholder's agreement.

(h) This section shall not prohibit any other agreement among two or more shareholders not otherwise prohibited by law.

15-2-124. SHAREHOLDER'S RIGHT TO INSPECT RECORDS.

(a) A corporation shall keep at least the following records:

(1) Minutes of all shareholders' meetings and board of director's meetings;

(2) Appropriate accounting records;

(3) Names and addresses of all shareholders and the number and class of shares held;

(4) Current articles of incorporation, bylaws and shareholders' agreements described in Section 123;

(5) Resolutions adopted by the board of directors.

(b) Upon five days written notice, a shareholder of the corporation is entitled to inspect and copy the records referred to in subsection (a) above, subject to the following requirements:

(1) The shareholder's demand must be made in good faith and for a proper purpose;

(2) The shareholder must describe with reasonable particularity his or her purpose and the records he or she desires to inspect;

(3) The records must be directly connected with his or her purpose;

(4) The corporation may impose a reasonable charge covering the cost of labor and materials for copies of documents made for the shareholder; provided, however, that the charge may

not exceed any estimates of such costs provided to the shareholder.

(c) A shareholder's agent or attorney as the same inspection and copying rights as the shareholder he or she represents.

(d) A corporation may take reasonable steps to prevent the dissemination of trade secrets, proprietary information or other commercially-sensitive information to persons other than shareholders.

15-2-125. ANNUAL MEETING. A corporation formed under this Chapter may establish in its articles of incorporation or by-laws, or in a shareholders' agreement authorized by Section 123, a date at which an annual meeting of shareholders shall be held, if called, and if not so established, the date shall be the first business day after May 31st. Unless otherwise provided in the articles of incorporation, no annual meeting need be held unless a written request therefore is delivered to the corporation by an shareholder not less than 30 days before the date specified for the meeting.

15-2-126. SPECIAL MEETINGS OF SHAREHOLDERS.

(a) A corporation shall hold a special meeting if shareholders:

(1) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(2) If the holders of at least 10 percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation's secretary one or more written demands for the meeting describing the purposes for which it is to be held.

(b) Special shareholders' meetings may be held on or off the Rosebud Sioux Reservation, at the place stated in accordance with the bylaws. If no place is stated in the bylaws, special meetings shall be held at the corporation's principal office.

(c) Only business within the purposes described in the notice sent to shareholders may be conducted at a special shareholders' meeting.

15-2-127. NOTICE OF SHAREHOLDERS' MEETINGS.

(a) A corporation shall notify shareholders of the date, time and place of each annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting. Unless this chapter or the articles of corporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting. Notice shall be given by mail or telephone, using the most recent address or telephone number supplied to the corporation by each shareholder.

(b) If an annual or special shareholders' meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if that information is announced before meeting adjournment.

15-2-128. SHAREHOLDER SALE OPTION AT DEATH.

(a) If the articles of incorporation of a corporation formed under this Chapter provide that this section shall apply to the corporation, the executor or administrator of the estate of any deceased shareholder shall, subject to any directions in the deceased shareholder's last will and testament, have the right to require the corporation to elect either to purchase or cause the purchase of all, but not less than all, of the shares of the decedent pursuant to subsections (d) through (f), or to be dissolved.

(b) A modification of the provisions in this section shall be valid if it is set forth or referred to in the articles of incorporation.

(c) An amendment to the articles of corporation to provide that this section shall apply or to delete or modify the provisions of this section shall be approved by the unanimous vote of the holders of each class of shares of the corporation affected by the proposed deletion or modification, whether or not they are otherwise entitled to vote thereon; but if the corporation has not shareholders at the time of the proposed amendments, by the unanimous vote of all of the subscribers or all of the incorporators, as the case may be.

(d) A person exercising rights under this section shall, within six months after the death of the beneficial owner of shares, deliver a written notice to the corporation's registered office specifying the number and class of all shares beneficially owned by the

deceased shareholder and stating that an offer by the corporation to purchase such shares is being solicited pursuant to this section. Within 20 days after receipt of the notice, the president of the corporation shall call a special meeting of shareholders, which shall be held not more than 40 days after the call, for the purpose of determining whether to offer to purchase the shares. Approval of action to offer to purchase the shares entitled to vote of the holders of a majority of the shares entitled to vote, excluding the shares covered by the notice. With the consent of all the shareholders entitled to vote for approval, the corporation may allocate some or all of the shares to one or more shareholders, or to other persons, but if the corporation has more than one class of shares, the remaining holders of the class of shares being offered for sale shall have first option to purchase the shares that are not purchased by the corporation in proportion to their shareholdings or such proportion as shall be agreeable to those desiring to purchase. Written notice of any offer to purchase approved by the shareholders, or that no offer to purchase was approved, shall be delivered or sent to the person exercising his rights under this section within 75 days after delivery of the notice soliciting the offer to purchase. Any offer to purchase shall be accompanied by copies of the corporation's balance sheets as of the end of, and profit and loss statements for, its preceding two accounting years and any available interim balance sheet and profit and loss statement.

(e) To the extent the price and other terms for purchasing shares of a transferring shareholder by the corporation or remaining shareholders are fixed or are to be determined pursuant to provisions in the articles of incorporation, the by-laws of the corporation, or by written agreement, those provisions shall be binding, except that in the event of a default in any payment due, subsection (h) shall apply and the person exercising his rights under this section shall have the right to petition for dissolution of the corporation. Any offer to purchase shall be accepted or rejected in writing within 15 days.

(f) If an offer to purchase is rejected, or if no offer to purchase is made, the person exercising rights under this section may commence an action in the

Tribal Court. The jurisdiction of the court shall be plenary and exclusive. The corporation shall be made a party defendant in such action and shall, at its expense, give notice of the commencement of the action to all of its shareholders and such other persons as the court may direct. The court shall proceed to determine the fair value of the shares of the person exercising the rights under this section in accordance with Section 129 (e) of this Chapter and enter an order requiring the corporation to cause the purchase of the shares at fair value and on the other terms so determined or to give such person the right to have the corporation dissolved.

(g) Upon the petition of the corporation, the court may modify its decree to change the terms of payment if it finds that the changed financial or legal ability of the corporation or other purchasers of the shares to complete the purchase justifies a modification. Any person making a payment in order to prevent or cure any default by any purchaser shall be entitled to recover the excess payment from the defaulting person.

(h) If the corporation or other purchaser fails for any reason to make any payment specified in the court decree within 30 days after the due date for such payment, the court shall, upon the petition of the person to whom the payment is due and in the absence of good cause shown by the corporation, enter a decree dissolving the corporation.

(i) (1) If the fair value of the shares as determined by the court does not materially exceed the last offer made by the corporation prior to the commencement of an action brought pursuant to subsection (f) and the court finds that the failure of the person exercising rights under this section to accept the corporation's last offer was arbitrary, vexatious, or not otherwise in good faith, the court may assess all or a portion of the costs and expenses of the action against such person.

(2) If the fair value of the shares as determined by the court materially exceeds the amount of the last offer made by the corporation prior to the time a petition was filed pursuant to subsection (f) and the court finds that the corporation's last offer was arbitrary, vexatious, or was otherwise not made in good faith, the court may assess all or a

portion of the costs and expenses of the action against the corporation.

(3) Expenses assessable under subsections (1) and (2) shall include reasonable compensation for and reasonable expenses of any appraisers appointed by the court, and the reasonable fees and expenses of counsel for and experts employed by any party.

(4) Except as provided in subsections (1) and (2), the legal costs of an action filed pursuant to subsections (f) shall be assessed on an equal basis between the corporation and any party exercising rights under this section, and all other fees and expenses shall be borne by the party incurring the fees and expenses.

(j) Any shareholder may waive his and his estate's and heirs' rights under this section by a signed writing.

(k) This section shall not be construed to prohibit any other agreement not prohibited by law that provides for the purchase of shares of the corporation, nor shall it prevent a shareholder from enforcing any other remedy he may have.

15-2-129. ACTIONS BY SHAREHOLDERS OF CLOSE CORPORATIONS.

(a) Any shareholder of record, the beneficial owner of shares held by a nominee, or the holder of voting trust certificates of a corporation formed under this Chapter may file a petition in the Tribal Court for relief on the grounds that:

(1) The directors or those in control of the corporation have or will have conducted the business and affairs of the corporation in a manner which is not in good faith and which is unfair or oppressive as to the petitioner. Such conduct shall include, but shall not be limited to unfairly depriving the shareholder of the benefit of his or her investment in preference to other shareholders by failing to pay dividends which in good faith ought to be paid, or using the payment of wages as an unfair device to divert income from the petitioner.

(2) Conditions exist that would be grounds for judicial dissolution of the corporation under Section 163.

(b) In determining whether one or more of the conditions specified in subsection (a) above exist, the court shall give due consideration to the strict

fiduciary duty which shareholders of corporations formed under this Chapter owe to one another, which is the duty of good faith, fairness and loyalty.

(c) The jurisdiction of the court shall be plenary and exclusive. If the court finds that one or more of the conditions specified in subsection (a) exist, it shall grant such relief as in its discretion it deems appropriate, including, without limitations, orders granting one or more of the following types of relief:

(1) Canceling, altering or enjoining any resolution or other act of the corporation;

(2) Directing or prohibiting any act of the corporation or of shareholders, directors, officers, or other persons party to the action;

(3) Canceling or altering any provision contained in the articles of incorporation or by-laws of the corporation;

(4) Removing from office any director or officer, or ordering that a person be appointed a director or officer;

(5) Requiring an accounting with respect to any matters in dispute;

(6) Appointing a custodian to manage the business and affairs of the corporation;

(7) Appointing a provisional director who shall have all the rights, powers, and duties of a duly elected director and shall serve for the terms and under the conditions established by the court;

(8) Ordering the payment of dividends;

(9) If the court finds the relief specified in paragraphs (1) through (8) is or would be inadequate or inappropriate, ordering that the corporation is liquidated and dissolved unless either the corporation or one or more of the remaining shareholders has purchased all of the shares of another shareholder at the fair value by a designated date, with the fair value and terms of the purchase to be determined as provided by subsection (e). In the event the share purchase is not consummated and the corporation is dissolved and liquidated, any shareholder whose shares were to be purchased shall have the same rights and priorities in the assets of the corporation as would have been the case had no purchase been ordered by the court.

(10) Awarding damages to any aggrieved party in addition to or in lieu of any other relief granted.

In determining whether to enter a judgment under paragraph (9), the court shall take into consideration the financial condition of the corporation but shall not refuse to order liquidation solely on the grounds that the corporation has earned surplus or current operating profits.

(d) If the court determines that any party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may award reasonable expenses, including attorneys' fees and the costs of any appraisers or other experts, to one or more of the other parties.

(e) If the court orders relief pursuant to subsection (c) (9), the court shall:

(1) Proceed to determine the fair value of the shares to be purchased, considering the going concern value of the corporation, any agreement among the same or all of the shareholders fixing a price or specifying a formula for determining the value of the corporation's shares for any purpose, the recommendation of any appraisers appointed by the court, any legal constraints on the ability of the corporation to acquire the shares to be purchased, and other relevant evidence.

(2) Enter a decree specifying the identity of the purchaser and the terms of the purchase found to be proper under the circumstances, including such provisions as are deemed proper concerning payment of the purchase price in two or more installments, payment of interest on the installments, subordination of the obligation to the rights of other creditors of the corporation, security for the deferred purchase price, and a covenant not to compete or other restriction on the selling shareholder.

(3) Order that the selling shareholder shall, concurrently with the payment of the purchase price, or in the event of an installment purchase concurrently with the payment of the initial payment called for in the order make delivery of all his or her shares and from that date have no rights or claims against corporation or its directors, officers, or shareholders by reason of his or her having been a director, officer, or shareholder of the corporation, except the right to receive the unpaid balance of the amount awarded under this section and any amounts due under any

agreement with the corporation or the remaining shareholders that are not terminated by the court's orders.

(4) Order, that if the purchase is not completed in accordance with the court's decree, the corporation shall be liquidated.

(f) Except as otherwise provided in subsection (g), the rights of a shareholder to file a proceeding under this section are in addition to and not in lieu of any other rights or remedies the shareholder may have.

(g) No shareholder shall be eligible to file an action under this section until he shall have exhausted any non-judicial remedy for resolution of the issues in dispute to which the shareholder has agreed in writing.

15-2-130. LIMITED LIABILITY. The failure of the corporation to observe usual corporate formalities or requirements relating to the exercise of its corporate powers or the management of its business and affairs shall not be grounds for imposing personal liability on the shareholders for obligations of the corporation.

PART C – DIRECTORS AND OFFICERS

15-2-131.	Duties Of Board Of Directors
15-2-132.	Qualifications Of Directors
15-2-133.	Terms Of Directors
15-2-134.	Removal Of Directors By Shareholders
15-2-135.	Removal Of Directors By Judicial Proceeding
15-2-136.	Meetings
15-2-137.	Action Without Meeting
15-2-138.	Notice Of Meeting
15-2-139.	Waiver Of Notice
15-2-140.	Quorum and Voting
15-2-141.	General Standards For Directors
15-2-142.	Director Conflict Of Interest Liability or Unlawful
15-2-143.	Distributions
15-2-144.	Officers
15-2-145.	Standards Of Conduct For Officers
15-2-146.	Resignation and Removal Of Officers
15-2-147.	Indemnification Of Corporate Agents
15-2-148.	Mandatory Indemnification
15-2-149.	Insurance

15-2-131. DUTIES OF BOARD OF DIRECTORS. Unless the election under Section 122 of this Chapter to operate without a board of directors has been made, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the directions of, its board of directors, subject to any limitations set forth in the articles of incorporation.

15-2-132. QUALIFICATIONS OF DIRECTORS. The articles of incorporation or by-laws prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or by-laws so prescribe. A director shall be at least 18 years of age.

15-2-133. TERMS OF DIRECTORS.
(a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next annual shareholder's meeting following their election unless the articles of incorporation provide that their terms are staggered.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(e) Despite the expiration of a director's term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors.

15-2-134. REMOVAL OF DIRECTORS BY SHAREHOLDERS.

(a) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him or her.

(c) A director may be removed by the shareholders only at a meeting called for that purpose and the meeting notice

must state that the purpose, or one of the purposes, of the meeting is removal of the director.

15-2-135. REMOVAL OF DIRECTORS BY JUDICIAL PROCEEDING.

(a) The Rosebud Sioux Tribal Court may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least 10 percent of the outstanding shares of any class if the court finds that (1) the director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation (2) removal is in the best interest of the corporation.

(b) If the court removes the director it may bar the director from reelection for a period prescribed by the court.

(c) If shareholders commence a proceeding under subsection (a), they shall make the corporation a party defendant.

15-2-136. MEETINGS.

(a) The board of directors may hold regular or special meetings on or off the Rosebud Sioux Reservation.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by the means is deemed to be present in person at the meeting.

15-2-137. ACTION WITHOUT MEETING.

(a) Unless the article of incorporation or bylaws provides otherwise, action required or permitted by this Chapter to be taken at a board of director's meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

15-2-138. NOTICE OF MEETING.

(a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held as provided in the bylaws without notice to directors of the date, time, place, or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation, bylaws or the provisions of this Chapter.

15-2-139. WAIVER OF NOTICE.

(a) A director may waive any notice required by this Chapter, the articles of incorporation or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless that director at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

15-2-140. QUORUM AND VOTING.

(a) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of a majority of the number of directors.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the number of directors.

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of

incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) he objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting; (2) his dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) he delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

15-2-141. GENERAL STANDARDS FOR DIRECTORS.

(a) A director shall discharge his or her duties as a director, including duties as a member of a committee:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner he or she reasonably believes to be in the best interest of the corporation.

(b) In discharging his or her duties a director is entitled to rely on information opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(3) A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director is not liable for any action as a director, or any failure to take any action, if he or she performed the duties of office in compliance with this section.

15-2-142. DIRECTOR CONFLICT OF INTEREST.

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is voidable by the corporation because of the director's interest in the transaction unless any one of the following is true:

(1) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction;

(2) The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction; or

(3) The transaction was fair to the corporation.

(b) For purpose of this section, a director of the corporation has an indirect interest in a transaction if (1) another entity in which he or she has a material financial interest or in which he or she is a general partner is a party to the transaction (2) another entity of which he or she is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

(c) For purposes of subsection (a) (1), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote case by, a director with a direct or indirect interest in the transaction does

not affect the validity of any action taken under subsection (a) (1) if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

(d) For purpose of subsection (a) (2), a conflict of interest transaction is authorized, approved or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and share owned by or voted under the control of an entity described in subsection (b) (1), may not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (a) (2). The vote of those shares, however, is counted in determining whether the transaction is approved under other sections of this Chapter. A majority of the shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

15-2-143. LIABILITY FOR UNLAWFUL DISTRIBUTIONS.

(a) Unless he or she complies with the applicable standards of conduct described in Section 141, a director who votes for or assents to a distribution made in violation of this Chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this Chapter or the articles of incorporation.

(b) A director held liable for an unlawful distribution under subsection (a) is entitled to contribution:

(1) From every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in Section 141; and

(2) From each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of this act or the articles of incorporation.

15-2-144. OFFICERS.

(a) A corporation has the officers described in its bylaws or appointed by

the board of directors in accordance with the bylaws.

(b) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(d) The same individual may simultaneously hold more than one office in a corporation.

(e) Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

15-2-145. STANDARDS OF CONDUCT FOR OFFICERS.

(a) An officer with discretionary authority shall discharge his or her duties under that authority:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner he or she reasonably believes to be in the best interest of the corporation.

(b) In discharging his or her duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(c) An officer is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) An officer is not liable for any action taken as an officer, or any failure

to take any action, if he or she performed the duties of office in compliance with this section.

15-2-146. RESIGNATION AND REMOVAL OF OFFICERS.

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(b) A board of directors may remove any officer at any time with or without cause.

15-2-147. INDEMINIFICATION OF CORPORATE AGENTS.

(a) A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partner, joint venture, trust or other enterprise, against expenses including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with the action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(b) No indemnification shall be made pursuant to this section in respect of any proceeding in which such person shall have been adjudged to be liable to the corporation.

(c) No person shall be indemnified under this section in respect of any proceeding charging improper personal benefit to him or her, whether or not involving action in his or her official capacity, in which he or she shall have been adjudged to be liable on the basis

that personal benefit was improperly received by him or her.

15-2-148. MANDATORY

INDEMNIFICATION. Unless limited by its articles of incorporation, a corporation shall indemnify a director or officer who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he or she is or was a director of the corporation, against reasonable expenses incurred by him or her in connection with the proceedings.

15-2-149. INSURANCE. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him or her against the same liability under this Chapter.

PART D – AMENDMENT OF ARTICLES OF INCORPORATION

15-2-150	Resolution Of Proposed Amendment
15-2-151	Notice Of Proposed Amendment
15-2-152	Vote of Shareholders At Meeting
15-2-153	Classes Of Shares Entitled To Vote
15-2-154	Articles Of Amendment

15-2-150. RESOLUTION OF

PROPOSED AMENDMENT. The board of directors shall adopt a resolution setting forth a proposed amendment to the articles of corporation and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

15-2-151. NOTICE OF PROPOSED AMENDMENT. Written notice setting forth a proposed amendment to the articles of corporation or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon. If the meeting be an annual meeting, the proposed amendments or such summary may be included in the notice of such annual meeting.

15-2-152. VOTE OF SHAREHOLDERS AT MEETING. At the meeting described in Section 151 a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. Except as otherwise provided in this Chapter, the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares entitled to vote thereon. If any class of shares is entitled to vote thereon as a class pursuant to Section 153, the proposed amendments shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class of the total shares entitled to vote thereon, unless a greater majority is required by the provisions of this Chapter.

15-2-153. CLASSES OF SHARES ENTITLED TO VOTE. The holders of the outstanding shares of class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of corporation, if the amendment would:

- (1) Increase or decrease the aggregate number of authorized shares of such class;
- (2) Increase or decrease the par value of the shares of such class;
- (3) Effect an exchange, reclassification or cancellation of all or parts of the shares of such class;
- (4) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class;
- (5) Change the designation, preferences, limitations or relative rights of the shares of such class;
- (6) Change the shares of such class, whether with or without par value, into

the same or a different number of shares, either with or without par value, of the same class or another class or classes;

(7) Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences of any class having rights and preferences prior or superior to the shares of such class;

(8) In the case of a preferred or special class of shares, divide the unissued shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series or authorize the board of directors to do so;

(9) Limit or deny the existing preemptive rights of the shares of such class;

(10) Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared.

15-2-154. ARTICLES OF AMENDMENT.

(a) Articles of amendment shall be executed in duplicate by the corporation by its chief executive officer and shall be verified by the officer who has been delegated responsibility under Section 144 of this Chapter for authenticating corporate records, and shall set forth:

- (1) The name of the corporation;
- (2) The amendment so adopted;
- (3) The date of the adoption of the amendment by the shareholders;
- (4) The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;
- (5) The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendments, respectively;
- (6) If such amendments provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the

manner in which the same shall be effected;

(7) If such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement expressed in dollars, of the amount of stated capital as changed by such amendment.

(b) The articles of amendment shall be sent to the Director of Corporations with the fees as provided in this Chapter. If the Director of Corporations approves the amendments, he shall issue a certificate of amendment.

PART E – DISSOLUTION

- 15-2-155. Dissolution By Board Of Directors and Shareholders
- 15-2-156. Shareholder Option To Dissolve The Corporation
- 15-2-157. Articles Of Dissolution
- 15-2-158. Effect Of Dissolution
- 15-2-159. Known Claims Against Dissolved Corporation
- 15-2-160. Unknown Claims Against Dissolved Corporation
- 15-2-161. Grounds For Administrative Dissolution
- 15-2-162. Procedure For and Effect Of Administrative Dissolution
- 15-2-163. Grounds For Judicial Dissolution
- 15-2-164. Procedure For Judicial Dissolution
- 15-2-165. Decree Of Dissolution
- 15-2-166. Deposit With Tribal Treasurer

15-2-155. DISSOLUTION BY BOARD OF DIRECTORS AND SHAREHOLDERS.

(a) A corporation's board of directors may propose dissolution for submissions to the shareholders.

(b) For a proposal to dissolve to be adopted:

(1) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(2) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e).

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with Section 127. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, in order for the proposal to dissolve to be adopted it must be approved by a majority of all the votes entitled to be cast on that proposal.

15-2-156. SHAREHOLDER OPTION TO DISSOLVE THE CORPORATION.

(a) Unless a shareholder's agreement or the articles of incorporation provide otherwise, any shareholder of a corporation formed under this Chapter has an option to have the corporation dissolved at will. Whenever any such option to dissolve is exercised, the shareholder exercising the option shall give written notice thereof to all other shareholders. The corporation or one or more shareholders of the corporation may offer to purchase the shares at their fair market value from the person exercising the option to dissolve. If the parties cannot agree on the price for the shares or other terms of the sale, any party may bring an action in tribal court to oversee the terms of the sale, utilizing the procedures set forth in Section 129 (e) of this Chapter. If no such written offer to purchase is received within 30 days following the sending of the notice, the dissolution of the corporation shall proceed as if the required number of shareholders having voting power had consented pursuant to Section 155.

(b) Unless the article of incorporation otherwise provide, an amendment to the articles of incorporation to include, modify, or delete a provision authorized by subsection (a) shall be approved by the holders or all the outstanding shares, whether or not otherwise entitled to vote thereon, or all of the subscribers or all of the incorporators, as the case may be.

15-2-157. ARTICLES OF DISSOLUTION.

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Director of Corporation for filing articles of dissolution setting forth:

(1) The name of the corporation;
(2) The date dissolution was authorized;
(3) If dissolution was approved by the shareholders:

(i) the number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

(ii) either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

(4) If voting groups was required, the information required by subparagraph (3) must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(5) If the dissolution resulted from the exercise of an option to dissolve authorized by Section 156 a copy of the notice required by that section shall be attached.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

15-2-158. EFFECT OF DISSOLUTION.

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(1) Collecting its assets;
(2) Disposing of its properties that will not be distributed in kind to its shareholders;

(3) Discharging or making provisions for discharging its liabilities;

(4) Distributing its remaining property among its shareholders according to their interests; and

(5) Doing every other act necessary to wind up and liquidate its business and affairs.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

15-2-158. EFFECT OF DISSOLUTION.

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(1) Collecting its assets;
(2) Disposing of its properties that will not be distributed in kind to its shareholders;

(3) Discharging or making provisions for discharging its liabilities;

(4) Distributing its remaining property among its shareholders according to their interests; and

(5) Doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

(1) Transfer title to the corporation's property;

(2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(3) Subject its directors or officers to standards of conduct different from those prescribed in Sections 141 and 145;

(4) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers; or change provisions for amending its bylaws;

(5) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(6) Abate or suspend a proceeding pending by or against the corporation in its corporate name;

(7) Terminate the authority of the registered agent of the corporation.

15-2-159. KNOWN CLAIMS AGAINST DISSOLVED CORPORATION.

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(1) Describe information that must be included in a claim;

(2) Provide a mailing address where a claim may be sent;

(3) State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) If a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline;

(2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

15-2-160. UNKNOWN CLAIMS AGAINST DISSOLVED CORPORATION.

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

(1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was last located, and in newspaper of general circulation on the Reservation;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two years after the publication date of the newspaper notice:

(1) A claimant who did not receive written notice under Section 159;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on;

(3) A claimant whose claims is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his prorata share of the claim or the corporate assets, distributed to him in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to him.

15-2-161. GROUNDS FOR ADMINISTRATIVE DISSOLUTION.

The Director of Corporations may proceed under Section 162 to administratively dissolve a corporation if:

(1) The corporation's period of duration stated in its articles of incorporation expires:

(2) Responses to the interrogatories under §15-1-107 of this Title show that the Corporation has been inactive for a period of at least one year, and there are no plans to reactive the corporation in the future; or

(3) Interrogatories under Section 15-1-107 of this Title have not been answered by any of the persons to whom they were directed for a period of 120 days after becoming due; provided, however, that 30 days before commencing a proceeding under this subsection, the Director of Corporation shall notify each person failing to answer such interrogatories of its intent to commence such a proceeding.

15-2-162. PROCEDURE FOR AND EFFECT OF ADMINISTRATIVE DISSOLUTION.

(a) If the Director of Corporations determines that one or more grounds exist under Section 161 for dissolving a corporation, it shall serve the corporation with written notice of its determination.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable

satisfaction of the Director of Corporation that each ground determined by the Director of Corporation does not exist within 60 days after service of the notice is perfected, the Director of Corporations shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Director of Corporations shall file the original of the certificate and serve a copy on the corporation.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under Section 158 and notify claimants under Sections 159 and 160.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

15-2-163. GROUNDS FOR JUDICIAL DISSOLUTION. The Rosebud Sioux Tribal Court may dissolve a corporation:

(1) In a proceeding brought on behalf of the Director of Corporations or other agency or official of the Tribe if it is established that:

(i) The corporation obtained its articles of incorporation through fraud; or

(ii) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a shareholder if it is established that:

(i) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(ii) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired;

(iv) The corporate assets are being misapplied or wasted; or

(v) The shareholder has duly exercised an option described in Section 156 of this Chapter to dissolve the corporation, and the corporation has failed to proceed with filing articles of dissolution or winding up corporate affairs as required by this Chapter;

(3) In a proceeding by a creditor if it is established that;

(i) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

15-2-164. PROCEDURE FOR JUDICIAL DISSOLUTION.

(a) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(b) The Tribal Court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

15-2-165. DECREE OF DISSOLUTION.

(a) If after a hearing the Tribal Court determines that one or more grounds for judicial dissolution described in Section 163 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of decree to the Director of Corporations, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with Section 158 and the notification of claimants in accordance with Sections 159 and 160.

15-2-166. DEPOSIT WITH TRIBAL TREASURER. Assets of a dissolved corporation that should be transferred to

an individual who is a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the Tribal Treasurer for safekeeping. When the individual furnishes satisfactory proof of entitlement to the amount deposited, the Tribal Treasurer shall pay to the individual the amounts due.

CHAPTER 3 – NON-PROFIT CORPORATIONS

PART A – FORMATION

- 15-3-101. Scope Of Chapter
- 15-3-102. Definition Of Terms Used In This Chapter
- 15-3-103. Purposes and Powers Of Non-Profit Corporations
- 15-3-104. Limitations
- 15-3-105. Limitations On Private Foundations
- 15-3-106. Defense Of Ultra Vires
- 15-3-107. Articles Of Incorporation
- 15-3-108. Filing Of Articles Of Incorporation
- 15-3-109. Effect Of Filing The Articles Of Incorporation – Certificate Of Incorporation
- 15-3-110. Organization Meeting Of Directors

15-3-101. SCOPE OF CHAPTER.

Unless otherwise provided, the provisions of this Chapter apply to all non-profit corporations formed under the sovereign powers of the Rosebud Sioux Tribe, except those corporations which are controlled by the Rosebud Sioux Tribal Council.

15-3-102. DEFINITIONS OF TERMS USED IN THIS CHAPTER. In this Chapter:

- (1) "Corporation" means a non-profit corporation formed under the sovereign powers of the Rosebud Sioux Tribe, except for those corporations controlled by the Rosebud Sioux Tribal Council;
- (2) "Director" means a member of a group elected otherwise authorized to govern affairs of the corporation, and includes trustees, governors, regents, and other terms of like import;
- (3) "Member" means (without regard to what a person is called in the articles or bylaws) any person who on more than one occasion, pursuant to a provision of

a corporation's articles or bylaws, has the right to vote for the election of a director or directors. A person is not a member solely by virtue of any of the following:

- (i) Any right such person has as a member of the staff or student body of any school or college to vote for a director;
- (ii) Any rights such person has to designate a director or directors; or
- (iii) Any rights such person has as a director.

(4) "Mutual Benefit Corporation" means any corporation, including any non-profit cooperative, which is not a "public benefit corporation."

(5) "Public Benefit Corporation" means:

(a) Any corporation which is recognized as exempt under Section 501 (c) (3) of the Internal Revenue Code, or any successor section;

(b) Any corporation, unless its articles or incorporation provide that it is a mutual benefit corporation, which is organized and operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals; or

(c) Any corporation organized primarily for a public purpose and which is designated in its articles of incorporation as a public benefit corporation.

15-3-103. PURPOSES AND POWERS OF NON-PROFIT CORPORATIONS.

(a) Every corporation incorporated under the sovereign powers of the Rosebud Sioux Tribe has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

(b) Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs, including without limitation power:

(1) To sue and be sued, complain and defend in its corporate name.

(2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(3) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Rosebud Sioux Tribe, for managing and regulating the affairs of the corporation;

(4) To purchase, receive, lease, or acquire, whether by gift, devise, bequest or otherwise, and to own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;

(7) To make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;

(8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by Section 104 of this Chapter;

(9) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;

(10) To conduct its business, locate offices, and exercise the powers granted by this Chapter within or without Rosebud Sioux Reservation and the State of South Dakota;

(11) To elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation;

(12) To pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) To make donations for public welfare or for charitable, scientific, or educational purposes and for the purposes not inconsistent with law, that furthers the corporate interest;

(14) To impose dues, assessments, admission and transfer fees upon its members;

(15) To establish conditions for admission to membership, admit members and issue memberships;

(16) To carry on a business;

(17) To do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation;

(18) To cease its corporate activities and surrender its corporate franchise.

15-3-104. LIMITATIONS.

(a) A corporation:

(1) Shall not have or issue shares of stock;

(2) Shall not pay dividends or make any disbursement of income to its members, directors or officers;

(3) Shall not loan money or credit to its officers or directors;

(4) May pay compensation only up to a reasonable amount of its members, directors, officers or agents for services rendered; and

(5) May confer benefits upon its members only in conformity with its purposes.

(b) A mutual benefit corporation, unless its articles of incorporation or bylaws provide otherwise:

(1) Upon dissolution or final liquidation may make distributions to its members as permitted by this Chapter, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income; and

(2) May periodically pay refunds to members for fees or dues actually paid which are in excess of the losses, expenses and debts of the corporation, and such refunds shall not be deemed to be dividends or distributions of income.

(c) A public benefit corporation shall, upon dissolution of "Public Benefit Corporation" contained in Section 201 of this Chapter, or to the federal government, or to a state, tribe or other local government, for a public purpose, or shall be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

15-3-105. LIMITATIONS ON PRIVATE FOUNDATIONS.

A corporation which is a private foundation as defined in Section 509 (a) of the Internal Revenue Code of 1954:

(a) Shall distribute such amounts for each taxable year at such time and in such manner as to avoid subjecting the

corporation to tax under Section 4942 of the Code;

(b) Shall not engage in any act of self-dealing as defined in Section 4941 (d) of the Code;

(c) Shall not retain any excess business holdings as defined in Section 4943 (c) of the Code;

(d) Shall not make any taxable expenditures as defined in Section 4944 of the Code;

(e) Shall not make any taxable expenditures as defined in Section 4945 (d) of the Code;

All references in this section to sections of the Code shall be to such sections of the Internal Revenue Code of 1954 as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States.

15-3-106. DEFENSE OF ULTRA

VIRES. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In a proceeding by a member or director against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through

members in a representative suit, against the incumbent or former officers or directors of the corporation.

(3) In a proceeding by the Director of Corporations, as provided in this Chapter, to dissolve the corporation, or to enjoin the corporation from the transaction of unauthorized business.

15-3-107. ARTICLES OF INCORPORATION.

(a) The articles of incorporation shall set forth:

(1) A corporate name for the corporation that satisfies the requirements of Section 15-1-111;

(2) One of the following statements:

(i) This corporation is a public benefit corporation.

(ii) This corporation is a mutual benefit corporation.

(3) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(4) The names and addresses of the individuals who are to serve as the initial directors;

(5) The street address of the corporation's initial registered office and the name of its initial registered agent at that office;

(6) The name and address of each incorporator;

(7) Whether or not the corporation will have members; and

(8) Provisions not inconsistent with law regarding the distribution of assets on dissolution.

(b) The articles of incorporation may set forth:

(1) Provisions not inconsistent with law regarding:

(i) Managing and regulating the affairs of the corporation;

(ii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members); and

(iii) The characteristics, qualifications, rights, limitations and obligations attaching to each or any class of members.

(2) Any provisions that under this Chapter is required or permitted to be set forth in the bylaws.

(c) Each incorporator and director named in the articles must sign the articles.

(d) The articles of incorporation need not set forth any of the corporate powers enumerated in this Chapter.

15-3-108. FILING OF ARTICLES OF INCORPORATION. Duplicate originals of the articles of incorporation shall be delivered to the Director of Corporations. If the Director of Corporations finds that the articles of incorporation conform to this Chapter, he shall, when all the fees have been paid as in this Chapter described:

(1) Endorse on each of such originals the word "Filed" and the effective date of the filing thereof.

(2) File one of such originals.

(3) Issue a certificate of incorporation to which the other original shall be affixed.

The certificate of incorporation together with the original of the articles of incorporation affixed thereto shall be returned to the incorporation or their representative.

15-3-109. EFFECT OF FILING THE ARTICLES OF INCORPORATION – CERTIFICATE OF INCORPORATION.

Upon the filing of the articles of incorporation, the corporate existence shall begin, and the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporation have been complied with and that the corporation has been incorporated under this Chapter, except as against the Tribe in a proceeding to cancel or revoke the certificates of incorporation or for involuntary dissolution of the corporation.

15-3-110. ORGANIZATION MEETING OF DIRECTORS. After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the articles of incorporation shall be held at the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting bylaws, electing officers, and transacting such other business as may come before the meeting. Unless all directors waive notice, the directors calling the meeting shall give at least three days' notice thereof by mail to each director, which notice shall state the time and place of meeting. Any action permitted to be taken at the

organization meeting of the directors may be taken without a meeting if each director signs an instrument which states the action so taken.

PART B – MEMBERS

- 15-3-111. Admission Of Members
- 15-3-112. Differences In Rights and Obligations Of Members
- 15-3-113. Transfers
- 15-3-114. Resignation
- 15-3-115. Termination
- 15-3-116. Purchase Of Memberships
- 15-3-117. Annual Meeting Of Members
- 15-3-118. Special Meetings Of Members
- 15-3-119. Notice Of Members' Meetings
- 15-3-120. Waiver Of Notice
- 15-3-121. Action By Written Ballot
- 15-3-122. Voting Rights Of Members In General
- 15-3-123. Inspection Of Corporate Records
- 15-3-124. Limitations On Use Of Membership Lists

15-3-111. ADMISSION OF MEMBERS.

(a) A corporation is not required to have members.

(b) A corporation may admit any person as a member. The articles or bylaws shall establish criteria or procedures for admission; provided, however, that no person shall be admitted as a member without his or her consent.

(c) Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

15-3-112. DIFFERENCES IN RIGHTS AND OBLIGATIONS OF MEMBERS.

All members shall have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

15-3-113. TRANSFERS.

(a) Except as set forth in or authorized by the article or bylaws, no member of a mutual benefit corporation may transfer a membership or any right arising therefrom.

(b) No member of a public benefit corporation may transfer a membership or any right arising therefrom.

(c) Where transfer rights have been provided, no restrictions on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

15-3-114. RESIGNATION.

(a) A member may resign at any time.

(b) The resignation of a member does not relieve the member from any previously accrued obligations the member may have to the corporation.

15-3-115. TERMINATION.

(a) No member may be expelled or suspended, and no membership or memberships may be terminated or suspended except pursuant to a procedure which is fair and reasonable under the circumstances and is carried out in good faith.

(b) A procedure is fair and reasonable when it provides for written notice to the member of the reasons for the proposed expulsion, suspension or termination, and provides a reasonable opportunity for the member to be heard by the person or persons authorized to decide the matter prior to the proposed action.

(c) A procedure which departs from any procedures set forth in the corporate bylaws for the expulsion, termination or suspension of members or membership rights is not fair and reasonable, unless special circumstances warrant such a departure.

(d) Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension or termination.

15-3-116. PURCHASE OF MEMBERSHIPS.

(a) A public benefit corporation may not purchase any of its memberships or any right arising therefrom.

(b) A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws.

(c) A mutual benefit corporation shall not purchase its memberships unless after the purchase is completed:

(1) The corporation would be able to pay its debts as they become due in the usual course of its activities; and

(2) The corporation's total assets would at least equal the sum of its total liabilities.

15-3-117. ANNUAL MEETING OF

MEMBERS. A corporation with member shall establish in its articles of incorporation or bylaws a date at which an annual meeting of members shall be held, if called, and if not so established, the date shall be the second business date after May 31st. Unless otherwise provided in the articles of incorporation, no annual meeting need be held unless a written request therefore is delivered to the corporation by any voting member not less than 30 days before the date specified for the meeting.

15-3-118. SPECIAL MEETINGS OF MEMBERS.

(a) A corporation shall hold a special meeting of members:

(1) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(2) If at least 10 percent of all the members entitled to vote on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose for which it is to be held.

(b) Special meetings of members may be held on or off of the Rosebud Sioux Reservation, at the place stated in accordance with the bylaws. If no place is stated in the bylaws, special meetings shall be held at the corporation's principal office.

(c) Only business within the purposes described in the notice sent to members may be conducted at a special meeting of members.

15-3-119. NOTICE OF MEMBERS' MEETINGS.

(a) A corporation shall notify its members of the date, time and place of each annual and special meeting of members no fewer than 15 nor more than 60 days before the meeting. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to members entitled to vote at the meeting.

(b) Notice of members' meetings shall be given by mail or telephone, using the most recent address or telephone number supplied to the corporation by each member; provided, however, that if it is consistent with the corporation's articles or bylaws, notice may be given by posting and publishing notices instead of mailing or telephoning if the directors determine in good faith that notice so given is reasonably calculated to actually inform all voting members of the meeting.

(c) If an annual or special members' meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if that information is announced before meeting adjournment.

15-3-120. WAIVER OF NOTICE.

(a) A member may waive any notice required by this Chapter, the articles, or bylaws before or after the date and time stated in the notice. Except as provided in subsection (b) below, the waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A member's attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

15-3-121. ACTION BY WRITTEN BALLOT. Unless prohibited or limited by the article or bylaws, any action which may be taken at any annual or special

meeting of members may be taken by a vote without a meeting if the corporation delivers written ballot to every member entitled to vote on the matter.

15-3-122. VOTING RIGHTS OF MEMBERS IN GENERAL.

(a) Each member shall have no more than one vote with respect to any matter he or she is entitled to vote upon according to the corporation's bylaws or articles.

(b) Cumulative voting for directors shall not be allowed unless provided for in the corporation's bylaws or articles.

(c) The bylaws or articles of a corporation may provide for any reasonable method to fill individual positions on its board of directors, including but not limited to: voting by all members; voting among members living in a particular community; voting among any other class of members; appointments by the Tribal Council or any other person or entity; and voting among persons who are not considered "members" under Section 102 of this Chapter.

15-3-123. INSPECTION OF CORPORATE RECORDS.

(a) A corporation shall keep at least the following records:

(1) Minutes of all member's meeting and board of director's meetings and actions of members or of the board of directors without a meeting;

(2) Appropriate accounting records;

(3) Detailed records of the use of any money donated to a public benefit corporation;

(4) Names and addresses of all members and the class of voting rights held by each;

(5) Current articles of incorporation and bylaws;

(6) Resolutions adopted by the board of directors.

(b) Upon five days written notice, the Director of Corporation or his duly authorized representative or a member of the corporation is entitled to inspect and copy the records referred to in subsection (a) above. In the case of inspection by a member, the right is subject to the following requirements:

(1) The member's demand must be made in good faith and for a proper purpose;

(2) The member must describe with reasonable particularity his or her purpose and the records he or she desires to inspect; and

(3) The records must be directly connected with his or her purpose.

(c) The corporation may impose a reasonable charge covering the costs of labor and materials for copies of documents; provided, however, that in the case of copies made for a member, the charge may not exceed any estimate of such costs provided to the member.

(d) A member's agent or attorney has the same inspection and copying rights as the member he or she represents.

(e) A corporation may take reasonable steps to prevent the dissemination of trade secrets, proprietary information or other commercially-sensitive information to persons other than corporate members or representatives of the Director of Corporations.

15-3-124. LIMITATIONS ON USE OF MEMBERSHIP LISTS.

(a) Without consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:

(1) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;

(2) Used for any commercial purpose; or

(3) Sold to or purchased by any person.

(b) This section shall not be construed to limit the use of membership lists by the Director of Corporations or other tribal officials in the course of any official investigation of the operation of a corporation.

PART C – DIRECTORS AND OFFICERS

- 15-3-125. Duties Of Board Of Directors
- 15-3-126. Qualifications Of Directors
- 15-3-127. Terms Of Directors
- 15-3-128. Removal Of Elected Directors
- 15-3-129. Removal Of Designated or Appointed Directors

- 15-3-130. Removal Of Directors By Judicial Proceeding
- 15-3-131. Vacancy On Board
- 15-3-132. Meetings
- 15-3-133. Action Without Meeting
- 15-3-134. Notice Of Meeting
- 15-3-135. Waiver Of Notice
- 15-3-136. Quorum and Voting
- 15-3-137. General Standards For Directors
- 15-3-138. Director Conflict Of Interest
- 15-3-139. Liability For Unlawful Payments
- 15-3-140. Officers
- 15-3-141. Standards Of Conduct For Officers
- 15-3-142. Resignation and Removal Of Officers
- 15-3-143. Indemnification Of Corporate Agents
- 15-3-144. Mandatory Indemnification
- 15-3-145. Advance For Expenses
- 15-3-146. Court-Ordered Indemnification
- 15-3-147. Determination and Authorization Of Indemnification
- 15-3-148. Insurance

15-3-125. DUTIES OF BOARD OF DIRECTORS.

(a) Except as provided in subsection (b) below, all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board of directors.

(b) The articles may authorize a person or person to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized any such person or persons shall have the duties and responsibilities of directors, and the directors shall be relieved to that extent from such duties and responsibilities.

15-3-126. QUALIFICATIONS OF DIRECTORS. The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of the Reservation or a member of the corporation unless the articles of incorporation or bylaws so prescribe. A director shall be an individual who is at least 18 years of age.

15-3-127. TERMS OF DIRECTORS.

(a) If the corporation has members:
(1) The terms of the initial directors of a corporation expire at the first

members' meeting at which directors are elected; and

(2) The terms of all other directors expire at the next annual members' meeting following their election, unless the articles of incorporation provide that their terms are staggered or are longer than one year in duration.

(b) If the corporation does not have members, all the directors (except the initial directors) shall be elected, appointed or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than the initial directors) shall be elected by the board.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) Except as provided in the articles or bylaws:

(1) The term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and

(2) The term of a director filling any other vacancy expires at the end of the unexpired term which such director is filling.

(e) Despite the expiration of a director's term, he continues to serve until a successor is elected or appointed and qualifies or until there is a decrease in the number of directors.

15-3-128. REMOVAL OF ELECTED DIRECTORS.

(a) The members may vote to remove one or more directors with or without cause.

(b) If a director is elected by a voting group of members, only the members of that voting group may participate in the vote to remove him.

(c) A director may be removed by the members only at a meeting called for that purpose and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

(d) An entire board of directors may be removed under subsections (a) – (c).

(e) The board of directors of a corporation may, without cause, remove a director who has been elected by the board by the vote of a two-thirds of the directors then in office or such greater numbers as is set forth in the articles or bylaws.

(f) If at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only of a majority of the directors then in office vote for the removal.

15-3-129. REMOVAL OF DESIGNATED OR APPOINTED DIRECTORS.

(a) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(b) Appointed Directors:

(1) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director;

(2) The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary;

(3) A removal is effective when the notice is effective unless the notice specifies a future effective date.

15-3-130. REMOVAL OF DIRECTORS BY JUDICIAL PROCEEDING.

(a) The Rosebud Sioux Tribal Court may remove a director of the corporation from office in a proceeding commenced by the corporation, or by at least 33 percent of the members or in an action brought on behalf of the Director of Corporations, if the court finds that

(1) The director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the corporation or that the director received a loan of the corporation's money or credit, and

(2) Removal is in the best interest of the corporation.

(b) If the court removes the director it may bar the director from reelection for a period prescribed by the court.

(c) If either the corporation's members or the Director of Corporations commences a proceeding under subsection (a), the corporation shall be made a party defendant.

15-3-131. VACANCY ON BOARD.

(a) Unless the articles or bylaws provide otherwise, and except as provided in subsections (b) and (c), if any vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) The members, if any, may fill the vacancy; if the vacant office was held by a director elected by a specific voting class, only members of the class are entitled to vote to fill the vacancy if it is filled by the member.

(2) The board of directors may fill the vacancy; or

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(c) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.

(d) A vacancy that will occur at a specific later date, by reason of a resignation or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

15-3-132. MEETINGS.

(a) The board of directors may hold regular or special meetings on or off the Rosebud Sioux Reservation.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

15-3-133. ACTION WITHOUT MEETING.

(a) Unless the articles of incorporation or bylaws provided otherwise, action required or permitted by this Chapter to be taken at a board of

directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

15-3-134. NOTICE OF MEETING.

(a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held as provided in the bylaws without notice.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation, bylaws or the provisions of this Chapter.

15-3-135. WAIVER OF NOTICE.

(a) A director may waive any notice required by this Chapter, the article of incorporation or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless that director at the beginning of the meeting (or promptly upon his or her arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

15-3-156. QUORUM AND VOTING.

(a) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of

directors consists of a majority of the number of directors.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the number of directors.

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) he or she objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transaction business at the meeting; (2) his or her dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) he or she delivers written notice of his or her dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting.

The right of dissent or abstention is not available to a director who votes in favor of the action taken.

15-3-137. GENERAL STANDARDS FOR DIRECTORS.

(a) A director shall discharge his or her duties as a director, including duties as a member of a committee:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner he or she reasonably believes to be in the best interests of the corporation.

(b) In discharging his or her duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes

are within the person's professional or expert competence; or

(3) A committee of the board of directors of which he or she is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property, and notwithstanding that the corporation may be a trustee with respect to the property.

(e) A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of office in compliance with this section.

15-3-138. DIRECTOR CONFLICT OF INTEREST.

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a director or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsections (b) or (c).

(b) A transaction in which a director of a public benefit corporation has a conflict of interest may be approved.

(1) In advance by the vote of the board of directors or a committee of the board if:

(i) The material facts of the transaction and the director's interest are disclosed or known to the board or committee of the board; and

(ii) The directors approving the transaction in good faith reasonably believe that the transaction is fair to the corporation; or

(2) Before or after it is consummated, by obtaining approval of the:

(i) Director of Corporations; or

(ii) Tribal Court in an action of which the Director of Corporation is given notice.

(c) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if:

(1) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction; or

(2) The material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

(d) For purposes of this section, a director of the corporation has an indirect interest in a transaction (1) another entity in which he or she has a material financial interest or in which he or she is a general partner is a party to the transaction or (2) another entity of which he or she is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

(e) For purposes of subsections (b) and (c), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsections (b) and (c) if the transaction is otherwise authorized, approved, or ratified as provided in subsections (b) or (c).

(f) For purposes of subsection (c) (2), a conflict of interest transaction is authorized, approved or ratified if it receives the vote of a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted

under the control of an entity described in subsection (d) (1), may not be counted in a vote of interest transaction under subsection (c) (2). The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this Chapter. A majority of the voting members, whether or not present, entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(g) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

15-3-139. LIABILITY FOR UNLAWFUL PAYMENTS.

(a) Unless he or she complies with the applicable standards of conduct described in section 137, a director who votes for or assents any payment of money by the corporation to a member, officer or director made in violation of Section 104 of this Chapter or the articles of incorporation is personally liable to the corporation for the amount of the payment that exceeds what could have been distributed without violating this Chapter or the articles of incorporation.

(b) A director held liable for an unlawful payment under subsection (a) is entitled to contribution:

(1) From every other director who voted for or assented to the payment without complying with the applicable standards for conduct described in section 137; and

(2) From each member, officer, or director who received an unlawful payment, for the amount of the unlawful payment, whether or not he or she accepted the payment knowing it was made in violation of this Chapter or the articles of incorporation.

15-3-140. OFFICERS.

(a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing

minutes of the directors' and members' meetings and for authenticating records of the corporation.

(d) The same individual may simultaneously hold more than one office in a corporation.

(e) Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

15-3-141. STANDARDS OF CONDUCT FOR OFFICERS.

(a) An officer with discretionary authority shall discharge his or her duties under that authority:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner he or she reasonably believes to be in the best interests of the corporation.

(b) In discharging his or her duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(c) An officer is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) An officer is not liable for any action taken as an officer, or any failure to take any action, if he or she performed the duties of office in compliance with this section.

15-3-142. RESIGNATION AND REMOVAL OF OFFICERS.

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a

later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(b) A board of directors may remove any officer at any time with or without cause.

15-3-143. INDEMNIFICATION OF CORPORATE AGENTS.

(a) A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partner, joint venture, trust or other enterprise, against expenses including attorneys' fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred in connection with the action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(b) No indemnification shall be made pursuant to this section in respect of any proceeding in which such person shall have been adjudged to be liable to the corporation.

(c) No person shall be indemnified under this section in respect of any proceeding charging improper personal benefit to him or her, whether or not involving action in his or her official capacity, in which he or she shall have been adjudged to be liable on the basis that personal benefit was improperly received by him or her.

15-3-144. MANDATORY

INDEMNIFICATION. Unless limited by its articles of incorporation, a corporation shall indemnify a director or officer who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a

party because he or she is or was a director of the corporation, against reasonable expenses incurred by him or her in connection with the proceedings.

15-3-145. ADVANCE FOR EXPENSES.

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director or officer who is a party to a proceeding in advance of final disposition of the proceeding if:

(1) The director or officer furnishes the corporation a written affirmation of his or her good faith belief that he or she has met the standard of conduct described in section 143;

(2) The director or officer furnishes the corporation a written undertaking executed personally or by a surety or guarantor, to repay the advance if it is ultimately determined that he or she did not meet the standard of conduct; and

(3) A determination is made that the facts then known to those making the determination would not preclude indemnification under this subchapter.

(b) The undertaking required by subsection (a) (2) must be an unlimited general obligation of the director or officer but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in section 147.

15-3-146. COURT-ORDERED

INDEMNIFICATION. Unless limited by a corporation's articles of incorporation, a director or officer of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding, to the Tribal Court or to another court of competent jurisdiction. On receipt of an application the court, after giving any notice the court considers necessary, may order indemnification in the amount it considers proper if it determines:

(1) The director or officer is entitled to mandatory indemnification under section 144, in which case the court shall also order the corporation to pay the director's or officer's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) The director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances,

whether or not the director met the standard of conduct set forth in section 143 or was adjudged liable as described in section 143 (b) or (c), but if the director or officer was adjudged so liable indemnification is limited to reasonable expenses incurred.

15-3-147. DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION.

(a) A corporation may not indemnify a director or officer under section 143 unless authorized in the specific case after a determination has been made that indemnification is permissible in the circumstances because the director or officer has met the standard of conduct set forth in section 143.

(b) The determination shall be made:

(1) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) If a quorum cannot be obtained under subdivision (1), by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding;

(3) By special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in subdivision (1) or (2); or

(ii) if a quorum of the board cannot be obtained under subdivision (1) and a committee cannot be designated under subdivision (2), selected by majority vote of the full board (in which selection directors who are parties may participate);

(4) By the members of a mutual benefit corporation, but directors who are at the time parties to the proceedings may not vote on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b) (3) to select counsel.

(d) A director or officer of a public benefit corporation may not be

indemnified until 20 days after written notice is given to the Director of Corporations of the proposed indemnification.

15-3-148. INSURANCE. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him or her against the same liability under this Chapter.

PART D – AMENDMENT OF ARTICLES OF INCORPORATION

- 15-3-149. Amendments To Bylaws and Articles Of Corporations without members
- 15-3-150. Amendments To Bylaws and Articles Of Corporations With Members
- 15-3-151. Approval By Third Persons
- 15-3-152. Articles Of Amendment

15-3-149. AMENDMENTS TO BYLAWS AND ARTICLES OF CORPORATION WITHOUT MEMBERS. If a corporation has no members, its board of directors may adopt one or more amendments to the corporation's bylaws and articles, subject to any approvals required by the articles or bylaws. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with section 134. The notice must also state that a purpose of the meeting is to consider a proposed amendment to the articles or bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. In addition to any requirements in the bylaws or articles concerning voting on proposed amendments, the amendments must be

approved by a majority of the directors in office at the time the amendment is adopted.

15-3-150. AMENDMENTS TO BYLAWS AND ARTICLES OF CORPORATIONS WITH MEMBERS.

If the corporation has members, then:

(1) Unless this act, the articles, bylaws or the board of directors (acting pursuant to subsection (b) (2) requires a greater vote or voting by class, an amendment to a corporation's articles or bylaws to be adopted must be approved:

(i) By the board if the corporation is a public benefit corporation and the amendment does not relate to the numbers of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

(ii) By the members by two-thirds of the votes cast or by a majority of the voting power, whichever is less; and

(iii) In writing by any person or persons whose approval is required by a provision of the articles or bylaws.

(2) If the board initiates an amendment to the articles or bylaws, or board approval is required by subsection (1) to adopt an amendment, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.

(3) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with section 119. The notice must state that a purpose of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(4) If the board seeks to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

15-3-151. APPROVAL BY THIRD PERSONS. The articles or bylaws may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. Such an article or bylaw provision may only be amended with the approval in writing of such person or persons.

15-3-152. ARTICLES OF AMENDMENT.

(a) A corporation amending its articles shall prepare articles of amendment, which shall be executed in duplicate by the corporation by its chief executive officer and shall be verified by the officer who has been delegated responsibility under Section 140 of this Chapter for authenticating corporate records, and shall set forth:

- (1) The name of the corporation;
 - (2) The text of each amendment adopted;
 - (3) The date of each amendment's adoption;
 - (4) If approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors;
 - (5) If approval by members was required, the number of membership outstanding and the total number of votes cast for and against the amendment;
 - (6) If approval of the amendment by some person or persons other than the members or the board is required pursuant to section 151, a statement that the approval was obtained.
- (b) The articles of amendments shall be sent to the Director of Corporations with the fees as provided in this Chapter. If the Director of Corporations approves the amendments, he shall issue a certificate of amendment.

PART E – DISSOLUTION

- 15-3-153. Dissolution Of Corporations Without Members
- 15-3-154. Voting On Dissolution By Directors and Members
- 15-3-155. Distribution By Public Benefit Corporations
- 15-3-156. Articles Of Dissolution
- 15-3-157. Effect of Dissolution
- 15-3-158. Known Claims Against Dissolved Corporation
- 15-3-159. Unknown Claims Against Dissolved Corporation
- 15-3-160. Grounds For Administrative Dissolution
- 15-3-161. Procedure For and Effect Of Administrative Dissolution
- 15-3-162. Grounds For Judicial Dissolution
- 15-3-163. Procedure For Judicial Dissolution

- 15-3-164. Receivership or Custodianship
- 15-3-165. Decree Of Dissolution
- 15-3-166. Deposit With Tribal Treasurer

15-3-153. DISSOLUTION OF CORPORATIONS WITHOUT MEMBERS.

(a) The board of directors of a corporation that has no members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering to the Director of Corporation articles of dissolution.

(b) The corporation shall give notice of any meeting at which dissolution will be approved. The notice shall be in accordance with Section 134. The notice must also state that a purpose of the meeting is to consider dissolution of the corporation.

(c) Dissolution shall be approved by a vote of a majority of the directors in officer at the time the transaction is approved.

(d) The directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

15-3-154. VOTING ON DISSOLUTION BY DIRECTORS AND MEMBERS.

(a) Unless this Chapter, the articles, bylaws or the board of directors or members acting pursuant to subsection (b) require a greater vote, dissolution is authorized if it is approved:

- (1) By the board;
- (2) By the members, if any, by two-thirds of the vote cast or a majority of the members, whichever is less; and
- (3) In writing by any person or persons whose approval is required by a provision of the articles authorized by Section 151 for an amendment to the articles or bylaws.

(b) The board may condition its submission of the proposed dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

(c) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall given notice to its members of the proposed membership meeting in accordance with Section 119. The

notice must also state that a purpose of the meeting is to consider dissolving the corporation and must contain or be accompanied by a copy or summary of the plan of dissolution.

(d) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

(e) The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

15-3-155. DISTRIBUTIONS BY PUBLIC BENEFIT CORPORATIONS.

(a) A public benefit corporation shall give the Directors of Corporations written notice that it intends to dissolve 10 days before the time it delivers articles of dissolution to the Director of Corporations. The notice shall include a copy or summary of the plan of dissolution.

(b) No assets shall be transferred or conveyed by a public benefit corporation as part of the dissolution process until twenty days after it has given written notice as required by subsection (a) to the Director of Corporations or until the Director of Corporations has consented in writing to, or indicated in writing that it will take no action with respect to, the transfer or conveyance, whichever is earlier.

(c) Prior to the expiration of the 20 day period described in subsection (b), the Director of Corporations may bring an action in Tribal Court to challenge the planned distribution of assets, and the Tribal Court may enjoin any distribution pending the outcome of the action.

(d) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the Director of Corporations a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list shall indicate the addresses of each person, other than creditors, who received assets and indicate what assets each received.

15-3-156. ARTICLES OF DISSOLUTION.

(a) Subject to any waiting period prescribed by Section 155, at any time after dissolution is authorized, the corporation may dissolve by delivering to the Director of Corporations articles of dissolution setting forth:

(1) The name of the corporation;

(2) The date dissolution was authorized;

(3) A statement that dissolution was approved by a sufficient vote of the board;

(4) If approval of members was not required, a statement to that effect;

(5) If approval by members was required, the number of memberships outstanding and the total number of votes cast for and against dissolution.

(6) If approval of dissolution by some person or persons other than the members, the board or the incorporation is required pursuant to Section 154 (a) (3), a statement that the approval was obtained; and

(7) The effective date of the articles of dissolution.

(b) After its articles of dissolution have been accepted for filing by the Director of Corporations, a corporation is dissolved upon the effective date stated in its articles of dissolution.

15-3-157. EFFECT OF DISSOLUTION.

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(1) Preserving and protecting its assets and minimizing its liabilities;

(2) Discharging or making provision for discharging its liabilities and obligations;

(3) Disposing of its properties that will not be distributed in kind;

(4) Returning, transferring or conveying assets held by the corporation upon a condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;

(5) Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;

(6) If the corporation is a public benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring, subject to any contractual

or legal requirement, its assets in accordance with section 104 (c);

(7) If the corporation is a mutual benefit corporation and no provisions has been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, to those persons whom the corporation holds itself out as benefiting or serving; and

(8) Doing every other act necessary to wind up and liquidate its assets and affairs.

(b) Dissolution of a corporation does not:

(1) Transfer title to the corporation's property;

(2) Subject its directors or officers to standards of conduct different from those prescribed in sections 137 and 141;

(3) Change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers; or change provisions for amending its bylaws;

(4) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(5) Abate or suspend a proceeding pending by or against the corporation in its corporate name; or

(6) Terminate the authority of the registered agent of the corporation.

15-3-158. KNOWN CLAIMS AGAINST DISSOLVED CORPORATION.

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(1) Describe information that must be included in a claim;

(2) Provide a mailing address where a claim may be sent;

(3) State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) If a claimant who was given written notice under subsection (b) does

not deliver a claim to the dissolved corporation by the deadline;

(2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

15-3-159. UNKNOWN CLAIMS AGAINST DISSOLVED CORPORATION.

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

(1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was last located and in a newspaper of general circulation on the Reservation;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two years after the publication date of the newspaper notice:

(1) A claimant who did not receive written notice under section 158;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on;

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation, distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

15-3-160. GROUNDS FOR ADMINISTRATIVE DISSOLUTION.

The Director of Corporations may proceed under Section 161 to dissolve a corporation administratively if:

(1) The corporation's period of duration stated in its articles of incorporation expires;

(2) Responses to the interrogatories under Section 15-1-107 of this Chapter show that the Corporation has been inactive for a period of at least one year, and there are no plans to reactive the corporation in the future; or

(3) Interrogatories under Section 15-1-107 of this Chapter have not been answered by any of the persons to whom were directed for a period of 120 days after becoming due; provided, however, that 30 days before commencing a proceeding under this subsection, the Director of Corporation shall notify each person failing to answer such interrogatories of its intent to commence such a proceeding.

15-3-161. PROCEDURE FOR AND EFFECT OF ADMINISTRATIVE DISSOLUTION.

(a) If the Director of Corporations determines that one or more grounds exist under section 160 for dissolving a corporation, he shall serve the corporation with written notice of his determination.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Director of Corporations that each ground determined by the Director of Corporations does not exist within 60 days after service of the notice is perfected, the Director of Corporations shall administratively dissolve the corporation by signing a certificate of dissolution that recites the grounds or grounds for dissolution and its effective

date. The Director of Corporations shall file the original of the certificate and serve a copy on the corporation.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 157 and notify claimants under section 158 and 159.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

15-3-162. GROUNDS FOR JUDICIAL DISSOLUTION.

(a) The Rosebud Sioux Tribal Court may dissolve a corporation:

(1) In a proceeding brought on behalf of the Director of Corporations or other agency or official of the Tribe if it is established that:

(i) the corporation obtained its articles of incorporation through fraud;

(ii) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(iii) the corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; or

(iv) the corporation is a public benefit corporation and is no longer able to carry out its purposes.

(2) In a proceeding by members holding 25% of the voting power, or by a director, or by any person specified in the articles, if it is established that:

(i) the directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to break the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) the members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have, or otherwise would have, expired;

(iv) the corporate assets are being misapplied or wasted; or

(v) the corporation is a public benefit corporation and is not longer able to carry out its purpose.

(3) In a proceeding by a creditor if it is established that;

(i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(b) Prior to dissolving a corporation, the court shall consider whether:

(1) There is reasonable alternative to dissolution;

(2) Dissolution is in the public interest, if the corporation is a public benefit corporation;

(3) Dissolution is the best way of protecting the interests of members, if the corporation is a mutual benefit corporation.

15-3-163. PROCEDURE FOR JUDICIAL DISSOLUTION.

(a) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought them individually.

(b) The tribal court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian will all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(c) A person who brings an involuntary dissolution proceeding for a public benefit corporation shall forthwith give written notice of the proceeding to the Director of Corporations, which may intervene.

15-3-164. RECEIVERSHIP OR CUSTODIANSHIP.

(a) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual, or a domestic or foreign business or non-profit corporation as a

receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time.

Among other powers:

(1) The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; provided, however, that the receiver's power to dispose of the assets of the corporation is subject to any trust and other restrictions that would be applicable to the corporation; and (ii) may sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation;

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(d) During a receivership the court may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its members, and creditors.

(e) From time to time during the receivership or custodianship the court may order compensation paid and reimbursements made to the receiver or custodian and to his or her counsel and accountants from the assets of the corporation or proceeds from the sale of the assets.

15-3-165. DECREE OF DISSOLUTION.

(a) If after a hearing the tribal court determines that one or more grounds for judicial dissolution described in section 162 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of court shall deliver a certified copy of the decree to the Director of Corporations, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with section 157 and the

notification of claimants in accordance with section 158 and 159.

15-3-166. DEPOSIT WITH TRIBAL TREASURER. Assets of a dissolved corporation that should be transferred to an individual who is a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the Tribal Treasurer for safekeeping. When the individual furnishes satisfactory proof of entitlement to the amount deposited, the Tribal Treasurer shall pay to the individual the amounts due.

CHAPTER 4 – TRIBAL ENTITIES

PART A – GENERAL PROVISIONS

- 15-4-101. Scope
- 15-4-102. Purpose and Construction
- 15-4-103. Definitions
- 15-4-104. Status Of A Tribal Entity
- 15-4-105. Preexisting Tribal Entities
- 15-4-106. Sovereign Immunity and Waiver
- 15-4-107. Assets Of A Tribal Entity

15-4-101. SCOPE. The provisions of this Chapter shall apply to each tribal entity formed under the laws and sovereign of the Rosebud Sioux Tribe, whether before or after the passage of this Act.

15-4-102. PURPOSE AND CONSTRUCTION.

- (a) The purposes of this Chapter are:
- (1) To establish a uniform system of creation and regulation of tribal entities for both economic and governmental purposes;
 - (2) To preserve the sovereign immunity and protect the credit of the Rosebud Sioux Tribe;
 - (3) To provide for partial waivers of sovereign immunity by tribal entities with adequate safeguards, as required by economic and governmental necessity;
 - (4) To provide for insulation of tribal economic entities from the shifts of policy of tribal politics;
 - (5) To provide stability and increase the stature of tribal entities in the commercial world; and
 - (6) To ensure that tribal entities comply with tribal law.

(b) The provisions of this Chapter shall be liberally construed and applied to promote its underlying purpose and policies.

15-4-103. DEFINITIONS. The following terms, whenever used or referred to in this Chapter, shall have the following respective meanings, unless different meanings clearly appear from the context:

(a) “Charter” means the Charter of a tribal entity, and includes approved articles of incorporation.

(b) “Constitution” means the Constitution and Bylaws of the Rosebud Sioux Tribe, approved by the Secretary of the Interior on December 20, 1935, as amended thereafter.

(c) “Tribal Council” and “Council” mean the Tribal Council of the Rosebud Sioux Tribe, acting as the governing body of the Tribe pursuant to the Constitution.

(d) “Tribal Court” means the Tribal Court established by the Council pursuant to Article IV, Section 1 (k) of the Constitution.

(e) “Tribal Entity” includes any cooperative formed under Article IV of the Constitution, any entity created and owned by the Rosebud Sioux Tribe for economic or governmental purpose and any entity which is controlled by the Tribal Council, but does not include the Tribal Land Enterprise. For the purposes of this Chapter, an entity shall be deemed to be controlled by the Tribal Council, if the majority of its Directors are chosen by the Tribal Council or are required to be council members. Entities governed by this Chapter include, but are not limited to, organizations entitled “authority,” “enterprise,” “corporation,” “agency,” “commission,” or terms of like import, as deemed necessary by the Tribal Council; provided, however, that committees of the Tribal Council shall not be deemed “tribal entities” for the purposes of this Chapter.

(f) “Tribe” means the Rosebud Sioux Tribe, organized pursuant to the Constitution and Bylaws of the Rosebud Sioux Tribe.

15-4-104. STATUS OF A TRIBAL ENTITY.

(a) For purposes of taxation, regulatory jurisdiction and civil jurisdiction, a tribal entity created pursuant to the sovereign powers of the

Rosebud Sioux Tribe shall be deemed to be a subordinate arm of the government of the Rosebud Sioux Tribe and shall be entitled to all of the privileges and immunities of the Rosebud Sioux Tribe.

(b) The Rosebud Sioux Tribal Court shall have jurisdiction to decide all questions with respect to the status of a tribal entity formed pursuant to the sovereign powers of the Rosebud Sioux Tribe.

15-4-105. PREEXISTING TRIBAL ENTITIES. A tribal entity preexisting passage of this Chapter shall continue to exist and to perform its several functions, but will be issued a tribal entity charter pursuant to this Chapter within a reasonable time.

15-4-106. SOVEREIGN IMMUNITY AND WAIVER.

(a) Sovereign Immunity of the Tribal Entity.

A tribal entity is clothed by federal law with all the privileges and immunities of the Tribe, except as specifically limited by the tribal entity Charter, including sovereign immunity from suit in any state, federal or tribal court. Nothing in this Chapter shall be deemed or construed to be a waiver of sovereign immunity of a tribal entity from suit or to be a consent of the tribal entity or the Tribe, to the jurisdiction of the United States or of any state with regard to the business or affairs of the tribal entity or to any cause of action, case or controversy, except as provided herein.

(b) Waiver of Sovereign Immunity of the Tribal Entity.

Sovereign immunity of the tribal entity may be waived only by express resolution of the governing body of the tribal entity after consultation with its attorneys. All waivers of sovereign immunity must be preserved with the resolutions of the governing body of the tribal entity of continuing force and effect. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the tribal entity subject thereto, court having jurisdiction pursuant thereto and law applicable thereunder. Neither the power to sue and be sued provided in the charter of the tribal entity, nor any express waiver of sovereign immunity by resolution of the tribal entity shall be

deemed a consent to the levy of any judgment, lien or attachment upon property of the tribal entity other than property specifically pledged or assigned, or any property of the Tribe, or a consent to suit in respect of any land within the exterior boundaries of the Rosebud Sioux Indian Reservation or a consent to the alienation, attachment or encumbrance of any such land.

(c) Sovereign Immunity of the Tribe.

All inherent sovereign rights of the Tribe as a federally-recognized Indian tribe with respect to the existence and activities of the tribal entity are hereby expressly reserved, including sovereign immunity from suit in any state, federal or tribal court. Nothing in a tribal entity charter shall be deemed or construed to be a waiver of sovereign immunity from suit of the Tribe or to be a consent of the Tribe to the jurisdiction of the United States or of any state with regard to the business or affairs of the tribal entity or the Tribe or to any cause of action case or controversy, except as provided herein.

(d) Credit of the Tribe.

Nothing in a tribal entity charter, nor any activity of any tribal entity, shall implicate or in any way involve the credit of the Tribe.

(e) Inclusion in Charter.

The provisions of subsection (a)-(d) of this Section shall be included in the charter of each tribal entity.

15-4-107. ASSETS OF A TRIBAL ENTITY. A tribal entity shall have only those assets of the Tribe formally assigned to it by the Tribal Council, together with whatever assets it acquires from other sources. No activity of a tribal entity nor any indebtedness incurred by it shall implicate or in any way involve any assets of Tribal members or the Tribe not assigned in writing to the tribal entity.

PART B – CREATION AND REGULATION OF A TRIBAL ENTITY

- 15-4-108. Tribal Entity Charter
- 15-4-109. Delegation Of Essential Governmental Functions To Tribal Entities
- 15-4-110. Liability Of Members Of Governing Body Of Tribal Entities

- 15-4-111. Disposition Of Assets
- 15-4-112. Amendment Of Tribal Entity Charter

15-4-108. TRIBAL ENTITY

CHARTER. The charter for a tribal entity formed under this Chapter shall set forth:

- (1) The name of the tribal entity.
- (2) The purposes for which the tribal entity is organized.
- (3) Provisions for establishments of a governing body and determining membership thereof.
- (4) The powers of the tribal entity.
- (5) The provisions of Section 106 above, providing for sovereign immunity and waivers thereof.
- (6) Provisions directing management of the tribal entity and regulation of its affairs.
- (7) Provisions designed to insulate the tribal entity from the shifts of policy of tribal politics.
- (8) Provisions allowing the tribal entity to use the tribal attorneys or other attorneys approved by the Tribal Council.

15-4-109. DELEGATION OF ESSENTIAL GOVERNMENTAL FUNCTIONS TO TRIBAL ENTITIES.

For purposes of allowing a tribal entity to utilize the provisions of the Tribal Governmental Tax Status Act of 1982, as amended, the Tribal Council may delegate one or more essential governmental functions to a tribal entity, provided however, that exercise of any such power shall be subject to review by the Tribal Council.

15-4-110. LIABILITY OF MEMBERS OF GOVERNING BODY OF TRIBAL ENTITIES.

No member of the governing body of any tribal entity formed pursuant to the sovereign powers of the Rosebud Sioux Tribe shall be liable to any creditor of the tribal entity by reason of his status as such a member, or by reason of acts done in the course of his official duties.

15-4-111. DISPOSITION OF ASSETS.

Upon dissolution of a tribal entity its asset shall be distributed at the directors of the Tribal Council, or its designee, as follows:

- (1) Any property held upon express condition requiring its return, transfer or

other disposition shall be distributed accordingly;

- (2) Any property or assets required to be distributed or transferred in any manner according to federal law shall be distributed or transferred accordingly;

- (3) Claims of creditors of the tribal enterprise approved by the Tribal Council shall be paid accordingly; and

- (4) Remaining assets shall be transferred to another tribal entity, to the Tribe, or distributed or transferred as the Tribal Council otherwise directs.

15-4-112. AMENDMENT OF TRIBAL ENTITY CHARTER.

Any tribal entity charter formed under the laws and sovereign power of the Rosebud Sioux Tribe may be amended only by the Rosebud Sioux Tribal Council, provided however, that the Charter may provide that such amendment require an affirmative vote higher than a majority vote.

PART C – COMMUNITY GOVERNMENTS, MUNICIPAL CORPORATIONS AND SCHOOLS

- 15-4-113. Community Government
- 15-4-114. Municipal Corporations
- 15-4-115. Status and Immunities Of Community Governments and Municipal Corporations
- 15-4-116. Schools

15-4-113. COMMUNITY GOVERNMENT.

The Tribal Council retains authority to issue or approve organic documents for the government of the local communities listed in Article III of the Constitution. Governmental subdivisions so created shall not be deemed to be “tribal entities” for the purposes of Sections 108 and 111 of this Chapter except to the extent the Tribal Council so provides.

15-4-114. MUNICIPAL CORPORATIONS.

The Tribal Council retains authority to issue charters for municipal corporations for the local communities listed in Article III of the Constitution. No such municipal corporation shall be deemed to be a business corporation subject to Chapter Two of this Title, or a non-profit corporation subject to Chapter Three of this Title.

15-4-115. STATUS AND IMMUNITIES OF COMMUNITY GOVERNMENTS AND MUNICIPAL CORPORATIONS. Local community governments and municipal corporations described in this Part are subdivisions of tribal government, have the same legal status described in Section 104 of this Chapter with respect to tribal entities, and are subject to the same specific provisions of Section 106 of this Chapter with respect to tribal entities.

15-4-116. SCHOOLS. Any legally established organization comprising primarily Indians which is sanctioned or chartered by the Tribe, or which is democratically elected by the adult members of the Indian community served by the organization, and which has its purpose the operation of an accredited school shall have the same immunities from suit as those described in Section 106 of this Chapter.

TITLE 16
BUSINESSES

CHAPTER 1 – BUSINESS
LICENSING

- 16-1-101. Sovereign Power To Regulate Business
- 16-1-102. Tribal Power To Impose Taxes and License Fees
- 16-1-103. Purpose - *Amendment*
- 16-1-104. Definitions - *Amendment*
- 16-1-105. Administration Of Chapter
- 16-1-106. Administrative Actions
- 16-1-107. Agreements With Federal, State and Local Governments

16-1-101. SOVEREIGN POWER TO REGULATE BUSINESS. The power to regulate business conducted within the Rosebud Sioux Indian Reservation by all persons, Indian and non-Indian, is an inherent and an essential part of the authority of tribal government. Business regulatory power is an aspect of retained sovereignty of the Rosebud Sioux Tribe except where it has been limited or withdrawn by applicable laws of the United States. The Rosebud Sioux Tribe is a sovereign Indian tribe organized pursuant to the Act of June 18, 1934, 48 Stat. 984, as amended, and governed pursuant to the Constitution and Bylaws ratified on November 23, 1935, and approved by the Commissioner of Indian Affairs on December 20, 1935, as amended from time to time thereafter. Pursuant to the Constitution and Bylaws, the Rosebud Sioux Tribal Council is the governing body of the Rosebud Sioux Tribe. This Chapter is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Tribal Council in Article IV, Section 1 (f), (h), (i), (k), (m), (n), (t) and (u).

16-1-102. TRIBAL POWER TO IMPOSE TAXES AND LICENSE FEES. The primary responsibility to determine the meaning of the tribal Constitution and Bylaws lies with the Tribal Council. The Council finds that the combined meaning of subsections (h) and (m) of Article IV, Section 1 of the Tribal Constitution is that the Tribal Council is entitled to regulate the conduct of trade

on the Reservation by both members and non-members, that the term “taxes” and “license fees” in subsection (h) are used interchangeably and that the Tribal Council has the authority to impose the license fees provided for in this Chapter as a form of taxation on tribal members and non-members alike. The Rosebud Sioux Tribal Council further finds that the imposition of license fees as provided in this Chapter is consistent with Article IV, Section 1 of the Rosebud Sioux Tribe Constitution.

16-1-103. PURPOSE. The Rosebud Sioux Tribal Council finds that the regulation of persons engaged in trade and business on the Rosebud Indian Reservation is necessary to safeguard and promote the peace, safety, morals and general welfare of the tribe. Accordingly, the Council declares that the tribe has the sole and exclusive authority to grant, deny or withdraw the privilege of doing business and utilizing tribal lands within the reservation, except such authority limited or withdrawn from the tribe by the application laws of the United States.

16-1-104. DEFINITIONS. The following terms, whenever used or referred to in this Chapter, shall have the following meanings, unless a different meaning clearly appears from the context:

(1) “Agent” means the individual or individuals designated by any “licensee” to receive and accept “service of process.”

(2) “Applicant” means any “person” who submits an application to the Tribe for a business license and who has not yet received such license.

(3) “Business” means any regular or “temporary business” activity engaged in by any “person” for the purpose of conducting a trade, profession or commercial activity involving the ‘sale’ of any “property” or “service”; provided, however, that an isolated sale of property or services shall not be considered to be “business” under this Chapter.

(4) “Chapter” means the Rosebud Sioux Business Licensing Chapter as enacted and amended by the “Council.”

(5) “Company” means any “person” or group of people engaged in “business.”

(6) “Council” means the Rosebud Sioux Tribal Council acting as the

governing body of the Rosebud Sioux Tribe pursuant to its Constitution and Bylaws as approved and amended.

(7) "Governmental Entity" means the United States, a federally recognized Indian Tribe, a state or local government. It also includes any political subdivisions, agency or department of the foregoing including any tribal entities as defined by Title 15, Chapter Four, Sec. 15-4-103 of the Law and Order Code.

(8) "Licensee" means any "person" who is granted a business license by the Tribe.

(9) "Notice" means actual notice by hand delivery or by certified mail. For time computations as provided for in this Chapter, which are to begin upon "notice," such notice shall be at delivery, except that where delivery is not possible after three consecutive postal days due to the inaction of the "agent," notice shall be at the time of the first attempted delivery. Upon return of the forms of notice to the Director, the forms shall be mailed by regular mail.

(10) "Person" means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, public utility, club, business trust, non-profit corporation, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise, and includes any instrumentality thereof. The term includes members and nonmembers of the "Tribe," but excludes any "governmental entity".

(11) "Property" means any existing and identified real or personal property, including, but not limited to "goods" as that term is defined by Section 105 of the Sales Chapter.

(12) "Reservation" means the Rosebud Indian Reservation as now or hereafter constituted.

(13) "Sale" means the transfer, exchange or barter, conditional or otherwise, of the ownership of, title to, or possession of real or personal property for consideration. The term shall also include leases, conditional sales contracts, leases with the option to purchase, and any other contract under which possession of the property is given to the purchaser but title is retained by the seller as security. It shall also include the furnishing of food, drink, or meals for compensation, whether or not consumed on the premises. It shall

also include any conditional or unconditional provision of services for consideration.

(14) "Service of Process" includes the delivery of show cause orders, cease and desist orders, summonses, complaints and other documents of the "Director" or "Tribal Court".

(15) "Services" means the performance of labor for the benefit of another for consideration. It excludes labor performed by an employee for the benefit of his or her employer.

(16) "Tribal Court" means the Tribal Court of the Rosebud Sioux Tribe.

(17) "Tribal law" means the tribal Constitution and all laws now and hereafter duly enacted by the "Council".

(18) "Tribal member" or "member of the Tribe" means an enrolled member of the Rosebud Sioux Tribe. A corporation, partnership or other entity shall be considered a Tribal member, for purposes of this Chapter only, if 51% or more of the entity is owned by Tribal members.

(19) "Ranch" or "farm" means an operation where a "person" is in the primary business of raising or growing agriculture products.

16-1-105. ADMINISTRATION OF

CHAPTER. Because of the close interrelationship between the Tribe's inherent sovereign powers to regulate the conduct of business on the Reservation and the Tribe's inherent sovereign powers to collect taxes from persons engaged in business on the Reservation, the Tribal Revenue Department is hereby delegated the responsibility to administer the provisions of this Chapter. The Tribal Revenue Department is hereby delegated all powers which are specifically provided for in this Chapter, or impliedly necessary to implement its provisions, subject to Council review of any action taken by virtue of such delegated powers.

16-1-106. ADMINISTRATIVE

ACTIONS. The Director shall promulgate regulations pursuant to this Chapter, formulate recommendations to submit to the Council for revisions of or amendments to this Chapter, and take other actions necessary for the administration of the provisions of this Chapter.

16-1-107. AGREEMENTS WITH FEDERAL, STATE AND LOCAL GOVERNMENTS. In the event it is deemed appropriate to effectuate the provisions of this Chapter, the Tribal Council shall negotiate Memoranda of Agreement concerning this Chapter with federal, state and local governments.

PART 2 – BUSINESS LICENSES

- 16-1-201. Applicability
- 16-1-202. Application and Issuance - **Amendment**
- 16-1-203. Denial Of License and Appeal
- 16-1-204. Exemptions - **Amendment**
- 16-1-205. Classes Of Licenses - **Amendment**
- 16-1-206. Conditions Of License

16-1-201. APPLICABILITY. This Chapter shall be applicable to all persons engaged in business within the exterior boundaries of the Reservation. No person shall engage in business upon the Reservation without a valid business license issued by the Tribe, except as provided in Section 204 (1).

16-1-202. APPLICATION AND ISSUANCE. An applicant for a business license shall be submitted in writing to the Tribal Revenue Department, using forms which it shall provide. Any person engaged in business at the time this Chapter is enacted shall have 30 days in which to obtain and submit to the Tribe an application for a license. All applications shall include:

- (1) A description of the type of business;
 - (2) The name and address of the owner or owners of the business;
 - (3) The trade name, if any, to be used by the company;
 - (4) The locations on the Reservation at which the business will be conducted;
 - (5) A sworn statement that the applicant will comply with all Tribal law applicable to the applicant's business;
 - (6) The name, address and signature of the agent who will accept service of process on behalf of the company.
- The Director shall notify the applicant by regular mail within 14 days after receipt of the application whether a license shall be issued. If a license is issued, the licensee shall post the license in a

conspicuous manner at its primary business location.

16-1-203. DENIAL OF LICENSE AND APPEAL. If it is determined that

- (1) The applicant has materially misrepresented facts contained in the application,
- (2) The applicant presently is in non-compliance with tribal law, or
- (3) The business will threaten the peace, safety, morals, or general welfare of the Tribe, the Director, shall issue an order of denial to the applicant by certified mail, return receipt requested, within 14 days after receipt of the application. The order of denial shall set forth the reasons for such denial and shall state that the applicant has three days from receipt of the order of denial to file a notice of appeal with the Tribal Revenue Department for an expedited administrative hearing under Section 305 (1) of this Chapter, or 30 days from receipt of the order of denial to file a notice of appeal with the Tribal Court under Section 305 (2) of this Chapter.

16-1-204. EXEMPTIONS.

- (1) The following shall not be required to obtain a license under this Chapter:
 - (a) Governmental entities;
 - (b) Tribal members engaged in the creation of traditional Indian art or handicrafts in their home;
 - (c) Tribal members engaged in the traditional practice of medicine;
 - (d) Employees of a person; and
 - (e) Tribal members engaged in a farm or ranch operation.
- (2) The following shall not be required to pay a fee for the issuance of a business license under this Chapter:
 - (a) Any church engaged in raising funds for religious or charitable purposes;
 - (b) Any school, club or athletic organization engaged in staging athletic events for which an admission fee is charged, provided such admission fees do not accrue to the personal benefit of any individual;
 - (c) Any accredited school, no part of the income of which accrues to the personal benefit of any individual; and
 - (d) Any non-profit corporation organized under SDCL 47-22 or organized under Title 15, Chapter Three of the Law and Order Code.

16-1-205. CLASSES OF LICENSES.

(1) Temporary Business License:

All persons engaged in business on the Reservation for a period of four days or less shall have a temporary business license. The fee for a temporary business license is \$10.00.

(2) Seasonal Business License:

All persons engaged in business on the Reservation for a period of three months or less shall have a seasonal business license. The fee for a seasonal business license is \$25.00.

(3) Permanent Business License:

All persons engaged in business for a period exceeding three months shall have a permanent business license. The fee for a permanent business license is \$50.00. A license holding a permanent business license need not apply for renewal each year, but the license must notify the Tribal Revenue Department of any change in the licensee’s business activities, which render inaccurate the information previously provided to the Tribal Revenue Department under Section 202 of this Chapter.

16-1-206. CONDITIONS OF

LICENSE. Each licensee shall comply with all applicable tribal laws, including but not limited to: tax laws, Indian employment and contracting preference laws, health and sanitation laws and consumer protection laws. The Tribe may, but need not, notify each licensee by regular mail of any additional tribal laws with which the licensee must comply as such laws are enacted by the Council.

Each licensee consents to the jurisdiction of Tribal Court as to any cause of action arising in connection with the transaction of any business within the Reservation, or any tortious acts committed in connection with the transaction of any business within the Reservation. Each licensee consents to the service of process of the Tribal Court with respect to all actions over which the Tribal Court has subject matter jurisdiction, in accordance with the Rules of Procedure of the Tribal Court. Each licensee shall respond in a timely manner to requests by the Tribal Revenue Department for information about the licensee’s business for the purpose of establishing whether the licensee is in compliance with the terms of this Chapter.

PART 3 – SANCTIONS

- 16-1-301. Revocation Of License; failure To Obtain License; Show Cause Hearing – **Amendment**
- 16-1-302. Civil Penalties and Restitution – **Amendment**
- 16-1-303. Removal and Exclusion Of Non-Indians
- 16-1-304. Other Remedies
- 16-1-305. Appeals

16-1-301. REVOCATION OF LICENSE; FAILURE TO OBTAIN LICENSE; SHOW CAUSE HEARING.

(1) Whenever it is brought to the attention of the Tribal Revenue Department that any person is in non-compliance with any condition of license the Director may,

(a) Serve upon such person or any agent of such person an order to show cause why this license should not be revoked;

(b) Bring an action in Tribal Court for an order to institute a monetary penalty in accordance with §16-1-302;

(c) Bring an action in Tribal Court for an order to show cause why an injunction should not be issued.

(2) Whenever it is brought to the attention of the Tribal Revenue Department that any person has failed to obtain a license within the time requirements of this Chapter, the Directors may,

(a) Serve upon such person or any agent of such person and order to show cause why a monetary penalty should not be imposed in accordance with §16-1-302;

(b) Bring an action in Tribal Court for an order to show cause why he should not be enjoined from doing business on the Reservation without a license.

(3) Such notice shall state the reasons for the order, the time and place for the show cause hearing before the Tribal Court, and that the person shall have an opportunity to present testimony and cross examine opposing witnesses and to present any other evidence which he should deem appropriate as to why a revocation order or an injunction should not be issued. The hearing shall be set for a time not exceeding 14 days and not less than 10 days from the date of notice. The hearing shall be governed in all

respects in accordance with the Rules of Procedure of the Tribal Court.

(4) In the event it is determined that any person's non-compliance with the chapter is direct or immediate threat to the peace, safety, morals or general welfare of the residents of the Reservation, the Director shall issue a cease and desist order which shall be served upon the person or any agent of the person. The person shall cease and desist business immediately upon service of the order and may file a notice of appeal with Tribal Court within three days for an expedited appeal under Section 305 (3) of this chapter, or within 30 days for a regular appeal to Tribal Court under Section 305 (2) of this chapter.

16-1-302. CIVIL PENALTIES AND RESTITUTION.

(1) If it is determined that any person failed to comply with the conditions of his license or failed to secure a license within the time requirements of this Chapter, the Director may bring an action in Tribal Court for an order requiring the person to appear and show cause why a monetary penalty should not be imposed and restitution should not be ordered; provided, the amount of the penalty shall not exceed \$1,000.00 for each violation.

(2) The Director may submit a recommendation to the Tribal Court regarding any restitution which the person should pay to any person or persons injured by his failure to comply with the conditions of his license or his failure to secure a license within the time requirements of this Chapter.

(3) The Director may submit a recommendation to the Tribal Court regarding the amount of any civil penalty which the person should pay for failure to comply with the conditions of his license or failure to secure a license within the time requirements of this Chapter.

If the Director submits a suggested penalty amount, the Director shall expressly address in writing each and all of the following criteria:

- (a) The good or bad faith of the violator;
- (b) The injury to the public resulting from the violation;
- (c) The benefits derived by the violator from the violation;
- (d) The violator's ability to pay; and

(e) The administrative costs of prosecution.

The purpose of the civil penalty provided for herein shall be primarily to defray the costs of administration and enforcement of this Chapter, and secondarily, to deter continued violations of this Chapter by the violator or others; provided, however, that all funds collected by the Tribal Court under this section shall be subject to disposition by the Tribal Council.

16-1-303. REMOVAL AND EXCLUSION OF NON-INDIANS.

If any non-Indian, except any person authorized by federal law to be present on tribal land or any person who owns real property on the Reservation, fails to comply with any order of the Director without appealing the order or fails to appear for any hearing, the Director may petition the Tribal Court for an order directing the Tribal police to remove the non-Indian physically from the Reservation in accordance with Tribal law. The Director may also petition the Tribal Court for an order permanently excluding the non-Indian, except any person authorized by federal law to be present on tribal land, or any person who owns real property on the Reservation, and an order authorizing the seizure and sale of any business property necessary to satisfy restitution and civil penalties imposed under this Chapter.

16-1-304. OTHER REMEDIES. The Director may petition the Tribal Court for other remedies provided for in this Code which are necessary to enforce the provisions of this Chapter, including but not limited to temporary restraining orders and preliminary and permanent injunctions. The Director may also petition a court of competent jurisdiction for a writ of execution to enforce an order, judgment or decree of Tribal Court off-Reservation. The order, judgment or decree must include findings showing:

- (1) The basis for the Tribal Court's jurisdiction over the subject matter and the parties;
- (2) The order, judgment or decree was not obtained fraudulently; and
- (3) The defendant was afforded due process.

16-1-305. APPEALS.

(1) Expedited Administrative Appeal.

(a) If an applicant for a business license seeks an administrative hearing, the Tribal Revenue Department, upon receipt of the notice of appeal, shall notify the applicant in person or by telephone, telegram or other electronic means, of the time set for the expedited hearing which shall be not less than three nor more than five working days thereafter.

(b) At the hearing the applicant shall be entitled to present testimony and cross examine opposing witnesses, and present any other evidence which the applicant shall deem appropriate. All oral testimony shall be recorded and retained until expiration of the time within which the applicant could appeal to Tribal Court. In the event of such an appeal, the Director shall immediately certify the record and deliver the recordings and all other evidence in the record to the Tribal Court. If no appeal is filed, all evidence, except recordings, submitted by the applicant shall be returned.

(c) The Director shall rule upon the appeal within three working days after the hearing and shall set forth in writing the factual findings and the reasons for his decision. If the appeal is denied, the ruling shall state that the applicant has 30 days from receipt thereof to file a notice of appeal with the Tribal Court under this subsection. The notice shall state in a conspicuous manner that the appeal sought is an expedited appeal pursuant to this subsection.

(d) Upon receipt of a notice of appeal from an expedited administrative hearing, the Tribal Court or other electronic means, of the time set for the expedited hearing which shall be not less than three nor more than five working days thereafter.

(e) The appeal shall be decided by the Tribal Court sitting without a jury, and shall be heard solely on the record established at the hearing as certified by the Director. No new or additional evidence may be introduced during the appeal.

(f) The Tribal Court shall uphold all factual findings of the Director unless the Court determines that such findings are not supported by substantial evidence in the record established before the director. In reviewing reasons for denial

of the license by the Director, the Court shall give proper weight to the Director's interpretation of this Chapter and any regulations promulgated hereunder.

(2) Direct appeal to the Tribal Court.

If any person is entitled to an appeal pursuant to this Chapter seeks a direct appeal to the Tribal Court, the appellant shall be deemed to have waived any right he may otherwise have to an expedited administrative hearing or an expedited appeal to the Tribal Court, and the appeal shall be governed in all respects in accordance with the Rules of Procedure of the Tribal Court.

(3) Expedited Direct Appeal to the Tribal Court.

(a) Any person seeking an expedited appeal pursuant to Section 301 (b) of this Chapter shall file a notice of appeal which states in a conspicuous manner that the appeal sought is an expedited appeal pursuant to this subsection. Upon receipt of the notice of appeal the Tribal Court shall notify the appellant in person or by telephone, telegram or other electronic means, of the time set for the expedited hearing which shall be held no later than five working days after receipt by the Tribal Court of the notice of appeal.

(b) The expedited appeal hearing by the Tribal Court shall be by trial de novo and shall be governed in all respects in accordance with the rules of procedure of the Tribal Court, except that the Tribal Court shall rule upon the expedited appeal within three working days after completion of the hearing.

PART 4 – SAVINGS CLAUSE

In the event that any provisions of this Chapter shall be found or declared to be invalid, the remaining provisions of this Chapter shall be unaffected thereby, and shall remain in full force and effect.

CHAPTER 2 – CONSUMER PROTECTION

- 16-2-101. Unfair & Deceptive Practices Unlawful
- 16-2-102. Ambiguities In Documents Of Sale
- 16-2-103. Unsolicited Merchandise
- 16-2-104. Home Solicitation Sale

- 16-2-105. Transactions Not Considered Home Solicitation Sales
- 16-2-106. Home Solicitation Seller's Failure To Inform Buyer Of Rights To Cancel
- 16-2-107. Cancellation Notice Form To Be Furnished and Filled In By Home Solicitation Seller
- 16-2-108. Deceptive To Include Confession Of Judgment or Waiver Of Rights In Home Solicitation
- 16-2-109. Deceptive To Fail To Honor Notice Of Cancellation Of Home Solicitation Sale
- 16-2-110. Criteria For Compliance Of Home Solicitation Sales With Notice Requirements
- 16-2-111. Advertising Media Exempt Without Knowledge Of Unlawfulness
- 16-2-112. Tribe May Restrain Prohibited Acts
- 16-2-113. Civil Action For Damages
- 16-2-114. Limitation Of Actions

16-2-101. UNFAIR & DECEPTIVE PRACTICES UNLAWFUL. It shall be unlawful for any person to use any unfair or deceptive act or practice in the conduct of his or her business.

16-2-102. AMBIGUITIES IN DOCUMENTS OF SALE. Where a document related to a contract of sale of goods or services between a merchant seller and a non-merchant buyer contains language which is uncertain or is reasonably capable of being understood as having more than one meaning, any such ambiguity shall be resolved in favor of the buyer in a manner consistent with the understanding a reasonable buyer would have had at the time of the sale.

16-2-103. UNSOLICITED MERCHANDISE. Unless otherwise agreed, where unsolicited merchandise is delivered in person or by mail or common carrier to a person, he or she has a right to refuse such merchandise and is not obligated to return such merchandise to the sender. Such unsolicited merchandise shall be deemed an unconditional gift to the recipient, who may use it in any manner without any obligation to the sender. This section shall not apply if there is

evidence of an obvious misdelivery, or the merchandise is offered in good faith in substitution for merchandise solicited.

16-2-104. HOME SOLICITATION SALE. In this chapter, unless the context otherwise requires, "home solicitation sale" means, except as provided by Section 103 of this Chapter, any sale, lease or rental of goods or services with a purchase price of twenty-five dollars or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller.

16-2-105. TRANSACTIONS NOT CONSIDERED HOME SOLICITATION SALES. The term "home solicitation sale" shall not include any transaction:

- (1) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or
- (2) In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act (15 U.S.C, 1635); or
- (3) In which the buyer has initiated the contract and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days; or
- (4) Conducted and consummated entirely by mail or telephone, and without any other contract between the buyer and the seller or its representatives prior to delivery of the goods or performance of the services; provided, however, that this exception shall not apply if the seller initiated the contract by telephone; or
- (5) In which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in

the course of such a visit, the seller sells the buyer the right to receive additional services of goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or

(6) Pertaining to the sale or rental of real property; or

(7) Pertaining to the sale, lease or repair of motor vehicles, metal buildings, farm machinery or implements, or mobile homes, by a dealer having a fixed permanent location and place of business in South Dakota where such goods and services are offered on a continuing basis.

16-2-106. HOME SOLICITATION SELLER'S FAILURE TO INFORM BUYER OF RIGHT TO CANCEL.

It is a deceptive act or practice, within the meaning of Section 101 of this Chapter, for any seller, in connection with any home solicitation sale to:

(1) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of ten points, a statement in substantially the following form: "YOU THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

(2) Fail to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel;

(3) Misrepresents in any manner the buyer's right to cancel.

16-2-107. CANCELLATION NOTICE FORM TO BE FURNISHED AND FILLED IN BY HOME SOLICITATION SELLER.

It is a deceptive act or practice, within the meaning of Section 101 of this Chapter, for any seller, in

connection with any home solicitation sale, to:

(1) Fail to furnish each buyer, at the time he signs the home solicitation sales contract or otherwise agrees to buy goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain ten point bold face type the following information:

NOTICE OF CANCELLATION

(enter date of transaction)
(Date)

YOU CAN CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, ON OR BEFORE _____ (DATE), WHICH IS WITHIN THREE BUSINESS DAYS FROM DATE OF THIS TRANSACTION.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT (CHECK, NOTE, ETC.) EXECUTED BY YOU WILL BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATIONS NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED. IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE

FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO (Name of Seller) AT (address of seller's place of business) NOT LATER THAN MIDNIGHT OF

(Date)

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)

(2) Fail, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of transaction, by which the buyer may give notice of cancellation.

16-2-108. DECEPTIVE TO INCLUDE CONFESSION OF JUDGMENT OR WAIVER OF RIGHTS IN HOME SOLICITATION. It is a deceptive act or practice, within the meaning of Section 101 of this Chapter, for any seller to include in any home solicitation contract or receipt any confession of judgment or any waiver or any of the rights to which the buyer is entitled under this chapter including specifically his right to cancel the sale in accordance with the provisions of this chapter.

16-2-109. DECEPTIVE TO FAIL TO HONOR NOTICE OF CANCELLATION OF HOME SOLICITATION SALE. It is a deceptive practice within the meaning of Section 101 of this Chapter, for any seller, in connection with any home solicitation sale, to:

(1) Fail or refuse to honor any valid notice of cancellation by a buyer and within ten business days after the receipt of such notice, to refund all payments made under the contract or sale; return any goods or property traded in, in substantially good condition as when received by the seller; cancel and return any negotiable instrument executed by

the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction;

(2) Fail, within ten business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

16-2-110. CRITERIA FOR COMPLIANCE OF HOME SOLICITATION SALES WITH NOTICE REQUIREMENTS. A home solicitation sale shall be deemed to be in compliance with the notice requirements of this chapter if:

(1) The buyer may at any time,
(a) Cancel the sale, or
(b) Refuse to accept delivery of the goods or services without incurring any obligation to pay for them, or
(c) Return the goods to the seller and receive a full refund for any amount the buyer has paid; and
(2) The buyer's right to cancel the sale, refuse delivery or return the goods without obligation or charge at any time is clearly and unmistakably set forth on the face or reverse side of the receipt or contract.

16-2-111. ADVERTISING MEDIA EXEMPT WITHOUT KNOWLEDGE OF UNLAWFULNESS. Nothing in this chapter shall apply to publishers, broadcasters, printers, or other persons in so far as an unlawful act or practice as defined in Section 101 of this Chapter involves information that has been disseminated or reproduced on behalf of others without knowledge that is an unlawful act or practice.

16-2-112. TRIBE MAY RESTRAIN PROHIBITED ACTS.

(1) The Tribe may cause a civil action to be brought in its name in Tribal Court against any person to restrain him or her and prevent the doing of any act or practice prohibited by Section 101 of this Chapter;

(2) In any action brought under this section, the court may make such additional orders or judgments as may be necessary to restore to any person any moneys or property which may have

been acquired by means herein declared to be unlawful.

16-2-113. CIVIL ACTION FOR

DAMAGES. Any person who has been adversely affected by any act or practice which is unlawful under Section 101 of this chapter shall be permitted to bring a civil action in Tribal Court for rescission and for the recovery of actual damages together with the costs of suit and a reasonable attorney's fees. The court may in its discretion increase the award of damages in an amount not to exceed three times the amount of actual damages; provided, however, that the amount by which the award is increased shall not exceed One Thousand Dollars (\$1,000.00).

16-2-114. LIMITATION OF ACTIONS.

No action under this Chapter may be brought more than two years after the occurrence or discovery of the conduct which is the subject of the action.

CHAPTER 3 – FOOD SANITATION

- 16-3-101. Authority
- 16-3-102. Health Board
- 16-3-103. License Fees
- 16-3-104. Duration Of Licenses
- 16-3-105. Inspection
- 16-3-106. Reinstatement After Revocation
- 16-3-107. Tribal Court Jurisdiction
- 16-3-108. Condition For Issuance Of License
- 16-3-109. Application For License
- 16-3-110. Standards Applicable
- 16-3-111. Violations

16-3-101. AUTHORITY. This Chapter is enacted pursuant to the authority of the Rosebud Sioux Tribe under Article IV, Sections K, M, and Q of the Rosebud Sioux Tribal Constitution.

16-3-102. HEALTH BOARD. The final authority of any question of non-compliance with this Chapter shall rest with the Health Board of the Rosebud Sioux Tribe or its designee.

16-3-103. LICENSE FEES. A fee of Twenty-five Dollars (\$25.00) shall be payable to the Tribe for each full-time food service license application and Ten Dollars (\$10.00) for each itinerant food service license, that any decisions of

non-compliance shall be full and just cause for revocation of any license granted under this Chapter.

16-3-104. DURATION OF LICENSES.

Each full-time food service license is valid for a period of one year, expiring on September 31 of each year. Each itinerant food service license is valid for ten (10) days after the date of issuance.

16-3-105. INSPECTION. Each full-time food service establishment will be inspected at least twice as year by the Indian Health Service's Office of Environmental Health staff in accordance with the U.S. Public Health Service, Model Food Service Sanitation Ordinance: 1976 Recommendations of the Food and Drug Administration.

16-3-106. REINSTATEMENT AFTER

REVOCAION. Any license revoked under this Chapter shall be reinstated only on determination of correction of the condition resulting in the finding of non-compliance and upon payment of a renewal fee not to exceed the original fee.

16-3-107. TRIBAL COURT

JURISDICTION. License revocation and fines will be decided by the Rosebud Sioux Tribal Court upon refusal of the licensee to comply with the provisions of the U.S. Public Health Services, Model Food Service Sanitation Ordinance: 1976 Recommendations of the Food and Drug Administration.

16-3-108. CONDITION FOR

ISSUANCE OF LICENSE. Prior to issuance of food service license, the licensee must provide for proper water, sewer, and solid waste facilities; food protection equipment and practices; lightening, ventilation, and plumbing; and demonstrate the ability to operate a food service establishment properly by passing a food service inspection in accordance with the U.S. Public Health Service, Model Food Service Sanitation Ordinance: 1976 Recommendations of the Food and Drug Administration.

16-3-109. APPLICATION FOR

LICENSE. The application for a temporary food license for the Rosebud Sioux Tribal Reservation and Reserves, shall include the name and address of

the individual, firm, association or organization, the type of food to be served, type of cooking facilities available, type of building to be utilized, a brief description of the sanitizing facilities to be used, a description of hand washing facilities available, waste disposal facilities, sources of all food supplies, and the names and addresses of all employees and a brief statement to the effect that the licensee has read and understands the provisions of the U.S. Public Health Services, Food Service Sanitation Ordinance: 1976 Recommendations of the Food and Drug Administration and agrees to abide by and adhere to the application sections of that document.

16-3-110. STANDARDS

APPLICABLE. The inspection of food service establishment; the issuance, suspension and revocation of permits to operate good service establishments; the prohibiting of the sale of adulterated or misbranded food or drink; and the enforcement of this Chapter shall be regulated in accordance with the unabridged form of the U.S. Public Health Service, Model Food Service Sanitation Ordinance: 1976 Recommendations of the Food and Drug Administration. Three copies of which shall be on file in the Office of the Tribal Secretary, provided that the words "Municipality of" in said unabridged form shall be understood to refer to Rosebud Reservation of South Dakota.

16-3-111. VIOLATIONS. Any person who violates any of the provisions of this Chapter shall be guilty of a Class C offense. In addition thereto such persons may be enjoined from continuing such violations and have their food service license revoked. Each day upon such violation occurs constitutes a separate violation.

CHAPTER 4 – FIREWORKS

- 16-4-101. Title – *Amendment*
- 16-4-102. Authority and Purpose – *Amendment*
- 16-4-103. Definitions – *Amendment*
- 16-4-104. Requirements and Regulations – *Amendment*
- 16-4-105. Permissible Fireworks – *Amendment*
- 16-4-106. Place Of Business – *Amendment*

- 16-4-107. Restricted Areas – *Amendment*
- 16-4-108. Penalties – *Amendment*
- 16-4-109. Enforcement – *Amendment*

16-4-101. TITLE. This law shall be known as the Fireworks Law.

16-4-102. AUTHORITY AND PURPOSE.

Authority. The Governing Body of the Rosebud Sioux Tribe is exercising its authority pursuant to Article IV, Section 1 (h), and (m) of the Constitution and Bylaws of the Rosebud Sioux Tribe.

(1) Article IV, Section 1 (h) grants authority in part to levy taxes or license fees upon members and non-members.

(2) Article IV, Section 1 (m) grants the authority to safeguard and promote the peace, safety, morals and general welfare of the Tribe by regulating the conduct of trade.

Purpose. The purpose of this Tribal Law is:

(1) To regulate the sale of permissible fireworks and provide provisions to obtain a temporary business license;

(2) To restrict the areas where fireworks can be used and ignited;

(3) To provide provisions where all retailers must comply with Tribal Law concerning fireworks, taxation, commercial code and other applicable Tribal Laws; and

(4) Limit the size and type of fireworks that can be sold and used.

16-4-103. DEFINITIONS.

(1) "Retailer" shall mean any person engaged in the business of making sales of fireworks at retail to consumers.

(2) "Sale" shall include barter, exchange, or gift of offer thereof, and such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.

(3) "Wholesaler" shall mean any person engaged in the business of making sale of fireworks at wholesaler to retailers.

16-4-104. REQUIREMENTS AND REGULATIONS.

License required for Sale of Fireworks, Application Fee, Duration and Display. No person shall sell, hold for sale, or offer for sale, as retailer any fireworks in this Reservation unless such person has first obtained a license in accordance

with Title 16, of the Law and Order Code. Application for a license as a retailer shall be made to the department of revenue on forms to be prescribed by it. Each application shall be of revenue on forms to be prescribed by it. Each application shall be accompanied by the required fee, twenty five dollars for a retailer's license. The license shall be good only for the calendar year in which issued and shall at all times be displayed at the place of business of the holder thereof. Applicant will consent to Tribal Law concerning taxation, commercial code, business license and other applicable law.

Importation by Unlicensed Persons Prohibited, Retailer. No person who is not licensed as a retailer shall bring any fireworks into this reservation. No retailer shall sell any fireworks which have not been purchased from a wholesaler licensed under the provisions of SDCL Chapter 34, Section 34-37-2 or applicable tribal law.

Period during which Retail Sales Permitted. No person, firm or corporation shall offer fireworks for sale to individuals at retail before the twenty fifth day of June and after the Fifth day of July.

Procedure for Banning Sale of Fireworks. The Rosebud Sioux Tribal Council can declare a ban on the sale of fireworks if just reason. This will done in Resolution form.

Prohibited Firecrackers, Manufacture or Use as Crime. Any person who shall manufacture, use or dispose of to another, with or without consideration, so as to endanger the safety of others, any firecracker more than three inches lone or made wholly or in part of dynamite, nitroglycerin, or giant powder, is guilty of a Class C crime.

Possession, Sale, or Use of Unauthorized Fireworks Unlawful. Except as provided in this title no person shall possess, sell, offer for sale, bring into this reservation commonly known as fireworks, other than permissible fireworks.

16-4-105. PERMISSIBLE

FIREWORKS. Permissible fireworks enumerated and described below.

Permissible fireworks shall mean:

(1) Roman Candles, not exceeding ten balls spaced uniformly in the tube, total pyrotechnic composition not to exceed twenty grams in weight. The inside tube

diameter shall not exceed three eights inch.

(2) Skyrockets with sticks, total pyrotechnic composition not to exceed twenty grams each in weight. The inside tube diameter shall not exceed one half inch. The rocket sticks must be securely fastened to the tubes.

(3) Helicopter type rockets, total pyrotechnic composition not to exceed twenty grams in weight. The inside tube diameter shall not exceed one half inch.

(4) Cylindrical fountains, total pyrotechnic composition not to exceed seventy five grams each in weight. The inside tube diameter shall not exceed three fourths inch.

(5) Cone fountains, total pyrotechnic composition not to exceed fifty grams in weight.

(6) Wheels, total pyrotechnic composition not exceed sixty grams for each driver unit of two hundred and forty grams for each complete wheel. The inside tube diameter of driver units shall not exceed one half inch.

(7) Illuminating torches and colored fire, in any form, except items in subdivision (12), total pyrotechnic composition not to exceed one hundred grams each in weight.

(8) Sparklers and dipped sticks, total pyrotechnic composition not to exceed one hundred grams each in weight. Pyrotechnic composition containing any chlorate or perchlorate shall not exceed five grams.

(9) Mines and shells of which the mortar is an integral part, total pyrotechnic composition not to exceed forty grams each in weight.

(10) Firecrackers and salutes with casings, the external dimensions of which do not exceed one and one half inches, in length or one quarter in diameter, total pyrotechnic composition not to exceed two grains each in weight.

(11) Novelties consisting of two or more devices enumerated in this section, trick matches and cigarettes plugs, when approved by the Bureau of Explosives.

(12) Railway fuses, truck flares, hand ship distress signals, smoke pots. Nothing shall be construed as applying to toy paper caps containing not more than twenty five hundredths of a grain of explosive composition per cap, and to the manufacture, storage, sale or use of signals necessary for safe operation of railroads or other classes of public or private transportation, nor apply to the

military or navy forces of the United States or to peace officers, nor as prohibited the sale or use of blank cartridges for ceremonial, or theatrical, or athletic events.

16-4-106. PLACE OF BUSINESS.

Sale from vehicle prohibited. No retailer shall sell fireworks from any motor vehicle.

Exits from structure where fireworks sold. All buildings or structure wherein fireworks are sold to retail shall have at least two separate door exits which shall be equipped with panic devices or kept unlocked at all times when fireworks are being offered for sale.

“No Smoking” signs where fireworks are sold. Signs must be prominently posted on all displays of fireworks offered for sale at retail, which shall read in red letters not less than three inches in height. “NO SMOKING WITHIN TWENTY-FIVE FEET.”

Minimum distance for igniting fireworks. In all buildings or structures wherein fireworks are being offered for sale the licensee shall have a sign prominently posted stating that no fireworks can be ignited or discharged within one hundred fifty feet of the licensee’s premises.

Open flames prohibited where fireworks sold. Fire extinguishing agent required. No licensee shall have on his premises any device, apparatus, receptacle or burner from which an open flame is emitted. Provided, further that every licensee shall in the conduct of his business of selling fireworks keep and maintain upon said premises a fire extinguisher agent for a Class A fire equivalent to two and one half gallons of water.

16-4-107. RESTRICTED AREAS.

Sale or use prohibited within timber reserve and/or other designated area. No person shall sell or cause to be sold, discharge or cause to be discharged, any pyrotechnics of any description whatever within the exterior boundaries of the timber reserve or any land owned or leased by the department of game, fish and parks. However, the Director of Game, Fish and Parks may, by written authorization, permit pyrotechnic displays or exhibits on land owned or leased by the department unless otherwise prohibited by status.

Public displays permitted, local permit required. Nothing shall prohibit the use

of public display of fireworks provided that any individual, group of individual, association, organization, city, town, county, firm, partnership or corporation, prior to making such public display for fireworks, shall first secure a written permit to do so from the Rosebud Sioux Tribe wherein said public displays is to be fired, and shall be purchased fireworks for such display from a licensed wholesaler.

16-4-108. PENALTIES.

Violation of this chapter. Except where a punishment is specifically provided, any person violating any of the provisions of this display shall be guilty of a Class C crime.

Second conviction as grounds for revocation or suspension of license. If any person is found guilty of violating any of the provisions of this chapter a second time, such violation may constitute cause for revocation or suspension of the license held by such person or for refusal to renew such license upon expiration thereof.

16-4-109. ENFORCEMENT.

Enforcement by Department and Law Enforcement Officers. The Department of Revenue, together with all Law Enforcement officers, shall be charged with the enforcement of the provision of this chapter.

Possession of unauthorized fireworks unlawful, seizure and destruction. No person shall possess any fireworks, other than those enumerated above. If any person shall have in his possession any fireworks in violation of said section, a warrant maybe issued for the seizure of such fireworks, and such fireworks shall be safely kept to be used as evidence. Upon conviction of the offense, the fireworks shall be destroyed, but if the offender is discharged, the fireworks shall be returned to the person whose possession they were found, provided, that nothing in this chapter shall apply to the transportation of fireworks by regulated carriers.

TITLE 18

LAND USE

CHAPTER 1 – LEGISLATIVE FINDINGS AND PURPOSE

- 18-1-101. Sovereign Power To Regulate Land Use
- 18-1-102. Lack Of Adequate Land Use Regulations
- 18-1-103. Consensual Relations Between Nonmembers, The Tribe, and Tribal Members
- 18-1-104. Lack Of County and State Land Use Regulation
- 18-1-105. Benefits Of Tribal Government
- 18-1-106. Territory, Persons and Property Affected
- 18-1-107. Purpose
- 18-1-108. Sovereign Immunity

18-1-101. SOVEREIGN POWER TO REGULATE LAND USE. The power to regulate land use is an inherent and essential part of the authority of any reservation tribal government. This power is therefore an aspect of the retained sovereignty of Indian tribes, except where it has been limited or withdrawn by federal law. The Rosebud Sioux Tribe is a sovereign Indian tribe organized pursuant to the Act of June 18, 1934, 48 Stat. 984, as amended, and governed pursuant to a Constitution and ByLaws ratified on November 23, 1935, and approved by the Secretary of the Interior, Harold L. Ickes, on December 16, 1935, as amended from time to time thereafter. Pursuant to the Constitution and ByLaws, as amended, the Rosebud Sioux Tribal Council is the governing body of the Rosebud Sioux Tribe. This Title is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Tribal Council in Article IV, Section 1 (c), (h), (i), (k), (m), (t) and (u) of the Tribal Constitution, which authorize the Tribal Council to manage and otherwise deal with tribal lands and property, to exclude any ordinance from the restricted lands of the Reservation persons not legally entitled to reside therein, to promulgate and enforce ordinances providing for the maintenance of law and order and the administration of justice on the

Reservation, to regulate the conduct of trade and the use and disposition of property upon the Reservation, to regulate tribal agencies and tribal officials, and to delegate to subordinate boards or tribal officials the forgoing powers, subject to review by the Council.

18-1-102. LACK OF ADEQUATE LAND USE REGULATIONS. The Rosebud Reservation, tribally-owned trust lands and allotted trust lands owned by enrolled tribal members lie within Todd, Tripp, Mellette, Gregory and Lyman Counties, South Dakota. Todd County, in which the majority of the Reservation lies, has no land use regulations of any kind. The remaining four counties are similarly without any land use regulations. The Reservation is checkerboard with both trust land and nontrust land and within the historical boundaries of the Rosebud Reservation are substantial populations of both Indians and non-Indians. The Reservation was established as an agricultural reservation for farming and ranching purposes to provide a permanent homeland for the Tribe. Since establishment of the Reservation by the Treaty, the Tribe has maintained the essential character of the entire Reservation; however, as additional residential, commercial, governmental and agricultural activities multiply, the need for adequate land use controls grows ever more serious. Tribal land and tribal members are the most precious assets of the tribe. The Reservation is too valuable a tribal resource to be damaged by uncontrolled development and use of land with their attendant problems.

The Council finds that such uncontrolled use of land has a demonstrably serious impact which imperils the economic security, health, welfare and general well-being of the Tribe, its members, and all residents of the Reservation, resulting in:

- (1) Gradual loss of the essential character of the Reservation,
- (2) Destruction of the historical and cultural values and traditions of the Tribe,
- (3) Deterioration of the aesthetics of the Reservation,
- (4) Increased transportation problems,

(5) Increased inability of the infrastructure of the Reservation to provide governmental services for the population,

(6) Increased air, water and solid waste disposal pollution;

(7) An adverse affect upon the Reservation school system,

(8) Increased contamination of drinking water from the Ogallala Aquifer and surface water supplies, and

(9) Deterioration of the standards of living, quality of life, welfare and well-being of all Reservation residents, whether tribal members or not.

18-1-103. CONSENSUAL RELATIONS BETWEEN NONMEMBERS, THE TRIBE, AND TRIBAL MEMBERS. The Council finds that every person who uses land, whether trust land or nontrust land, within the Reservation, enters into consensual relations, commercial dealings and contracts with residents of the Reservation, Indian and non-Indian, and with the Tribe and that all such uses of land have a demonstrably serious impact which imperils the economic security, health, welfare and general well-being of the Tribe, its members, and all residents of the Reservation.

18-1-104. LACK OF COUNTY AND STATE LAND USE REGULATION. Because of five counties within which the Reservation and tribally owned and individually owned trust lands lie do not have zoning codes, it is imperative that the Tribe regulate all land use within its jurisdiction.

18-1-105. BENEFITS OF TRIBAL GOVERNMENT. Among the benefits provided by the tribal government to tribal members and to nonmembers residing or conducting business within the Rosebud Reservation are the following:

(1) The provisions of a civilized form of government and civilized environment within which to reside and do business;

(2) The provisions of governmental services, including sewer and water systems, police and fire protection, and a Tribal Court system of general jurisdiction;

(3) The promotion and regulation of economic activities within the Tribe's sovereign jurisdiction; and

(4) The orderly development and protection of the Reservation lands, resources and communities.

18-1-106. TERRITORY, PERSONS AND PROPERTY AFFECTED. To the extent not prohibited by federal law, this Title shall apply to the following:

(1) The Rosebud Sioux Reservation within the historical boundaries of the Reservation established in Section Two of the Act of March 2, 1889, 25 Stat. 888, including all lands, islands, waters, roads, and bridges, or any interests therein, whether in trust or non-trust status and notwithstanding the issuance of any patent or right-of-way, and such other lands, islands, waters or any interest therein thereafter added to the Reservation;

(2) All trust or restricted land of the Tribe or any enrolled member of the Tribe situate within historical boundaries of the Reservation established in Section Two of the Act of March 2, 1889, 25 Stat. 888, including all lands, islands, waters, roads, or any interests therein, including Tripp, Mellette, Gregory and Lyman Counties; and

(3) All persons and property within any geographical area referred to in Subsections (1) and § 18-2-101 (2), (40) (b) that is subject to the jurisdiction and governmental power of the Tribe.

18-1-107. PURPOSE. The Council hereby declares it to be in the public interest that all uses of land, whether trust land or nontrust land, by enrolled tribal members and nonmembers be regulated as hereinafter provided in order:

(1) Encourage the most appropriate use of the land;

(2) Protect the sacred, cultural, social and economic stability of residential, agricultural, commercial, industrial, forest, wildlife, and environmentally sensitive lands, water resources, and other areas within the Rosebud Reservation, and to assure the orderly use of such areas;

(3) Prevent the menace to the public safety resulting from the improper location of buildings and land use;

(4) Facilitate the purpose and objectives of the Bylaws, Tribal Land Enterprise, Rosebud Indian Reservation; and

(5) Otherwise promote the public health, safety, morals, and general

welfare in accordance with the treaty rights reserved by the Rosebud Sioux Tribe.

18-1-108. SOVEREIGN IMMUNITY.

The Rosebud Sioux Tribe, and all its constituent parts, including the Land Use and Environment Commission established pursuant to this Title, are immune from suit in any jurisdiction, except to the extent that such immunity has been expressly and unequivocally waived by the Tribe in this Title or elsewhere. Nothing in this Title shall be construed as waiving the sovereign immunity of the Tribe or any of its constituent parts, including the Land Use and Environment Commission, its members, the Director of Land Use and Environment and the Director of Natural Resources; except that the Commission, its members, and the Directors shall be subject to suit for prospective, equitable relief (including declaratory and injunctive relief) only in proceedings before the Commission and Tribal Court, nor any enforcement action taken pursuant to this Title, shall constitute a waiver of such sovereign immunity as to any claim for damages, attorneys fees or costs, regardless of whether any such claim arises out of the same transaction or occurrence, or in any other in any other respect. Nothing in this Title shall be construed as a legislative declaration of tribal liability under federal or state environmental laws or as a waiver of tribal sovereign immunity with respect thereto.

CHAPTER 2 – GENERAL PROVISIONS

18-2-101. Definitions

18-2-101. DEFINITIONS. In this Title and in Title 19, except where otherwise specifically provided or the context otherwise requires, the following terms and expression shall have the following meanings.

(1) “Accessory Use of Building” means a building, part of a building or structure or use which is subordinate to, and the use of which is incidental to that of the main building, structure or use on the same lot.

(2) “Agriculture” means the tilling of the soil, the raising of crops,

horticulture, livestock farming, dairying and/or animal husbandry.

(3) “Alley” means a public thoroughfare or way which has a width of not more than 20 feet which affords only a secondary means of access to abutting property.

(4) “Apartment House” means a building or portion of a building, designed for occupancy by three or more families living independently of each other and containing three or more dwelling units.

(5) “Building” means any structure, including mobile homes, established for the support, shelter or enclosure of person, animals, of chattels, and when separated by division walls without openings from the ground up, each portion of such structure shall be deemed a separate building. For purposes of this Title, “mobile homes” does not include vehicles or trailers that are not normally occupied other than for travel.

(6) “Business” means any regular or temporary activity engaged in by any person for the purpose of conducting a trade, profession or commercial activity involving the sale of any property or services. However, an isolated sale of property or services shall not be considered of traditional Indian art or handicrafts by tribal members or the traditional practice of medicine by a tribal member be considered to be a “business” under this Title.

(7) “Constitution” or “Tribal Constitution” means the Constitution and Bylaws of the Rosebud Sioux Tribe of South Dakota, ratified on November 23, 1935, and approved by the Secretary of the Interior, Harold L. Ickes, on December 16, 1935, as amended from time to time thereafter.

(8) “Council” or “Tribal Council” means the Rosebud Sioux Tribal Council established as the governing body of the Rosebud Sioux Tribe in the Tribal Constitution.

(9) “Commission” means the Land Use and Environment Commission established under this Title.

(10) “Department” means the Land Use and Environment Department established under this Title.

(11) “Director” means the Tribal Director appointed pursuant to Chapter Five of this Title or, if with respect to matters governed by Chapter Six of Title 19 only and enforcement thereof, the Director of Water Resources.

(12) " Dwelling" means a building or portion thereof designed exclusively for residential purposes, including one family, two family, and multiple family dwellings, but shall not include hotels, auto courts, boarding houses and lodging houses.

(13) " Dwelling Unit" means one or more rooms in a dwelling or apartment house or apartment hotel designed for occupancy by one family for living or sleeping purposes, and having only one kitchen.

(14) " Dwelling, Single Family" means a detached building designed exclusively for occupancy by one family and containing one dwelling unit.

(15) " Dwelling, Two Family" means a detached building designed exclusively for occupancy by two families living independently of each other, and containing two dwelling units. Such definition shall also include the term " Duplex."

(16) " Dwelling, Multiple Family" means a building, or portion thereof, designated for occupancy by three or more families living independently of each other, and containing three or more dwelling units.

(17) " Farming Activities" means all acts or human efforts for the raising of crops, horticultural endeavors, soil protection or preparation efforts, or ground enhancement activities for cultivation of fruits, vegetables, flowers, grasses, plants or other crops which occur within the exterior boundaries of the Reservation, including activities involving the use of pesticides, fertilizers, chemical enhancers or other products or natural substances utilized in the raising of crops or other vegetal species.

(18) " Forest Activities" mean all acts of human efforts for the raising or for the production enhancement of trees, plants or other forest crops, horticultural endeavors for the production of trees or other fiber producing vegetal species (excluding cotton), erosion control efforts and other activities for soil protection, preparation or conservation which occurs within the exterior boundaries of the Reservation, including activities involving the use of pesticides, fertilizers, chemical enhancers or other products or natural substances utilized in the replanting or raising of trees, forest crops or other products or natural substances utilized in the replanting or raising of trees, forest crops or other

vegetal species (other than those activities included under " Farming activities" above).

(19) " Grade" means the average of the finished ground level at the center of all walls of a building. In case walls are parallel to and within five feet of the street side of a sidewalk, the above-ground level shall be measured at the sidewalk.

(20) " Home Occupation" means any occupation of a service character which is clearly secondary to the main use of the premises as a dwelling place, and does not change the character thereof or have any exterior evidence of such secondary use. Any such occupation shall be carried on or conducted only by members of a family residing in the dwelling and in connection with which there is kept no stock in trade or commodity for sale upon the premises; provided, however, that the keeping of stock in trade or commodities for sale may be done by any enrolled tribal member engaged in the manufacture, sale and repair of Indian arts and crafts.

(21) " Immediate family" means brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half brother, half sister, or brother, sister, son, daughter, mother or father by adoption.

(22) " Institution" means an establishment maintained and operated by a society, corporation, individual, foundation, or public agency for the purpose of providing charitable, social, educational, or similar services to the public, groups, or individuals.

(23) " Lot" means a fractional part of subdivided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include " Tracts" or " Parcels."

(24) " Lot Area" or " Parcel Area" means the total horizontal area within the boundary lines of a lot or a parcel. For the purposes of determining area in the case of an irregular triangular or cone-shaped lot or parcel, a line 10 feet in length within the lot or parcel and farthest removed from the front lot line and at right angles to the line constituting the depth of such lot or parcel shall be used as the rear lot line.

(25) " Lot, Corner" means a lot situated at the intersection of two or more streets, except where the angle of the intersection of the street margins exceeds 135°.

(26) “Lot, Inside or Interior” means a lot other than a corner lot or reversed corner lot.

(27) “Lot Key” means the first lot to the rear of a reversed corner lot and whether or not separated by an alley.

(28) “Lot Line, Front” means in the case of interior lot, the property line separating the lot from the street. In the case of a corner lot, the front line shall be the property line separating the narrowest street frontage of the lot from the street.

(29) “Lot Line, Rear” means the property line which is opposite and most distant from the front lot line. For the purpose of establishing the rear lot line of a triangular or trapezoidal lot, or of a lot the rear line of which is formed by two or more lines; the following shall apply:

(a) For a triangular or cone-shaped lot a line 10 feet in length within the lot and farthest removed from the front line at right angles to the line comprising the depth of such lot shall be used at the rear lot line.

(b) In the case of a trapezoidal lot, the rear line of which is not parallel to the front lot line, the rear lot line shall be deemed to be a line at right angles to the line comprising the depth of such lot and drawn through a point bisecting the recorded rear lot line.

(c) In the case of a pentagonal lot, the rear boundary of which includes an angle shall be employed for determining the rear lot line in the same manner as prescribed for a triangular lot.

(30) “Lot Line, Side” means any lot boundary line not a front line lot or a rear lot line.

(31) “Lot of Record” means a lot shown on an officially recorded plot or subdivision, or a parcel of land the deed of which is officially recorded, considered as a unit of property, and described by metes and bounds.

(32) “Lot, Reversed Corner” means a corner lot, the side street line of which is substantially a continuation of the front lot line of the lot upon which the rear of such corner lot abuts.

(33) “Lot through” means an interior lot having frontage on two streets.

(34) “Lot Width” means the horizontal distance between the side lot lines measured at right angles to the line comprising the depth of the lot at a point midway between the front and rear lot line. However, the length of the line constituting the rear line of the required

front yard shall never be less than 50 feet.

(35) “Notice,” as used in this Section, means publication in any newspaper of general circulation on the Reservation.

(36) “Percentage of Lot Occupancy” means the percentage of a lot of parcel as herein defined, which is occupied as building area.

(37) “Person” means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, investment trust, municipal corporation, corporation, association, syndicate, pool, organization, society, political entity, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.

(38) “Preside” means to occupy the place of authority of, direct, control, or regulate proceedings of, exercise superintendent or guidance of, an organization, meeting or activity.

(39) “Property” means realty and personal, of whatever nature, including fixtures, money, claims, intangible rights and interests in property.

(40) “Reservation” means:

(a) The Rosebud Sioux Reservation, including all lands, islands, waters, roads, and bridges or any interests therein, whether in trust or non-trust status and notwithstanding the issuance of any patent or right-of-way, within the boundaries of the Reservation as established in Section Two of the Act of March 2, 1889, 25 Stat. 888, and such other lands, islands, waters or any interest therein thereafter added to the Reservation at any time;

(b) All trust or restricted land of the Tribe or any enrolled member of the Tribe situated within the historical boundaries of the Reservation established in Section Two of the Act of March 2, 1889, 25 Stat. 888, including lands, islands, waters, roads, or any interests therein, including Tripp, Mellette, Gregory and Lyman Counties;

(c) All persons and property within any geographical area referred to in Subsections (40) (a) and (2), (40) (b) above, that is subject to the jurisdiction and governmental power of the Tribe.

(41) “Right Of Way, Private” means every way, lane, road, street, and every way or place on the Reservation in private ownership and used for travel by the owner or owners or those persons

having express or implied permission from the owner or owners, but not by other persons.

(42) "Right Of Way, Public" means every way, lane, road, street and every way or place on the Reservation open as a matter of right to public vehicular travel.

(43) "Sign" means any outdoor advertising display or outdoor advertising structure designed and placed so as to be readable principally from the outside.

(44) "State" means the State of South Dakota.

(45) "Structural Alterations" means any change in the support in members of a building such as foundations, bearing walls, columns, beams, floor or roof joists, girders, or rafters, or changes in the roof or exterior lines if such changes result in any enlargement of the building.

(46) "Structure" means anything constructed located, or established that requires location on the ground or attached to something having a location on the ground but not including fences or walls used as fences less than six feet in height.

(47) "Tribal Appellate Court" means the court of that named established under the provisions of Chapter One of Title 9 of this Code, and the Judges of that Court, collectively and individually, serving and acting in that office and capacity.

(48) "Tribal Court" means the court of that name established under the provisions of Chapter One of Title 19 of this Code, and the Judges of that Court, collectively and individually, serving and acting in that office and capacity.

(49) "Tribal Land Enterprise" means the Tribal Land Enterprise established by the Tribe pursuant to the Bylaws, Tribal Land Enterprise, Rosebud Indian Reservation adopted by the Tribal Council April 5-7, 1943, approved by the Secretary of the Interior July 8, 1955, as amended.

(50) "Tribal member" or "member" means an individual Indian who is enrolled in the Rosebud Sioux Tribe.

(51) "Waterway" means any creek, stream, river or lake within the boundaries of the Reservation, including man-made canals, ditches, or lakes.

(52) "Yard" means an open space other than a court, on the same lot with a building and unoccupied from the ground upward.

(53) "Yard, Front" means the required yard extending along the entire length of the front line of the lot which is the street line, and measured from the building to the street.

(54) "Yard, Rear" means the required yard extending along the entire width of the lot at the rear of a building, measured from the building in the direction opposite from the front yard.

(55) "Yard, Side" means the required yard between the side wall of a building and the side line of the lot, measured from the building to the side line.

(56) "Zone" means a geographical area given a specific land use designation pursuant to Chapter Eight through Seventeen of this Title.

CHAPTER 3 – MINIMUM REQUIREMENTS

18-3-101. Code As Minimum Requirements

18-3-101. CODE AS MINIMUM REQUIREMENTS. In their interpretation and application, the provisions of this Title shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Whenever the requirements of this Title are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions or covenants, the most restrictive or that imposing the higher standard, shall govern.

CHAPTER 4 – LAND USE AND ENVIRONMENT COMMISSION

18-4-101. Creation Of Commission
18-4-102. Number and Selection Of Commissioners
18-4-103. Qualifications Of Commissioners
18-4-104. Terms Of Office
18-4-105. Oath Of Office
18-4-106. First Commission
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18-4-110. Officer Of Commission
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- 18-4-127. Commission Is State Agency For Purposes Of Federal Law
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- 18-4-133. Decisions Of Commission; Rescission or Amendment
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- 18-4-137. Copies Of Documents As Evidence
- 18-4-138. Orders and Findings In Writing
- 18-4-139. Transcribed Record To Be Kept

18-4-101. CREATION OF COMMISSION. The Tribe hereby creates and establishes, pursuant to this Title, the Land Use and Environment Commission, a governmental agency and subordinate subdivision of the Tribe.

18-4-102. NUMBER AND SELECTION OF COMMISSIONERS. The Commission shall comprise of five members appointed by Council.

18-4-103. QUALIFICATIONS OF COMMISSIONERS.

(1) Three Commissioner members shall be enrolled members of the Rosebud Sioux Tribe, and two Commission members shall be non-members of the Rosebud Sioux Tribe.

(2) In appointing members, the Council shall give due consideration to:

(a) Sound judgment and knowledge of the goals, purposes, and provisions of Titles 18 and 19;

(b) Qualities of experience, industry, responsibility, integrity, and sensitivity to the unique Indian cultural, economic, and social condition and goals of the Rosebud Sioux Tribe; and

(c) Familiarity with the land and natural resources of the Rosebud Sioux Indian Reservation within the territory described in § 18-1-106 of the Title.

(3) No members of the Commission shall serve in any other tribal capacity in which he is responsible for actions or decisions that involve the use of land within the Rosebud Sioux Indian Reservation which would regularly be subject to the provisions of Titles 18 and 19.

18-4-104. TERMS OF OFFICE.

(1) Commissioners shall serve three year terms and shall hold office until their successors have been appointed and have been sworn into office; provided, however, that the first Commission shall have terms of office as described in § 18-4-106.

(2) The members of the Commission shall not be subject to the Tribal Personnel and Policy Procedure Manual.

18-4-105. OATH OF OFFICE. At the time of being sworn into office each Commissioner shall take the following oath of office; I, _____, do hereby solemnly swear that I will support and defend the Constitution of the United States against all enemies, will carry out faithfully, and impartially, the duties of my office to the best of my ability; and will cooperate, promote and protect the best interests of the Tribe in accordance with the Tribal Constitution and By-Laws.

18-4-106. FIRST COMMISSION. Two Commissioners appointed to the first Commission shall serve terms of three years. Two Commissioners appointed to the first Commission shall serve terms of two years. The remaining Commissioner appointed to the first Commission shall serve a term of one year.

18-4-107. VACANCIES. If any Commissioner shall die, resign, be removed or, for any reason, be unable to serve as a Commissioner, the Council shall declare his position vacant and shall appoint another person to fill the position. Terms of office of all persons appointed to replace the initial Commissioners shall be for the balance of any unexpired term for each such position.

18-4-108. RESIGNATION. Any Commissioner may resign by delivering a written resignation to the President of the Commission. Such resignation shall be effective upon receipt, unless otherwise provided by the terms thereof. A Commissioner's resignation under this Section or removal under § 18-4-109 shall also terminate that Commissioner's status, if applicable, as a presiding officer of the Commission.

18-4-109. REMOVAL. A Commissioner may be removed by the Council for serious inefficiency or neglect of duty or for malfeasance, misfeasance, or nonfeasance or for misconduct in office but, except as provided below in this Section, only after a hearing before the Council, and only after the Commissioner has been given written notice of the specific damages at least ten days prior to such hearing. At any such hearing, the Commissioner shall have the opportunity to be heard in person or by counsel and present witnesses on his or her behalf. If the Council determines that immediate removal of a Commissioner is necessary to protect the interests of the Tribe, the Commissioner may be temporarily removed immediately, and the question of permanent removal shall be determined pursuant to the hearing procedures specified herein. A written record of all removal proceedings, together with the charges and findings thereon, shall be kept by the Tribal Secretary. A decision on removal by the Council shall be final.

18-4-110. OFFICERS OF THE COMMISSION.

(1) President. The President of the Commission shall be appointed by the Council from among the members of the Commission and shall hold office for a term of two years. The President shall preside over all Commission meetings; sign on behalf of the Commission all documents, decisions, orders, notices, or other papers approved for such execution by the Commission; and shall have such other powers and duties as may from time to time be assigned to him by the Commission.

(2) Vice President. The Vice President of the Commission shall be appointed by the Council from among the members of the Commission and shall hold office for a term of one year. Whenever the President is unable to preside or fulfill his duties as President the Vice President shall do so, and when so acting, shall be clothed with all of the powers and duties of the President.

(3) Secretary. The Secretary of the Commission shall be elected by and from the Commission membership for a term not to exceed his term of office as Commissioner. His duties shall be those assigned him by the Commission.

(4) Treasurer. The Treasurer of the Commission shall be the tribal treasurer and shall perform all functions as such for the Commission pursuant to his constitutional authority.

8-4-111. OFFICE OF THE COMMISSION.

The Commission shall be provided with suitable office space, necessary office furniture, stationery, books and maps, the expense thereof to be paid by the Tribe pursuant to appropriations for such purposes.

8-4-112. COMPENSATION OF COMMISSIONERS.

Compensation of Commissioners, if any, shall be determined by the Council and shall be paid from the Commission. Account established pursuant to § 18-4-115. Otherwise Commissioners shall serve without pay, but shall be reimbursed for out-of-pocket expenses incurred performing their official duties at a rate established by the Council.

8-4-113. QUORUM. Four Commissioners shall constitute a quorum of the Commission. A majority of those Commissioners present at a meeting at which there is no quorum may by resolution adjourn the meeting from time to time for a period not exceeding ten days in any one instance.

8-4-114. MAJORITY VOTE. All member of the Commission, including the President, or the Vice President if he shall be presiding, shall be entitled to vote upon all matters coming before the Commission and all such matters shall be decided by majority vote.

8-4-115. GENERAL PROCEDURES OF THE COMMISSION. The Commission shall in all cases conduct its proceedings in the manner most conducive to the proper dispatch of business and to the ends of justice. No Commissioner shall participate in any hearing or proceeding in which such Commissioner has any direct personal pecuniary interest. The Commission may make or amend such general rules or orders as may be necessary for the orderly regulation of proceedings before it, including forms of notice and the service thereof, which shall conform as nearly as possible to those in use by the Tribal Court. Any party may appear before the Commission and may be heard in person or by attorney. Every vote and official action of the Commission shall be heard in person or by attorney. Every vote and official action of the Commission shall be entered into a record and its proceedings shall be published upon the request of any interested person. Every Commissioner shall have the right to administer oaths and affirmations in any proceeding pending before the Commission.

18-4-116. COMMISSION ACCOUNT ESTABLISHED.

(1) There is hereby authorized and directed to be established an account in a federally insured financial institution to be known as the Land Use and Environment Commission Account.

(2) The Commission Account shall be an interest bearing account and the funds therein may be invested and reinvested as approved by the Council.

(3) No monies shall be released or expended from the Commission Account except upon written resolution of the Council appropriating a specific amount of the monies contained therein for the use of a particular department, agency, or program of the Tribe. Such appropriated amount shall be directly transferred to the account of the receiving department, agency, or program named in the appropriation resolution.

(4) All fees, penalties, interest, charges, or other monies collected by the Commission in the administration and enforcement of Titles 18 and 19 shall be deposited in the Commission Account.

18-4-117. JURISDICTION AND POWERS OF COMMISSION. Subject to the right of review provided in Article IV, Section 1 (u) of the Tribal Constitution, the Commission shall have the following powers:

(1) To exercise all managerial authority over the Tribal Land Use and Environment Department pursuant to Titles 18 and 19;

(2) To determine petitions for zone changes and approve zone changes pursuant to procedures set forth in this Title;

(3) To set such fees and charges for application, permits, certified copies of proceedings, files, and other records as it deems appropriate;

(4) To employ and consult with such advisors regarding its duties as it may deem necessary, subject to the limitations hereunder and restrictions set forth in § 18-4-120;

(5) To retain and use the services of only the tribal attorneys or other attorneys designated by the Council upon a contract approved by the Council and the Secretary of the Interior;

(6) To employ and use the services of only the tribal accountants or other accountants designated by the Council upon a contract approved by the Council;

(7) To publish and make available to the public standardized forms necessary for implementation of this Title;

(8) To administer oaths, conduct hearings as provided in § 18-4-117 and § 18-4-118 hereunder, and, by subpoena or subpoena duces tecum, to compel the attendance and testimony of witnesses and the production of any books,

records, papers, vouchers, accounts, documents, and financial statements of any taxpayer or any other person relating to any enforcement action authorized by Titles 18 and 19;

(9) To examine under oath, either orally or in writing, any petitioner or witness with respect to any enforcement action authorized by Titles 18 and 19;

(10) To delegate to an individual member of the Commission, the Director, the Director of Water Resources with respect to matters governed by Chapter Six of Title 19 only and enforcement thereof, or to other members of the Commission staff, or, subject to the approval of the Council, to tribal staff, such of its functions as may be necessary to administer Titles 18 and 19 efficiently; provided, that the Commission may not delegate its powers to promulgate regulations;

(11) To promulgate and enforce regulations consistent with Titles 18 and 19 pursuant to § 18-4-120 and § 19-5-108.

(12) To require the filing of any forms or reports and the issuance of any regulations necessary for implementation of Titles 18 and 19;

(13) To adopt, by regulations, a schedule of fees and charges for services rendered relating to preparation of transcripts and the furnishing of certified copies of: proceedings, files, and records;

(14) To make recommendations to the Council regarding the amendment of Titles 18 and 19; and

(15) To exercise all other authority delegated to it by this Code or the Council, or as may be reasonably necessary in the implementation of any provisions of Titles 18 and 19.

18-4-118. HEARINGS; EXAMINER.

The Commission may conduct such hearings as may be reasonably required in administration of the powers and duties conferred upon it by Titles 18 and 19. The Commission may designate one of its members to act as examiner for the purpose of holding any hearing which the Commission has the power or authority to hold, or the Commission may appoint another person to act as examiner under § 18-4-118. Reasonable notice of all hearings shall be given to interested persons as determined by the Commission.

18-4-119. APPOINTMENT OF EXAMINER; POWER OF EXAMINER.

The Commission may appoint any person qualified in the law or possessing knowledge or expertise in the subject matter of the hearing to act as examiner for the purpose of holding any hearing which the Commission, or any member thereof, has power of authority to hold. Any such appointment shall constitute a delegation to such examiner of all powers of a Commissioner under Titles 18 and 19 with respect to any such hearing.

18-4-120. REGULATIONS OF THE COMMISSION.

(1) The Commission shall promulgate such written regulations as are necessary to carry out the orderly performance of all its duties and powers, including, but not limited to, regulations relating to: the internal operational procedures of the Commission and its staff, the interpretation and application of Titles 18 and 19 as may be necessary to carry out its duties and exercise its powers, the promulgation of official findings or reports or other information required by or necessary to implement Titles 18 and 19, the conduct of inspections, investigations, hearings, enforcement actions and other powers of the Commission authorized by Titles 18 and 19.

(2) Such regulations shall provide for hearings for all interested persons upon reasonable notice, and their right to present oral or written testimony.

(3) No rule or regulation of the Commission shall be of any force or effect until and unless copies of the rule or regulation have been filed for record in the office of the Tribal Secretary and in the office of the Clerk of Tribal Court or Tribal Appellate Court. The copy shall bear the signature of at least three Commission members, certifying that the rule or regulation was duly adopted by the Commission pursuant to Titles 18 and 19.

(4) The Tribal Court, Tribal Appellate Court and any other court of competent jurisdiction shall take judicial notice of all regulations of the Commission promulgated pursuant to Titles 18 and 19.

18-4-121. COMMISSION EMPLOYEES AND EXPENSES.

(1) The Commission may employ such employees and incur such expenses as may be necessary for the proper discharge of its duties, subject to the limitations and restrictions set out in this Section. Commission employees shall be subject to the Tribal Personnel and Policy Procedures.

(2) Upon the approval of the Council by resolution, the Commission may utilize regular tribal staff in exercising the duties and responsibilities set out in Titles 18 and 19.

(3) The Commission may delegate to the tribal staff by rule such of its functions as may be necessary to administer Titles 18 and 19 efficiently, subject to the limitations of this Section.

(4) The total amount disbursed by the Commission in any one fiscal year for the payment of salaries, expenses, and incidentals shall not exceed the amount appropriated for these same disbursements by the Council. The Commission shall submit to the Council a line item proposed budget for the next fiscal year no later than August 15th of each year.

18-4-122. BONDS.

(1) The Commission may require its members and each of its officials and employees who may handle tribal monies or revenues, or who are responsible therefore, to give bond for the honest and faithful performance of their duties, in such amounts as may be fixed by the Commission.

(2) The premiums on any bonds required of the Commission's members, officials, and its employees shall be paid from the Commission Account as authorized in the Commission budget.

18-4-123. RECORDS OF THE COMMISSION.

(1) The Commission shall keep and maintain accurate, complete, and detailed records which reflect each and every official transaction, communication, or action of the Commission, including minutes of all meetings of the Commission.

(2) Such records shall be maintained at the offices of the Commission and shall not be removed from that location absent the consent of the Commission by formal resolution.

(3) Such records shall be subject to audit any time upon the direction of the Council, and shall be audited not less than once each year by an independent auditor selected by the Council.

(4) Records of the Commission which shall be public records of the Tribe and which shall be available for public inspection during regular business hours shall include the following:

(a) Documents and materials submitted to the Commission with respect to any official Commission business; and

(b) Records of all administrative proceedings or hearings before the Commission or any hearing examiner; and

(c) Minutes of all Commission meetings.

(5) Records of the Commission which shall not be public records of the Tribe and which shall not be available for public inspection shall include the following:

(a) Personnel matters and personnel files; and

(b) Advice of counsel and matters relating to threatened, past or pending litigation.

Copies of such records may be obtained by payment of such copying cost as may be established by rule of the Commission.

18-4-124. POWERS OF COMMISSION TO ISSUE AND ENFORCE ORDERS AND PERMITS.

In addition to other powers conferred upon it by this Title and Title 19, the Land use and Environment Commission shall have power to hold hearings relating to any aspect of the administration of this Title.

18-4-125. POWER OF COMMISSION TO ISSUE AND ENFORCE ORDERS AND PERMITS.

In addition to other powers conferred upon it by this Title and Title 19, the Land Use and Environment Commission shall have power to issue such permits and orders as may be necessary to effectuate the purposes of this Title and enforce the same by all appropriate administrative and judicial proceedings.

18-4-126. COMMISSION IS STATE AGENCY FOR PURPOSES OF FEDERAL LAW.

The Land Use and Environment Commission shall be

designated as a state agency for all state purposes of the Clean Water Act, codified at 33 U.S.C. §§ 1251-1387; the Solid Waste Disposal Act, codified at 42 U.S.C. §§ 6901-6992 k; and the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616, as amended by January 1, 1992.

18-4-127. HEARINGS OF THE COMMISSION; EXAMINER. The Commission may conduct such hearings as may be reasonably required in administration of the powers and duties conferred upon it by this Title 18 and 19. The Commission may designate one of its members to act as examiner for the purpose of holding any hearing which the Commission has the power or authority to hold, or the Commission may appoint another person to act as examiner under § 18-4-127. Reasonable notice of all hearings shall be given to interested persons as determined by the Commission.

18-4-128. APPOINTMENT OF EXAMINER; POWER OF EXAMINER. The Commission may appoint any persons qualified in the law or possessing knowledge or expertise in the subject matter of the hearing to act as examiner for the purpose of holding any hearing which the Commission, or any member thereof, has power or authority to hold. Any such appointment shall constitute a delegation to such examiner of all powers of a Commissioner under this Title and Title 19 with respect to any such hearing.

18-4-129. EFFECTIVE DATE OF ORDERS AND DECISIONS. Every decision made by the Commission constituting an order or decision shall be effective and enforced 10 days after it has been filed and has been served by personal delivery or by mailing a copy thereof to all parties to the proceeding in which the decision was made or to their attorney, unless the Commission specifies a different date upon which the order or decision shall be effective.

18-4-130. CONCLUSIVE EFFECT OF ORDERS AND DECISIONS OF COMMISSION. In all collateral actions or proceedings before any court or administrative agency of competent jurisdiction, the orders and decisions of

the Commission that have become final shall be conclusive.

18-4-131. REHEARINGS BEFORE COMMISSION.

(1) Within 10 days after service by the Commission of any decision constituting an order or decision, any party to the proceeding and any other person aggrieved by the decision and directly affected thereby, may apply to the Commission for a rehearing in respect to any matters determined in the decision. The Commission may grant a rehearing on any or all matters raised in the request for rehearing, if in its discretion sufficient reason exists.

(2) Applications for rehearing shall be governed by general rules which the Commission may establish. If, after rehearing, it shall appear that the original order or decision is in any respect unlawful or unreasonable, the Commission may reverse, change, modify or suspend the original action accordingly. No order of the Commission shall become effective until the time for filing an application for rehearing expires or while a rehearing is pending and until ten days after any such application for a rehearing is either denied, or the Commission has announced its final determination on rehearing, whichever first occurs.

(3) The grant or denial of a rehearing shall be discretionary with the Commission. A request for rehearing shall not be deemed a condition precedent to judicial review of a final administrative order or decision.

18-4-132. DECISIONS OF COMMISSION; RESCISSION OR AMENDMENT. The Commission may at any time, on its own motion or upon motion of an interested party, and upon notice to the utility and after opportunity to be heard, rescind, alter or amend any order or decision made by the Commission and may reopen any case following the issuance of an order or decision therein, or the taking of further evidence or for any other purpose. Any order rescinding, altering, amending or reopening a prior order or decision shall have the same effect as an original order or decision.

18-4-133. SUBPOENA; WITNESSES; FEES; MILEAGE. The Commission or a

Commissioner may issue subpoenas and all necessary process in proceedings pending before the Commission; and each process shall extend to all parts of the Reservation and may be served by any person authorized to serve process under this Code. Each witness who shall appear before the Commission, or at a hearing, or whose depositions is taken, shall receive for attendance the fees and mileage, if any, provided for witnesses in civil cases in Tribal Court.

18-4-134. DEPOSITIONS. The Commission or any party to the proceedings may, in any investigations or hearing before the Commission, cause the deposition of witnesses residing within or without the Reservation to be taken in the manner prescribed by law for taking depositions in civil actions in the Tribal Court.

18-4-135. TESTIMONY AND PRODUCTION OF RECORDS;

PERJURY. No person shall be excused from testifying or from producing any book, document, paper, or account in any investigation, or inquiry by, or hearing before, the Commission or any Commissioner, or person designated by it to conduct hearings, when ordered to do so, upon the ground that the testimony or evidence, book, document, paper, or account required may tend to incriminate the person or subject the person to penalty or forfeiture; but no person shall be prosecuted, punished, or subjected to any forfeiture or penalty for or on account of any act, transaction, matter, or thing concerning which the person shall have been compelled under oath to testify to, or produce documentary evidence of. However, no person so testifying shall be exempt from prosecution or punishment for any perjury committed in testimony.

18-4-136. COPIES OF DOCUMENTS AS EVIDENCE. Copies of official documents and orders filed or deposited according to law in the office of the Commission, certified by the Commission under the official seal of the Commission to be true copies of the originals shall be evidence in like manner as the original, in all matters before the Commission and in the Tribal Court.

18-4-137. ORDERS AND FINDINGS IN WRITING. Every order, finding, authorization, or certificate issued or proved by the Commission under any provisions of this Title shall be in writing and filed in the office of the Commission. A certificate under seal of the Commission that any order, finding, authorization, or certificate has not been modified, stayed, suspended, or revoked, shall be received as evidence in any proceeding as to the facts therein stated.

18-4-138. TRANSCRIBED RECORD TO BE KEPT. A full and complete record shall be kept of all proceedings at any formal hearing of the Commission and all testimony shall be taken down by a reporter appointed by the Commission. A copy of the transcript shall be furnished on demand to any party to the proceedings upon payment of reasonable costs of reproduction.

CHAPTER 5 – LAND USE AND ENVIRONMENT DEPARTMENT

- 18-5-101. Establishment
- 18-5-102. Director Of Land Use and Environment
- 18-5-103. Duties Of The Director Of Land Use and Environment
- 18-5-104. Director Of Water Resources
- 18-5-105. Duties Of The Director Of Water Resources
- 18-5-106. Department Employees

18-5-101. ESTABLISHMENT. There is hereby established a Land Use and Environment Department to administer Titles 18 and 19 of this Code.

18-5-102. DIRECTOR OF LAND USE AND ENVIRONMENT. The Manager of the Land Use and Environment Department shall be the Director. The Director shall be appointed by the Tribal Council to serve for a three year term beginning January 1, 1992, and such additional succeeding three year terms as the Tribal Council may determine. The Director shall be subject to the Tribal Personnel and Policy Procedures.

18-5-103. DUTIES OF THE DIRECTOR OF LAND USE AND ENVIRONMENT. Except as provided in this Title 18 or Title 19, in performance of his duties, the Director shall:

- (1) Administer and enforce Titles 18 and 19;
- (2) Administer the operations of the Rosebud Land Use and Environment Department, using funds budgeted by the Council;
- (3) Submit a proposed annual budget to the Council;
- (4) Supervise all employees of the Department pursuant to delegation of authority by the Commission;
- (5) Review applications for and recommend Commission action upon the following:
 - (a) Land use permits,
 - (b) Zoning changes,
 - (c) Variances,
 - (d) Conditional use permits,
 - (e) Land division permits,
 - (f) Planned Unit Developments,
 - (g) Alteration or repair of nonconforming uses, and
 - (h) Such other permits as are required by Titles 18 and 19 as originally enacted or as amended, unless specifically provided therein, and except with respect to matters governed by Chapter 6 of Title 19 only, for which permits applications shall be reviewed and recommendations to the Commission shall be made by the Director of Water Resources.
- (6) Provide clerical and administrative support to the Commission; and
- (7) Take such actions as are prescribed in Titles 18 and 19 or the laws of the Tribe.

18-5-104. DIRECTOR OF WATER RESOURCES. The Chief Executive Officer of the Land Use and Environment Department with respect to matters governed by Chapter 6 of Title 19 only and enforcement thereof shall be to serve for a three year term beginning January 1, 1992, and such additional succeeding three year terms as the Tribal Council may determine. The Director shall be subject to the Tribal Personnel and Policy Procedures.

18-5-105. DUTIES OF THE DIRECTOR OF WATER RESOURCES. The Director of Water Resources shall exercise such duties provided in

§ 18-5-103 as specifically relate to matters governed by Chapter Six of Title 19 only and enforcement thereof.

18-5-106. DEPARTMENT EMPLOYEES.

(1) The Director may employ such employees and incur such expenses as may be necessary for the proper discharge of his duties, subject to the limitations and restrictions set out in this Section.

(2) Upon the approval of the Council resolution, the Director may utilize regular Tribal staff to exercise the duties and responsibilities set out in Titles 18 and 19.

(3) The Director may delegate to the Tribal staff by rule such of its functions as may be necessary to administer Titles 18 and 19 efficiently, consistent with the limitations of Titles 18 and 19.

(4) The total amount expended by the Director in any one fiscal year for the payment of salaries, expenses, and incidentals shall not exceed the amount appropriated for these same expenditures by the Council. The Director shall submit to the Council a line item proposed budget for the next fiscal year not later than July 1st of each year.

CHAPTER 6 – ZONING MAPS

- 18-6-101. Establishment Of Zones: Provisions For Official Zoning Maps
- 18-6-102. Interpretation Of Zone Boundaries

18-6-101. ESTABLISHMENT OF ZONES: PROVISIONS FOR OFFICIAL ZONING MAPS.

(1) Official Zoning Maps.

(a) The Reservation is hereby divided into zones. Such zones shall be noted on the five Official Zoning Maps which, together with all explanatory matter thereon, are hereby adopted by reference and declared to be a part of this Title. There shall be a separate Official Zoning Map for each South Dakota county in which the Rosebud Sioux Reservation is located, including Todd County, Tripp County, Mellette County, Gregory County, and Lyman County. A new Official Zoning Map shall be adopted and declared to be a part of this Title for every new South Dakota

county in which the Rosebud Sioux Reservation is located.

(b) The Official Zoning Maps, comprising several sections, shall be as identified by the signature of the Chairman of the Council, together with the date of adoption of this Title.

(c) If, in accordance with the provisions of this Title, a change is made in zone boundaries or other matter portrayed on an Official Zoning Map, such change shall be made on the Official Zoning Map promptly after the change has been approved.

(d) No change of any nature shall be made in an Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this Title. Any unauthorized change of whatever kind by any person or person shall be considered a violation of this Title and punishable as provided by applicable law.

(e) The Official Zoning Maps shall be located in the Office of the Planning Department, with certified copies in the Tribal Chairman's office. Copies of the current Official Zoning Map shall also be given to the appropriate offices of the Bureau of Indian Affairs, the federal government, and the government of the State of South Dakota. Regardless of the existence of purported copies of the Official Zoning Maps shall be final authority as to the current zoning status of all property within the territory described in Section 18-1-106 of this Title.

(2) Replacement of Official Zoning Maps. In the event that any Official Zoning Maps becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the Tribal Council may by resolution adopt a new Official Zoning Map, as needed, which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending this Title or any subsequent amendment thereof.

18-6-102. INTERPRETATION OF ZONE BOUNDARIES. Whenever uncertainty exists as to the boundaries of zones as shown on the Official Zoning Maps, the following rules shall apply:

(1) Boundaries indicated as approximately, following the center lines

of streets, highways, or alleys shall be construed to follow such center lines;

(2) Boundaries indicated as approximately following plotted lot lines shall be construed as following such lot lines;

(3) Boundaries indicated as approximately following city limits shall be construed as following city limits;

(4) Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;

(5) Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line, shall be construed as moving with the actual shore lines;

(6) Boundaries indicated as approximately following center lines of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such center lines; and

(7) Boundaries indicated as parallel to or extensions of features indicated in subsections (1) through (6) shall be so construed. Distances not specifically indicated on an Official Zoning Map shall be determined by the scale of the map. Where physical or cultural features existing on the ground are at variance with those shown on an Official Zoning Map, or in other circumstances not covered by subsections (1) through (7), the Commission shall interpret the zone boundaries.

CHAPTER 7 – NONCONFORMING LOTS, USES AND STRUCTURES

- 18-7-101. Intent
- 18-7-102. Nonconforming Lots Of Record
- 18-7-103. Nonconforming Uses Of Land
- 18-7-104. Nonconforming Uses Of Structures and Land

18-7-101. INTENT.

(1) Within the zones established by this Title or amendments that may later be adopted, there may exist lots, structures, and uses of land and structures which were lawful before this Title was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Title or any such future amendment. It is the intent of this Title to permit these non-conformities to continue until they are

removed, but not to encourage their survival. Such uses are declared by this Title to be incompatible with permitted uses in the zones involved.

(2) To avoid undue hardships, nothing in this Title shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Title and, further, if all or part of the lots do not meet the requirements of lot width and area established by this Title, then the lands involved shall be considered to be an individual parcel for the purpose of this Title and no portion of such parcel shall be used or sold which does not meet lot width and area requirements established by this Title, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this Title.

18-7-103. NONCONFORMING USES OF LAND.

Whenever, on the effective date of adoption or amendment of this Title, a lawful use of land exists that is made no longer permissible under the terms of this Title as enacted or amended, such use may be continued, as long as it remains otherwise lawful, subject to the following provisions:

(1) No such nonconforming use shall be enlarged, increased, or extended to occupy a greater area of land than was occupied on the effective date of adoption or amendment of this Title, unless the additions conform in all respects to this Title or are approved under the procedures and standards for variances.

(2) No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use on the effective date of adoption or amendment of this Title.

(3) If any such nonconforming use of land ceases for any reason for a period of more than 180 days, any subsequent use of such land shall conform to the regulations specified by this Title for the zone in which such land is located.

18-7-104. NONCONFORMING

STRUCTURES. Whenever a lawful structure exists on the effective date of adoption or amendment of this Title that could not be built under the terms of this Title by reason of restrictions on area, lot coverage, weight, yards, or other

characteristics of the structure or its location of the lot, such structure may be continued as long as it remains otherwise lawful, subject to the following provisions:

(1) No structure may be enlarged or altered in any way unless the enlargement or alteration is approved under the procedures and standards for variations.

(2) Should a structure be destroyed by any means to an extent of more than 75% of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this Title.

(3) Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the zone in which it is located after it is moved.

18-7-105. NONCONFORMING USE OF STRUCTURES AND LAND.

Whenever a lawful structure and land in combination exists on the effective date of adoption or amendment of this Title, that would not be allowed in the zone under the terms of this Title, such lawful use may be continuing as long as it remains otherwise lawful, subject to the following provisions:

(1) No existing structure devoted to a use not permitted by this Title in the zone in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered in any way except to change the use of the structure to a use permitted in the zone in which it is located;

(2) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Title, but no such use shall be extended to occupy any land outside of such building;

(3) If no structural alterations are made, any nonconforming use of a structure and land may be changed to another nonconforming use provided that the procedures for obtaining a variance are followed and the Commission finds that the proposed use is more appropriate to the zone than the existing nonconforming use. In permitting such change, the Commission may require appropriate conditions and safeguards in accordance with the provisions of the Title;

(4) Any structure or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the zone in which such structure is located, and the nonconforming use may not thereafter be resumed;

(5) Whenever a nonconforming use of a structure, or structures, or structure and land in combinations shall not thereafter be used except in conformance with the regulations of the zone in which it is located;

(6) On any building devoted in whole or in part to any nonconforming use, work may be done on ordinary repair, provided that the cubic content of the building as it existed at the time of passage or amendment of this Title shall not be increased. Nothing in this Title shall be deemed to prevent the strengthened or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official; and

(7) Whenever nonconforming use status applies to the structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land which shall not thereafter be used except in conformance with regulations of the zone in which it is located.

CHAPTER 8 – RESIDENTIAL ZONE

- 18-8-101. Purposes
- 18-8-102. Allowed Uses
- 18-8-103. Transitional Uses
- 18-8-104. Area Regulation

18-8-101. PURPOSES. A Residential Zone (R) is established as a zone in which the principal use of the land is for residential construction and land development of varying densities designed to meet contemporary building and living standards. In order that a Residential Zone shall further promote the general purpose of this Title, the specific intent of this Zone is:

- (1) To encourage construction upon and the continued use of land for various residential purposes.
- (2) To prohibit commercial and industrial uses of land and to prohibit any

other use that would substantially interfere with the development or continuation of residential uses.

(3) To encourage the discontinuance of existing uses of land which would not be permitted as new uses under the provisions of this Title.

(4) To prohibit any use of land which, because of its character or size, creates requirements and costs for public services, such as police and fire protection, water supply and sewage facilities, substantially in excess of such requirements and costs if the Zone in which the land lies were developed solely for residential purposes.

18-8-102. ALLOWED USES. No building, structure or land shall be used and no building or structure shall be hereafter located, established, altered, enlarged or maintained in a Residential Zone except for the following uses:

- (1) Single family dwellings.
- (2) Two-family dwellings.
- (3) Multiple-family dwellings.
- (4) Public parks and playgrounds.
- (5) Farming, gardening, orchards and nurseries, provided that no retail or wholesale business office is maintained, and provided that no poultry or livestock shall be housed within 100 feet of any residence other than the dwelling on the same lot.
- (6) Home occupations as defined in § 18-2-101 of this Title.
- (7) Accessory buildings such as are ordinarily appurtenant to the permitted uses in such Zone.
- (8) Special Property uses specifically allowed in such Zone as listed in Chapter Twenty Five of this Title.

18-8-103. TRANSITIONAL USES.

Whenever the side of a lot abuts a Commercial or Industrial Zone, the following transitional uses are permitted provided they do not extend more than 100 feet into the Residential Zone:

- (1) Medical or dental offices and clinics.
- (2) Other uses of a transitional nature as determined by the Director. These transitional uses shall conform to all other requirements of this Title which apply.

18-8-104. AREA REGULATION. The following area regulations apply in a Residential Zone:

(1) Lot Size and Percentage of Coverage.

(a) Single Family Dwelling. No single family dwelling shall hereafter be located upon any lot or plot having an area of less than 7200 square feet, or an average width of less than 60 feet. Nor shall the building, including its accessory buildings, cover more than 50% of the total lot area.

(b) Two-Family Dwelling. No two family dwelling shall hereafter be located upon any lot or plot having an area of less than 9600 square feet, or an average width of less than 80 feet. Nor shall the building, including its accessory buildings, occupy or cover more than 50% of the total lot area.

(c) Multiple-Family Dwelling. No multiple family dwelling of three or more residential units shall hereafter be located upon any lot or plot having an area of less than 10,800 square feet, or an average width of less than 890 feet. Nor shall an apartment or multiple-family dwelling of any type be located in such a manner as to provide less than 2000 square feet of land area for each living unit including the land on which the unit is built. No multiple family dwelling, or apartment, including its accessory building, shall occupy or cover more than 50% of the total lot area.

(2) Lot Sizes. Larger lot sizes for individual water and sewage systems or community water and sewage systems may be required by the Director of Water Resources.

(3) Set-Back Requirements.

(a) Front. There shall be a minimum set-back for all buildings or other structures from the centerline or rights-of-way as follows:

<u>Rights-of-Way, Public</u>	<u>Set-Back</u>
Major or Secondary Arterials	60 feet
Collector of Access Roads	50 feet

<u>Rights-of-Way, Private</u>	
Any road, land, street or other access way in private ownership	50 feet

Any Waterway
See § 18-2-101 (51), above. 200 feet

(b) Side. There shall be a side set-back of not less than five feet on each side of a dwelling except that a set-back

on a corner lot shall not be less than 10 feet along the flanking or side street line.

(c) Rear. There shall be a rear set-back of not less than 15 feet in the rear of each dwelling. Accessory buildings may be located in the rear of each dwelling. Accessory buildings may be located in the rear yard provided they shall maintain a set-back of five feet any lot line.

(4) Height Requirements. No building shall exceed a height of 45 feet or three stories, whichever is the lesser.

CHAPTER 9 – COMMERCIAL ZONE

- 18-9-101. Purposes
- 18-9-102. Allowed Uses
- 18-9-103. Area Regulation

18-9-101. PURPOSES. A Commercial Zone (C) is established as a zone in which the principal use of the land is for various types of commercial activities which provide the outlets for commodities, personal services, professional services and other business uses related to the needs of the particular section of the community in which it is located.

In order that a Commercial Zone shall further promote the general purpose of this Title, the specific intent of this Title is:

(1) To protect commercial development, as far as is possible and appropriate in each area, against the establishment of uses which would create hazards, offensive noise, vibration, smoke, dust, orders, heat, glare, or other objectionable influences, or heavy trucking traffic;

(2) To protect commercial development against congestion, so far as is possible and appropriate in each area by limiting the bulk of buildings in relation to the land around them to one another;

(3) To provide sufficient space in appropriate locations for the transaction of all types of commercial and miscellaneous service activities in beneficial relation to one another, and thus to strengthen the economic base of the community;

(4) To provide appropriate space, and in particular sufficient depth from the street, to satisfy the needs of modern commercial development, including the

need for off-street parking, in areas where a large proportion of customers come by automobile;

(5) To encourage the tendency of commercial development to concentrate, to the mutual advantage of both customers and merchants;

(6) To promote the most desirable use of land in accordance with a well-considered plan, to promote the beneficial and appropriate development of all land, to promote stability of commercial development to protect the character and established pattern of desirable development in each area, to conserve the value of the land, and thus to promote public safety, convenience, prosperity and welfare.

18-9-102. ALLOWED USES. No building, structure, or land shall be used and no building or structure shall be hereafter located, established, altered, enlarged, or maintained in a Commercial Zone except for the following uses:

- (1) Any use permitted in a Residential Zone;
- (2) Retail trade establishment; and
- (3) Commercial and professional service establishment.

18-9-103. AREA REGULATIONS. The following area regulations shall apply in a Commercial Zone.

(1) **Lot Size and Percent of Coverage.** No building, including all accessory buildings on one lot, shall occupy or cover more than 50% of the total lot area.

(2) **Set-Back Requirements.**

(a) **Front.** There shall be a minimum set-back for all buildings or other structures from the centerline of rights-of-way as follows:

<u>Rights-of-Way, Public</u>	<u>Set Back</u>
Major or Secondary Arterials	60 feet
Collector or Access Roads	50 feet
<u>Rights-of-Way, Private</u>	
Any road, street or other access way in private ownership	50 feet
<u>Any Waterway</u>	
See § 18-2-101 (5), above.	200 feet

(b) **Side.** No side set-back is required except for property abutting a

Residential Zone in which case the side yard on the abutting side shall be the same as that required in the Residential Zone. On a side abutting a street, the set-back shall be a minimum of ten feet for all structures.

(c) **Rear.** No rear set-back is required in a Commercial Zone.

(3) **Height Requirements.** No building shall exceed a height of 45 feet or three stories, whichever is the lesser.

CHAPTER 10 – INDUSTRIAL ZONE

- 18-10-101. Purposes
- 18-10-102. Allowed Uses
- 18-10-103. Area Regulations

18-10-101. PURPOSES. The Industrial Zone (I) is established as a zone in which the principal use of the land is for the various types of industrial activities and development which are considered to be compatible with and essential to the economic well-being of the community in which it is located.

In order that an Industrial Zone shall further promote the general purpose of the Title, the specific intent of this Zone is:

- (1) To establish standards for the height and size of buildings, the areas and dimension of yards and open spaces.
- (2) To provide facilities to minimize traffic congestions.
- (3) To provide for facilities and the operation of industries to minimize noise, glare, air pollution, water pollution, and fire and safety hazards in Industrial Zones.

18-10-102. ALLOWED USES. No building, structure, or land shall be used and no building or structure shall be hereafter located, established, altered, enlarged, or maintained in an Industrial Zone except for the following uses:

- (1) Any use permitted in a Commercial Zone, other than a dwelling except when exclusively connected with the business involved.
- (2) Manufacturing, repairing, compounding, proceeding, packing, or storage.
- (3) Wholesale distributing or outlet.
- (4) Railroad facilities, such as switching yards, spur, or holding tracks.

- (5) Kennels.
- (6) Motor vehicle wrecking or junk yard, provided that it is fully screened or fenced so that the storage and operation is not visible from my public right-of-way.

18-10-103. AREA REGULATIONS.

(1) **Setback.** There are no front, side, or rear set-back requirements except for those found in § 18-10-104; provided, however, that no building or use shall be allowed within 75 feet of a Residential Zone or a lot or parcel containing a dwelling in another zone.

(2) **Landscaping.** The open area next to a Residential Zone or dwelling shall be landscaped and maintained with trees, shrubs, hedges or other condition necessary to reduce adverse impacts the industrial use may have an adjacent properties.

(3) **Additional Limitations.** The Director may impose additional limitations on openings, access, location of buildings, activities or other features of the proposed use to reduce the impact on adjacent uses.

18-10-104. OTHER REGULATIONS.

(1) **Rights-of-way Preservation.** There shall be a minimum set-back for all buildings or other structures from the center lines of rights-of-way as follows:

Rights-Of-Way	Set Back
Major or secondary Arterials	40 feet
Collector of access Roads	30 feet

Rights-Of-Way Any road, lane, street Or other access way in private ownership	30 feet
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Any Waterway
See § 18-2-101 (51), above. 200 feet

(2) **Parking and Loading Space.** Parking and loading space shall be provided as required in § 18-24-101 of this Title.

**CHAPTER 11 – NATURAL
RESOURCE CONSERVATION
ZONE**

- 18-11-101. Purpose
- 18-11-102. Allowed Uses

- 18-11-103. Conditional Use
- 18-11-104. Criteria For Conditional Uses
- 18-11-105. Divisions Of Land
- 18-11-106. Signs

18-11-101. PURPOSES. The Natural Resource Conservation Zone (NRC) is established as a zone to:

(1) Preserve and protect Reservation forest lands for continued production of timber and other forest crops.

(2) Protect watershed, fish and wildlife habitats and populations, non-developed recreational uses, scientific uses and other such forest uses.

(3) Provide for limited development of recreational uses not in conflict with the other uses for which the Zone is created.

18-11-102. ALLOWED USES. Within the Natural Resource Conservation Zone, the following uses are allowed and no building, structure or premise shall be located, established, used, arranged, or structurally altered or enlarged except for one or more of the following uses:

(1) Forest uses, including the growing and harvesting of trees; open space; watershed protection; wildlife and fish habitat; vegetative soil stabilization; air and water quality maintenance, undeveloped or low intensity outdoor recreational activities.

(2) Facilities and test plots for experimental and research activities associated with forest management or forest produce.

(3) Fish and wildlife management and related facilities.

(4) Processing, storage, and sale of firewood.

18-11-103. CONDITIONAL USES.

The following uses may be permitted in a Natural Resource Conservation Zone under a conditional use permit granted in compliance with the standards in § 18-22-103:

(1) Exploration, mining and processing of geothermal, aggregate, mineral or other subsurface minerals;

(2) A facility for the primary processing of forest products, such as the use of a chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market;

(3) Commercial activities in conjunction with forest uses defined above;

- (4) Power generation facilities;
- (5) Parks, playgrounds, compounds, hunting and fishing preserves, trails for non-motorized recreational transport (such walking bicycling, or horseback riding) serving the general public and limited structures or buildings associated with such activities;
- (6) Livestock grazing;
- (7) One single family dwelling per parcel on contiguous ownership when necessary and accessory to a forest use;
- (8) A mobile home for security personnel or as a temporary use while constructing a dwelling necessary and accessory to a forest use, the latter use being limited to two years; and
- (9) A mobile home used in conjunction with forest management activities.

18-11-104. CRITERIA FOR

CONDITIONAL USES. The following criteria must be met for the approval of conditional uses in Natural Resource Conservation Zone:

- (1) The use is compatible with forest uses and the intent of the Natural Resources Conservation Zone;
- (2) The use does not interfere with, or enhances, forest uses on adjacent lands;
- (3) The use does not materially alter the stability of the overall land use pattern of the Natural Resource Conservation Zone;
- (4) If the use involves construction of any structure, the structure is sized minimally to meet its purpose and to limit impacts on forest uses, and is located in a manner most likely to minimize impacts on forest uses or removal of land from primary forest uses; and
- (5) The use will not have a significant adverse impact on tree growth or harvesting, watersheds, fish and wildlife habitat or population, soil or slope stability, air or water quality and undeveloped outdoor recreation.

18-11-105. DIVISIONS OF LAND.

Subdivision and Planned Unit Developments are not consistent with the purposes and intent of the Natural Resource Conservation Zone and are prohibited. Land in the Natural Resource Conservation Zone may be partitioned only pursuant to the following rules:

- (1) Any proposed parcel is shown to be of adequate size to support both physically and economically the specific permitted or conditional use proposed,

with the presumption that forest uses require at least 80 acres of land; and

- (2) If a conditional use is contemplated on any proposed parcel, the Land Use and Environment Commission shall consider the partition and the conditional use together and shall approve the partition only if the conditional use permit is granted.

18-11-106. SIGNS. No signs are permitted in a Natural Resource Conservation Zone except as required for resource management, traffic regulation, or safety.

**CHAPTER 12 – NATURAL
RESOURCES DOMINANT
RESIDENTIAL ZONE**

- 18-12-101. Purpose
- 18-12-102. Allowed Uses
- 18-12-103. Conditional Uses
- 18-12-104. Criteria For Conditional Uses
- 18-12-105. Signs

18-12-101. PURPOSES. The Natural Resource Dominant Residential Zone (NDR) is established as a zone to permit the development of a limited number of residences in forested areas under strict conditions preserving as much of the forest environment as possible.

18-2-102. ALLOWED USES. Within a Natural Resource Dominant Residential Zone, the following uses are allowed and no building, structure or premise shall be located, established, used, arranged, structurally altered or enlarged except for one or more of the following uses:

- (1) Forest uses, including the growing but not the commercial harvesting of trees; open space; watershed protection, wildlife and fish habitat; vegetative soil stabilization; air and water quality maintenance, undeveloped recreational activities;
- (2) Facilities and test plots for experimental and research activities associated with forest management or forest products; and
- (3) Fish and wildlife management and related facilities.

18-2-103. CONDITIONAL USES. The following uses may be permitted in a Natural Resource Dominant Residential

Zone under a conditional use permit granted in compliance with the standards in § 18-22-103:

- (1) Parks, playgrounds, campgrounds, hunting and fishing preserves, trails for non-motorized transportation (such as walking, bicycle riding, or horseback riding) serving the general public and limited structures or buildings associated with such activities.
- (2) Single family dwellings.

18-2-104. CRITERIA FOR

CONDITIONAL USES. The following criteria must be met for the approval of conditional uses in a Natural Resource Dominant Residential Zone.

- (1) The use is compatible with the forest uses permitted outright in the Zone and the intent of the Natural Resource Dominant Residential Zone;
- (2) The use will not have a significant adverse impact on watersheds, fish and wildlife habitat, soil or slope stability, air or water quality, and undeveloped outdoor recreation; and
- (3) If the use includes dwellings, the dwellings are built only pursuant to a planned unit development which limits, to the greatest extent feasible, the impact on natural systems and forest uses, which preserves as many live trees as feasible, and which incorporates substantial areas of open space into its plan.

18-2-105. SIGNS. No signs are permitted in a Natural Resource Dominant Residential Zone except as required for resource management, traffic regulation, or safety.

CHAPTER 13 – PRIMARY AGRICULTURE ZONE

- 18-13-101. Purpose
- 18-13-102. Allowed Uses
- 18-13-103. Conditional Uses
- 18-13-104. Criteria For Conditional Uses
- 18-13-105. Division Of Land
- 18-13-106. Signs

18-13-101. PURPOSES. The primary Agricultural Zone (PA) is established as a zone to include lands on which the primary use is the conduct of commercial agriculture. This Zone is intended to:

(1) Preserve and protect the Reservation's best agricultural land for agricultural purposes.

(2) To prohibit or discourage uses which would interfere with the use of agricultural land for agricultural purposes.

18-13-102. ALLOWED USES. Within a Primary Agricultural Zone, the following uses are permitted, and no building, structure, or premise shall be located, established, used, arranged structurally altered, or enlarged, except for one or more of the following uses:

(1) Farm uses, including the employment of land and buildings or structures for the purpose of obtaining a profit or subsistence by raising, harvesting, and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairy products or any other agricultural or horticultural use or animal husbandry and any combination thereof. Farm use includes the preparation, processing, and storage of the products raised on such land for human or animal use and the disposal by marketing or otherwise, and buildings to conduct such activities;

(2) Forest uses, as defined in the description of that term in the Natural Resource Conservation Zone;

(3) Stands for the display and sale of products raised or grown on the premises;

(4) Accessory buildings ordinarily appurtenant to the conduct of farming or agriculture;

(5) Single family dwellings or mobile homes and accessory structures used only in conjunction with a farm use, to house those persons engaged in significant amounts of work related to farming activity or the relatives or family of such persons;

(6) Single family dwellings or mobile homes and accessory structures on home assignments, issued pursuant to Article VIII, Section 1, of the Tribal Constitution, or issued pursuant to Bylaw 26 of the Bylaws, Tribal Land Enterprise, Rosebud Indian Reservation;

(7) Single family dwellings or mobile homes and accessory structures on exchange assignments, issued pursuant to Article VIII, Section 3, or leased pursuant to Section 4, or reassigned pursuant to Section 5, of the Tribal Constitution.

(8) Single family dwellings or mobile homes and accessory structures on tribal land leased pursuant to Article VIII, Section 7, of the Tribal Constitution, or leased pursuant to Bylaw 34 of the Bylaws, Tribal Land Enterprise, Rosebud Indian Reservation;

(9) Home occupations; and

(10) Open space.

18-13-103. CONDITIONAL USES.

The following uses may be allowed as conditional uses in the Primary Agricultural Zone:

(1) All special uses identified in Chapter Twenty One of this Title.

(2) Tribal parks and playgrounds, hunting and fishing preserves or habitat conservation areas.

18-13-104. CRITERIA FOR CONDITIONAL USES.

(1) Special uses identified in Chapter Twenty One may be permitted only if it is shown that:

(a) There is no other reasonably practical alternative site for the use of elsewhere that would not cause greater disruption to the goals of this Title.

(b) The special use is designed and cited so as to minimize the utilization of high quality agricultural land for non-agricultural uses.

(c) The use does not materially alter the stability of the overall land use pattern of the Primary Agricultural Zone.

(2) Other conditional uses may be permitted only if it is shown that:

(a) The use is compatible and does not interfere with agricultural activities on adjacent lands;

(b) Agricultural activities on adjacent lands are compatible with and do not interfere with the conditional use;

(c) The use is so designed and sited so as to minimize the utilization of high quality agricultural land for non-agricultural purposes; and

(d) The use does not materially alter the stability of the overall land use pattern of the Primary Agricultural Zone.

18-13-105. DIVISION OF LAND.

Subdivisions and Planned Unit Development are not consistent with the purposes and intent of the Primary Agricultural Zone and are prohibited. Land in the Primary Agricultural Zone may be partitioned only pursuant to the following rules:

(1) Any proposed parcel is shown to be of adequate size to support both physically and economically the specific permitted or conditional use proposed, with the presumption and agricultural uses require at least two and one-half acres of land; and

(2) If a conditional use is contemplated on any proposed parcel, the Planning Commission shall consider the partition and the conditional use coincidentally and shall approve the partition only if the conditional use permit is granted.

(3) No area of agricultural land shall be subdivided into smaller units than two and one-half acres, as provided by Article VIII, Section 5 (c), of the Constitution of the Rosebud Sioux Tribe of South Dakota.

18-13-106. SIGNS. No signs are permitted in a Primary Agricultural Zone except as are required for agricultural or forest management, traffic, safety, or the advertisement of commercial enterprises allowed in the Zone, in which case the signs shall be no more than nine square feet and no more than two per enterprise.

CHAPTER 14 – HISTORIC PRESERVATION ZONE

18-14-101. Purpose

18-14-102. Allowed Uses

18-14-103. Historic Structures

18-14-104. Signs

18-14-101. PURPOSES. The Historic Preservation Zone (HP) is established as a zone to:

(1) Preserve, protect, maintain and enhance those historic resources that reflect or trace the course of human influence on lands within the Rosebud Indian Reservation.

(2) Encourage the understanding of and reverence for the actions of Sioux Indians in seeking to protect the identity and sovereignty of the Sioux Nation and its constituent parts.

(3) To preserve, protect, and learn from archeological resources on the Rosebud Indian Reservation.

(4) To permit only those land uses that achieve these other purposes.

18-14-102. ALLOWED USES. Within an Historic Preservation Zone, the

following uses are allowed and no building, structure, or premise shall be located, established, used, arranged, altered, or enlarged, except for one or more of the following uses:

(1) Historic identification markers, trails, and interpretive centers.

(2) Uses existing at the time of the passage of this Title that, in each particular Historic Preservation Zone, are declared compatible with historic preservation and are so noted on the Official Zoning Map.

(3) Nondeveloped natural resource use, such as fish and wildlife habitat.

(4) Religious, cultural, and ceremonial activities.

(5) Farming activities, as defined in § 18-2-101 of this Title, and forest activities as defined in § 18-2-101 of this Title, other than the harvest of trees except for the construction of any structures accessory to these activities.

18-14-103. HISTORIC

STRUCTURES. If a structure within an Historic Preservation Zone is designated for historic preservation as part of the Zone, and is so noted on the Official Zoning Map, then the following restrictions will apply to any use or alteration of the building:

(1) No building designated as an historic preservation site may be remodeled, enlarged, repaired, or otherwise altered without first seeking a permit from the Director of the Land Use and Environment Department.

(2) The Director shall grant a permit under this section only on the following conditions:

(a) The exterior design, material and detail shall be preserved to the maximum extent feasible.

(b) Any additions to the structure do not exceed that which was traditional for the building style, and to the greatest extent feasible, maintain the same scale, proportion, building scale; and materials as the original structure.

(c) The building improvements overall are compatible with the architectural style and character of the original building.

(3) No person shall demolish a building designated for historic preservation without applying for a permit from the Director.

(a) If the building has been damaged in excess of 60% of its value,

the permit for demolition shall be issued without any preservation conditions.

(b) In all other cases, the permit shall not be issued for 45 days after the application for demolition, during which time the Director shall make reasonable efforts to identify alternatives to demolition with the goal of maintaining the structure. A lack of private or tribal funding to pay to preserve the structure will be sufficient to allow demolition.

18-14-104. SIGNS. No signs are permitted in an Historic Preservation Zone except as required for traffic, safety, or historical designation, interpretation or information.

CHAPTER 15 – RESERVATION **NATURAL AND CULTURAL** **RESOURCE ZONE**

18-15-101. Purposes

18-15-102. Allowed Uses By Members Only

18-15-103. Access and Use Restricted To Tribal Members; Tribal Permits Required For Nonmember Access

18-15-101. PURPOSES. The Natural and Cultural Resource Zone (NCR) is established as a zone to insure protection and preservation of the Tribal cultural and natural resources and to insure the right of tribal members to have an area in which they may camp, hunt, fish, and gather roots and berries and worship in the tradition of their culture. The Natural and Cultural Resources Zone is further established to prevent uncontrolled development or land use which could result in irreversible damage to important tribal historical, cultural, religious, or aesthetic values or natural systems of processes or could unreasonably endanger life or property.

18-15-102. ALLOWED USES BY MEMBERS ONLY. Only the following uses by members of the Rosebud Sioux Tribe are allowed in a Natural and Cultural Resources Zone. No uses by nonmembers are allowed within the Zone. Furthermore, no building, and structure or premise shall be located, established, used, arranged, altered or enlarged, except in conjunction with one of the following uses:

- (1) Harvesting wild crops.
- (2) Hunting, fishing, and trapping by tribal members only.
- (3) Camping in temporary structures.
- (4) Tribal camps for the education and recreation of Tribal members and continued tribal cultural activities.
- (5) Conduct of religious or cultural activities.
- (6) Improvement, repair and maintenance of cultural, religious and historical sites.
- (7) Maintenance of pre-existing roads and other access routes.

18-15-103. ACCESS AND USE RESTRICTED TO TRIBAL MEMBERS; TRIBAL PERMITS REQUIRED FOR

NONMEMBER ACCESS. A Natural and Cultural Resource Zone is closed to all nonmembers other than persons bearing tribally issued permits. Applications for such permits are to be directed to the Director of the Land Use and Environment Department. Permits shall be issued to only the following persons:

- (1) Owners of record of lands within the Zone as of January 1, 1992 and their successors in interest.
 - (2) Persons or firms doing business with the Rosebud Sioux Tribe or a subdivision or agency thereof or the federal government which business requires access to the Zone.
 - (3) Employees to the Rosebud Sioux Tribe or Bureau of Indian Affairs.
 - (4) Such other persons who can demonstrate that their access to the Zone directly benefits the Tribe.
- Tribal permits shall be issued only for the limited purpose of access to the Zone. No nonmember shall be allowed to conduct a use of the Zone, even such uses permitted to members.

CHAPTER 16 – GENERAL ENVIRONMENTAL PROTECTION OVERLAY ZONE

- 18-16-101. Purposes
- 18-16-102. Allowed Uses
- 18-16-103. Conditional Uses
- 18-16-104. Criteria For Conditional Uses

18-16-101. PURPOSES. The General Environmental Protection Overlay Zone (GEPO) is established as a zone to protect and maintain soil stability, water

quality, watershed values, fish and wildlife habitat, natural areas, scenic views, and other valuable or unique environmental or ecological features.

18-16-102. ALLOWED USES. The following uses are permitted in the General Environmental Protection Overlay Zone:

- (1) Uses permitted in the underlying Zone that do not require construction of roads or structures, the harvest or felling of trees, or the alteration of geology, topography, or hydrology of the area, other than livestock grazing which is not a permitted use unless specifically noted on the zoning map.

18-16-103. CONDITIONAL USES. All other uses permitted outright or permitted conditionally by the underlying Zone shall be conditional uses.

18-16-104. CRITERIA FOR CONDITIONAL USES. The following criteria must be met for the approval of conditional uses in a General Environmental Protection Overlay Zone.

- (1) The use will not interfere with or will enhance the environmental and ecological values of the land for the protection of which the Environmental Protection Overlay Zone was applied.
- (2) The use will not materially alter the stability of the overall land use pattern of the underlying Zone or the purpose of the Environmental Protection Overlay Zone.

CHAPTER 17 – FLOOD PLAINS OVERLAY ZONE

- 18-17-101. Purposes
- 18-17-102. Allowed Uses
- 18-17-103. Flood Plain Development Permit
- 18-17-104. Permit Approval

18-17-101. PURPOSES. The Flood Plains Overlay Zone (FPO) is established as a zone to:

- (1) Minimize flood damage to human structures.
- (2) Control the alteration of natural flood plains, stream channels and natural protective barriers which hold, accommodate or channel flood waters.
- (3) Restrict or prohibit uses which are dangerous due to water or erosion hazards or which present the possibility

of damage to structures from flood waters.

18-17-102. ALLOWED USES. All activities and uses of land set forth in the underlying specific zones located within the Flood Plains Overlay Zone are declared special conditional uses subject and must obtain a flood plain development permit if the use involves construction of any structures or alteration of flood plain geology or topography for human or animal occupancy, provided that the following uses need not seek such a permit:

(1) Minor repairs or alterations to existing structures the cost of such does not exceed 20% of the value of the structure, other than any improvements required to comply with existing health, sanitary, or safety codes or which are necessary to ensure safe living conditions.

(2) Placement of utility facilities necessary to serve established and permitted uses within flood plain areas, provided that this exception does not apply to buildings or substations which must obtain a flood plain development permit.

18-17-103. FLOOD PLAIN DEVELOPMENT PERMIT.

(1) Except as provided in § 18-17-102, a flood plain development permit must be obtained for construction of structures or alteration of geology or topography within the Flood Plain Overlay Zone.

(2) Application for a flood plain development permit shall be made to the tribal Land Use and Environment Department and shall contain, at a minimum, a description of the proposal development and a map showing the property boundary, its location in the Flood Plain Overlay Zone, and the location of the proposed development. The Land Use and Environment Department may, upon receiving an application, request such additional information as it needs to review the application.

18-17-104. PERMIT APPROVAL. The Director shall issue flood plain development permits only if he can find on the information available to him that:

(1) No residential structures are involved in the proposed development.

(2) Any non-residential structures included in the proposal have elevated

floors or are otherwise constructed so as to be flood proofed by making walls below expected flood levels watertight or substantially impermeable to the passage of water.

(3) The development does not involve a modification of a floodway that reduces its flood carrying capacity.

CHAPTER 18 – PLANNED UNIT DEVELOPMENT; SPECIFIC PROCEDURES

- 18-18-101. Purposes
- 18-18-102. Definitions
- 18-18-103. Limitations
- 18-18-104. Application For Planned Unit Development Zone
- 18-18-105. Notice and Hearing On Application
- 18-18-106. Public Participation In Establishing A Planned Unit Development
- 18-18-107. Waiver By The Tribal Council or Commission Of Notice and Hearing For Development That Are Tribally or Federally Funded
- 18-18-108. Commission Action and Effective Date
- 18-18-109. Commission's Decisions
- 18-18-110. Final Development Plan and Program
- 18-18-111. Application Required For Modification To Development
- 18-18-112. Review Of Planned Unit Development Rezone
- 18-18-113. Commission Action and Effective Date
- 18-18-114. Reconstruction Of Buildings or Improvements
- 18-18-115. Any Waterway

18-18-101. PURPOSES. The Planned Unit Development (PUD) Zone is established as a zone to:

(1) Encourage flexibility in design and development that will encourage a more creative approach in the development of land, and which will result in a more efficient, aesthetic and desirable use of the land.

(2) Permit flexibility in design, placement of buildings, use of required open spaces, circulation facilities, off-street parking areas and otherwise better to utilize the potentials of sites characterized by special features of

geography, topography, geology, size or shape.

(3) Facilitate the adequate and economical provision of streets and utilities.

(4) Preserve the natural and scenic qualities of open areas and protect environmentally sensitive areas.

18-18-102. DEFINITIONS. In this Chapter, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meaning:

(1) "Planned Unit Development" means the development of an area of land as a single entry for a number of dwelling units or a number of uses, according to a plan which does not correspond in lot size, bulk or type of dwelling, density, lot coverage or required open space to the regulations otherwise required.

(2) "Common Open Space" means an area within a development designed and intended for use or enjoyment of all residents of the development or for the use and enjoyment of the public in general. Common open space land will be maintained in perpetuity.

18-18-103. LIMITATIONS. Planned Unit Development Zones are allowed in any zone except a Primary Agricultural Zone, Natural Resource Conservation Zone, Reservation Natural and Cultural Resource Zone, Historic Preservation Zone, and areas subject to the Flood Plain Overlay Zone. Planned Unit Development may contain uses allowed outright or conditionally in Residential or Commercial or Industrial Zones, or special uses, Chapter Nineteen of this Title, consistent and compatible with the other uses.

18-18-104. APPLICATION FOR PLANNED UNIT DEVELOPMENT

ZONE. An application for a Planned Unit Development Zone must be filed with the Director and must set out detailed information concerning the following subjects as they may be involved in or provided for by the Planned Unit Development Project:

- (1) Proposed ownership pattern.
- (2) Operation and maintenance proposals, i.e., homes, associations, condominium, co-op or other.
- (3) Waste disposal facilities.

- (4) Lighting.
- (5) Water supply.
- (6) Public transportation.
- (7) Community facilities.
- (8) General timetable of development.

18-18-105. NOTICE OF HEARING ON APPLICATION. Upon receipt of a petition for a Planned Unit Development Zone, the Commission shall give notice of the petition as follows:

(1) The Commission shall provide notice that includes:

(a) A statement of the time, place, and nature of public proceeding on any proposed Planned Unit Development Zone;

(b) A statement of the purpose of the Planned Unit Development Zone and the legal authority under which it is proposed;

(c) Either the specific language of the proposal or a description of the proposal's contents;

(d) Whenever the language of the proposal is not included in the notice, a statement that the proposal is available free of charge from the Department and an explanation of how to obtain a copy; and

(e) The name of the person in the Department to whom the public may direct questions about the proposal.

(2) The notice shall be publicized by:

(a) Being provided to each member of the Council;

(b) Being publishing at least twice in a newspaper of general circulation on the Reservation; and

(c) Being posted conspicuously at the Tribal Administrative Building.

18-18-106. PUBLIC PARTICIPATION IN ESTABLISHING A PLANNED UNIT DEVELOPMENT.

No sooner than 10 days nor later than 30 days after issuance of the last notice as required by § 18-18-105, the Commission shall schedule a public meeting at which any person may express his views on the proposal orally or in writing. The Commission may accept written comments up to 14 days after the date of the hearing. The Commission may set a reasonable limit on the length of time each person may speak.

18-18-107. WAIVER BY THE TRIBAL COUNCIL OR COMMISSION OF NOTICE AND HEARING FOR

DEVELOPMENTS THAT ARE TRIBALLY OR FEDERALLY FUNDED.

In its sole discretion, the Commission or Tribal Council may waive the notice requirements of § 18-18-105 and the hearing requirements of § 18-18-106, above, when the Planned Unit Development petitioned for is funded by either the Tribe of the federal government.

18-18-108. COMMISSION ACTION AND EFFECTIVE DATE.

(1) If, after hearing on any petition, the Commission determines to grant the petition for a Planned Unit Development Zone, it shall announce its decision on the proposal by:

- (a) Providing a copy of its decision to each member of the Council.
- (b) Publishing its decision once in a newspaper of general circulation on the Reservation; and
- (c) Posting a copy of its decision conspicuously at the Tribal Administrative Building.

(2) The final action of the Commission, as published by the Commission, shall be effective and shall be noted on the appropriate Official Zoning Map 45 days after the Commission's decision is announced, unless before the date, the Council acts to amend or reverse the Commission's decision.

18-18-109. COMMISSION'S DECISION.

(1) The Commission may approve an application for a Planned Unit Development Zone only if it complies with § 18-18-103 and § 18-18-104. Further, in making its decision, it shall apply and provide written funding on the following criteria.

- (a) Substantial conformance to this Title.
- (b) The proposal's harmony with the surrounding area, or its potential future use;
- (c) The system of ownership and means of development, preserving and maintaining space;
- (d) The adequacy of the size of the proposed Zone to accommodate the contemplated development; and
- (e) The proposal's achievement of the purposes of this Title.

(2) The Commission may grant, deny, or deny with conditions, any Planned Unit Development Zone application and

may require binding commitments or posting of a bond to insure completion of the Planned Unit Development Project as approved.

(3) Approval of application for a Planned Unit Development Zone alters the zone covering the land in question. Upon approval, the new zoning designation shall thenceforth be: "Planned Unit Development Zone".

(4) The Commission's decision may be appealed pursuant to this Title.

18-18-110. FINAL DEVELOPMENT PLAN AND PROGRAM.

Upon being granted approval by action of the Commission, the applicant shall prepare a final Planned Unit Development Plan containing the enumerated elements and meeting the density, open space and other requirements listed below:

(1) Plan Elements.

(a) Existing maps drawn to scale of not less than 1 inch to 100 feet and proposed contour map.

(b) Location, with the names, of all existing and proposed streets, public ways, railroads and utility rights-of-way, parks or other open spaces and all land uses within 500 feet of the boundary of the development.

(c) Existing sewers, water mains, and other underground facilities within and adjacent to the development and their certified capacities.

(d) Proposed sewer or other waste disposal facilities, water mains and other underground utilities.

(e) Preliminary subdivision plan.

(f) Proposed land use plan.

(g) Community facilities plan.

(h) Location and amount of open space not be less than 35% of the entire area designated a Planned Unit Development Zone.

(i) Traffic flow plan.

(j) Location and dimensions of walks, trails or easements.

(k) Locations, arrangement, number and dimensions of truck loading and unloading spaces and docks.

(l) Location, arrangement, number and dimensions of auto garages and parking spaces, width of aisles, bays and angles of parking.

(m) Preliminary plans, elevation of typical building or structures, indicating general height, bulk and number of dwelling units.

(n) Approximate location, height, and materials of all walls, fences and screen plantings.

(o) Indication of stages of development.

(2) Program Elements.

(a) Statement of goal and objectives.

(b) Evidence of resources available for development.

(c) Tables showing total number of acres, distribution of area by use, percent designated for each building, type of off-street parking, streets, parks, playgrounds, schools and open spaces.

(d) Tables indicating overall densities and density-by-dwelling-types, and any proposal for the limitations of density.

(e) Provisions to ensure maintenance of common open space in perpetuity.

(3) Project Densities. The Commission may approve population or development density for a Planned Unit Development even though such density may be greater than that specified in the Title for the area containing the Planned Unit Development if, in the opinion of the Commission, the design of the Planned Unit Development will not result in inconvenience or unsafe access to the Planned Unit Development or excessive burden on parks, recreation area, schools and other public facilities which serve or are proposed to serve the Planned Unit Development.

(4) Common Open Space Requirements.

(a) Common Open Space in a Planned Unit Development.

(i) the location, shape, size and character of the open space must be suitable for the Planned Unit Development.

(ii) common open space must be suited for amenity or recreational purposes. The uses authorized for the common open space must be appropriate to the scale and character of the Planned Unit Development, considering its size, density, expected population, topography and number and type of dwelling units to be provided.

(iii) common open space must be suitably improved for its intended use, but common open space containing natural features may be left unimproved if the Commission so allows. The buildings, structures and improvements which are permitted in the common open

space must be appropriate to the uses which are authorized for common open space and must conserve and enhance the amenities of the common open space in regards to its topography and unimproved conditions.

(b) Common Open Space Improvement. The development schedule, which is part of the Development Plan, must coordinate improvement of common open space, construction of buildings, structures and improvements in the common open space, and the construction of residential dwellings in the Planned Unit Development.

(5) Retention and Maintenance of Common Open Space.

(a) The final Development Plan and program shall include a provision approved by the Commission as being sufficient to assure permanent retention and maintenance of the common open space in a Planned Unit Development Zone. Such assurance may be in the form of restrictive covenants, dedication of open space to the public where such dedication will be accepted by the Council, an undertaking by an association of owners or tenants of the property within the Planned Unit Development Zone, or in any other form by any other method approved by the Commission as being practical and legally sufficient to assure the permanent retention and maintenance of the common open spaces. All legal documents to carry out the plan and program in this regard shall be filed by the applicant with the final Development Plan and program and shall be subject to approval as to form by the Tribal Attorney. All such plans and programs shall contain a provision whereby the Rosebud Sioux Tribe will be vested with the right to enforce the permanent retention and maintenance of the common open space and further, that in the event the common open space is permitted to deteriorate, or is not maintained in a condition consistent with the Development Plan and program, then in such an event, the Rosebud Sioux Tribe may, at its option, cause necessary maintenance to be performed and assess the cost thereof to the owners of the property within the Planned Unit Development Zone.

(b) No common space may be put to any use other than specified in the approved final Development Plan unless

the Development Plan has been modified to permit such other use pursuant to § 18-20-110. No such modification of use shall be deemed as a waiver of any of the provisions of the approved final Development Plan, assuring the permanent retention and maintenance of the common open space.

18-18-111. APPLICATION REQUIRED FOR MODIFICATION TO DEVELOPMENT.

(1) Major Modification.

Application for major modifications in the final Development Plan and program must be submitted to the Commission and hearings held as if such application were an original application for a Planned Unit Development Zone.

(2) Minor Modification. Minor Modifications in the final Development Plan and program may be approved by the Director. Such changes may include minor shifting of the location of buildings, proposed streets, public or private ways between the easements, parks or other features of the plan, but shall not include those changes of boundaries, changes in land use or other changes of location which are not devoted to specific land use.

(3) Tribal and Federal Developments Exempt. This section shall not apply to tribally and federally funded Planned Unit Developments; neither the Commission nor the Director shall be required to approve modifications, either major or minor, to such developments.

18-18-112. REVIEW OF PLANNED UNIT DEVELOPMENT REZONE. If, within one year after the granting of an application for a Planned Unit Development Zone, substantial construction has not been performed on the approved project, the Commission shall review on its own motion the grant of such application at a public hearing after giving notice of such hearing in the same mode and manner as notice is given of a hearing upon an application for a Planned Unit Development Zone pursuant to § 18-18-105. In addition, such notice shall be given to all persons claiming any right, title or interest of record in and to the affected property and shall be given at least 20 days prior to such hearing.

18-18-113. COMMISSION ACTION AND EFFECTIVE DATE.

(1) After a review hearing on any such Planned Unit Development, the Commission shall determine whether to continue the existence of such Planned Unit Development, or to return the area within such Planned Unit Development to its original zoning status, and shall announce its decision in the same mode and manner as notice is given of a decision upon an application for a planned Unit Development Zone pursuant to § 18-18-107.

(2) The final action of the Commission, as published by the Commission, shall be effective and shall be noted on the appropriate Official Zoning Map 45 days after the Commission's decision is announced, unless before that date, the Council acts to amend or reverse the Commission's decision.

18-18-114. RECONSTRUCTION OF BUILDINGS OR IMPROVEMENTS. Replacement or reconstruction of any building or improvements to buildings damaged or destroyed shall substantially conform to the originally approved Planned Unit Development Plan.

18-18-115. ANY WATERWAY. No Planned Unit Development project will be allowed within 200 feet of any waterway, see § 18-2-101 (51), above, and not less than 15 feet in elevation above the normal flow of any waterway. This height restriction shall not apply to man-made ditches for irrigation purposes.

CHAPTER 19 – SPECIAL PROPERTY USES

- 18-19-101. General Provisions
- 18-19-102. List Of Special Uses
- 18-19-103. Area Regulations

18-19-101. GENERAL PROVISIONS. All of the uses listed in this section and all matters directly related thereto are declared to be uses possessing characteristics of such unique and special form as to make impractical their being included automatically in any zone in the authority for the location and operation thereof shall be subject to review and the issuance of a Special Property Use Permit by the Director. Special Use Permits may not be granted

for use in a zone from which it is specifically excluded and may be subject to other conditions as the Director deems appropriate to accomplish the purposes of this Title. None of these uses may be permitted in the following Zones: Reservation Natural and Cultural Resources, Historic Preservation (except to the extent the use can both preserve and use historic structures, Environmental Protection Overlay Zone, and Natural Resources Conservation Zone). Special Property Use Permits may contain conditional limitations.

18-19-102. LIST OF SPECIAL USES.

(1) Automobile Dismantling, Wrecking or Junk Yards. Such uses shall be specifically excluded from all but Commercial and Industrial Zones.

(2) Public Cemeteries. Such uses shall be specifically excluded from primary Agricultural Zones. However, family burial plots and burials conducted in the tradition of the Tribe shall be permitted within Primary Agricultural Zones.

(3) Charitable Institutions and Orphanages. Such uses shall be specifically excluded from Industrial Zones.

(4) Churches. Such uses must meet the following requirements:

(a) A church may exceed the height limit of the zone in which a church may propose to locate provided that the buildings are set back from all property lines at least one additional foot for each foot of excess height.

(b) The height of the spire, tower or similar feature of a church may exceed the height limit of the zone in which a church may propose to locate, provided that it is not intended for human occupancy and further provided that it is removed not less than 20 feet from any adjoining lot line.

(5) Crematories, Columbaria and Mausoleums. Such uses shall be specifically excluded from Residential Zones unless inside a cemetery.

(6) Drive-In Theaters, Race Tracks or Other Outdoor Commercial Amusements of a Permanent Nature involving Large Assembly of People. Such uses shall be specifically excluded from all zones except Commercial and Industrial Zones, and the following requirements must be

met for mobile home sites containing more than three mobile homes:

(a) Access to such uses shall be from full width streets or roads;

(b) Parking areas shall be paved or surfaced to eliminate dust or mud; and

(c) Screens for an outdoor theater shall not be allowed to face the highway and shall be landscaped in such a manner as to screen them from the neighboring uses.

(7) Fertilizer Manufacturing Plants. Such uses shall be specifically excluded from all zones except Primary Agricultural and Industrial Zones.

(8) Fraternal Organizations, Lodges, Grange Halls, and Clubs.

(9) Hospitals, Sanitariums, Nursing Homes and Institutions and Philanthropic and Eleemosynary Uses, Other Than Correction.

(10) Livestock Feeding or Sales Yards. Such uses shall be excluded from all zones except Primary Agricultural and Industrial Zones.

(11) Mining, Including Quarrying, Mineral Extractions, Explorations, etc., Gasification Plants, Liquidification Plants, Steam Generation Plants, and any other coal conversion facility, slurry pipe lines. Such uses shall be specifically excluded from Residential Zones.

(12) Mobile Home Parks. The following minimum requirements must be met:

(a) Lot size of 10 acres with a maximum density of 10 spaces per gross acre.

(b) A greenbelt plant strip not less than 20 feet in width, shall be located along all lot lines of the park not bordering a street. Such greenbelt shall be composed of one row of deciduous and/or evergreen trees, spaced not more than 40 feet apart and not less than three rows of shrubs, spaced not more than eight feet apart and which grow to a height of five feet or more after one full growing season and which shrubs will eventually grow to a height of not less than 12 feet.

(13) Public Buildings. Such uses shall include governmental offices, police stations, fire stations, art galleries, museums, and libraries.

(14) Public Utilities. Such uses shall include public utilities and sewers or utilities operated by mutual agencies consisting of water wells, electrical substations, gas metering stations, telephone exchanges, power booster or conversion plants within the necessary buildings, apparatus or appurtenances thereto.

(15) Radio and Television Broadcasting Stations and Transmitters. Such uses shall be specifically excluded from Residential Zones.

(16) Rendering of Animal Fat, Bones, Meat Scraps, etc. Such uses shall be specifically excluded from all zones except Primary Agricultural and Industrial Zones.

(17) Sanitary Land Fill. Such uses shall be specifically excluded from Residential Zones.

(18) Schools. Such uses shall include private schools, kindergarten and nursery schools and institutions of higher learning. Such uses shall be specifically excluded from Industrial Zones.

(19) Sewage Disposal or Treatment Plants.

(20) Slaughter Houses or Meat Packing Plants. Such uses shall be specifically excluded from all zones except Primary Agricultural and Industrial Zones.

(21) Trailer Park, Court, Camps. Such uses shall be specifically excluded from Residential and Industrial Zones, and the following requirements must be met:

- (a) Access to such use shall only be from major or secondary arterials;
- (b) All requirements of the Indian Health Service shall be fulfilled; and
- (c) All external boundaries abutting any Residential Zone shall be effectively sight screened by a view-obstructing fence or by a combination of fencing and landscaping.

18-19-103. AREA REGULATIONS.

(1) Yards. Unless otherwise specified by the Director, the provisions for required front and side yards applicable to the particular zone in any such use is proposed to be located shall prevail.

(2) Height and Area Regulations. Unless otherwise specified by the Director, the provisions for height, area requirements, and lot coverage applicable to the particular zone in which any such use is proposed to be located shall prevail.

CHAPTER 20 – OFF-STREET PARKING AND LOADING

18-20-101. General Provisions

18-20-101. GENERAL PROVISIONS. At the time of the erection of a new structure or the addition to an existing structure or the use of an existing building, structure, or land use is changed, off-street parking and loading space shall be provided according to the following requirements.

<u>USE</u>	<u>PARKING SPACE REQUIRED</u>
(1) Amusement Park	1 space for each 1000 sq. ft. of patrol serving area
(2) Auto courts, motels, trailer parks	1 space for each sleeping unit and/or 1 space for each trailer space
(3) Banks, business and professional offices	1 space for each 200 sq. ft. of gross area
(4) Bowling Alleys	5 spaces for each alley
(5) Churches, mortuaries, funeral homes	1 space for each 5 seats in the chapel or nave
(6) Commercial recreation facilities	1 space for each 100 sq. ft. of

	gross floor area		area
(7) Dance halls, exhibition halls, clubs, lodges, and other places of assembly without fixed seats	1 space for each 75 sq. ft. of gross floor area	(17) Retail stores, except otherwise specified:	1 space for each 300 sq. ft. gross floor area
(8) Dwelling, one-, two-, multiple	1 space for each dwelling unit	(a) Having not more than 7000 sq. ft. of gross area	
		(b) Having more than 7000 sq. ft. of gross area	
<u>CHAPTER 21 – GENERAL PROVISIONS</u>			
(9) Furniture, appliance, hardware and clothing stores, service or personnel service shops	1 space for each 600 sq. ft. of floor area	18-21-101.	Representation By advocates and Lawyers In Proceedings Before The Director and Commission Service and publication In Matters Involving Lands Having More Than Five Beneficial Owners
(10) Golf driving range	1 space for each linear foot of driving range	18-21-102.	Parties Entitled To Bring Action Under This Title To Halt Activities That Threaten Reservation Resources
(11) Hospitals, sanitariums, convalescent homes, nursing homes and rest homes	1 space for each 5 regular beds plus 1 space for every two employees with a minimum of 2 spaces	18-21-103.	Parties Entitled To Intervene In Proceedings Involving Potential Harm To Reservation Land or Resources
(12) Hotels	2 spaces for every 3 bedrooms	18-21-104.	No Recognition Of Affirmative Defense Of “No Reasonable Alternative” Remedies In Titles 18 and 19 Are Alternative To Remedies Under Other Tribal Law
(13) Libraries and museums	1 space for each 500 sq. ft. of gross area	18-21-105.	Procedure For Hearing Matters Of General Concern To The Rosebud Reservation Community: Informal Public hearing
(14) Uses permitted in the Residential Zone	1 space for each 3 employees based on the maximum work shift	18-21-106.	Procedure For Hearing Contested Matters: Formal Trial-Like Proceedings
(15) Medical and dental clinics	1 space for each 200 sq. ft. of gross floor area	18-21-107.	Procedure For Requesting Permits From The Commission or Director
		18-21-108.	Procedures For Issuance Of Notices Of Violation By The Director
		18-21-109.	Procedure For Revocation Of Permits By The Commission
		18-21-110.	Procedure For Issuance Of Emergency Orders To Permit By The Director
(16) Restaurants, and any establishment for sale and consumption on the premises of food or refreshments	1 space for each 100 sq. ft. of gross floor	18-21-111.	Procedure For Appeal Of Decisions Made By The Director
		18-21-112.	
		18-21-113.	

- 18-21-114. Procedure For Appeal Of Decisions Made By The Commission
- 18-21-115. Initiation Of Appeal To Tribal Court
- 18-21-116. Limited Waiver Of Sovereign Immunity For Tribal Court Review
- 18-21-117. Relief Pending Review
- 18-21-118. Scope Of Review; Relief Available
- 18-21-119. Appeal To Tribal Appellate Court
- 18-21-120. Scope Of Review In Tribal Appellate Court; Relief Available

(2) No action may be commenced under subsection (1) of this provision unless:

(a) Prior to filing his complaint, the plaintiff gives 60 days notice of the alleged harm or degradation to each of the following (i) the Director of Land and Use and Environment (or Water Resources if the alleged harm or degradation is to Reservation waters); (ii) the Commission; (iii) the Rosebud Sioux Indian Tribe; and (iv) the alleged violator;

(b) All proceedings before the Commission are final; and

(c) No enforcement proceedings have been initiated by the Commissioners or by the Directors.

18-21-101. REPRESENTATION BY ADVOCATES AND LAWYERS IN PROCEEDINGS BEFORE THE DIRECTOR AND COMMISSION. A party to proceedings before the Director or Commission may appear on behalf of himself or through a tribal law advocate or attorney. Such lay advocate or attorney must comply with all requirements to practice before the Tribal Court.

18-21-104. PARTIES ENTITLED TO INTERVENE IN PROCEEDINGS INVOLVING POTENTIAL HARM TO RESERVATION LAND OR RESOURCES.

(1) The Commission may permit any tribal member, tribal entity or any person or entity directly affected or potentially directly affected by a decision of the Commission, Director or to intervene as a party in any proceeding before the Commission that involved conduct that might pollute, impair or degrade Reservation resources or land. To intervene, a person must file a pleading with the Commission that alleges that the proceeding involves conduct that has the effect of polluting, impairing or degrading the air, water, land or other natural resources of the Reservation. Such a pleading must be filed at least three days before the last Commission hearing conducted before the issuance of the final decision.

18-21-102. SERVICE AND PUBLICATIONS IN MATTERS INVOLVING LANDS HAVING MORE THAN FIVE BENEFICIAL OWNERS. In matters involving a parcel of land having more than five beneficial owners, whose ownership is derived from an Indian owner or allottee, any requirements of serve and publication shall be deemed to be sufficient and in good faith where notice is given to the appropriate office of the Bureau of Indian Affairs.

(2) In a proceeding for judicial review of a Commission decision, the Tribal Court may also permit such intervention upon the filing of such a pleading. In a Tribal Court proceeding, a pleading requesting intervention shall be filed with the tribal court and served upon the parties to the Tribal Court proceeding. To be timely, a request for intervention in a Tribal Court proceeding must be filed with the court and served upon all parties to the judicial proceeding within 10 days of the filing of the request for judicial review.

18-21-103. PARTIES ENTITLED TO BRING ACTION UNDER THIS TITLE TO HALT ACTIVITIES THAT THREATEN RESERVATION BOUNDARIES.

(1) Any person or other legal entity, including the Rosebud Sioux Indian Tribe, any of its political subdivisions, and the federal government, may maintain an action in Tribal Court for declaratory and equitable relief against any person or other legal entity for the protection of the air, water, land and other Reservation natural resources. This section shall not constitute a waiver of the sovereign immunity of the Rosebud Sioux Tribe or any of its subordinate entities as to any action for the protection of Reservation natural resources or land.

18-21-105. NO RECOGNITION OF AFFIRMATIVE DEFENSE OF “NO REASONABLE ALTERNATIVE”. In the light of the Rosebud Sioux Indian Tribe’s paramount concern for the protection of Reservation natural resources and lands from pollution, impairment or degradation and the health and welfare of Reservation

residents, neither the Directors of Land Use and Environment and Water Resources, the Commission, nor the Tribal Court shall recognize the argument that there is no feasible and prudent alternative to the defendant's conduct and that such conduct is consistent with the promotion of the health of Reservation residents as an affirmative defense to any action brought to protect Reservation resources and lands from pollution, impairment or degradation.

18-21-106. REMEDIES IN TITLES 18 AND 19 ARE ALTERNATIVE TO REMEDIES UNDER OTHER TRIBAL LAW.

A purpose of Titles 18 and 19 is to provide additional and cumulative remedies to prevent, abate, and control the pollution and degradation of Reservation natural resources and land. Accordingly, this Chapter shall not be interpreted to list the only remedies for harm to Reservation natural resources and land, nor shall it be interpreted to limit or change rights or remedies for such harm available under tribal law, nor shall it be construed as preventing the Tribe, the Directors, the Commission, or any Reservation resident from exercising their rights under tribal law to suppress nuisances or to abate pollution or other degradation of Reservation natural resources or land.

18-21-107. PROCEDURE FOR HEARING MATTERS OF GENERAL CONCERN TO THE ROSEBUD RESERVATION COMMUNITY: INFORMAL PUBLIC HEARINGS.

Where this Code requires or where the Commission or Directors are to act upon matters that affect the Reservation community and members of the Rosebud Sioux Tribe or where the Commission or Directors determine in their discretion that an informal public hearing is required, the Director shall:

- (1) Issue a notice that includes:
 - (a) A statement of the time, place, and nature of the informal public proceedings;
 - (b) A statement of the purpose of the proposed land use;
 - (c) Either the specific language of the request to conduct the proposed land use or a description of the contents of the request;
 - (d) Whenever the language of the proposed request is not included in the notice, a statement that a copy of the proposed request is available free of charge from the Land use and Environment Department and an explanation of how to obtain a copy; and

- (e) The name of the person in the Department to whom the public may direct questions about the proposed request.

- (2) Publicize such notice by:

- (a) Providing it to each member of the Commission; and

- (b) Posting it conspicuously at the Tribal Administration Building.

- (c) In his discretion, the Director may publish the notice twice in a newspaper of general circulation on the Reservation.

- (3) Schedule an informal, public hearing at which any person may express his views on the requested land use orally or in writing. The Director may set a reasonable limit on the length of time each person may speak. The public shall be permitted to file written comments up to 14 days after the public hearing is held. The Director shall schedule such meeting no sooner than 10 days nor later than 20 days after posting of the notice required by § 18-21-103 (2) (b).

- (4) After consideration of all evidence presented to it during the informal public hearing and within 20 days of the conclusion of that hearing, the Commission or Director shall issue its decision. Such a decision shall be made in accordance with the best interest of the Reservation community and members of the Rosebud Sioux Tribe.

- (5) The decision shall be announced by:

- (a) Providing a copy to each member of the Tribal Council; and

- (b) Posting a copy conspicuously at the Tribal Administration Building.

- (c) In its discretion, the decision may be publicized by being published once in a newspaper of general circulation on the Reservation.

- (6) The decision after an informal hearing shall be effective immediately and shall be posted in a conspicuous place at the Tribal Administration Building.

18-21-108. PROCEDURE FOR HEARING CONTESTED MATTERS: FORMAL TRIAL-LIKE PROCEEDINGS.

Where required by this Title, or where the Commission determines in its discretion that a formal, trial-like proceeding be held:

- (1) The Director shall provide timely notice to all interested parties of:

- (a) The time, place and nature of the formal hearing; and

- (b) The matters of law and fact asserted

by either personal service or by United States mail, first-class postage prepaid.

- (2) The Director shall schedule a hearing to be held no soon than 10 days and no later

than 20 days after service of the notice on all parties.

(3) All interested parties shall have the opportunity to:

- (a) Present and cross-examine witness.
- (b) Submit facts and arguments.

(4) During the pendency of any formal trial-like proceeding, no member of the Commission or the Department, including the Director, may communicate with any person interested in the proceeding unless he gives notice to all interested parties of the communication.

(5) After consideration of all evidence presented and within 20 days of the conclusion of the hearing, the decision shall be issued. Such a decision shall be made in accordance with the best interests of the Reservation community and members of the Rosebud Sioux Tribe.

(6) The Director shall serve a copy of the decision upon all interested parties and post a copy of the decision conspicuously at the Tribal Administration Building. The decision shall be effective upon its issuance.

18-21-109. PROCEDURES FOR REQUESTING PERMITS FROM THE COMMISSION OR DIRECTOR.

(1) To obtain a permit under this Title and Title 19, a person must file a petition with the Director requesting a permit to conduct an activity that is regulated by this Code.

(2) Such petition shall provide, at the minimum, the following information:

(a) The legal description of the property involved.

(b) The reason why the activity is required to achieve necessary and justifiable economic or social development.

(c) The overriding consideration of the public interest that would be served thereby.

(d) The reason why any proposed activity will not interfere with or be injurious to Reservation land or natural resources.

(3) Upon receipt of a petition for a permit the Director shall provide notice of such petition according to § 18-21-103 (1). Such notice shall also include a statement of the purpose of the proposed activity or discharge of a pollutant.

(4) When determining whether to issue permits, the Commission shall follow the procedures for informal public hearings set forth in § 18-21-103 (1), except as otherwise provided by this Title or Title 19.

(5) Any person petitioning for a permit or an extension, amendment or renewal of an existing permit, that authorizes activity that could result in a significant risk of pollution, contamination or degradation of the

Reservation environment and that is not covered by a performance or damage bond or other financial assurance guaranteeing the performance of corrective actions to contain, mitigate and remedy all pollution, contamination or degradation that may be caused by such activity. The financial assurance shall be in a form and in a reasonable and proper amount, all of which shall be approved by the Commission, and may include but is not limited to insurance, company net worth considerations, a surety bond, escrow account, letter of credit, trust, guarantee, or cash deposit. This tribal bond requirement is in addition to any bond required by federal law pertaining to federally leased land.

(6) All right and title in any bond or other security required by the Land use and Environment Commission shall be in the Rosebud Sioux Indian Tribe until the Commission releases the said security. The bond or other security is not an asset of the person required to provide it and may not be cancelled, assigned, revoked, disbursed, replaced or allowed to terminate without the approval of the Commission.

18-21-110. PROCEDURE FOR ISSUANCE OF NOTICES OF VIOLATION BY THE DIRECTOR.

(1) Whenever the Director has reason to believe that a violation of this Title or Title 19, or any rules made or permits issued under there, has occurred, he shall serve a written Notice of Violation upon the alleged violator or his agent. Where the alleged violation occurs upon federally leased lands, the Director shall also serve a copy of the Notice of Violation upon the Bureau of Indian Affairs. Such service shall be either by (i) person service, (ii) attaching the notice conspicuously to the home, building, business, or other location where the violation has occurred, or (iii) United States mail, first-class postage prepaid, addressed to the last known address of the alleged violator. For purposes of this section, service by mail is complete upon mailing.

(2) Such Notice of Violation shall state separately each violation of this Title, the specific section of this Title has been violated, what corrective action necessary to comply with the Title, and the reasonable time established by the Director for compliance, which shall in no event be sooner than 20 days from the date of service.

(3) When calculating a reasonable time for compliance, the Director shall take into consideration:

- (a) The type and degree of violation.

(b) The threat to public health and the environment posed by the violation.

(c) The difficulty of compliance and the financial and material means of the alleged violator.

(d) The expressed intent and past record of compliance of the alleged violator. An extension of time for compliance may be granted by the Director, but only upon a showing that the corrective actions required by the Director have been commenced and that the work is progressing at a satisfactory rate.

(4) The alleged violator may request a hearing before the Commission to be conducted in accordance with the procedures set in § 18-21-104, below, to answer the charges made against him. Such a request must be filed with the Commission and served upon the Director within five days of service of the Notice of Violation. A request for a hearing shall not affect the time for compliance stated in the Notice of Violation.

(5) If a contested hearing is requested pursuant to subsection (5) above, the Commission shall hold a contested hearing pursuant to § 18-21-104 within 10 days of service of the notice required by subsection (1), above. A hearing shall not stay the running of the time for compliance established pursuant to § 19-5-103 (3), above. The Director shall have the burden of proving, by a preponderance of the evidence, that a violation has occurred.

(6) The Commission shall issue an order confirming the Notice of Violation within five days after conclusions of the hearing, if the Director proves a violation. The order shall be effective upon its issuance and shall be served by United States mail, first-class postage prepaid, upon the alleged violator and the Director.

(7) If no hearing is requested pursuant to subsection (5) above, the Notice of Violation shall be effective 20 days from the date of service upon the alleged violator.

18-21-111. PROCEDURE FOR REVOCATION OF PERMITS BY THE COMMISSION.

(1) The Commission may revoke, modify or suspend, in whole or in part, any permit issued pursuant to this Title or Title 19. Such a revocation, modification or suspension must be for cause, which may include but is not limited to a violation of any permit conditions, obtaining a permit by misrepresentation or failure to disclose any relevant facts, or changes in conditions that require revocation, modification or

suspension of the permit so as to preserve the quality of Reservation resources.

(2) The Commission shall give 30 days written notice of its intention to revoke, modify or suspend a permit to the holder of the permit and the Director. The date of the notice shall be the date it is issued by the Commission. Such notice shall state the basis for the Commission's proposed action and shall be delivered to the permit holder by personal service or by United States mail, first-class postage prepaid. If the Commission intends to revoke a permit issued pursuant to Chapter Six of Title 19, it shall also serve a copy of such notice upon the United States Environmental Protection Agency.

(3) Within 30 days of receipt of the notice required by subsection (2) above, the holder of the permit may request a contested hearing pursuant to § 18-21-104. Such a hearing shall be held within 30 days of service upon the Commission of such request, and the Director shall prove, by a preponderance of the evidence, why the permit should be revoked, modified or suspended. A request for a hearing does not stay the revocation, modification or suspension of the permit. The Commission's decision shall be issued within 30 days of conclusion of the hearing, and shall be served by United States mail, first-class postage prepaid, upon the permit holder and the Director.

(4) Revocation, modification or suspension of a permit shall be effective upon the date indicated in the notice required by subsection (2) above.

(5) The Commission's final order revoking, modifying or suspending any permit shall be publicized pursuant to § 19-5-105 (5). If the Commission revokes a permit issued pursuant to Chapter Six of this Title, it shall serve a copy of its revocation order upon the United States Environmental Protection Agency as well.

18-21-112. PROCEDURE FOR ISSUANCE OF EMERGENCY ORDERS OR PERMITS BY THE DIRECTOR.

(1) No person may, in violation of this Title or Title 19 or any rule or permit issued under it, commit an act that will cause substantial harm or pollution to Reservation resources or land, the harmful effects of which cannot be remedied immediately after the commission or cessation of the act. The Director may issue an emergency order requiring the person to stop, avoid, or moderate the act or an emergency permit allowing certain regulated activity so that the

substantial injury will not occur. Such an order or permit is effective immediately upon receipt by the person to whom it is directed. If the emergency order is not complied with in a timely manner or if the emergency permit does not limit or prevent the harm, the Director may take reasonable action to prevent such harm, including making efforts to contain and recover pollutants to limit or prevent pollution of any Reservation resources.

(2) Notice of an emergency order to permit shall be given in accordance with § 18-21-103 (1), so far as is possible given the nature of the emergency. Such a notice shall state that the order or permit is issued for emergency purposes.

(3) Upon issuing an emergency order or permit pursuant to subsection (1) above, the Director shall set a place and a time for a hearing no more than five days after issuance of the order. The hearing shall be conducted as a contested hearing pursuant to § 18-21-104. At such hearing, the Commission shall either confirm or reject the Director's issuance of such order.

(4) The Commission's decision is reviewable by the Tribal Court pursuant to § 18-21-115; however, a request for such review shall not stay the effectiveness of the order.

18-21-113. PROCEDURE FOR APPEAL OF DECISIONS MADE BY THE DIRECTOR.

(1) Within 30 days of the issuance of any decision under this Title or the issuance of any other order by the Director, such as an order to comply or an order assessing civil penalties, any person adversely affected by the order may appeal to the Commission. However, the Commission shall have no jurisdiction to hear such an appeal unless the person seeking the appeal has previously exhausted all of their available remedies before the Director.

(2) An appeal shall be instituted by the delivery, no later than 30 days after the date of the order appealed from, of a notice of appeal to the office of the Commission and to the offices of the Directors. The notice shall state the appellant's name and address, the order appealed from, and the general grounds of the appeal.

(3) In any appeal, the Commission may adopt such procedures and set such schedules as are appropriate for the circumstances, including informal hearings or formal trial-like proceedings, on the conditions that any appellant may demand and shall be granted the right to formal trial-

like hearings in its notice of appeal and that, in any appeal, the Commission shall hold an informal hearing at which the appellant, and any other interested person, may appear to present his position on the appeal.

(4) The hearing on an appeal shall be held no later than 30 days after the notice of appeal is filed, unless the Commission grants a request for extension for good cause.

(5) The Commission shall issue its decision on the appeal no later than 30 days after conclusion of the hearing.

18-21-114. PROCEDURE FOR APPEAL OF DECISIONS MADE BY THE COMMISSION.

Any person adversely affected by a decision of the Land Use and Environment Commission may appeal the decision to the Tribal Court within 30 days of the Commission's decision. However, the Tribal Court shall have no jurisdiction over such an appeal unless the person seeking the appeal has previously exhausted all of their available remedies before the Directors and the Commission. In any such an appeals proceeding, the decision of the Commission shall be upheld unless the court shall find that the Commission's decision:

(1) Violates this Title or Title 19 or any other law or custom of the Rosebud Sioux Tribe;

(2) Was arbitrary, capricious or an abuse of discretion; or

(3) Was made without observance of procedure required by law or custom of the Rosebud Sioux Tribe.

18-21-115. INITIATION OF APPEAL TO TRIBAL COURT.

(1) **Final Action Appealable.** Any party to any proceeding heard by the Commission who is aggrieved by the decision or by the entry of any final order or decision of the Commission is entitled to judicial review thereof in the Tribal Court. Neither a preliminary, procedural, or intermediate Commission action nor any action of the Director, is subject to review in the Tribal Court.

(2) **Time For Appeal.** An appeal shall be initiated by filing with the Tribal Court, within 20 days of the decision appealed from, a Notice of Appeal.

(3) **Form Of Notice.** The Notice of Appeal will contain:

(a) The appellant's name and address;

(b) The nature of the decision appealed from;

(c) The general location and the legal description of the property involved; and

(d) A brief statement of the grounds for appeal.

18-21-116. LIMITED WAIVER OF SOVEREIGN IMMUNITY FOR TRIBAL COURT REVIEW.

(1) The Tribe hereby waives the sovereign immunity of the Commission, its members, and the Directors for the limited purpose of Tribal Court review of decisions of the Directors or Commission. Such waiver of immunity is further limited to prospective, equitable relief, including declaratory and injunctive relief, and does not include money damages of any kind. Any such action in the Tribal Court shall not be dismissed nor relief be denied on the ground that it is against the Tribe or that the Tribe is an indispensable party.

(2) Nothing herein either affects other limitations on judicial review or the power or duty of the Tribal Court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or confers authority to grant relief if any other tribal law that grants consent to suit expressly or impliedly forbids the relief which is sought.

18-21-117. RELIEF PENDING REVIEW.

Whenever the Tribal Court finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required, and to the extent necessary, to prevent irreparable injury, the Tribal Court may issue all necessary and appropriate process to postpone the effective date of a Commission action or to preserve the status quo or rights pending conclusions of the review proceedings.

18-21-118. SCOPE OF REVIEW; RELIEF AVAILABLE.

To the extent necessary to make its decision and when presented, the Tribal Court shall decide all relevant questions of law, interpret constitutional provisions and all other tribal law, and determine the meaning or applicability of the terms of the Commission's action. The Tribal Court may:

(1) Compel Commission action unlawfully withheld unreasonably delayed;

(2) Hold unlawful and set aside Commission action, findings, and conclusions found to be:

(a) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;

(b) Contrary to any right, power, privilege, or immunity accorded by the Tribal

Constitution or the Indian Civil Rights Act, 25 U.S.C. § 1301, et seq.;

(c) In excess of jurisdiction, authority, or limitations granted by tribal law;

(d) Without observance of procedure required by law; or

(e) In an adjudicatory proceeding only, unsupported by substantial evidence.

In making the foregoing determinations, the Tribal Court shall review the whole record before the Commission or those parts of it cited by any party.

18-21-119. APPEAL TO TRIBAL APPELLATE COURT.

Any party to an appeal to the Tribal Court who is aggrieved by the judgment in the Tribal Court upon judicial review of a final order or decision of the Commission, may prosecute an appeal to the Tribal Appellate Court under the provisions of this Code.

18-21-120. SCOPE OF REVIEW IN TRIBAL APPELLATE COURT; RELIEF AVAILABLE.

The scope of review and relief available in the Tribal Appellate Court shall be identical to that provided for in the Tribal Court by § 18-26-104.

CHAPTER 22 – SPECIFIC PROCEDURE FOR OBTAINING ZONING CHANGES

18-22-101.	Initiation Of Zoning Change
18-22-102.	Notice and Hearing On Proposed Zoning Change
18-22-103.	Publication Of Decision; Effective Date
18-22-104.	Council Retention Of Authority

18-22-101. INITIATION OF ZONING CHANGE.

(1) **Who May Seek a Variance.** A Proposed zoning change may be initiated by:

(a) Petition to the Commission by any interested person or by the Director;

(b) Action of the Commission upon its own motion; or

(c) Action by the Council.

(2) **Petition Requirements.** A Petition for a zoning change shall provide, at the minimum, the following information:

(a) Legal description of the property to be rezoned;

(b) Names and last known addresses of the owners of all property lying within a distance of 500 feet (streets and alleys

included) of the property proposed for rezoning; and

(c) A description of the proposed zoning change and an explanation of the grounds for the rezone.

18-22-102. NOTICE AND HEARING ON PROPOSED ZONING CHANGE.

Upon receipt of a petition for a zoning change, the Commission shall give notice and conduct an informal, public hearing pursuant to § 18-21-103.

18-22-103. PUBLICATION OF DECISION; EFFECTIVE DATE.

(1) After hearing on the petition, the Commission shall announce its decision on the proposal by:

(a) Providing a copy of its decision to each member of the Council;

(b) Publishing its decision once in a newspaper of general circulation on the Reservation; and

(c) Posting a copy of its decision conspicuously at the Tribal Administration Building.

(2) Notwithstanding any provision to the contrary, the final zoning change as published by the Commission shall be effective and shall be noted on the appropriate Official Zoning Map 45 days after the Commission's decision is announced, unless before that date, the Council acts to amend or reverse the Commission's decision.

18-22-104. COUNCIL RETENTION OF AUTHORITY. Notwithstanding any other provisions of this Title, the Council may at any time amend this Title and any Official Zoning Map in the same manner in which the Council exercises its other lawmaking functions.

**CHAPTER 23 – SPECIFIC
PROCEDURE FOR OBTAINING
VARIANCES**

18-12-101.	Initiation Of Variance Procedure; Petition Required
18-12-102.	Notice; Hearing
18-12-103.	Standard For Grant Of Variance
18-12-104.	Effective Date Of Variance; Publication
18-12-105.	Term Of Variance

18-23-101. INITIATION OF VARIANCE PROCEDURE; PETITION REQUIRED.

(1) **Who May Seek a Variance.** To seek a variance, the applicant must submit a written petition to the Commission. A petition may be filed by one or more of the following entities or persons:

(a) The owner of the property;

(b) Whenever the property is held in trust, the beneficial owner;

(c) A purchaser of the property, with the written consent of the owner; or

(d) A lessee of property, with the written consent of the owner; or

(e) The duly authorized agent of any of the foregoing;

(f) Any tribal government official acting in his official capacity; and

(g) Any person whose interests are or would be adversely affected by the uses of the land allowed under this Title if not altered.

(2) **Petition Requirements.** A petition for a variance must contain, at a minimum, the following information:

(a) The name and address of the property owner and, if different, the applicant;

(b) The legal description of the property;

(c) The nature of the variance sought;

(d) The names and last known addresses of owners of property within 500 feet of the property proposed for variance and proof that notice of the application has been provided to those persons by the applicant; and

(e) The grounds upon which the variance is sought, responding to each condition that must be met for a variance, set out in § 18-23-103 of this Chapter.

18-23-102. NOTICE; HEARING. Notice shall be given and the Commission shall conduct an informal public hearing on the petition in accordance with § 18-21-103.

18-23-103. STANDARD OF GRANT OF VARIANCE.

(1) A variance may be granted only if the Commission finds, the documents in writing its findings and their bases, that:

(a) There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of this Title;

(b) There are exceptional or extraordinary circumstances or condition applying to the land, buildings, or uses

referred to in the petition, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land, uses or structures in the vicinity shall not in themselves constitute such circumstances or conditions;

(c) Granting the petition will not be materially detrimental to the public welfare or be injurious to property or improvements in the neighborhood of the premises;

(d) Such variance is necessary for the preservation and enjoyment of the substantial property rights of the petitioner;

(e) Granting the petition will not adversely affect the health or safety of persons working or residing in the neighborhood of the property of the applicant or of the Reservation community; and

(f) Granting of the petition will be in general harmony with the intent and purpose of this Title.

However, the Commission shall grant no variance to allow the use of property for a purpose not authorized as a permitted or conditional use within the zone in which the proposed use would be located. That is, the Commission may not grant a variance to allow a use that would be a special or forbidden use within that zone. In granting a variance, the Commission may attach conditions necessary to protect the best interests of the surrounding property and the Reservation as a whole and to achieve the purposes of this Title.

18-23-104. EFFECTIVE DATE OF VARIANCE; PUBLICATION.

(1) A variance shall become effective 10 days after the date of the Commission's decision.

(2) Notwithstanding § 18-21-103, the Commission's decision to grant or deny a variance shall be served upon the applicant and the Director by first-class mail, postage prepaid. The Commission shall also post its decision conspicuously in the Tribal Administration Building. In addition, the Commission, in its discretion, may publicize its decision in a newspaper of general circulation on the Reservation.

18-23-105. TERM OF VARIANCE.

(1) **Variance Right Must be Exercised to be Effective.** A variance granted under this Title shall be effective only when the exercise of the right granted thereunder shall be commenced within six months from the effective date of the grant, unless a longer period be specified or

thereafter allowed by the Director or Commission. In case such right has not been exercised, or extension obtained, the variance shall be void. A written request for an extension of time filed with the Director at least 30 days prior to the expiration of the variance shall extend the running of the six month period until the Director has acted on such request.

(2) Cessation of Variances.

Discontinuance of the exercise of any right authorized by any variance for a continuous period of six months shall be deemed an abandonment of such variance, and the property affected thereby shall be subject to all the provisions and regulations of this Title applicable to the zone in which such property is located at the time of such abandonment.

(3) **Transfer of Variance.** Any valid variance pursuant to this Title is transferable unless otherwise provided at the time of the granting of such variance.

CHAPTER 24 – SPECIFIC PROCEDURES FOR OBTAINING BUILDING, CONDITIONAL USE, SPECIAL USE, AND LAND DIVISIONS PERMITS; PROCEDURE FOR REVOCATION OF PERMITS

18-24-101.	General Provisions; Petition Required For Permit; Informal Hearing Procedures; Tribal Bond Optional
18-24-102.	Procedure For Obtaining Building Permits
18-24-103.	Procedure For Obtaining Conditional Use Permits
18-24-104.	Procedure For Obtaining Special Use Permits From The Commission
18-24-105.	Specific Procedure For Obtaining Land Division Permits
18-24-106.	Procedure For Revocation Of Permits By The Director

18-24-101. GENERAL PROVISIONS; PETITION REQUIRED FOR PERMIT; INFORMAL HEARING PROCEDURES; TRIBAL BOND OPTIONAL.

(1) **Activities Not Requiring Permits.** Any land use permitted outright in any zone, but not including the construction of buildings or structures, may be conducted without seeking a land-use permit, if the land

use is conducted in accordance with the provisions of this Title.

(2) Activities Requiring Permits. No person may build, locate, establish, move or otherwise alter a structure or conduct a conditional or special use or divide land without a permit issued pursuant to this Chapter.

(3) Informal Hearing Procedure to be Followed. With the exception of building and conditional use permits, when determining whether to issue permits under this Chapter, the Director and Commission shall follow the procedures for informal public hearings set forth in § 18-21-103.

(4) Tribal Bond May be Required in Director's Discretion. Any person petitioning for a permit, or an extension, amendment or renewal of an existing permit, that authorized a land use that could result in significant harm or damage to the Reservation community, the Tribe or its members and that is not covered by a performance or damage bond or other financial assurance instrument may be required as a condition of the permit to provide financial assurance guaranteeing the performance of corrective actions to contain, mitigate and remedy all pollution, contamination or degradation that may be caused by such activity. The financial assurance shall be in a form and in a reasonable and proper amount, all of which shall be approved by the Director, and may include but is not limited to insurance, company net worth considerations, a surety bond, escrow account, letter of credit, trust, guarantee, or cash deposit. This tribal bond requirement is in addition to any bond required by federal law pertaining to federally leased land.

(5) Title of Security to be in Tribe. All right and title in any bond or other security required by the Land Use and Environment Commission shall be in the Rosebud Sioux Indian Tribe until the Commission released the said security. The bond or other security is not an asset of the person required to provide it and may not be canceled, assigned, revoked, disbursed, replaced or allowed to terminate without the approval of the Commission.

18-24-102. PROCEDURE FOR OBTAINING BUILDING PERMITS.

(1) Petition Requirement. A petition for a building permit shall provide, at the minimum, the legal description of the property involved and a description of the

building activity for which the permit is sought.

(2) No Notice or Hearing Required. Within 10 days of receipt of a proper petition for a building permit, the Director shall grant such a permit if the proposed structure conforms to the requirements of this Title and other tribal law. If the Director fails to act upon the application within the 10-day period, the permit shall be deemed to be granted. No hearing shall be required.

(3) Effective Date; Publication. A building permit shall be effective upon its issuance. Upon issuance, all building permits shall be conspicuously posted in the Tribal Administration Building for at least one month after the date of issuance.

(4) Expiration of Building Permit. If the work or use described in any permit has not been substantially completed within two years of the date of issuance thereof such permit shall expire. Further work as described in the canceled permit shall not proceed unless and until the Director issues a new permit.

18-24-103. PROCEDURE FOR OBTAINING CONDITIONAL USE PERMITS.

(1) Petition Requirements. No person shall engage in any land use that may be conducted only as a conditional use within a zone without first obtaining a conditional use permit from the Director. A petition for a conditional use permit shall contain, at a minimum, the following information:

(a) The legal description of the land involved;

(b) Names or names of the owner and all other persons with any legal or beneficial interest in the land;

(c) Description of the current land use and all existing building or structures;

(d) Description of the land use proposed, including plans of any buildings, roads, structures, or land or vegetation disturbing activities proposed;

(e) The petitioner's explanation of how the conditional use conforms to the requirements of this Title; and

(f) Such additional information as the Director may require at the time of petition or thereafter as may be necessary to determine conformance with this Chapter.

(6) No Notice or Hearing Required. No notice or hearing is required for the issuance of a conditional use permit.

(7) Standards for Decision. The Director shall grant, deny, or grant with conditions any petition for a conditional use

permit within 10 days of receipt of the application. If the Director fails to act upon the application within the 10-day period, the permit shall be deemed to be granted. The Director shall issue such permits only if he determines, upon the face of the application, that the use will conform to the requirements of this Title and such other tribal laws which the Council may hereafter assign to the Director to enforce.

(8) Effective Date; Publication. A conditional use permit is effective upon its issuance and may be acted upon immediately. The Director shall publicize the grant or denial of a conditional use permit by posting a notice of his decision in a conspicuous place in the Tribal Administration Building.

18-24-104. PROCEDURE FOR OBTAINING SPECIAL USE PERMITS FROM THE COMMISSION.

(1) To seek a special use permit, a person must submit a written petition to the Director. An application may be filed by one or more of the following entities or persons:

- (a)** The owner of the property;
- (b)** Whenever the property is held in trust, the beneficial owner;
- (c)** A purchaser of the property under a duly executed written contract, with the written consent of the seller;
- (d)** A lessee of property, with the written consent of the owner; or
- (e)** The duly authorized agent of any of the foregoing;
- (f)** Any tribal governmental official acting in his official capacity; and
- (g)** Any person whose interests are or would be adversely affected by the uses of the land allowed under this Title if not altered.

(2) Petition Requirements. A petition for a special use permit must contain:

- (a)** The name and address of the property owner and, if different, the applicant;
- (b)** The legal description of the property;
- (c)** A description of the proposed special use sought and an explanation of the grounds for the special use permit sought; and
- (d)** The names and last known addresses of owners of property within 500 feet of the property proposed for variance and proof that notice of the application has been provided to those persons by the applicant.

(3) Notice; Informal Hearing

Procedure. The Commission shall consider petitions for special use permits in accordance with the procedures set forth in § 18-21-103.

(4) Standards for Granting Special Use Permit. The Commission may grant a petition for a special use permit only if it finds, and documents in writing its findings and their bases, that:

- (a)** There are unnecessary, unreasonable hardships or practical difficulties that can be relieved only by issuing the special use permit;
- (b)** There are exceptional or extraordinary circumstances or conditions applying to the land, buildings, or special uses referred to in the petition, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land, uses or structures in the vicinity shall not in themselves constitute such circumstances or conditions;

(c) Issuing the permit will not be materially detrimental to the welfare of the Reservation community or be injurious to property or improvements in the neighborhood of the premises;

(d) Such special use permit is necessary for the preservation and enjoyment of the substantial property rights of the petitioner;

(e) Issuing the permit will not adversely affect the health or safety of persons working or residing in the neighborhood of the property of the petitioner or of the Reservation community;

(f) Issuing the permit will be in general harmony with the intent and purpose of this Title;

(g) The present and future needs of the Reservation community will be served by the proposed activity and that, on the whole, the community will be benefited more than impaired by issuance of the permit; and

(h) Conditions shall be imposed to provide the greatest protection for existing, expected, and permitted uses in the surrounding area.

(5) Effective Date. A special use permit shall become effective 10 days after the date of the Commission's decision.

(6) Publication. Notwithstanding § 18-21-103, the Commission's decision to grant or deny a special use permit shall be served upon the applicant and the Director by first-class mail, postage prepaid. The Commission shall also post its decision conspicuously in the Tribal Administration

Building. In addition, the Commission, in its discretion, may publicize its decision in a newspaper of general circulation on the Reservation.

(7) Special Use Permit Right Must Be Exercised To Be Effective. A special use permit granted under this Title shall be effective only when the exercise of the right granted thereunder shall be commenced within six months from the effective date of the grant, unless a longer period be specified or thereafter allowed by the Director or Commission. In case such right has not been exercised, or extension obtained, the special use permit shall be void. A written request for an extension of time filed with the Director at least 30 days prior to the expiration of the special use permit shall extend the running of the six month period until the Director has acted on such request.

(8) Cessation of Special Use Permit. Discontinuance of the exercise of any right authorized by any special use permit for a continuous period of six months shall be deemed an abandonment of such special use permits, and the property affected thereby shall be subject to all the provisions and regulations of this Title applicable to the zone in which such property is located at the time of such abandonment.

(9) Transfer of Special Use Permit. Any valid special use permit granted pursuant to this Title is transferable unless otherwise provided at the time of the granting of such special use permit.

18-24-106. SPECIFIC PROCEDURE FOR OBTAINING LAND DIVISION PERMITS.

(1) No person or entity owning or controlling property may subdivide or otherwise create two or more parcels of property from one, without first obtaining a permit under this Chapter.

(2) Petition Requirements. A permit petition shall contain, at a minimum, the following information:

- (a)** The legal description of the land involved;
- (b)** The name of the owner and all other persons with any legal or beneficial interest in the land;
- (c)** A description of the land division proposed;
- (d)** Proof that the applicant has provided notice in writing to all owners of property within 500 feet of the subject property; and
- (e)** Such additional information as the Director may require at the time of application or thereafter as may be

necessary to determine conformance with this Title.

(3) Notice; Informal Hearing. The Director shall give notice and conduct an informal hearing pursuant to § 18-21-103.

(4) Standards for Decision. Within 10 days of the hearing on the land division permit application, the Commission shall grant, deny, or grant the application with appropriate conditions or restrictions. The Commission shall deny a land division application only if it would violate a relevant section of this Chapter.

(5) Effective Date; Publication. The Commission shall publicize the grant or denial of a land division permit by posting its decision in a conspicuous place in the Tribal Administration Building. The Commission's decision is effective and may be acted upon 20 days after the date of the decision.

18-24-107. PROCEDURE FOR REVOCATION OF PERMITS BY THE DIRECTOR.

(1) The Director may revoke, modify or suspend, in whole or in part, any permit issued pursuant to this Chapter. Such a revocation, modification or suspension must be for cause, which may include but is not limited to a violation of any permit conditions, obtaining a permit by misrepresentation or failure to disclose any relevant facts, or charges in conditions that require revocation, modification or suspension of the permit so as to preserve the quality of Reservation land and other resources.

(2) Revocation, modification or suspension of a permit shall be effective upon the date indicated in the notice required by § 18-24-107 (2).

(3) The Director shall give 30 days written notice of his intention to revoke, modify or suspend a permit to the holder of the permit. Such notice shall state the basis for the Director's proposed action and shall be delivered to the permit holder by personal service or by the United States mail, first-class postage prepaid.

(4) Within 10 days of the date of the notice required by § 18-24-107 (2) above, the Director shall conduct a formal, contested hearing pursuant to § 18-21-104. The date of the notice is the date it is issued by the Director. The Director shall prove, by a preponderance of the evidence, why the permit should be revoked, modified or suspended. The effective date of the revocation is not stayed pending hearing on the revocation. The Director's decision shall be issued within 10 days of conclusion of the

hearing and shall be served by United States mail, first-class postage prepaid, upon the permit holder and any other interested party.

CHAPTER 25 – ENFORCEMENT

18-25-101.	Initiation Of Enforcement By Director
18-25-102.	Assessment Of Civil Penalty
18-25-103.	Additional Relief
18-25-104.	Purpose Of Civil Penalties
18-25-105.	Criminal Enforcement

18-25-101. INITIATION OF ENFORCEMENT BY DIRECTOR.

(1) Determination of Violation;

Notice. Whenever the Director determines has reason to believe that violations of any part of this Title exists, he shall serve upon the owner, lessor, tenant, resident, operator, or other person believed to be responsible for such violation a notice of violation. The written notice shall be served by personal service, or by notice attached conspicuously to the home, building, business, or other location of the violation, or by United States mail addressed to the last known address of the person, tenant, occupant, operator or other party believed to be responsible for the violation. In the case of property leased under a federally approved lease, a copy of the written notice shall be served upon the Bureau of Indian Affairs by United States

(2) Contents of Notice. The notice shall state separately each violation of this Title, what corrective action is necessary to comply with the Title, and the reasonable time established by the Director for compliance. In particular, the Director may order discontinuance of any activity violating this Title and indicate what actions are necessary to bring a violating use or structure into compliance.

(3) Time for Compliance. When calculating a reasonable time for compliance, the Director shall take into consideration:

- (a) The type and degree of violation;
- (b) The threat to public health and the environment posed by the violation;
- (c) The difficulty of compliance and the financial and material means of the violator; and
- (d) The expressed intent and past record of compliance of the reasonable party.

An extension of time for compliance may be granted by the Director only upon a showing that required actions have been commenced

and that the work is progressing at a satisfactory rate.

18-25-102. ASSESSMENT OF CIVIL PENALTY.

(1) Determination and

Recommendation of Civil Penalty. In addition to any other sanction or remedy available under this Title, the Director may, after investigation of the alleged violation, determine a civil penalty for the violation and recommend to the Commission its assessment against the violator. The penalty shall not exceed \$250.00 for each day the violation existed prior to the service of a notice of violation and \$500.00 a day for each day thereafter.

(2) Notice of Civil Penalty; filing

With Commission. The Director shall serve a Notice of Civil Penalty by personal service or by United States mail addressed to the last known address of the person the Director deems responsible for the violation and shall file the notice with the Commission. The notice shall explain the nature of the violation, the basis of the amount of civil penalty assessed, that the penalty constitutes a recommendation to the Commission and may be assessed by the Commission only after a hearing as provided herein.

(3) Notice of Penalty Hearing. Upon receipt of a Notice of Civil Penalty, the Commission shall serve notice of a penalty hearing upon the alleged violator in the manner provided in this Code for service of summons and complaint in the Tribal Court and shall schedule the penalty hearing not sooner than 20 days nor later than 45 days after such service.

(4) Hearing Before Commission. At the penalty hearing the alleged violator may express his views orally or in writing, and may present witnesses and evidence in his behalf, but shall not be entitled to a continuance unless he posts bond with satisfactory sureties or cash in the amount of any civil penalty assessed by the Commission.

(5) Action By The Commission. The Commission shall accept, reject or modify the Director's recommended civil penalty, as it deems fair and just, and may assess the civil penalty against the violator and may provide a time for payment. The Commission may require, in its discretion, payment to be paid in one lump sum within no less than 30 days or to be paid in installments over not more than 24 months.

(6) Action to Recover Penalty. If the violator fails to make payment within the specified time, or, if an installment payment program is directed and the violator fails to meet any of the scheduled payments, the Director may commence an action to recover the unpaid penalty amounts in the Tribal Court.

18-25-103. ADDITIONAL RELIEF. The Director may also seek other relief from the Tribal Court to enforce any orders he issues under this Title, or to enjoin any action or practice, or to abate any condition which constitutes or will constitute a violation of this Title.

18-25-104. PURPOSE OF CIVIL PENALTIES. The civil fines imposed under this Chapter are intended to be remedial and not punitive and are designed to compensate the Tribe for the damage done to the peace, security, economy and general welfare of the Tribe and the Reservation, and to compensate the Tribe for costs incurred by the Tribe in enforcing this Title. The civil fines under this Chapter are also intended to coerce all persons into complying with this Title, Commission regulations and the laws and regulations of the Tribe and not to punish such persons for violation of such laws and regulations.

18-25-105. CRIMINAL ENFORCEMENT. In addition to the civil penalties provided for in § 18-25-102, any Indian who violates or fails to comply with this Title shall, upon conviction in the Tribal Court, be punished by a fine of no more than \$1,000. In lieu of fine, any such person found guilty of violating this Title may be required by the Court to provide not more than 30 days of community service assisting in activities useful to the protection or enhancement of the Reservation environment. Each day of violation shall be considered a separate violation of this Title.

TITLE 19

ENVIRONMENTAL PROTECTION

CHAPTER 1 – LEGISLATIVE FINDINGS AND PURPOSE

- 19-1-101. Sovereign Power To Regulate The Reservation Environment
- 19-1-102. Lack Of Adequate Environmental Regulations
- 19-1-103. Demonstrably Serious Impact Of Lack Of Adequate Environmental Controls Upon The Economic Security, Health and Welfare Of The Tribe and Tribal Members
- 19-1-104. Consensual Relations Among Nonmembers, The Tribe, and Tribal Members
- 19-1-105. Tribal Environmental Responsibilities
- 19-1-106. Benefits Of Tribal Government
- 19-1-107. Territory, Persons and Property Affected
- 19-1-108. Purpose
- 19-1-109. Sovereign Immunity

19-1-101. SOVEREIGN POWER TO REGULATE THE RESERVATION ENVIRONMENT.

The power to regulate the Reservation environment is an inherent and essential part of the authority of any reservation tribal government. This power is therefore an aspect of the retained sovereignty of Indian tribes except where it has been limited or withdrawn by federal law. The Rosebud Sioux Tribe is a sovereign Indian tribe organized pursuant to the Act of June 18, 1934, 48 Stat. 984, as amended, and governed pursuant to a Constitution and Bylaws ratified on November 23, 1935, and approved by the Secretary of the Interior, Harold L. Ickes, on December 16, 1935 as amended from time to time thereafter. Pursuant to the Constitution and Bylaws, as amended, the Rosebud Sioux Tribal Council is the governing body of the Rosebud Sioux Tribe. This Title is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Tribal Council in Article IV, Section 1 (c), (h), (i), (k), (m), (t) and (u) of the Tribal Constitution, which authorize the Tribal Council to manage and otherwise deal with tribal lands and property, to exclude by

ordinance from the restricted lands of the Reservation person not legally entitled to reside therein, to promulgate and enforce ordinances providing for the maintenance of law and order and the administration of justice on the Reservation, to regulate the conduct of trade and the use and disposition of property upon the Reservation, to regulate tribal agencies and tribal officials, and to delegate to subordinate boards or tribal officials the foregoing powers, subject to review by the Tribal Council.

19-1-102. LACK OF ADEQUATE ENVIRONMENTAL REGULATIONS.

The Rosebud Reservation, tribally owned trust lands and allotted trust lands owned by enrolled tribal members lie within Todd, Tripp, Mellette, Gregory and Lyman Counties, South Dakota. Todd County, in which the majority of the Reservation lies, is unorganized under South Dakota state law and consequently has no environmental regulations of any kind. The remaining four counties, although organized under South Dakota state law, are similarly without environmental regulations of any kind.

19-1-103. DEMONSTRABLY SERIOUS IMPACT OF LACK OF ADEQUATE ENVIRONMENTAL CONTROLS UPON THE ECONOMIC SECURITY, HEALTH AND WELFARE OF THE TRIBE AND TRIBAL MEMBERS.

The Reservation is checker boarded with both trust land and nontrust land and within the historical boundaries of the Rosebud Reservation are substantial populations of both Indians and non-Indians. The Reservation was established as an agricultural reservation for farming and ranching purposes to provide a permanent homeland for the Tribe. Since establishment of the Reservation by the Treaty, the Tribe has maintained the essential character of the entire Reservation; however, as additional residential, commercial, governmental and agricultural activities multiply, the need for adequate environmental controls grows ever more serious. Tribal land and tribal members are the most precious assets of the Tribe. The Reservation is too valuable a tribal resource to permit the uncontrolled use and alteration of the Reservation environment, and its attendant pollution and destruction. The Council finds that such uncontrolled use of the Reservation environment has a demonstrably serious impact that imperils the economic security, health, welfare and general well-being of the Tribe, its members,

and all residents of the Reservation, resulting in:

- (1) Gradual loss of the essential character of the Reservation,
- (2) Destruction of the historical and cultural values and traditions of the Tribe,
- (3) Deterioration of the aesthetics of the Reservation,
- (4) Increased air, water and solid waste disposal pollution,
- (5) Increased contamination of drinking water from the Ogallala Aquifer and surface water supplies, and
- (6) Deterioration of the standards of living, quality of life, welfare and well-being of all Reservation residents, whether tribal members or not.

19-1-104. CONSENSUAL RELATIONS AMONG NONMEMBERS, THE TRIBE, AND TRIBAL MEMBERS. The Council finds that every person who uses land, whether trust land or nontrust land, within the Reservation, enters into consensual relations, commercial dealings and contracts with residents of the Reservation, Indian and non-Indian, and with the Tribe and that all such uses of land have a demonstrably serious impact which imperils the economic security, health, welfare and general well-being of the Tribe, its members, and all residents of the Reservation.

19-1-105. TRIBAL ENVIRONMENTAL RESPONSIBILITIES. The Rosebud Sioux Tribe is subject to certain responsibilities under certain federal laws, including the Solid Waste Disposal Act codified at 42 U.S.C. §§ 6901-6992 k, and the Resource Conservation and Recovery Act (RCRA), codified at 42 U.S.C. §§ 6901-6911 I, and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), codified at 42 U.S.C. §§ 6901-9675, any discarded materials on the Reservation, including solid waste; liquid and contained gaseous wastes; semi-solid wastes; sludges; and toxic, lethal and hazardous wastes. Because the five counties within which the Reservation and tribally owned and individually owned trust lands lie do not have adequate environmental laws, it is imperative that, within its jurisdiction, the Tribe regulate all discarded materials and uses and substances that are potentially harmful to the Reservation environment.

19-1-106. BENEFITS OF TRIBAL GOVERNMENT. Among the benefits provided by the tribal government to tribal

members and to nonmembers residing or conducting business within the Rosebud Reservation are the following:

- (1) The provision of a civilized form of government and civilized environment within which to reside and do business;
- (2) The provision of governmental services, including sewer and water systems, police and fire protection, and a Tribal Court system of general jurisdiction;
- (3) The promotion and regulation of economic activities within the Tribe's sovereign jurisdiction; and
- (4) The orderly development and protection of the Reservation lands, resources and communities.

19-1-107. TERRITORY, PERSONS AND PROPERTY AFFECTED. To the extent not prohibited by federal law, this Title shall apply to the following.

(1) The Rosebud Sioux Reservation within the historical boundaries of the Reservation established in Section Two of the Act of March 2, 1889, 25 Stat. 888, including all lands, islands, waters, roads, and bridges, or any interests therein, whether in trust or nontrust status and notwithstanding the issuance of any patent or right-of-way, and such other lands, islands, waters or any interest therein thereafter added to the Reservation.

(2) All trust or restricted land of the Tribe or any enrolled member of the Tribe situated within the historical boundaries of the Reservation established in Section Two of the Act of March 2, 1889, 25 Stat. 888, including all lands, islands, waters, roads, or any interests therein, including Tripp, Mellette, Gregory and Lyman Counties, South Dakota; and

(3) All persons and property within any geographical area referred to in subsections (1) and (2), above, that are subject to the jurisdiction and governmental power of the Tribe.

19-1-108. PURPOSE. The Council hereby declares it to be in the public interest that all uses of land, whether trust or nontrust land, by enrolled tribal members and nonmembers be regulated as provided by this Chapter in order to:

- (1) Encourage only environmentally sound use of Reservation land and resources;
- (2) Protect the sacred, cultural, social and economic stability of residential, agricultural, commercial, industrial, forest, wildlife, and environmentally sensitive lands, water resources, and other areas within the

Rosebud Reservation, and to assure the orderly use of such areas;

(3) Prevent the menace to the public safety resulting from the improper location of buildings and land uses; and

(4) Otherwise promote the public health, safety, morals, and general welfare in accordance with the treaty rights reserved by the Rosebud Sioux Tribe.

19-1-109. SOVEREIGN IMMUNITY. The Rosebud Sioux Tribe, and all its constituent parts, including the Land Use and Environment Commission established pursuant to this Chapter, are immune from suit in any jurisdiction, except to the extent that such immunity has been expressly and unequivocally waived by the Tribe in this Title or elsewhere. Nothing in this Chapter shall be construed as waiving the sovereign immunity of the Tribe or any of its constituent parts, including the Land Use and Environment Commission, its members, the Director of Land Use and Environment, or the Director of Water Resources; except that the Commission, its members, and the Directors shall be subject to suit for prospective, equitable relief (including declaratory and injunctive relief) only in proceedings before the Commission and the Tribal Court. Nothing in this Title, nor any appeal to the Tribal Court, nor any enforcement action taken pursuant to this Chapter, shall constitute a waiver of such sovereign immunity as to any claim for damages, attorneys fees or costs, regardless of whether any such claim arises out of the same transaction or occurrence, or in any other respect. Nothing in this Title shall be construed as a legislative declaration of tribal liability under federal, tribal or state environmental laws or as a waiver of tribal sovereign immunity with respect thereto.

CHAPTER 2 – GENERAL PROVISIONS

19-2-101. Definitions

19-2-102. DEFINITIONS. In this Title, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

(1) “Business” means any regular or temporary business engaged in by any person for the purpose of conducting a trade, profession or commercial activity involving the sale of any property or services. An isolated sale of property or

services shall not be considered to be a business under this Chapter.

(2) “Commission” means the Land Use and Environment Commission created and established by Title 18 of this Code to administer Titles 18 and 19 of this Code.

(3) “Commissioner” means one of the members of the Commission.

(4) “Council” or “Tribal Council” means the Rosebud Sioux Tribal Council established as the governing body of the Rosebud Sioux Tribe in the Tribal Constitution.

(5) “Director” means the Director of the Land Use and Environment Department established by Title 18 of this Code, except that in Chapters 6 and 8 of this Title, “Director” means the Director of Water Resources unless otherwise specifically indicated.

(6) “Director of Water Resources” means the Director of Water Resources, established by Chapter 6 of this Title.

(7) “Immediate family” means, brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half brother, half sister, or brother, sister, son, daughter, mother or father by adoption.

(8) “Notice,” as uses in this section, means publication in any newspapers of general circulation on the Reservation.

(9) “Reservation” means

(a) The Rosebud Sioux Reservation within the historical boundaries of the Reservation established in Section Two of the Act of March 2, 1889, 25 Stat. 888, including all lands, islands, waters, roads, and bridges, or any interests therein, whether in trust or nontrust status and notwithstanding the issuance of any patent or right-of-way, and such other lands, islands, waters or any interest therein thereafter added to the Reservation;

(b) All trust or restricted land of the Tribe or any enrolled member of the Tribe situate within the historical boundaries of the Reservation established in Section Two of the Act of March 2, 1889, 25 Stat. 888, including all lands, islands, waters, roads, or any interests therein, including Tripp, Mellette, Gregory and Lyman Counties; and

(c) All persons and property within any geographical area referred to in subsections (1) and (2), above, that are subject to the jurisdiction and governmental power of the Tribe.

(10) “State” means the State of South Dakota.

(11) “Tribal member” or “member” means an individual Indian who is enrolled in the Rosebud Sioux Tribe.

CHAPTER 3 – LAND USE AND ENVIRONMENT COMMISSION

- 19-3-101. Land Use and Environment Commission To Administer This Title
- 19-3-102. Power Of Land Use and Environment Commission To Conduct Hearings
- 19-3-103. Power Of The Land Use and Environment Commission To Issue and Enforce Orders and Permits
- 19-3-104. Land Use and Environment Commission Is State Agency For Purposes Of Federal Law

19-3-101. LAND USE AND ENVIRONMENT COMMISSION TO ADMINISTER THIS TITLE. The Land and Environment Commission, a governmental agency and subordinate subdivision of the Tribe created and established pursuant to Title 18 of this Code, shall administer this Title 19 pursuant to all powers and duties delegated to it by Title 18 of this Code. All references in Title 18 with respect to Title 18 only, shall refer to this Title as well.

19-3-102. POWER OF LAND USE AND ENVIRONMENT COMMISSION TO CONDUCT HEARINGS. In addition to other powers conferred upon it by this Title and Title 18, the Land use and Environment Commission shall have power to hold hearings relating to any aspect of the Administration of this Title.

19-3-103. POWER OF THE LAND USE AND ENVIRONMENT COMMISSION TO ISSUE AND ENFORCE ORDERS AND PERMITS. In addition to other powers conferred upon it by this Title and Title 18, the Land Use and Environment Commission shall have power to issue such permits and orders as may be necessary to effectuate the purposes of this Title and enforce the same by all appropriate administrative and judicial proceedings.

19-3-104. LAND USE AND ENVIRONMENT COMMISSION IS STATE AGENCY FOR PURPOSES OF FEDERAL LAW. The Land Use and Environment Commission shall be designated as a state agency for all state purposes of the Clean Water Act, codified at 33 U.S.C. §§ 1251-

1386; the Solid Waste Disposal Act, codified at 42 U.S.C. §§ 6901-6992 k; and the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616, as amended to January 1, 1992,

CHAPTER 4 – LAND USE AND ENVIRONMENT DEPARTMENT

- 19-4-101. Land Use and Environment Department To Administer This Title
- 19-4-102. Power Of The Land Use and Environment Department To Inspect Sites Of Possible Pollution

19-4-101. LAND USE AND ENVIRONMENT DEPARTMENT TO ADMINISTER THIS TITLE. The Land Use and Environment Department, a governmental agency and subordinate subdivision of the Tribe created and established pursuant to Title 18 of this Code, shall administer this Title 19 pursuant to all powers and duties delegated to it or to the Director by Title 18 of this Code. All references in Title 18 with respect to the duties of the Department or the Director, whether general or specific, and whether referring to Title 18 only, shall refer to this Title as well.

19-4-102. POWER OF THE LAND USE AND ENVIRONMENT DEPARTMENT TO INSPECT SITES OF POSSIBLE POLLUTION. Upon complaint by any person or upon its own motion, the Department may investigate the activities of any permittee under this Title. In conducting an investigation under this provision, the Department shall have the right, without notice, to enter into the permittee’s place of business or operation, to inspect any books or records of the permittee, and to inspect any of the permittee’s equipment. Such power may be exercised by authorized agents, representatives, and employees of the Department, including the Directors of Land Use and Environment and of Water Resources.

CHAPTER 5 – GENERAL PROCEDURES

- 19-5-101. Definition: Director
- 19-5-102. Governing Procedures

19-5-101. DEFINITION: "DIRECTOR".

For purposes of this Chapter, except where otherwise specifically provided or the context otherwise requires, the term "Director" shall mean the Director of Water Resources for purposes of actions taken pursuant to Chapters 6 and 8 of this Title; for purposes of actions taken pursuant to all other Chapters of this Title, the term "Director" shall mean the Director of Land Use and Environment.

19-5-102. GOVERNING PROCEDURES.

Except as specifically modified in this Chapter, proceedings before the Directors and the Commission shall be governed by Title 18, Chapter 21, of this Code.

CHAPTER 6 – CLEAN WATER

- 19-6-101. Findings and Purposes
- 19-6-102. Definitions
- 19-6-103. Prevention Of Pollution
- 19-6-104. Prohibited Activities
- 19-6-105. Director To Issue Regulations Governing Point and Nonpoint Sources Of Pollution
- 19-6-106. Contingency Plan To Deal With Imminent Threats To Health and Welfare
- 19-6-107. Water Quality Standards
- 19-6-108. Permits Required To Degrade or Discharge Pollutants Into Reservation Waters
- 19-6-109. Permit To Degrade Reservation Waters
- 19-6-110. Permit For Point Source Discharge
- 19-6-111. Term Of Permits Issued Under This Chapter; Relationship Of Tribal Permits To EPA Permits
- 19-6-112. Compliance With Standards and Requirements Of Land Use and Environment Commission To Use Irrigation System For Chemigation
- 19-6-113. Land Use and Environment Commission To Promulgate Rules and Standards Regarding Chemigation

19-6-101. FINDINGS AND PURPOSES.

The Tribal Council finds that pollution of the waters of the Reservation constitutes a menace to public health and welfare, is harmful to fish, wildlife, and aquatic life, and

impairs domestic, agricultural, industrial, recreational, and other beneficial uses of water. The purpose of this Chapter is to:

- (1) Conserve the waters of the Reservation;
- (2) Protect, maintain, and improve the quality of the waters of the Reservation for the propagation of fish and wildlife, and for domestic, industrial, agricultural, municipal, recreational, and other beneficial uses;
- (3) Provide for the prevention, abatement, and control of new or existing water pollution; and
- (4) Provide a basis for cooperation as necessary and appropriate with other sovereign governments, including other Indian tribes, states and the federal government, to achieve these purposes.

19-6-102. DEFINITIONS. In this Chapter, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

- (1) "Chemigation" means any process whereby fertilizers or pesticides are added to irrigation water applied to land or crops or both through an irrigation system.
- (2) "Discharge of a pollutant" means any addition of any pollutant to the waters of the Rosebud Reservation from a point source.
- (3) "Nonpoint source" means any source of discharge of a pollutant other than a point source.
- (4) "Person" means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, investment trust, municipal corporation, corporation, association, syndicate, pool, organization, society, political entity, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.
- (5) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, from which any pollutant is or may be discharged.
- (6) "Pollutant" means any material that when added to water causes pollution, including but not limited to, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage, sludge, munitions, chemical, biological, or radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, soil,

industrial, municipal and agricultural products or waste.

(7) "Pollution" means the human-made or human-induced alteration of the chemical, physical, biological, or radiological integrity of water.

19-6-103. PREVENTION OF POLLUTION.

(1) Pollution of the waters of the Reservation is declared not to be a reasonable, beneficial or natural use of such waters and to be contrary to the public policy of the Tribe.

(2) In order to carry out the Tribe's public policy as set forth in this Chapter, the Director of Water Resources and the Department of Land Use and Environment shall implement this Chapter and work cooperatively with the other governmental entities to prevent, abate and control pollution of the waters of the Reservation.

19-6-104. PROHIBITED ACTIVITIES.

(1) Except as may be permitted under this Title, no person shall cause or allow the discharge of any pollutant from a point source or nonpoint source that reduces the quality of the waters of the Reservation to below the standards established pursuant to § 19-6-105.

(2) No person shall violate the terms or conditions of any pollution discharge or activity permit or regulation issued pursuant to this Chapter.

19-6-105. DIRECTOR TO ISSUE REGULATIONS GOVERNING POINT AND NONPOINT SOURCES OF POLLUTION.

(1) **Point Source Regulations.** Within 360 days of passage of this Title, the Director of Water Resources shall promulgate final regulations, in accordance with the informal hearing procedure set forth in Title 18, Chapter 21, setting forth management practices to control all point sources of pollution within the boundaries of the Rosebud Reservation.

(2) Nonpoint Source Regulations.

(a) Within 360 days of passage of this Title, the Director of Water Resources shall promulgate final regulations, in accordance with the informal hearing procedures set forth in Title 18, Chapter 21, setting forth management practices to control nonpoint sources pollution from livestock grazing and agricultural activities.

(b) From time to time after he has issued the final regulations required by §§ 19-6-105 (1) and 19-6-105 (2) (a), the Director may promulgate or amend in the same manner

other regulations setting forth management practices to control point and nonpoint source pollution from agricultural practices, grazing, or other activities.

(3) Effect of Regulations.

(a) Upon promulgation of regulations pursuant to §§ 19-6-105 (1) and 19-6-105 (2) (a), no person who complies with those regulations may be found liable for illegal pollution as the result of an activity conducted consistent with such regulations.

(b) If conduct of an operation consistent with the regulations results in a violation of the water quality standards established by this Chapter, including its antidegradation policy, the Director shall order the person responsible for the violation to alter his operation in a manner to prevent the violation and shall give him a reasonable time, the person responsible shall be fully liable for illegal pollution under the terms of this Chapter.

19-6-106. CONTINGENCY PLAN TO DEAL WITH IMMINENT THREATS TO HEALTH AND WELFARE.

Within 90 days of the passage of this Title and pursuant to the informal hearing procedure set forth in Title 18, Chapter 21, the Director shall issue a final contingency plan to implement the emergency authority granted him by Title 18, Chapter 21.

19-6-107. WATER QUALITY STANDARDS.

(1) Standards for Identified Waters.

The Director shall establish regulations for beneficial uses and water quality standards for specific surface waters located within the Reservation. Such regulations shall be issued within 180 days of enactment of this Title.

(2) Antidegradation Standards.

Notwithstanding the water quality criteria established for streams, rivers, lakes, or other bodies of water in § 19-6-107 (1), it is the policy of the Tribe to prevent the unnecessary degradation of any waters of the Reservation, which policy shall be implemented as follows:

(a) Existing beneficial uses shall in all cases be maintained and protected and no water quality degradation shall be allowed that would interfere with or become injurious to existing beneficial uses.

(b) Under no circumstances may the degradation of the water quality of unique Reservation waters be allowed. Such unique Reservation waters shall be identified

by the Director in regulations within 180 days of enactment of this Title.

(c) Whenever surface waters other than those unique waters listed in § 19-6-107 (b) are of higher quality than provided for by the applicable Water Quality Standards, the existing higher water quality shall be protected, and no degradation shall be allowed unless the Commission waives the requirement that the higher water quality be maintained. The Commission may grant such a waiver only after a public hearing according to the informal hearing procedures set forth in Title 18, Chapter 21.

19-6-108. PERMITS REQUIRED TO DEGRADE OR DISCHARGE POLLUTANTS INTO RESERVATION

WATERS. Except as specifically provided for or modified in this Chapter, the procedures set forth in Title 18, Chapter 21, shall govern the consideration and issuance of any permit under this Chapter.

19-6-109. PERMIT TO DEGRADE RESERVATION WATERS.

(1) Upon petition in accordance with Title 18, Chapter 21, and § 19-6-108, the Commission shall, in accordance with the informal hearing procedures in Title 18, Chapter 21, decide whether to issue a permit to conduct an activity that will cause or allow the discharge of a pollutant into any body of Reservation water for which water quality standards are established (including those waters listed in § 19-6-107 (1) and (2) (b)). If an applicant seeks a point source discharge permit, he shall include the request for water quality degradation in the permit petition.

(2) Upon application to and upon a determination by the Director of Water Resources that an emergency exists, the Director may authorize short-term degradation of water quality (not to exceed 30 days) in any body of water for which water quality standards are established (including those waters listed in § 19-6-107 (1) and (2) (b)). If the applicant seeks a point source discharge permit, he shall include the request for short-term water quality degradation in the petition.

(a) For purposes of § 19-6-109 (2), an "emergency" is defined as circumstances that threaten the public health or welfare or prevents essential activities from proceeding.

(b) The Director may permit such short-term degradation only if he determines that clear and convincing evidence demonstrates that the degradation will not

cause long-term injury or interference with water quality and the designated beneficial use is for the affected water body.

(c) In all cases involving emergencies as defined in § 19-6-109 (2) (a), the Director of Water Resources shall, at a minimum, provide notice of his action to the Tribal Council and post notice on the Tribal Agency Bulletin Board. In addition, the Director shall provide the closest approximation to the informal hearing procedure set forth in Title 18, Chapter 21, taking into account the nature of the emergency.

(d) In circumstances in which the Director of Water Resources determines to be emergencies, he may shorten the time within which the permit becomes effective unless the Commission acts to stay the decision upon appeal.

19-6-110. PERMIT FOR POINT SOURCE DISCHARGE.

(1) Federal and Tribal Permits Required.

(a) Any point source discharge of pollutants into the waters of the Reservation requires a permit from the federal Environmental Protection Agency. No person may discharge any pollutant from a point source into waters of the Reservation without having first obtained a permit from the EPA.

(b) Further, no person may discharge any pollutant from a point source into waters of the Reservation without first having obtained a permit from the Commission pursuant to this Chapter.

(2) Tribal Permit for Point Source Discharge.

(a) In lieu of a petition for permit as required by § 19-6-109 (1) and (2), the applicant shall provide to the Director of Water Resources a complete and full copy of his petition to the federal Environmental Protection Agency at the same time as it is supplied to the EPA.

(b) Upon receipt of a complete petition the Director of Water Resources shall immediately contact the appropriate federal Environmental Protection Agency office and advise it of the Director's intent to review and provide public participation on the permit petition. The Director shall request that EPA not act prior to conclusion of the tribal process.

(c) Within two weeks of having first received a petition, the Director may request applicant to supply within a reasonable time such additional information as he deems necessary to permit a thorough review of the petition. If the applicant fails to submit the requested information within the reasonable

time established in the Director's request, the Director may reject the petition for such failure.

(d) Upon receipt of a complete petition pursuant to § 19-6-109 or 19-6-110 (2) (a), the Land Use and Environment Commission shall, in accordance with informal hearing procedures established in Title 18, Chapter 21, determined whether to issue the requested permit. The Commission shall grant the permit only if it finds, by clear and convincing evidence, that: Commission shall not grant a permit unless it finds on the record that:

(i) the discharge will not result to a violation of the water quality standards set forth in this Chapter or subsequently adopted, except as allowed by § 19-6-107 (2) (c) or § 19-6-107 (2) (d) of this Chapter; and

(ii) the discharge will not interfere with or injure existing beneficial uses.

(e) If the federal Environmental Protection Agency has not yet issued a permit, the Director shall urge EPA to act consistent with the decision on the tribal permit. If EPA has issued a permit, the Director shall insure that the Commission's permit conditions are at least as stringent as those in the EPA permit.

19-6-111. TERM OF PERMITS ISSUED UNDER THIS CHAPTER; RELATIONSHIP OF TRIBAL PERMITS TO EPA PERMITS.

A permit granted under this Chapter shall have the same term as and shall expire at the same time as any EPA permit granted for the same discharge. In the absence of an EPA permit, the terms of the tribal permit shall govern. In no event shall a tribal permit issued under this Title be deemed to reduce conditions contained in an EPA permit for the same discharge; however, where the condition contained in the tribal permit are more protective on the Reservation environment than those contained in the EPA permit, the conditions contained in the tribal permit shall govern.

19-6-112. COMPLIANCE WITH STANDARDS AND REQUIREMENTS OF LAND USE AND ENVIRONMENT COMMISSION TO USE IRRIGATION SYSTEM FOR CHEMIGATION.

Any person who utilizes an irrigation system for chemigation shall comply with any standards and requirements that are established by the Land Use and Environment Commission pursuant to §§ 19-6-105 (1) and 19-6-113.

19-6-113. LAND USE AND ENVIRONMENT COMMISSION TO PROMULGATE RULES AND STANDARDS REGARDING CHEMIGATION.

Within 360 days of passage of this Title, the Land Use and Environment Commission, with the assistance of the Director of Water Resources, shall establish, by rules made in accordance with informal hearing procedures established in Title 18, Chapter 21:

(1) Chemigation equipment standards, performance standards and installation requirements; and

(2) Requirements regarding the use and location of antipollution devices.

The requirements and standards established pursuant to this section shall provide for additional protection if chemigation involves the application of a pesticide, rather than a fertilizer.

CHAPTER 7 – SOLID WASTE CODE

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19-7-101. FINDINGS AND PURPOSES.

The Tribal Council finds that:

(1) The health and welfare of the Rosebud Sioux tribal members and other persons who reside on the Rosebud Reservation and the opportunities for economic development on the Reservation are at risk from the indiscriminate and uncontrolled disposal of solid waste on the Reservation;

(2) Solid Waste is generated by Indians and non-Indians on the Rosebud Reservation and Indians and non-Indians alike suffer from improper disposal;

(3) The improper disposal of solid waste on the Reservation is contrary to the historic close relationship between the people of the Rosebud Sioux Tribe and their land;

(4) The continued growth of population and economic activity on the Reservation will generate greater amounts of solid waste;

(5) Federal law requires extensive management of solid waste;

(6) There is a need for an organized effort to manage properly the disposal of solid waste on the Rosebud Reservation; and

(7) The Rosebud Sioux Tribe, as the properly constituted sovereign government of the Rosebud Reservation should undertake to regulate and manage the disposal of solid waste.

The purposes of this Chapter are to:

(1) Provide environmental and health standards for the collection and disposal of solid waste;

(2) Prohibit future open dumping and littering of waste on the Reservation and eliminate unhealthy, unsightly and indiscriminate disposal or placement of solid waste; and

(3) Inform and educate persons living on the Reservation of the need to participate fully in efforts to manage solid waste generation, transportation, and disposal on the Reservation.

19-7-102. DEFINITIONS.

(1) "Beverage" means beer or other malt beverages and mineral waters, soda water and similar carbonated soft drinks in liquid form and intended for human consumption.

(2) "Beverage container" means the individual, separate, sealed glass, metal or plastic bottle, can, jar or carton designed to contain a beverage.

(3) "Biodegradable" means degradable through a process by which fungi or bacteria secrete enzymes to convert a complex molecular structure to simple gasses and organic compounds.

(4) "Contaminate" means to introduce a substance into water that would cause:

(a) The concentration of that substance to exceed the maximum concentration or contaminant levels established pursuant to federal law and regulations; or

(b) An increase in the concentration of such substance where the concentration in the ground water already exceeds the levels established by federal law and regulations.

(5) "Degradable" means capable of decomposing by biodegradation, photodegradation or chemical process into harmless component parts after exposure to natural elements for not more than 365 days.

(6) "Demolition waste" means any solid waste, largely inert waste, resulting from the demolition of or razing of buildings, roads, and other man-made structures, and any other material defined as "demolition waste" pursuant to federal law.

(7) "Hazardous waste" means solid waste that is flammable, corrosive, radioactive, explosive, toxic or reactive or that otherwise meets the criteria established for hazardous waste in federal law.

(8) "Hospital or medical wastes" includes laboratory or surgical wastes and implements, such as tissues, specimens of blood elements, excreta, and secretions obtained from patients or laboratory animals, or clothing, rags, needles, or paper goods contaminated with such waste.

(9) "Landfill" means a disposal facility or part of a facility at which solid waste is permanently placed in or on the land.

(10) "Liter" means any used or unconsumed substance or waste, including but not limited to any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, abandoned motor vehicle, motor vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure a person or create a traffic hazard, or anything else of an unsightly or unsanitary nature that has been discarded, abandoned or otherwise disposed of.

(11) "Person" means an individual, firm, association, co-partnership, political

subdivision, government agency, municipality, public or private corporation, or any other entity whatsoever, except for the Rosebud Sioux Tribe as a sovereign entity.

(12) "Photodegradable" means degradable through a process in which ultraviolet radiation in sunlight causes a chemical change in a material.

(13) "Photodegradable" means degradable through a process in which ultraviolet radiation in sunlight causes a chemical change in a material.

(14) "Solid Waste" means all putrescible and non-putrescible solid and semi-solid wastes including, but not limited to, abandoned vehicles or parts thereof, ashes, demolition and construction wastes, discarded commodities, garbage, industrial wastes, rubbish, swill, and all other materials defined as "solid waste" pursuant to federal law. "Solid waste" also means all liquid, solid and semisolid materials that are not the primary products of public, private, industrial, commercial, mining, and agricultural operations. Solid waste includes but is not limited to sludge from waste water treatment plants and septage from septic tanks and wood waste;

(15) "Solid waste disposal site" means the location where any final treatment, utilization, processing or deposition of solid waste occurs.

(16) "Vector" means a living animal, insect, or other anthropoid which transmits or can transmit an infectious disease from an organism to another.

19-7-103. UNLAWFUL PRACTICES.

(1) **Dumping of Solid Wastes or Litter Anywhere Other Than at Authorized Sites.** No person shall dump, place, abandon, or deposit any solid waste or litter on land except at disposal sites authorized by the Department of Land Use and Environment.

(2) **Dumping of Solid Wastes or Litter into Reservation Waters.** No person shall dump, place, abandon or deposit any solid wastes or litter into Reservation waters except in a manner approved by the Land Use and Environment Commission.

(3) **Accumulation of Solid Wastes or Litter.** It shall be unlawful for any person, firm, corporation, or government entity to place, leave, dump, or permit the accumulation of any solid waste or litter in any building or upon any premises or on property within the boundaries of the Rosebud Reservation, except in garbage

cans or other containers for purposes of collection by an authorized collection agent or at an approved disposal site.

(4) **Bulky Items.** It shall be unlawful for any person to place, leave, dump, or permit the accumulation of unusual, large bulky items, such as white goods (refrigerators, stoves, etc.) or inoperable cars or trucks or parts thereof in any open and visible location on the Rosebud Reservation.

(5) **Landfills and Collection Systems.** No person may operate a landfill or solid waste disposal site or operate a solid waste collection system unless he has obtained a permit for such operation pursuant to this Title.

19-7-104. EXEMPTION FOR FARMING OPERATIONS. No provisions of this Chapter shall be construed so as to prohibit a farmer or rancher from disposing solid waste resulting from normal farming operations upon his own land where such disposal does not create a nuisance or a public health hazard, does not include substances defined as hazardous or toxic wastes under this Title, or does not otherwise violate tribal law.

19-7-105. POWERS OF COMMISSION UNDER THIS CHAPTER. For purposes of this Chapter, the Land Use and Environment Commission has the authority to:

- (1) Adopt a solid waste management plan for the Rosebud Reservation.
- (2) Locate, design, build, and operate solid waste disposal sites.
- (3) Operate a solid waste collection system.
- (4) Contract on behalf of the Rosebud Sioux Tribe with other persons or entities to operate solid waste disposal sites or a solid waste collection system, to dispose otherwise or solid waste, or to perform such other actions as are useful to accomplish the objectives of this Chapter and the duties of the Commission.
- (5) Issue permits as provided in this Chapter for the operation of solid waste sites or solid waste collection systems.
- (6) Employ and consult with such advisors regarding its duties as it may deem necessary.
- (7) Make recommendations to the Tribal Council on issues related to solid waste.
- (8) Levy such fees as may be required to fund its operation and recommend to the Tribal Council the levy of taxes as may be required or useful to fund solid waste regulation and disposal.

(9) Accept and use monies from whatever sources as are legally available to them to fund its operation.

(10) Promulgate and enforce regulations consistent with this Title, and promulgate regulations and procedures governing the work and operations of the Commission not inconsistent with the provision of this Code.

(11) Do everything necessary or proper not otherwise forbidden by law for the accomplishment of the obligations and duties imposed by this Title.

(12) The Commission may delegate to the Director of Land Use and Environment such of its duties as it deems appropriate, except that it may not delegate its duties under § 19-7-105 and 19-7-119 (2) of this Title.

Further, in all cases, the Commission must:

(a) Approve the expenditure of funds by the Department either through approval of a Department budget or by approval of specific expenditures;

(b) Approve any contracts entered into by the Department in the name of the Rosebud Sioux Tribe;

(c) Approve any levy of fees by the Department; and

(d) Approve all regulations proposed by the Department to regulate solid waste on the Reservation.

19-7-106. DEVELOPMENT OF SOLID WASTE DISPOSAL PLAN.

(1) Within 180 days of the passage of this Title, the Director of Land Use and Environment shall present to the Commission for its approval a comprehensive Solid Waste Management Plan for the Reservation. In designing the Plan, the Director may propose to use, in a combination that he deems most appropriate, any of the mechanisms authorized by this Title, including operation of parts or all of the system by Land Use and Environment Department staff, federal agency staff, contractors, or permittees. Such Plan shall include at a minimum:

(a) A solid waste collection system and disposal plan, the goal of which shall be the collection and proper disposal of all solid waste on the Reservation;

(b) A mechanism to fund continued operation of the system, which shall include, at a minimum, fees for Department-operated collection system and deposit of waste in any Department-operated disposal site, including special fees levied against deposit of large or bulky debris, large volume demolition debris, or large volume construction debris;

(c) An education and public involvement program to encourage proper disposal of waste;

(d) A recycling program to require or encourage recycling if the Director deems it feasible; and

(e) A plan to investigate the options for establishing comprehensive system of hazardous waste control, including controls on household hazardous waste.

(2) Within 15 days of presentation of the Solid Waste Management Plan by the Director, the Commission shall publicize the existence of the Plan and make widely available on the Reservation a Plan summary. Within 45 days, the Commission shall hold two public hearings at locations of its choice, to permit Reservation residents to comment on the proposed Plan.

(3) The Plan as proposed by the Director shall go into effect, and the Director shall commence its implementation, 100 days after the Director submits it to the Land Use and Environment Commission, unless the Commission acts to promulgate an amended Plan within the same 100 days.

19-7-107. GENERAL SOLID WASTE DISPOSAL SITE STANDARDS.

It is the intent of this Chapter that any solid waste disposal site, whether operated by the Land Use and Environment Department or by others under permit from the Land Use and Environment Commission shall, to the greatest extent practical, taking into account the needs and capabilities of the Tribe and the Reservation community and the environmental quality of the Reservation, meet or exceed the environmental and health-related performance standards established by applicable federal law.

19-7-108. LANDFILL LOCATION STANDARDS.

(1) No landfill shall be located closer than 10,000 feet from any airport runway.

(2) No landfill shall be located within 1,000 feet of a lake, pond, slough, river, stream, or wetland. To the greatest extent possible, landfills will be located at substantially greater distances from any surface water of significance.

(3) No landfill shall be visible from, nor shall it be closer than 1,000 feet to, a public park or principle Reservation roadway or in a location where the facility would constitute a potential safety hazard to the public.

(4) No landfill shall be located in an unstable area subject to significant erosion, mass soil movement, or other geologic or soil conditions which could adversely affect the safety and environmental integrity of the landfill.

(5) No landfill shall be located in a manner that will cause significant adverse impact to recreational opportunities, wildlife habitat or populations, or Reservation aesthetics.

(6) To the greatest extent possible, taking into account the other requirements of this Title, no landfill shall be located within 3,000 feet [measured from its exterior boundary as established in § 19-7-109] of a dwelling inhabited at the time of landfill location.

(7) No landfill will be located within 2,000 feet of a domestic water well, unless the Director determines that the well will not be contaminated by the solid waste site and establishes a water monitoring program for the well, or the Director provides substitute water source of equal or better convenience and quality.

19-7-109. LANDFILL DESIGN.

(1) All landfills shall be designed and certified by an experienced engineer to meet the location, performance and operating standards established by this code to protect health and environment quality.

(2) All landfill designs shall establish a "landfill boundary" which shall encompass an area judged sufficient to accept all solid waste planned or anticipated to be deposited at the site during the planned site life, plus a 100 yard perimeter buffer.

(3) All landfills will be designed using drainage or control or diversion systems or other methods so as to limit, to the greatest extent possible, erosion, infiltration, and surface poundage.

19-7-110. LANDFILL PERFORMANCE STANDARDS.

(1) **Air.** No landfill shall violate any federal or tribal air quality standard or requirement applicable on the Rosebud Reservation.

(2) **Surface Water.** No landfill shall cause a discharge of pollutants into waters of the United States in violation of the federal Clean Water Act or any applicable tribal requirements.

(3) Ground Water.

(a) No landfill shall cause contamination beyond the landfill boundary of ground water of quality sufficient to be uses for domestic drinking water purposes unless the Director extends the area of contamination beyond the normal boundary by no more than an additional 100 yards beyond the Title established landfill boundary upon a determination (i) that the ground water is no currently used for drinking water purposes and (ii) the ground

water will not be needed in the future for drinking water purposes, taking in to account the rate and expected increase or decrease of groundwater use, the availability of alternative drinking water supplies and the overall effect on the health of Reservation residents.

(b) In no cases shall a landfill cause the contamination of ground water used for drinking water at the time of site location, unless the Director determines at the time of disposal site location that it is in the public interest to permit contamination of the groundwater and users of that drinking water are provided an alternative supply of water of equal or greater quality, and convenience as their original source.

(4) **Disease.** All landfills shall minimize the population of on-site disease vectors, such as insects and rodents.

(5) **Methane.** All landfills must assure that the concentration of methane gas at the project boundary or in project structures not exceed the limits established by federal regulations.

19-7-111. LANDFILL SITE OPERATING CRITERIA.

(1) **Separation of Materials.** Solid waste disposal sites shall provide separate locations for the placement of certain materials not be places in the landfill pit, including trees or tree branches, car bodies, and large bulky metal goods (including "white goods" such as refrigerators, stoves, etc.), or other items identified as hazardous or otherwise unsuited for landfilling. Persons seeking to deposit such materials at landfills shall be required to separate such materials and place them in the identified locations.

(2) **Physical Operation at Disposal Sites.** All landfills must utilize procedures to meet these operating standards;

(a) Refuse shall be unloaded at the bottom of the open working face of the fills. This may be accomplished either by direction of supervisor personnel or by the placement of stationary or portable fencing.

(b) Deposited refuse shall be uniformly distributed and compacted in layers. A working face with a slope sufficient to permit thorough compaction shall be maintained.

(c) At the end of each working day, unless extreme weather conditions make operations infeasible, the open face of the landfill shall be covered with sufficient earth to control disease vectors and fire.

(d) At least two days worth of cover material shall be stockpiles at all times.

(e) When each portion of the landfill site has been completed, it shall be covered by at least twenty-four inches of compacted earth, which will support non-weedy plant growth and is free from cracks and extrusions of refuse. This final cover shall be leveled and shaped to provide proper runoff and drainage, and to prevent erosion or poundage and meet the design performance requirements of this Title.

(f) All landfills shall be operated to control litter at the unloading area and throughout the area within the site boundary through the use of fences, other litter control devices, and regular, at least bi-weekly, pickup. Disposal site operators shall also pick up site-generated litter beyond the site boundary if such occurs.

(g) All landfills must be operated to control dust, using sprayers or similar devices as necessary.

(3) Burning. Except as provided by this Title, no open burning may occur at a solid waste disposal site. Infrequent burning of trees or tree branches, agricultural wastes, or land clearing debris may occur if conducted away from the working fills in an area specially designated for that purpose and in a manner to prevent the spread of fire to any other area or materials.

(4) Access.

(a) All landfills must be provided with an all weather access road, suitable for travel by loaded vehicles.

(b) All landfills must be fenced and access must be provided only through one control entry point.

(5) Monitoring Programs. Each landfill shall operate a monitoring program designed and approved at the time the landfill is first approved for operation. The plan may, depending upon the circumstances as determined by the Director, include monitoring of ground water, surface water, methane gas and air quality. In all cases, ground water monitoring shall be required unless a qualified engineer or geologist certifies, based on reliable site-specific information, that there is no potential for contamination of a drinking water source outside the landfill boundary as designated by the code or extended by the Director. Test wells for ground water monitoring, where required, shall be cased, capped, and shall be at least four inches in diameter.

(6) Correction of Contamination. If surface or ground water contamination is discovered, the operator of the site, if not the Department, shall immediately notify the Director of Land Use and Environment. In all cases of discovery of surface or ground

water contamination, whether the operator is the Land Use and Environment Department or another, the Director shall:

(a) Within 90 days, determine the cause and extent of the contamination; and

(b) Take steps necessary to correct the cause of the contamination and eliminate, insofar as practical, the contamination itself. If contamination of a drinking water source cannot practically be eliminated in the judgment of the Director, the operator shall provide an alternative drinking water supply to any person or persons then using the contaminated source. If no person is using the groundwater, the Director may specify such other remedial steps, and may take such other enforcement action, as he deems appropriate in the circumstances.

(7) Control of Liquids. Bulk or non-containerized liquids, or containers containing liquids, may not be disposed of at any landfill unless the liquids are household wastes or the containers are no longer than those commonly found in household use.

(8) Control of Hazardous Waste. All disposal site operators shall be trained to identify hazardous waste prohibited from disposal in any landfill. Each disposal site shall establish procedures, including periodic inspection procedures, to identify and exclude hazardous waste from the landfill.

(9) Safety. Landfills shall be designed and operated to insure the safety of persons depositing solid waste and landfill operation staff.

19-7-112. CLOSURE OF LANDFILLS.

(1) as each unit or cell of a designated landfill is filled, it shall be permanently closed covering the cell or unit with a final cover system, including at least two feet of earth which is re-vegetated with non-weedy vegetation and which is designed and placed in a manner to prevent erosion, poundage, and the infiltration of liquid through the cover and into the waste.

(2) When a landfill site is no longer able to accept waste, it shall be closed. The operator, if not the Land Use and Environment Department, shall inform the Director of its intent to close the site no sooner than six months prior to closure. Any operator, including the Department, shall prepare a closure plan which shall be submitted to the Director at the same time as the notice of intent to close is required. The Plan shall be reviewed by the Land Use and Environment Commission and approved if it contains the following components:

(a) Rodent control measures to ensure that rodents do not leave the site.

(b) Marking the site to indicate that the site is closed to further dumping and to indicate where an alternative site is located.

(c) Covering the site with two feet of earth, capable of maintaining non-weedy vegetation in a manner described in subsection (1).

(d) Access control mechanisms to ensure no additional waste is disposed at the facility.

(e) Filling, grading, and draining the site to eliminate slumping, settling, or pondage of water on the surface of the site.

(f) Maintaining the site until it has settled and no further filling, or drainage problems exist; and

(g) Re-vegetation and maintenance, as required, to provide adequate cover of non-weedy vegetation to prevent excessive erosion or runoff.

(h) Continued monitoring of ground and surface water contamination levels, if the Director determines necessary.

(3) If the operator of a site is other than the Land Use and Environment Department, the Land Use and Environment Commission shall require the operator to post a bond sufficient to insure continued compliance of the Plan with these requirements.

19-7-113. SPECIAL WASTES.

(1) **Prohibited Materials.** The following materials may not be deposited in a landfill in a refuse can or in a receptacle the contents of which are to be deposited in a landfill: dead animals weighing over 15 pounds; sewage; human or animal excrement; hot ashes; infectious wastes; hospital or medical waste; hazardous wastes, except for household hazardous wastes exempt from federal regulation; radioactive wastes; explosives; containers previously containing pesticides or herbicides unless the containers have been cleaned as required to eliminate substance residue.

(2) **Hospital or Medical Waste.** Hospital, medical or other infectious waste must be incinerated at the point of generation or transferred to another medical facility for incineration. During transfer, the waste must be carried in specially marked red plastic bags bearing the words "hospital waste."

19-7-114. DUMPING FEES.

(1) The Director, subject to Land Use and Environment Commission approval, may establish or amend and thereafter may

collect and enforce rates or charges for the dumping of any material in a landfill operated by the Department, either directly or through contractors.

(2) Any person who operates a landfill under permit may establish rates or charges for the service performed. Such rates or charges shall be subject to review by the Land Use and Environment Commission upon petition by any person served by the permitted landfill. Upon such review, the Commission may only alter the rates charged after hearing, if it finds that they are unfair excessive or provide the collector an unnecessarily high rate of return.

19-7-115. COLLECTION SYSTEMS PRACTICES.

(1) **General.** No person shall collect, store or process solid waste, including hazardous waste in a manner that poses a direct or indirect threat to the public health or to the quality of the environment. Solid waste collection shall not:

- (a) Cause a disease;
- (b) Cause air and water pollution; or
- (c) Otherwise cause pollution of the environment.

(2) **Collection Periods.** Any waste collection system must provide for regular, periodic collection of waste on a schedule made well known to waste generators. Waste collection must occur at least once weekly and may occur more frequently by agreement between the collector and the waste generator.

(3) **Collection Vehicles.** Solid waste shall be collected by vehicles that are constructed to be readily cleanable and which will prevent the spillage or leakage of refuse during loading and transportation to the disposal site.

(4) Preparation of Garbage and Refuse for Collection.

(a) Any collection system shall provide written instructions to waste generators of the limits and requirements for preparation of garbage for collection. Minimum requirements shall include:

- (i) all garbage must be placed in garbage containers of no more than 10 gallons, which lids capable of resisting entry by rodents and other animals;
- (ii) newspaper and magazines must be made up into bundles and tied with a strong cord or wire;
- (iii) cardboard boxes and like materials must be flattened or tied in bundles; all commercial or government

establishments shall keep waste paper and boxes separate from regular garbage;

(iv) all aluminum must be separated and placed in a separate bag or other container; and

(v) items prohibited by § 19-7-113, above, shall not be placed in garbage containers.

(b) No collection shall be made of:

(i) burning or smoldering materials;

(ii) stumps and tree limbs that are more than four feet in length;

(iii) large volume construction and demolition debris that will not fit in approved containers; and

(iv) bulky items such as car bodies or parts and white goods, (washers, dryers, refrigerators and the like).

(5) Charges for Collection.

(a) The Director, subject to approval of the Land Use and Environment Commission, may establish or amend and thereafter may collect and enforce rates or charges for any refuse collection system operated by the Department, either directly or through contractors.

(b) Any person who operates a collection system under permit may establish rates or charges for the service performed. Such rates or charges shall be subject to review by the Land Use and Environment Commission upon petition by any person served by the permitted collection agency. Upon such review, the Commission may alter the rates charged only, if after hearing, it finds that such rates are grossly unfair and excessive or provide the collector an unnecessarily high rate of return.

19-7-116. DROP BOX STANDARDS.

Collection and disposal systems may include the use of drop boxes. In all cases, drop boxes shall be designed, located, constructed and operated so as to:

(1) Be sturdy and constructed of durable, water tight, easily cleanable material;

(2) Provide effective means to control vectors, such rodents, insects, birds and other vermin;

(3) Be adequately screened, fenced, or otherwise arranged so as to prevent blowing of litter and provide effective means to control litter;

(4) Be in readily accessible locations with access provided by all-weather roads and vehicular areas;

(5) Be adequately signed to advise those using the facility of the standards for preparation and/or separation of deposited materials (which shall be the same as the requirements in § 19-7-115 (4) (a)) of the

materials which are prohibited from deposit (which shall be the same as the requirements in § 19-7-115 (4) (a)) and advise the public that all materials must be placed in the drop-box;

(6) Be designed, sized, and serviced as often as necessary to ensure adequate dumping capacity at all times; and

(7) Include a separate location and drop-box for aluminum and any other materials which the Plan calls for recycling.

19-7-117. PERMITS REQUIRED TO OPERATE DISPOSAL SITES AND COLLECTION SYSTEMS.

(1) The Land Use and Environment Department may operate landfills and solid waste collection systems pursuant to the standards and requirements of this Chapter. No other person may operate a landfill or collection system (except for collection of his own wastes) without first obtaining a permit.

(2) Except as specifically provided for or modified in this Chapter, the procedures set forth in Title 18, Chapter 21, shall govern the consideration and issuance of any permit under this Chapter.

19-7-118. PERMIT TO OPERATE SOLID WASTE DISPOSAL SITES.

(1) **Petition for Permit to Operate Solid Waste Disposal Site.** If the Solid Waste Management Plan includes provisions for landfill sites not operated by the Land Use and Environment Department, any person may petition for a permit to operate a disposal site in accordance with the procedures set forth in Title 18, Chapter 21. In addition to the information required by Title 18, Chapter 21, an application for a permit to construct and operate or alter a landfill site shall include the following:

(a) A general description of the facility.

(b) A map and aerial photograph of the area to be used for the fill showing land use and, where applicable, zoning within 2,000 feet of the solid waste disposal site. The map and aerial photograph shall be of sufficient scale to show all homes, wells, water ways, topography, roads, and other objects that may be affected.

(c) A report indicating the following:

(i) the population and area to be served by the proposed site and life expectancy of the facility.

(ii) kind, quantity and source of solid waste to be disposed at the site.

(iii) the geological formation and groundwater elevations to a depth of at least twice the height of the proposed landfill

below the lowest elevation of the site. Such data will be obtained by soil boring and other appropriate means.

(iv) the source and characteristics of cover material to be used.

(v) reliable data on existing ground water quality within 2,000 feet of the site.

(vi) topography of the site and drainage patterns.

(d) A design and plan of operation for the facility, certified by a professional engineer, which identifies how each landfill location, design, performance and operating standard in this Title shall be met through design, construction, and operation of the disposal site. The design shall include, as well, one or more topographic maps at a scale of not over two hundred feet to the inch. Contour intervals shall not exceed ten feet. The maps should show proposed fill area, borrow areas, access roads, drainage areas, fencing, equipment and buildings.

(e) A plan for closure of the facility, certified by a professional engineer, explaining how each closure standard in this Title shall be met and how post-closure activities will be performed.

(f) A financial statement, estimating the cost of construction, operation and closure of the site, explaining the applicant's financial condition and the applicants' ability to fund the continued operation and closure of the site.

(2) Issuance of Permit to Operate Solid Waste Disposal Site. Within 180 days of submission of a complete application for a permit and in accordance with the procedures identified in Title 18, Chapter 21, the Land Use and Environment Commission shall issue or deny a permit. The Commission may issue a permit only if it finds, on the basis of information contained in the application and otherwise available to it, that the proposed landfill will comply with the standards contained in this Chapter and that the application has the financial and technical ability of the applicant to construct, operate, and close the landfill in a manner consistent with this Chapter. The burden of proof shall rest on the applicant to demonstrate compliance with these requirements. In issuing any permit, the Commission may design or condition the permit to accomplish the goals of this Title.

(3) Term of Permit to Operate Solid Waste Disposal Site. Permit terms shall be established by the Commission based on the expected useful life of the solid waste disposal site but in no case shall the permit term exceed 15 years. If the disposal site can, within the terms of this Chapter,

continue to operate after the permit term, a permittee may apply for a new permit six months before the term ends. The basis and procedures for grant of an additional permit shall be the same as for the original permit

19-7-119. PERMITS REQUIRED TO OPERATE COLLECTION SYSTEM.

(1) Application for Permit to Operate Collection System. If the Solid Waste Management Plan approved by the Commission allows private collection systems any person may apply to operate a solid waste collection system on part or all of the Reservation. An application for a collection system permit must include:

(a) A description of the collection territory proposed to be served, including the number of household, business, or other generators of solid waste within that territory.

(b) A list of those households, businesses, or other generators of solid waste that have already requested or agreed to be served by the applicant, and the price for service they agreed to pay.

(c) A financial description of the applicant, together with an analysis of the cost of the proposed collection service, the expected revenue from billings for the service, and expected rate of return for the activity.

(d) A description of the collection routes, timing, methods and equipment to be used and how the proposed system will comply with all the standards set forth in this Title.

(e) Designation of the disposal site proposed to be used for waste collected.

(2) Issuance of Permit to Operate Collection System. Within 30 days of receiving a complete permit application, the Land Use and Environment Commission shall either grant or deny a collection system permit. The Commission shall grant a permit only if it finds, on the basis of information contained in the application and otherwise available to it, that the proposed collection system will comply with the standards of this Title and that the applicant has demonstrated that the proposed system likely can sustain its operations financially. In issuing any permit, the Commission may design or condition the permit to accomplish the goals of this Title.

(3) Term of Permit to Operate Collection System. Permit terms shall be for not less than one nor more than three years. A collection system permit shall grant the permittee an exclusive right to collect

waste within the territory or from the waste generators identified in the permit terms. No other permits shall be issued for similar territory or generators during the term of the first permit issued for that territory or those generators unless and until the permit expires or is revoked.

19-7-120. REUSABLE, RECYCLABLE OR BIODEGRADABLE CONTAINERS

REQUIRED. After enactment of this Title, no beverage container may be sold or offered for sale within the historical boundaries of the Rosebud Reservation, as defined in § 19-2-101 (8), unless it is reusable, recyclable, or biodegradable. After enactment of this Title, no beverage container may be sold or offered for sale within the historical boundaries of the Rosebud Reservation, as defined in § 19-2-101 (8), if the beverage container is connected to another beverage container by a device constructed of a material that is not biodegradable or photodegradable.

19-7-121. RECYCLABLE OR DEGRADABLE PLASTIC GARBAGE BAGS OR GARBAGE CAN LINERS

REQUIRED. After enactment of this Title, no plastic garbage bag or plastic garbage can liner may be offered for sale within the historical boundaries of the Rosebud Reservation, as defined in § 19-2-101 (8), if the bag or can liner is not recyclable, biodegradable, photodegradable or otherwise degradable.

19-7-122. STARCH-BASED OR DEGRADABLE PLASTIC GARBAGE BAGS OR GARBAGE CAN LINERS

REQUIRED. After enactment of this Title, no plastic garbage bag or plastic garbage can liner may be offered for sale within the historical boundaries of the Rosebud Reservation, as defined by § 19-2-101 (8), if the bag or can liner is not constructed from starch-based plastic or is not biodegradable, photodegradable or otherwise degradable.

19-7-123. OPERATING CRITERIA-TEMPORARY SOLID WASTE STORAGE.

(1) Definitions.

(a) Temporary Solid Waste Storage Facility – A solid waste storage facility at which solid waste is temporary placed in or on the land for later removal to a final disposal site.

(b) Liquid Waste – Waste that is unable to pass a paint filter test.

(c) Disease Vector – Any rodent, flies, mosquitoes or other animal capable of transmitting disease to humans.

(2) Procedures for excluding hazardous waste.

(a) Program for detection and preventing disposal shall include:

(i) random inspection of loads unless other steps are taken to avoid hazardous wastes.

(ii) record-keeping.

(iii) training.

(iv) procedures to notify the Rosebud Sioux Water Resources of the occurrence of hazardous waste.

(3) Daily Cover.

(a) Shall use six (6) inches of earthen material cover at the end of each day or more frequently if necessary.

(b) May use alternative material and thickness.

(c) May approve temporary waivers in extreme climatic conditions.

(4) Disease Vector.

(a) Shall utilize measures to control on site disease vector populations.

(5) Air Criteria.

(a) Open burning shall be banned.

(b) Infrequent burning shall be allowed for:

(i) agricultural.

(ii) silvicultural.

(iii) land clearing debris.

(iv) diseased trees.

(v) emergency clean-up operations.

(c) Shall require compliance with Rosebud Sioux Tribal plans.

(6) Access Control shall:

(a) Protect human health and the environment.

(b) Prevent unauthorized traffic.

(c) Prevent illegal dumping.

(d) Shall allow use of artificial or natural barriers.

(7) Surface Drainage Control.

(a) Control run-on onto temporary storage site.

(b) Control run-off existing temporary storage site.

(8) Liquid Restrictions.

(a) Bulk or non-containerized liquid shall be prohibited unless:

(i) household liquids other than septic waste.

(b) Shall prohibit containers unless:

(i) household size.

(ii) designated to hold liquids for uses other than storage.

(iii) is household waste.

(9) Record-keeping shall include:

(a) Inspection of records by the enforcing agency. Rosebud Sioux Tribe Water Resources.

(b) Training procedures and documentation.

(c) Records of the weight or volume of solid waste delivered to the temporary solid waste storage/landfill facility.

CHAPTER 8 – WELLHEAD PROTECTION CODE

19-8-101.	Findings
19-8-102.	Definitions
19-8-103.	Initial Designation Of Community Wellhead Protection Areas
19-8-104.	Official Community Wellhead Protection Area Map
19-8-105.	Designation Of Additional or Amended Community Wellhead Protection Areas
19-8-106.	Community Wellhead Protection Area Regulation
19-8-107.	General Permits
19-8-108.	Specific Permits
19-8-109.	Nonconforming Activities

19-8-101. FINDINGS. The Tribal Council finds that:

(1) The people of the Rosebud Reservation rely almost exclusively on sources of underground water for their domestic water supplies.

(2) The Reservation community water system currently rely on 13 major water wells to supply domestic water needs.

(3) Further water needs may require development of additional community wells.

(4) Without proper regulation and control, certain activities threaten to contaminate the Reservation's underground water supplies.

(5) The Rosebud Sioux Tribe has inherent sovereign authority over activities that threaten the health and welfare of its people and the quality of the Reservation environment.

19-8-102. DEFINITIONS.

(1) "Aquifer" means a ground water-bearing geologic formation or formation that contain enough saturated permeable material to yield significant quantities of water to wells.

(2) "Contaminate" means to degrade the quality of ground or well water for human consumption by the addition or contribution of substances potentially harmful to health or offensive to the senses.

(3) "Community Wellhead Protection Area" or "CWPA" means the portion of an aquifer within the zone of capture and recharge area for a well or well field used to serve community water systems on the Rosebud Reservation designated for protection pursuant to this Title.

(4) "Community water systems" means water wells and distribution systems that are operated by the Rosebud Water and Sewer Commission or such other community or tribal water districts or entities as may hereafter be established.

(5) "Director" means the Director of Water Resources.

(6) "Facility" means contiguous area of land and such structures, appurtenances or improvements as have been placed thereon for a particular purpose.

(7) "Groundwater" means water below the land surface in the zone of saturation.

(8) "Hazardous wastes" means any material designated pursuant to federal law and that generally exhibit the characteristics of ignitability, corrosivity, reactivity, or toxicity.

(9) "Hazardous substance" means: Any substance designated as such pursuant to federal law.

(10) "Operator" means any person in control or having responsibility for daily operation of any facility or activity.

(11) "Person" means any human person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, governmental agency (including an agency of the Rosebud Sioux Tribe), political subdivision, public officer, owner, lessee, tenant, or any other entity whatsoever or any combination of such entity, but not the sovereign Rosebud Sioux Tribe or the Tribal Council.

(12) "Pesticide" means:

(a) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests, and

(b) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. The term 'pesticide' shall not include any article (1) that is a 'new animal drug' within the meaning of 21 U.S.C. § 321 (w); (2) that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article; or (3) that is an animal feed within the meaning of 21 U.S.C. § 321 (x) and bearing or containing an article covered by clause (1) of this subsection.

(13) "Well" means a pit or hole dug or drilled into the earth to reach an aquifer in order to supply water.

19-8-103. INITIAL DESIGNATION OF COMMUNITY WELLHEAD PROTECTION AREAS. The following land areas are hereby designated Community Wellhead Protection Areas under this Title.

(1) An area surrounding the Horse Creek Community well, located in Township 41N, Range 29W, Section 11, with a radius from the well of _____.

(2) An area surrounding the Swift Bear Community well, located in Township 47N, Range 29W, Section 31, with a radius from the well of _____.

(3) An area surrounding the Two Strike Community well, located in Township 37N, Range 31W, Section 8, with a radius from the well of _____.

(4) An area surrounding the Milk's Camp Community well, located in Township 95N, Range 69W, Section 4, with a radius from the well of _____.

(5) An area surrounding the Rosebud Rural Water System Community well, located in Township 36N, Range 29W, Section 6, with a radius from the well of _____.

(6) An area surrounding the Rosebud Rural Water System Community well, located in Township 36N, Range 29W, Section 6, with a radius from the well of _____.

(7) An area surrounding the Rosebud Rural Water System Community well, located in Township 36N, Range 29W, Section 20, with a radius of the well of _____.

(8) An area surrounding the Mission Rural Water Community well, located in Township 37W, Range 28W, Section 17, with a radius of the well of _____.

19-8-104. OFFICIAL COMMUNITY WELLHEAD PROTECTION AREA MAP.

(1) There is hereby adopted an official Rosebud Reservation Community Wellhead Protection Area Map which, together with all explanatory matter thereon, is declared to be a part of this Title.

(2) The Community Wellhead Protection Area Map shall be retained in the office of the Department of Land Use and Environment. The Director of Water Resources shall be responsible for custody, maintenance, and, as appropriate, revision of the map. The Director shall provide copies of the current map to the Bureau of Indian Affairs and to the Indian Health Service.

(3) The Community Wellhead Protection Area Map or an identical copy shall be at all

times available for inspection by the public during normal business hours of the Department.

19-8-105. DESIGNATION OF ADDITIONAL OR AMENDED COMMUNITY WELLHEAD PROTECTION AREAS.

(1) **General.** The Commission may, subsequent to passage of this Title, designate additional or enlarged CWPAs under the terms of this section.

(2) **Basis for Designation.** The Commission may designate new or amended CWPAs if it determines:

(a) Current areas are inadequately sized or located to protect fully the water quality of the wells they were meant to protect;

(b) New community wells are planned to come into production or have come into production around which there is no adequate wellhead protection areas; and

(c) The Commission determines that an aquifer or part of aquifer contains water of such quality and quantity that it is likely to be needed, used, or useful for community water well purposes in the future and should be protected.

(3) **Procedure for Designation of New or Amendment of Existing Community Wellhead Protection Area.**

(a) The Commission shall make widely known to the Reservation community any proposal to designate or amend a CWPA by, at a minimum:

(i) sending notice of the proposed designation or amendment to each owner or occupant of land within the proposed area whose name can be identified with the exercise of reasonable diligence;

(ii) sending notice of the proposed designation or amendment to the Bureau of Indian Affairs and the Indian Health Service;

(iii) sending notice of its proposed designation or amendment to each member of the Tribal Council; and

(iv) publishing a notice of its proposed designation at least twice in a newspaper of general circulation on the Reservation.

(b) The notice shall describe the land area encompassed in the proposed addition or amendment and the restrictions upon activities in CWPAs required by this Title. Not sooner than 10 days nor later than 30 days after the notices required by subsection (a) above are last published, the Commission shall convene a public meeting in the community nearest the proposed CWPA to

explain the proposal and to take comments. The comments shall be taken and the meeting otherwise conducted in accordance with the informal hearing procedures set forth in Title 18, Chapter 21. The public shall be permitted to file written comments with the Commission on the proposal up to 14 days after the public meeting is held.

(4) Announcement of Commission's Designations.

(a) If, after the close of the public comment period, the Commission determines to proceed with a new or amended CWPA designation, it shall announce that decision to the Tribal Council in a "Wellhead Protection Area Designation Report."

(b) The Report shall describe the area to be protected, provide an accurate map of its extent, and explain the purpose of an grounds for the designation, which shall include an analysis of the quality, quantity and use of the water to be protected, the threats or potential threats to its continued quality, and the effects of designation of the area.

(c) The Commission shall make its final designation widely known to the Reservation community by, at a minimum:

(i) sending a notice of the final designation to each owner or occupant of land within the area whose names can be identified with reasonable diligence;

(ii) posting a notice of the final designation at the Tribal Administration Building; and

(iii) publishing a notice of the final designation at least once in a newspaper of general circulation on the Reservation.

(5) Effective Date of Final Designation or Amendments to Community Wellhead Protection Areas.

The Commission's designation of any additional or amended CWPA shall be final and become part of this Title within 30 days of the date of last publication of the final designation.

(6) Amendment of Community Wellhead Protection Area Map. Upon final designation of an additional or amended CWPA by the Commission, the Director shall amend the official Community Wellhead Protection Area Map to reflect the additional or amended designation.

(7) Enforceability of Additional or Amended Community Wellhead Protection Areas. Unless specified otherwise by the Commission, a new or enlarged CWPA shall become binding and enforceable only upon its additional to the

official Community Wellhead Protection Area Map.

19-8-106. COMMUNITY WELLHEAD PROTECTION AREA REGULATION.

(1) Activities Prohibited in Community Wellhead Protection Areas. With the exception of activities defined as *de minimis* pursuant to subsection (2) of this section or for which the Commission has issued a general permit, no person may engage in the following activities or construct or operate the following facilities in any CWPA: solid waste disposal sites, waste piles, hazardous waste treatment or storage, septic systems, waste water lagoons or other waste water treatment facilities, petroleum products storage or disposal or petroleum product pipelines, use or storage of hazardous materials, excluding materials sold in small containers for household use, the raising or keeping of farm animals (not including household pets), the use or application of pesticides or crop fertilizer.

(2) *De Minimis* Activities or Facilities Not Prohibited. *De Minimis* activities or facilities not prohibited by this Title include:

(a) Fuel tanks attached to private or commercial vehicles and used directly in the propulsion of that vehicle.

(b) Use or storage, but not the disposal or leakage, of hazardous waste or hazardous materials when the materials are sold or stored in small containers for household use.

(c) Retail sales establishments that store or handle petroleum products or hazardous materials for resale in their original unopened containers of 5 gallons or 40 pounds or less. Such establishments must apply for and obtain a CWPA permit prior to engaging in such sales.

19-8-107. GENERAL PERMITS. The Commission may, by regulations issued pursuant to § 19-8-105 (3), grant a general permit for actions or categories of actions in one or more CWPA. If the Commission issues a general permit, no person need thereafter seek a specific permit to conduct the generally permitted activity within the CWPA.

19-8-108. SPECIFIC PERMITS.

(1) Unless an activity is defined as *de minimis* under § 19-8-106 (2), above, or for which the Commission has issued a general permit under § 19-8-107, above, any person wishing to conduct activities or build or operate facilities in a CWPA shall file a petition seeking a specific permit with the Director. In addition to the requirements set forth in Title 18, Chapter 21, the petition shall

include a description of the activity or facility proposed, its location, the distance from any water wells, and the actions proposed by the applicant to prevent contamination or damage to the ground water.

(2) Within five days of filing his petition with the Director, the petitioner must notify, either by United States mail, first-class postage prepaid or by personal service, all persons living within the CWPA or owning land within the CWPA whose names can be determined by reasonable diligence of the application and the nature of the activity or facility.

(3) Upon receipt of a complete petition for a specific permit, the Commission shall determine whether to grant the requested permit in accordance with the informal hearing procedures set forth in Title 18, Chapter 21. The Commission shall issue such a permit only if it finds, by clear and convincing evidence, that the activity will not contaminate the ground water within the CWPA. The burden of proof on this issue rests with the petitioner.

(4) If the Commission denies the permit, the person shall cease the activity or remove or replace the facility within 30 days of the date of the Commission's denial or 365 days after the designation of the CWPA, whichever is later.

19-8-109. NONCONFORMING ACTIVITIES.

(1) Prohibited Activities or Facilities Shall Cease Within One Year of Designation of a Community Wellhead Protection Area. Within one year of the designation of a CWPA, any person engaged in an activity or owning or operating a facility prohibited by this Title shall cease the activity or remove or replace the facility. If the facility is a private septic system for one home or business, the deadline for compliance shall be two years or whenever a sewer collection system is made accessible to the facility, whichever is longer.

(2) Permits to be Sought Within One Year of Designation of a Community Wellhead Protection Area. Within one year of the designation of a CWPA, any person engaged in an activity or owning or operating a facility requiring a permit under this Title shall apply for a permit.

CHAPTER 9 – AIR QUALITY CODE **(RESERVED)**

CHAPTER 10 – ENFORCEMENT

19-10-101.	Action By Director For Immediate Restraint Of Pollution
19-10-102.	Action By Land Use and Environment Commission To Enjoin Violations
19-10-103.	Abatement Actions By Director
19-10-104.	Criminal Penalty
19-10-105.	Civil Penalty
19-10-106.	Other Actions

19-10-101. ACTION BY DIRECTOR FOR IMMEDIATE RESTRAINT OF

POLLUTION. As an alternative to issuing an emergency order pursuant to Title 18, Chapter 21, upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health or welfare of members of the Reservation community, the Director may bring suit on behalf of the Tribe in the Tribal Court to restrain immediately any person from causing or contributing to such pollution or to take such other action as may be necessary.

19-10-102. ACTION BY LAND USE AND ENVIRONMENT COMMISSION TO

ENJOIN VIOLATIONS. The Land Use and Environment Commission may bring action in Tribal Court, without furnishing bond, for an injunction against the continuation of any alleged violation which has been the basis for suspension or revocation of a permit by the Commission against any person who fails to comply with an emergency order issued by the Director or any final order of the Commission.

19-10-103. ABATEMENT ACTIONS BY

DIRECTOR. If five days after the date set for compliance by a Notice of Violation passes without action on the part of the party required by the notice to correct illegal conditions, the Director may take action to correct the conditions and bring them into compliance with the requirements of this Title. The Director may thereafter serve by (i) person service or (ii) United States mail, first-class postage prepaid, upon the party named in the Notice of Violation a request for payment of the cost of the corrective action, plus up to 20 percent. The notice shall establish a deadline for payment in the same manner as provided for civil penalties. If payment is not made within the scheduled time, the Director may seek payment through an action in Tribal Court. In any successful action to recover payment, the court shall

additionally assess court costs against the delinquent party and may levy against the party's assets to collect any judgment entered.

19-10-104. CRIMINAL PENALTY. Anyone violating or failing to comply with the provisions of this Title shall, upon conviction in Tribal Court, be punished by a fine of not more than \$250.00 or imprisonment in the tribal jail for not more than 30 days or both. However, in no event shall such penalty or imprisonment exceed the maximum established by federal law. In lieu of fine or imprisonment, a person found guilty of violating this Title may be required by the Tribal Court to provide not more than 30 days of community service assisting in the collection and disposal of litter or solid waste. Each day of violation shall be considered a separate violation of this Title.

19-10-105. CIVIL PENALTY.

(1) In addition to any other sanction or remedy available under this Title, the Land Use and Environment Commission may assess against any person, after a hearing pursuant to § 19-5-106 or waiver thereof a civil penalty for the violation. The penalty shall not exceed \$50 for each day the violation existed prior to the service of a Notice of Violation and \$75 per day for each day thereafter. When the violation occurs in connection with a venture entered into for profit, the respective penalty limits shall be \$100 and \$150 per day. The Director himself remedies the conditions causing the violation after the deadline for corrective action contained in the Notice of Violation has passed and the violator has not corrected the conditions, the civil penalty may also include the actual cost of the remedy to the Director plus 20 percent.

(2) The Director shall serve the Notice of Civil Penalty by (i) personal service or (ii) United States mail, first-class postage prepaid, addressed to the last known address of the violator. The notice shall explain the nature of the violation and the basis of the amount of civil penalty assessed and provide a time for payment. The Director may, in his discretion, require payment be made either in one lump sum within no less than 30 days from the date of service of the notice or may be paid in installments over not more than 12 months.

(3) If the violator fails to make payment within the specified time, or, if an installment payment program is directed, the violator fails to meet any of the scheduled payments, the Director may commence an action to

recovery the unpaid penalty amounts in Tribal Court.

19-10-106. OTHER ACTIONS. The Director may also seek other relief from the Tribal Court to enjoin any action or practice or abate any condition that constitutes or will constitute a violation of this Title.

TITLE 20

UTILITIES

CHAPTER 1 – LEGISLATIVE FINDINGS, PURPOSE AND SCOPE

- 20-1-101. Legislative Findings
- 20-1-102. Purpose
- 20-1-103. Benefits Of Tribal Government
- 20-1-104. Territory, Persons and Property Affected

20-1-101. LEGISLATIVE FINDINGS.

(1) Sovereign Power to Regulate Utilities. The power to regulate utilities is an inherent and essential part of the authority of any reservation tribal government. This power is therefore an aspect of the retained sovereignty of the Rosebud Sioux Tribe except where it has been limited or withdrawn by federal law. The Rosebud Sioux Tribe is a sovereign Indian tribe organized pursuant to the Act of June 18, 1934, 48 Stat. 984, as amended, and governed pursuant to a Constitution and By-Laws ratified on November 23, 1935, and approved by the Secretary of the Interior, Harold L. Ickes, on December 16, 1935, as amended from time to time thereafter.

Pursuant to the Constitution and By-Laws, as amended, the Rosebud Sioux Tribal Council is the governing body of the Rosebud Sioux Tribe. This Title is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Tribal Council in Article IV, Section 1, Subsections (a), (c), (f), (g), (h), (i), (k), (m), (n), (t) and (u) of the Tribal Constitution, which authorize the Tribal Council to represent the Tribe and to negotiate with federal, state and local governments and with private persons, to purchase and otherwise acquire lands and other property for or on behalf of the Tribe and manage, permit, assign, lease, sell, exchange, encumber or otherwise deal with tribal lands and other property as authorized by law, to prevent the sale, disposition, lease or encumbrance of tribal lands, interests in tribal lands or other tribal assets without the consent of the Tribe, to manage all economic affairs and enterprises of the Tribe, to levy taxes and license fees upon

nonmembers doing business within the Reservation, to regulate and license all business and professional activities conducted upon the Reservation, to exclude by ordinance from the ordinances providing for the maintenance of law and order and the administration of justice by establishing a tribal court system, to safeguard and promote the peace, safety, morals, and general welfare of the Tribe by regulating the conduct of trade and the use and disposition of property on the Reservation, to charter subordinate organizations for economic purposes, to enact resolution regulating the procedures of all the Tribal Council, all tribal agencies and tribal officials, to administer any funds within the control of the Tribe, and to delegate to subordinate boards or tribal officials any or all the forgoing powers, subject to review by the Tribal Council.

(2) Need For Adequate Utility Regulations. As both the Indian and non-Indian populations within the boundaries of the Reservation increase, and as additional residential, commercial, governmental and agricultural activities multiply, the need for adequate utility regulation grows ever more serious. Inasmuch as the Reservation is checker boarded with both trust land and non-trust land, and inasmuch as both trust land and non-trust land are crisscrossed by utility lines, pipelines, rail lines and rights-of-way of both investor-owned and nonprofit utilities, adequate protection of utilities, the Tribe, tribal members and nonmembers requires that the Tribe regulate all utilities operating within the Reservation.

(3) Demonstrably Serious Impact of Utility Activities Upon the Economic Security, Health and Welfare of the Tribe and Tribal Members. The rural nature of the Reservation the fact that many homes of tribal members, especially HUD financed homes, are "all electric," that is, heated solely by electricity, the lack of any other practical heat source for members and nonmembers are dependant upon an assured flow of electricity during the harsh, subzero winter months, the lack of practical transportation of many elderly tribal members and nonmembers during the harsh, subzero winter months, the fact that tribal economic enterprises

furnish the majority of jobs for both tribal members and nonmembers on the Reservation, the high cost of electricity within the Reservation, the urgency of minimizing the cost of electricity to the Tribe, tribal members and nonmembers and to economic enterprises owned by the Tribe and tribal members, all evidence the demonstrably serious impact of utility activities upon the economic security, health and welfare of the Tribe and tribal members.

(4) Lack of State Jurisdiction.

The State of South Dakota lacks jurisdiction to regulate utilities within the Reservation for the reason that state regulation of such utilities interferes with the right of the Tribe and tribal members to make their own laws and be ruled by them and for the additional reason that utility regulation is preempted by the Tribe and the federal government with respect to all HUD homes of tribal members, other homes and businesses of tribal members financed in whole or in part by the Tribe or the federal government, all tribal buildings and businesses of the Tribe financed in whole or in part by the Tribe or the federal government and all Bureau of Indian Affairs or other federally owned or operated buildings.

(5) Unconstitutionality of State Utility Regulation Within the Reservation. As applied, the statutes of the State of South Dakota purporting to regulate utilities operating within the Reservation and purporting to grant jurisdiction to the State Public Service Commission regulating utilities within the Reservation unconstitutionally deny utilities, the Tribe, tribal members and nonmembers equal protection under both state and federal law because they (a) exempt from regulation of the State Public Service Commission the rates, contracts, sufficiency of facilities, or rules and regulations, of any rural electric cooperative corporation or association or any utility owned and operated by the State or by any city, county, township or other political subdivision of the State, (b) assign service areas to each utility, including rural electric cooperative corporations or associations, within which such utility is granted the exclusive right to provide service at retail price at each and every location at which it was servicing a customer as of March 21, 1975 and to every present and future customer within

the area, (c) prohibit any utility, including rural electric cooperative corporations or associations, from providing service at retail price within the assigned service area of another utility unless such other utility consents in writing, but (d) do not grant similar rights, protections or exemptions to any utility owned and operated by any federally recognized Indian tribe or political subdivision thereof within the limits of its reservation.

(6) Failure of State Law to Regulate Utilities Not Operated for Profit Within the Reservation.

Statutes of the State of South Dakota purporting to regulate utilities operating within the Reservation and purporting to grant jurisdiction to the State Public Service Commission are altogether inadequate in protecting either from Tribe, tribal members, nonmembers or any such utility because such statutes exempt from state regulation the rates, contracts, or sufficiency of facilities, or rules and regulations of any utility that is not operated for profit, and yet purport to authorize the State Public Service Commission to prevent extension of service to the Tribe, a tribal member or a tribal member's business on trust land, or to a tribal business on trust land, by any utility that is operated for profit or any rural electric cooperative corporation or association that is not specifically assigned the specific portion of the Reservation in question as its exclusive service area. Such extension of service may be denied regardless of whether such service economically benefits the Tribe or tribal member or whether extension of such service will provide the Tribe or Tribal member a more secure source of service. Such application of state law results in almost no state legal controls over whether any rural electric cooperative corporation or association operating within the Reservation charges excessive amounts for utility service, or discriminates against the Tribe or tribal members and nonmembers from choosing utility service from whichever utility is most economically beneficial and provides the most secure source of service.

(7) Illegal Collection of State Taxes By Utilities. Despite the fact that both tribal members and the Tribe are immune from state taxes for all utility services provided them within the Reservation, utilities operating within the

Reservation have for many years illegally collected the state gross receipts tax and other state taxes upon utilities with respect to services provided to both tribal members and the Tribe within the Reservation. Such illegal collection of state tax cannot be expected to stop unless tribal regulation of such utilities prohibits it as a matter of tribal law.

(8) Consensual Relations

Between Utilities Operating Within the Reservation and the Tribe, Tribal Members and Nonmembers.

The Council finds that every utility which enters and operates within the Reservation, enters into consensual relations, commercial dealings and contracts with residents of the Reservation, Indian and non-Indian, and with the Tribe, to provide services, operate facilities, construct and erect pipelines, transmission lines, poles, towers and other improvements upon and across Reservation lands owned by Indians, non-Indians and the Tribe. The Council further finds that the services, rates, policies, procedures and practices of every utility located and operating upon the Reservation have a demonstrably serious impact which imperils the economic security, health, welfare and general well-being of the Tribe, its members, and all residents of the Reservation and that regulation of every such utility by the Tribe is a necessary and proper exercise of the sovereign authority of the tribe. The Council further finds that regulation of such utilities located, operating or providing services upon the Reservation is an essential governmental function of the Tribe and that the Reservation by the State of South Dakota or any municipality or political subdivision of the State is an infringement upon the right of the Tribe to make its own laws and be governed by them and demonstrably imperils the political integrity and right of self-government of the Tribe.

(9) Utilities Have Easements Across Tribal Land.

20-1-102. PURPOSE. The Council hereby declares it to be in the public interest that all utilities located, operating or providing services within the Reservation be regulated as hereinafter provided in order to provide all retail consumers of utility services and commodities within the Reservation with adequate and reliable services at

reasonable rates, consistent with the financial and economic requirements of such utilities and their need to construct facilities to provide such services and commodities or otherwise to obtain utility supplies, to avoid unnecessary duplication of facilities which increase the costs of service to the consumer and to minimize disputes between utilities which may result in inconvenience or diminished efficiency in service to such consumers. The purpose of this legislation shall also be to regulate all utility policies located, operating or providing services within the Reservation with respect to matters other than rates, including connection of service, disconnection of service, re-connection, deposit and overdue payment charges and to prohibit discriminatory or unreasonable preferences or advantages to any consumer or group of consumers by providers of utility services. The regulation of utilities within the Reservation by the Tribe pursuant to this Title shall be deemed exclusive and shall preempt all other regulatory authority with respect to all utilities located, operating or providing services within the Reservation.

20-1-103. BENEFITS OF TRIBAL GOVERNMENT. Among the benefits provided by the tribal government to all utilities located, operating or providing services within the Reservation are the following:

(1) The provision of governmental services, including sewer and water systems, police and fire protection, and a Tribal Court system of general jurisdiction;

(2) The promotion and regulation of economic activities within the Tribe's sovereign jurisdiction; and

(3) The orderly development and protection of the Reservation lands, resources and communities.

12-1-104. TERRITORY, PERSONS AND PROPERTY AFFECTED. To the extent not prohibited by federal law, this Title shall apply to the following.

(1) The Rosebud Sioux Reservation within the historical boundaries of the Reservation established in Section Two of the Act of March 2, 1889, 25 Stat. 888, including all lands, islands, waters, roads, and bridges, or any interests therein, whether in trust or non-trust

status and notwithstanding the issuance of any patent or right-of-away, and such other lands, islands, waters or any interest therein thereafter added to the Reservation.

(2) All trust or restricted land of the Tribe or any enrolled member of the Tribe situated within the historical boundaries of the Reservation established in Section Two of the Act of March 2, 1889, 25 Stat. 888, including all lands, islands, waters, roads, or any interests therein, including Tripp, Mellette, Gregory and Lyman Counties.

(3) All persons and property within any geographical area referred to in Subsections (1) and (2) that are subject to the jurisdiction and governmental powers of the Tribe.

(4) Final adjudication by a court of competent jurisdiction that this Title does not apply to land, persons or property in any other circumstances.

CHAPTER 2 – GENERAL PROVISIONS

- 20-2-101. Definitions
- 20-2-102. Intent Of Tribe To Preempt State Law
- 20-2-103. Sovereign Immunity

20-2-101. DEFINITIONS. In this Title, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

(1) “Commission” means the Tribal Utility Commission created and established under this Title.

(2) “Commissioner” means one of the members of the Commission.

(3) “Corporation” means a private or public corporation incorporated under the laws of any nation, state or tribe, a municipality, an association, a cooperative whether incorporated or not, a joint stock association, a business trust, or any political subdivision or agency, but shall not mean any tribal entity created under Title 13 of this Code.

(4) “Director” means the Tribal Utility Commission Director acting in his official capacity.

(5) “Municipality” means any town, city, or other local government, however organized, but shall not include the Tribe.

(6) “Rate” means every compensation, charge, fare, toll, tariff, rental and classification, or any of them, demanded, observed, charged, or collected by any utility for any service product or commodity, offered by it to the public, and any rules, regulations, practices, or contracts affecting any such compensation, charge, fare, toll, rental, tariff, or classification.

(7) “Service” means the furnishing by any utility of any service product or commodity; the installation, removal, or repair of equipment or facilities for delivering or measuring the service product or commodity of any utility.

(8) “Tribal Utility Commission Account” means the account in federally-insured financial institution established pursuant to § 20-3-116.

(9) “Utility” means any person, corporation or other legal entity, its lessee, trustee, and receiver, now or hereafter located, operating or providing services within the Reservation, or maintaining, or controlling within the Reservation, equipment or facilities for furnishing at retail price telecommunications services; pipeline utilities engaged in the transportation of gas, oil, coal, and water; electric utilities engaged in the generation and distribution of light, heat, or power; gas utilities engaged in the distribution of natural, synthetic, or artificial gas; water companies for the storage and distribution of water for domestic or other beneficial use; heating utilities engaged in the distribution of heat; and all other utilities which operate, maintain, or control any equipment or facilities within the Reservation.

20-2-102. INTENT OF TRIBE TO PREEMPT STATE LAW. The Rosebud Sioux Tribe, not the State of South Dakota or its political subdivisions, has exclusive jurisdiction over utilities operating within or maintaining, or controlling any equipment or facilities within the Reservation for furnishing at retail price any utility service product or commodity to any customer. The Tribe, subject solely to the supremacy of federal law, exercise civil regulatory jurisdiction over Indians and non-Indians on the reservation. In order to provide for the equitable regulation of such utilities and protection of such utilities, the Tribe, tribal members and nonmembers within the Reservation, it is

the express intent of the Council that this Title shall preempt any law enacted by the State of South Dakota or local jurisdiction within the State purporting to regulate such utilities located, operating or providing services within the Reservation.

20-1-103. SOVEREIGN IMMUNITY.

The Rosebud Sioux Tribe, and all its constituent parts, including the Tribal Utility Commission established pursuant to this Chapter, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived by the Tribe in this Title or elsewhere. Nothing in this Title shall be construed as waiving the sovereign immunity of the Tribe or any of its constituent parts, including the Tribal Utility Commission, except that after exhaustion of administrative remedies as provided in Chapter Fourteen, a party aggrieved by the decision of the Commission may petition the Tribal Court for review of the decision by the Commission. Nothing in this Title, nor any such petition to the Tribal Court, nor any enforcement action taken pursuant to this Title, including the filing of suit by the Commission for the collection of penalties, or interest, and for recovery of reasonable attorney fees and expenses incurred in bringing such action, shall constitute a waiver of such sovereign immunity as to any claim for damages, attorney fees or costs, regardless of whether any such claim arises out of the same transaction or occurrence, or in any other respect.

CHAPTER 3 – TRIBAL UTILITY COMMISSION

- 20-3-101. Creation Of Commission
- 20-3-102. Number and Selection Of Commissioners
- 20-3-103. Terms Of Office
- 20-3-104. First Commission
- 20-3-105. Vacancies
- 20-3-106. Resignation
- 20-3-107. Removal
- 20-3-108. Officers Of The Commission
- 20-3-109. Duties Of President
- 20-3-110. Offices Of Tribal Utility Commission
- 20-3-111. Compensation Of Commissioners
- 20-3-112. Quorum
- 20-3-113. Majority Vote

- 20-3-114. General Procedures Of The Commission
- 20-3-115. Tribal Utility Commission Director
- 20-3-116. Tribal Utility Commission Account Established

20-3-101. CREATION OF COMMISSION. The Tribe hereby creates and establishes, pursuant to this Title, the Tribal Utility Commission, a governmental agency and subordinate subdivision of the Tribe.

20-3-102. NUMBER AND SELECTION OF COMMISSIONERS. The Commission shall comprise five voting members appointed by the Council. At least three Commissioners shall be members of the Rosebud Sioux Tribe. Each member of the Commission must be a resident of the Rosebud Indian Reservation and remain so throughout his term of office.

20-3-103. TERMS OF OFFICE. Commissioners shall serve three year terms and shall hold office until their successors have been appointed and have qualified: Provided however, the first Commission shall have terms of office as described in § 20-3-104.

20-3-104. FIRST COMMISSION. Two Commissioners appointed to the first Commission shall serve terms of three years. Two Commissioners appointed to the first Commission shall serve terms of two years. The remaining Commissioner appointed to the first Commission shall serve a term of one year.

20-3-105. VACANCIES. If any Commissioner shall die, resign, be removed or, for any reason, be unable to serve as a Commissioner, the Council shall declare his position vacant and shall appoint another person to fill the position. The term of office of any person appointed to replace an initial Commissioner shall be for the balance of any unexpired term for such position.

20-3-106. RESIGNATION. Any Commissioner may resign by delivering a written resignation to the President of the Commission. Such resignation shall be effective upon receipt, unless otherwise provided by the terms thereof. A Commissioner's resignation under this

Section or removal under § 20-3-108 below shall also terminate that Commissioner's status, if applicable, as a presiding officer of the Commission.

20-3-107. REMOVAL. A Commissioner may be removed by the Council for serious inefficiency or neglect of duty or for malfeasance, misfeasance or nonfeasance or for misconduct in office, but, except as provided below in this Section, only after a hearing before the Council, and only after the Commissioner has been given written notice of the specific charges at least ten days prior to such hearing. At any such hearing, the Commissioner shall have the opportunity to be heard in person or by counsel and to present witnesses on his behalf. If the Council determines that immediate removal of a Commissioner is necessary to protect the interests of the Tribe, the Commissioner may be temporarily removed immediately, and the question of permanent removal shall be determined pursuant to the hearing procedures specified herein. A written record of all removal proceedings together with the charges and findings thereon shall be kept by the Tribal Secretary. A decision on removal by the Council shall be final.

20-3-108. OFFICERS OF THE COMMISSION.

(1) President. The President of the Commission shall be appointed by the Council from among the members of the Commission and shall hold office for a term of two years. No Commissioner may serve as President for two consecutive terms. The President shall preside over all Commission meetings; sign on behalf of the Commission all documents, decisions, orders, notices, or other papers approved for such execution by the Commission; and shall have such other powers and duties as may from time to time be assigned to him by the Commission.

(2) Vice President. The Vice President of the Commission shall be appointed by the Council from among the members of the Commission and shall hold office for a term of one year. Whenever the President is unable to preside or fulfill his duties as President, the Vice President shall do so, and when so acting, shall be clothed with all of the powers and duties of the President.

(3) Secretary. The Secretary of the Commission shall be elected by and from the Commission membership for a term not to exceed his term of office as Commissioner. His duties shall be those assigned him by the Commission.

(4) Treasurer. The Treasurer of the Commission shall be the tribal treasurer and shall perform all functions as such for the Commission pursuant to his constitutional authority.

20-3-109. DUTIES OF PRESIDENT.

The President shall preside over all Commission meetings; sign on behalf of the Commission all documents, decisions, orders, notices, or other papers approved for such execution by the Commission; and shall have such other powers and duties as may from time to time be assigned to him by the Commission.

20-3-110. OFFICES OF TRIBAL UTILITY COMMISSION.

The Commission shall be provided with suitable office space, necessary office furniture, stationery, books and maps, the expense thereof to be paid by the Tribe pursuant to appropriations for such purposes.

20-3-111. COMPENSATION OF COMMISSIONERS.

Compensation of Commissioners, if any, shall be determined by the Council and shall be paid from the General Fund of the Tribe.

20-3-112. QUORUM. Three Commissioners shall constitute a quorum of the Commission. A majority of those Commissioners present at a meeting at which there is no quorum may by resolution adjourn the meeting from time to time for a period not exceeding ten days in any one instance.

20-3-113. MAJORITY VOTE. All questions rising in connection with the action of the Commission shall be decided by majority vote.

20-3-114. GENERAL PROCEDURES OF THE COMMISSION.

The Commission shall in all cases conduct its proceedings in the manner most conducive to the proper dispatch of business and to the ends of justice. No Commissioner shall participate in any

hearing or proceeding in which such Commissioner has any direct personal pecuniary interest. The Commission may make or amend such general rules or orders as may be necessary for the orderly regulation of proceedings before it, including forms of notice and the service thereof, which shall conform as nearly as possible to those in use in the Tribal Court of the Rosebud Sioux Tribe. Any party may appear before the Commission and may be heard in person or by attorney. Every vote and official action of the Commission shall be entered into a record and its proceedings shall be published upon the request of any interested person. Every commissioner shall the right to administer oaths and affirmations in any proceeding pending before the Commission.

20-3-115. TRIBAL UTILITY COMMISSION DIRECTOR. The Council shall appoint a Tribal Utility Commission Director who shall be a full time paid employee of the Tribe and shall be subject to all applicable provisions of the Personnel Policies and Procedures Manual. The Director shall have primary responsibility for the day-to-day operation of the Commission, pursuant to delegation of authority by the Commission, including supervision of all Commission employees. The Director shall not be a member of the Commission.

20-3-116. TRIBAL UTILITY COMMISSION ACCOUNT ESTABLISHED.

(1) There is hereby authorized and directed to be established an account in federally insured financial institution to be known as the Tribal Utility Commission Account.

(2) The Tribal Utility Commission Account shall be an interest bearing account and the funds therein may be invested and reinvested as approved by the Council.

(3) No monies shall be released or expended from the Tribal Utility Commission Account except upon written resolution of the Council appropriating a specific amount of the monies contained therein for the use of a particular department, agency, or program of the Tribe. Such appropriated amount shall be directly transferred to the account of the receiving department,

agency, or program named in the appropriation resolution.

CHAPTER 4 – POWERS AND DUTIES OF COMMISSION

- 20-4-101. Jurisdiction and Powers Of Commission
- 20-4-102. Accounting Systems
- 20-4-103. Annual Reports By Utilities
- 20-4-104. Depreciation Rates and Practices
- 20-4-105. Right Of Entrance; Inspection
- 20-4-106. Production Of Records
- 20-4-107. Investigation
- 20-4-108. Hearings; Examiner
- 20-4-109. Appointment Of Examiners; Power Of Examiner
- 20-4-110. Rules Of The Commission
- 20-4-111. Commission Employees and Expenses
- 20-4-112. Bonds
- 20-4-113. Records Of The Commission

20-4-101. JURISDICTION AND POWERS OF COMMISSION.

(1) **General Jurisdiction of the Commission Over Utilities.** The general jurisdiction of the Commission shall extend to and include:

(a) Telecommunications companies engaged in the furnishing of telecommunications services, including telegraph and telephone companies engaged in the transmission of messages or conversations by voice or electronic means;

(b) Pipeline utilities engaged in the transportation of gas, oil, coal, and water;

(c) Electric utilities engaged in the generation and distribution of light or power;

(d) Gas utilities engaged in the distribution of natural, synthetic, or artificial gas;

(e) Water companies for the storage and distribution of water for domestic or other beneficial use;

(f) Heating utilities engaged in the distribution of heat; and

(g) All other utilities that operate, maintain or control any equipment or facilities within the Reservation. Nothing in this Title shall prohibit the Commission from making any order affecting rates, contracts, services rendered, adequacy or sufficiency of facilities, of any utility owned and

operated by any state or by any political subdivision of any state or any utility that is not operated for profit.

(2) Powers of Commission With Reference to Utilities. The

Commission shall have power to:

- (a) Investigate all methods and practices of utilities or other persons subject to the provisions of this Title.
- (b) Require utilities or other persons to conform to the laws of the Tribe and to all rules, regulations, and orders of the Commission not contrary to law.
- (c) Require copies of reports, rates, classifications, schedules, and time tables in effect and used by such utilities or other persons and all other information desired by the Commission relating to such investigations and requirements to be filed with the Commission.
- (d) Compel obedience to its lawful orders by proceedings of mandamus or injunction or other proper proceedings, in the name of the Tribe, in any court having jurisdiction of the parties or of the subject matter, including the Tribal Court.
- (e) Hold hearings on good cause shown or on its motion, and to provide notice thereof prior to hearing. Such notice shall be reasonable in view of the nature, scope, and importance of the hearing. Whenever it shall appear to the satisfaction of the Commission that all of the interested parties have agreed concerning the matter at hand, the Commission may issue its order without a hearing.
- (f) Require, in its discretion, proof that no unreasonable profit is made in the sale of materials to or services applied for any utility by any firm or corporation owned or controlled directly or indirectly by the utility or any affiliate, subsidiary, parent, associate or any corporation whose controlling stockholders are also controlling stockholders of the utility, before permitting the value of such materials or services to be included in valuations or cost of operations for rate-making purposes. If unreasonable profits have been made in any such transactions, evaluations of such materials and services may be reduced accordingly.
- (g) Employ and fix the compensation of rate experts, engineers, and all other expert held and assistance for rate increase application hearings,

investigations, and proceedings relating to utilities, subject to Subsection (2) (h) and (2) (j). The expense of any hearings, investigations, and proceedings, and the compensation and actual expenses of any employees of the Commission while engaged in any such hearing, investigation, or proceeding shall, upon appropriate order of the Commission, be paid by the utility being investigated or involved in such hearing or proceeding. A utility liable for such costs and expenditures shall receive appropriate notice and opportunity to demand a hearing before the Commission.

(h) Retain and use the services of only the tribal attorneys and other attorneys designated by the Council upon a contract approved by the Council and the Secretary of the Interior.

(i) Employ and use the services of only the tribal accountants or other accountants designated by the Council upon a contract approved by the Council.

(j) Cooperate with and receive technical and financial assistance from the United States or any state for any purposes relating to federal energy laws that deal with energy conservation, coal conversion, rate reform, and utilities subject to the jurisdiction of the Commission. The Commission shall also have the authority to file any reports, hold hearings, and promulgate regulations for any such purposes.

(k) Promulgate and enforce rules and regulations consistent with this Title.

(l) Employ and consult with such advisors regarding its duties as it may deem necessary.

(m) Require by regulation the filing of any forms or reports necessary for implementation of this Title.

(n) Examine under oath either orally or in writing any agent, officer, or employee of any utility subject to regulation under this Title, or any other witness with respect to any enforcement action authorized by this Title.

(o) Delegate to an individual Commissioner, or to the Director or other members of the Commission staff or Tribal staff, such of its functions as may be necessary to administer this Title efficiently; provided that the Commission may not delegate its powers to promulgate rules and regulations, or to hear or rule upon any complaints filed with the Commission pursuant to this Title.

(p) Adopt by regulation a schedule of fees and charges for services rendered relating to transcripts and the furnishing or certifying of copies of proceedings, files, and records.

(q) Adopt rules and regulations in furtherance of the purposes of this Title pursuant to § 20-4-110.

(r) Exercise all other authority delegated to it by law, or as may be reasonably necessary in the implementation of any provisions of this Title.

Except as provided in this Title, the Commission may exercise one or more of the above powers, in its discretion, and may, by appropriate rule or regulation, issued after notice and hearing, assume regulatory authority over one or more classes of utilities within the Reservation. Failure to exercise one or more powers delegated under this Title shall not be deemed a waiver or affect the ability to exercise such powers in the future.

(3) Duties of Commission. The Commission is hereby vested with the powers, rights, functions, and jurisdiction to regulate, in accordance with the provisions of this Title, every utility as defined herein. The exercise of such powers, rights, functions, and jurisdiction is prescribed as a duty of the Commission.

(4) Power of Commission to Establish Rates. The Commission shall supervise all rates, tariffs, and charges of all utilities located or operating within the Reservation. It shall have the power, after notice and hearings, to originate, establish, modify, adjust, promulgate, and enforce all rates, tariffs, and charges of all utilities. Whenever the Commission, after hearing, shall find any existing rates, tariffs, charges, or schedule unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any of the provisions of this Title, the Commission by order shall fix reasonable rates, joint rates, wheeling rates, charges, or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any provision of law.

(5) Power of Commission to Regulate Services. Whenever the Commission shall find, after hearing, that the rules, regulations, practices, equipment, appliances, facilities or

service of any utility or the methods of manufacture, distribution, transmission, storage, or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the Commission shall determine the just, reasonable, safe, proper, adequate, or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced, or employed, and, after hearing, shall fix the same by its orders, rule or regulation. The Commission shall, pursuant to § 20-4-110 and after hearing, prescribe rules and regulations for the performance of any service, or the furnishing of any commodity, of a character furnished or supplied by any utility. On demand and tender of rates, such utility shall furnish such commodity and render such service within the time and upon the conditions provided in such rules and regulations.

20-4-102. ACCOUNTING SYSTEMS.

The Commission shall establish a system of accounts to be kept by utilities subject to its jurisdiction. A utility which maintains its accounts in accordance with the system of accounts prescribed by a federal agency or authority shall be deemed to be in compliance with the system of accounts prescribed by the Commission. Where optional accounting is prescribed by a federal agency or authority, the Commission may prescribe which option is to be followed. Every utility engaged directly or indirectly in any other business than that of the production, transmission or furnishing of natural gas or electrical service shall, if required by the Commission, keep and render separately to the Commission in like manner and form the accounts of all the other business, in which case all the provisions of this Title shall apply to the books, accounts, papers, and records of the other business.

Every utility is required to keep and render its books, accounts, papers, and records accurately and faithfully in the manner and form prescribed by the Commission and to comply with all directions of the Commission relating to these books, accounts, papers, and records.

20-4-103. ANNUAL REPORTS BY UTILITIES.

The Commission may require any utility to file annual reports in

such form and content, having regard for the provisions of this Section, as the Commission may require, and special reports concerning any matter about which the Commission is authorized to inquire or to keep itself informed. The Commission may require the reports to be verified. The basic financial statements in the annual report of a utility may, at the direction of the Commission, be examined by an independent certified public accountant and the accountant's opinion thereof included in the annual report filed with the Commission. The Commission may require the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the Commission.

20-4-104. DEPRECIATION RATES AND PRACTICES. The Commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion in respect of utility property, and every utility shall conform its depreciation, amortization or depletion accounts to the rates and methods fixed by the Commission.

20-4-105. RIGHT OF ENTRANCE; INSPECTION. The Commissioners and duly authorized officers and employees of the Commission, during regular business hours, may enter upon any premises of a utility for the purpose of making examinations and tests and to inspect the accounts, books, papers, and documents, of any utility for the purpose of exercising any power or duty provided for in this Title, and may set up and use on the premises any apparatus and appliance necessary therefore. Such utility shall have the right to be represented at the making of the examinations, tests, and inspections. The utility, its officers and employees, shall facilitate the examination, tests, and inspections by giving every reasonable aid to the Commissioners and any person or persons designated by the Commission for such duties.

20-4-106. PRODUCTION OF RECORDS. The Commission may require, by order served on any utility in the manner provided herein for the service of orders, the production, at a reasonable time and place as the Commission may designate, of any books, accounts, papers, or records of the utility relating to its business or affairs within the Reservation, pertinent to any lawful inquiry and kept by such utility in any office or place within or without the Reservation, or, at its option, verified or photostatic copies in lieu thereof, so that an examination

thereof may be made by the Commission or under the direction of the Commission.

20-4-107. INVESTIGATION. The Commission, upon complaint or upon its own initiative and whenever it may deem it necessary in the performance of its duties or the exercise of its powers, may investigate and examine the condition and operation of any utility or any part thereof. In conducting the investigations, the Commission may proceed either with or without a hearing as it may deem best, but it shall make no order without affording the affected parties notice and an opportunity for a hearing.

20-4-108. HEARINGS; EXAMINER. The Commission may, in addition to the hearings specifically provided for under this Title, conduct any other hearings as may be reasonably required in administration of the powers and duties conferred upon it by this Title. The Commission may designate one of its members to act as examiner for the purpose of holding any hearing which the Commission has the power or authority to hold, or the Commission may appoint another person to act as examiner under § 20-4-109 below. Reasonable notice of all hearings shall be given to persons interested therein as determined by the Commission.

20-4-109. APPOINTMENT OF EXAMINER; POWER OF EXAMINER. The Commission may appoint any person qualified in the law or possessing knowledge or expertise in the subject matter of the hearing to act as examiner for the purpose of holding any hearing which the Commission, or any member thereof, has power or authority to hold. Any such appointment shall constitute a delegation to such examiner of all powers of a Commissioner under this Title with respect to any such hearing.

20-4-110. RULES OF THE COMMISSION. The Commission shall promulgate such written rules and regulations as are necessary to carry out the orderly performance of all its duties and powers, including but not limited to rules and regulations relating to (a) internal operational procedures of the Commission and its staff; (b) interpretation and application of this Title as may be necessary to carry out its duties and exercise its powers; (c) supervision and regulation of the rates, wheeling rates, charges, tariffs, rules, regulations, practices, equipment, appliances, facilities, service, depreciation

rates and practices, accounting systems, annual reports and all other aspects of all utilities; (d) the findings of any reports or other information required by, or necessary to implement, this Title; and (e) the conduct of inspections, investigations, hearings, enforcement actions and other powers of the Commission authorized by this Title.

(1) Such rules shall provide for hearings for all interested persons upon reasonable notice, and their right to present oral or written testimony.

(2) No rule or regulation of the Commission shall be of any force or effect until and unless copies of the rule or regulation have been filed for record in the office of the Tribal Secretary and in the office of the Clerk of the Tribal Court. The copy shall bear the signature of at least three Commission members, certifying that the rule or regulation was duly adopted by the Commission pursuant to this Title.

(3) The Tribal Court and any other court of competent jurisdiction shall take judicial notice of all rules and regulations of the Commission promulgated pursuant to this Title.

20-4-111. COMMISSION EMPLOYEES AND EXPENSES.

(1) The Commission may employ such persons or entities and incur such expenses as may be necessary for the proper discharge of its duties subject to the limitations and restrictions set out in this Section.

(2) Upon the approval of the Council by resolution, the Commission may utilize regular Tribal staff to exercise the duties and responsibilities set out in this Title.

(3) The Commission may delegate to the Tribal staff by rule such of its functions as may be necessary to administer this Title efficiently, consistent with the limitations of this Title.

(4) The total amount disbursed by the Treasurer in any one fiscal year for the payment of salaries, expenses, and incidentals of the Commission shall not exceed the amount in the Commission budget for the fiscal year. The Commission shall submit to the Council a line item proposed budget for the next fiscal year not later than July 1st of each year; such budget shall be the official budget of the Commission after its approval by the Council.

20-4-112. BONDS.

(1) The Commission may require its members and each of its officials and employees who may handle tribal monies or

revenues, or who are responsible therefore, to give a bond for the honest and faithful performance of their duties, in such amounts as may be fixed by the Commission.

(2) The premiums on any bonds required of the Commission members, officials, and its employees shall be paid from the Tribal Utility Commission Account as authorized in the Commission budget.

20-4-113. RECORDS OF THE COMMISSION.

(1) The Commission shall keep and maintain accurate, complete, and detailed records which reflect all taxes, penalties, and interest levied, due, and paid, and each and every official transaction, communication, or action of the Commission, including minutes of all meetings of the Commission.

(2) Such records shall be maintained at the office of the Commission and shall not be removed from that location absent the consent of the Commission by formal resolution.

(3) Such records shall be subject to audit any time upon the direction of the Council, and shall be audited not less than once each year by an independent auditor selected by the Council.

(4) With the exception of records relating to the business of a named particular utility, any records of the Commission and any records of administrative proceedings before the Commission are public records of the Tribe. For reasonable business purposes only, such records shall be available for public inspection and copying during the Commission's regular business hours. Copies of such records may be obtained by payment of such copying cost as may be established by rule of the Commission. However, the names and other identification of any utility appearing in such records shall be rendered unreadable prior to release of such copies unless this Title otherwise allows release of such information.

CHAPTER 5 – DUTIES OF PUBLIC UTILITIES

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| 20-5-101. | To Provide Adequate Service |
| 20-5-102. | Reasonable Charges For Services and Commodity Of Utility |
| 20-5-103. | To Follow Prescribed System Of Accounts |
| 20-5-104. | To Pay Interest On Customer Deposits |

- 20-5-105. To Grant No Unreasonable Preferences or Advantages
- 20-5-106. To Observe Orders Of The Commission
- 20-5-107. To Disconnect No Service During Cold Weather
- 20-5-108. To Be Liable For Improper Action

20-5-101. TO PROVIDE ADEQUATE SERVICES. Each utility shall furnish safe, adequate, efficient, and reasonable service without unjust discrimination or preference. Every utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as will promote the safety, health, comfort, and convenience of its customers, employees, and the public. For purposes of this Title, service shall be deemed adequate if it is established within 90 days after a person within the service area requests service. Upon application by a utility and upon a showing by the utility of good cause, the Commission may extend this period by no more than an additional 90 days.

20-5-102. REASONABLE CHARGES FOR SERVICES AND COMMODITIES OF UTILITY. Every unjust and unreasonable rate or charge made, demanded, or received by any utility or by any two or more utilities for any product, commodity or service, is prohibited and unlawful.

20-5-103. TO FOLLOW PRESCRIBED SYSTEM OF ACCOUNTS. When the Commission shall have prescribed the forms for accounts and records to be kept by any utility for any of its business, it thereafter shall be unlawful for such utility to keep any accounts or records of such business other than those prescribed by the Commission and those prescribed by or under authority of the United States with the exception of such accounts and records as shall be explanatory of and supplemental to the accounts and records prescribed by the Commission.

20-5-104. TO PAY INTEREST ON CUSTOMER DEPOSITS. A utility may require from a customer a deposit for service in accordance with Commission rules. A utility shall pay interest on all customer deposits for service held by such utility at a rate to be determined by the Commission.

20-5-105. TO GRANT NO UNREASONABLE PREFERENCES OR ADVANTAGES. No utility shall make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or to any particular character of traffic or service in any respect whatsoever, nor subject any particular person, firm, corporation, company, or locality, or any particular character of traffic or service to any undue or unreasonable prejudice or disadvantage in any respect. No utility, directly or indirectly, by any special rate, rebate, drawback, or other device or method, shall charge, demand, collect, or receive from any person, firm, company, or corporation, a greater or lesser compensation for any service rendered or to be rendered than it charges, demands, collects, or receives from any other person, firm, company, or corporation for doing a like and contemporaneous service under the same or substantially similar circumstances and conditions. Nothing in this Chapter shall prohibit a utility from entering into any reasonable agreement with its customers, consumers, or employees or from providing for a sliding scale of charges, unless the same is prohibited by the terms of the authority under which such utility is operated. No such agreement or sliding scale shall be lawful unless and until the same shall be filed with and approved by the Commission.

20-5-106. TO OBSERVE ORDERS OF THE COMMISSION. Every utility shall obey and comply with each requirement of every order, decision, direction, rule, or regulation made or prescribed by the Commission in any manner in any way relating to or affecting its business as a utility, and shall do everything necessary or proper in order to secure compliance with and observation of every such order, decision, direction, rule, or regulation by all of its officers, agents and employees.

20-5-107. TO DISCONNECT NO SERVICE DURING COLD WEATHER. The Commission shall promulgate regulations setting our procedures for an limitations on a utility's disconnection of residential utility customers who are unable to pay for utility service during cold weather. Such regulations shall include the following:

- (1) A definition of "cold weather" as being any time the temperature falls below -30

degrees Fahrenheit, including allowance for a wind chill factor.

(2) Coverage of any utility customer, whom the utility knows or has reason to know (i) whose household income is less than 185% of the federal poverty level, (ii) is bedridden or is otherwise suffering the effects of a serious, life-threatening disease, or (iii) for whom the disconnection of utility service would have other serious, life-threatening effects.

(3) A provision that a customer who pays the utility at least 10% of the customer's income or the full amount of the utility bill, whichever is less, in a cold weather month cannot be disconnected during that month; provided that for the purpose of this Subsection, the term "customer income" means the actual monthly income of the customer except for a customer who is normally employed only on a seasonal basis and whose annual income is over 135% of the federal poverty level, in which case the customer's income shall be the average monthly income of the customer computed on an annual calendar year basis.

(4) A provision that the 10% figure in Subsection (3) above must be prorated between energy providers proportionate to each provider's share of the customer's total energy costs whenever the customer receives service from more than one provider.

(5) A provision that a customer's household income does not include any amount received for energy assistance.

(6) Verification of income by the local energy assistance provider, unless the customer is automatically eligible as a recipient of any form of public assistance, including energy assistance, that uses income eligibility in an amount at or below the income eligibility in Subsection (2).

(7) A provision that the customer receive, from the local energy assistance provider or other entity, budget counseling and referral to weatherization, conservation, or other programs likely to reduce the customer's consumption of energy.

20-5-108. TO BE LIABLE FOR

IMPROPER ACTION. If a utility does, causes to be done, or allows any act, matter, or thing prohibited by this Title or if a utility fails to do any act required by this Title, such utility shall be liable to the person affected thereby for all loss, damages, and injury caused thereby or resulting therefrom. Any person may bring an action in Tribal Court to recover for such loss, damage, or injury. If the finder of fact finds that the act or

omission was willful, the Court, in addition to the actual damages, may award punitive damages. No recovery under this Section shall affect in any manner a recovery by the Tribe of any fine or penalty provided for in this Title or the power to punish for contempt.

CHAPTER 6 – ELECTRIC UTILITIES

20-6-101.	Definitions
20-6-102.	Utility To Furnish Information Of Reservation Easements
20-6-103.	Public Policy Regarding Assigned Service Areas For Electric Utilities
20-6-104.	Assigned Service Areas
20-6-105.	Exclusive Service Rights
20-6-106.	Service Extensions
20-6-107.	Enforcement Of Chapter Terms By Which Facilities Of One Utility May Cross Those Of Another Utility
20-6-108.	Use By One Utility Of The Facilities Of Another Utility

20-6-101. DEFINITIONS. In this Chapter, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

(1) "Assigned service area" means the geographical area in which the boundaries are established as provided in this Chapter.

(2) "Customer" means a person contracting for or purchasing electric service at retail price from an electric utility.

(3) "Electric service" means electric service furnished to a customer at retail price for ultimate consumption, but does not include wholesale electric energy furnished by an electric utility to another electric utility for resale.

(4) "Electric line" means lines for conducting electric energy at a design voltage of 25,000 volts phase to phase or less used for distributing electric energy directly to customers at retail price.

(5) "Electric utility" means any person, his lessee, trustee, and receiver, separately or jointly, now or hereafter operating, maintaining or controlling within the Rosebud Indian Reservation equipment or facilities for providing electric service at retail price and which falls within the definition of "utility" under this Title, and includes facilities owned by a municipality or by a cooperative electric corporation or association.

20-6-102. UTILITY TO FURNISH INFORMATION OF RESERVATION EASEMENTS.

Within 180 days of the effective date of this Title, each electric utility providing service on the Reservation shall provide to the Commission information justifying any easements its exercises on the Reservation.

20-6-103. PUBLIC POLICY REGARDING ASSIGNED SERVICE AREAS FOR ELECTRIC UTILITIES.

It is hereby declared to be in the public interest that, in order to encourage the development of coordinated Reservation-wide electric service at retail price, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient and adequate electric service to residents of the Reservation, the Rosebud Indian Reservation may, subject to Section § 20-6-104, be divided into geographic service areas within which a specified electric utility shall provide electric service to customers on an exclusive basis.

20-6-104. ASSIGNED SERVICE AREAS.

(1) Within 30 days following the effective date of this Title, or when requested in writing by an electric utility and for good cause shown, whichever first occurs, and at such further time as the Commission may fix by order, each electric utility providing service on the Reservation shall file with the Commission a map or maps showing all its electric lines within the Reservation as they existed on the effective date of this Title and all places on the Reservation receiving its service. After 30 days from the effective date of this Title, unless a customer whose place being served is shown on such map or maps, it shall be conclusively presumed that such customer was not being served on the effective date of this Title.

(2) On or before twelve months following the effective date of this Title, the Commission shall, after notice and hearing, establish the assigned service area or areas of each electric utility and shall prepare or cause to be prepared a map or maps to show accurately and clearly the boundaries of the assigned service area of each electric utility providing electric service or maintaining an electric line within the Rosebud Indian Reservation.

(3) To the extent that it is not inconsistent with the legislative policies of this Chapter and existing service as shown on the map or maps provided pursuant to Subsection (1), the boundaries of each assigned service

area shall be a line equidistant between the electric lines of adjacent electric utilities as they exist on the effective date of this Title, provided that these boundaries may be modified by the Commission to take account of natural and other physical barriers including, but not limited to, highways, waterways, railways, major bluffs, and ravines, and shall be modified to take account of the contracts provided for under this Section; and provided further that at any time after the effective date of this Title, the Commission may on its own or at the request of an electric utility make changes in the boundaries of the assigned service areas, but only after appropriate notice and hearing as provided for in this Title.

(4) Contracts between an electric utility and any customer, and between utilities, which are executed on or before six months after the effective date of this Title designating customers and areas to be served by the electric utilities, when approved by the Commission, shall be valid and enforceable and shall be incorporated into the appropriate assigned service areas. The Commission shall approve a contract if it finds that the contract will eliminate or avoid unnecessary duplication of facilities, will provide adequate electric service to all areas and customers affected, and will promote the efficient and economical use and development of the electric systems of the contracting electric utilities.

(5) In those areas where, on the effective date of this Title, the existing electric lines of two or more electric utilities are so intertwined that the provisions of this Section cannot reasonably be applied, the Commission shall determine the boundaries of the assigned service areas for the electric utilities involved in such manner as will best promote the legislative policy of this Title.

20-6-105. EXCLUSIVE SERVICE RIGHTS.

Except as provided under this Chapter, each electric utility shall have the exclusive right to protect electric service at retail price to each and every present and future customer in its assigned service area, and no electric utility shall render or extend electric service at retail price within the assigned service area of another electric utility unless the electric utility consents thereto in writing; provided that any electric utility may extend its facilities through the assigned service areas of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area. Within 180 days of

the effective date of this Title, the Commission shall establish regulations regarding the transfer of the exclusive right to provide service to a particular service area.

20-6-106. SERVICE EXTENSION.

Notwithstanding the establishment of assigned service areas for electric utilities as provided for in this Chapter, customers who require electric service with a connected load of 2,000 kilowatts or more shall not be obligated to obtain electric service from the electric utility having the assigned service area where the customer is located if, after notice and hearing, the Commission so determines after consideration of the following factors: (a) the electric service requirements of the load to be served; (b) availability of an adequate power supply; (c) the development or improvement of the electric system of the utility seeking to provide the electric service, including the economic factors relating thereto; (d) the proximity of adequate facilities from which electric service of the type required may be delivered; (e) the overall public convenience, necessity and interest; (f) the preference of the customer; (g) any and all pertinent factors affecting the ability of the utility to furnish adequate electric service to fulfill customers' requirements and the public convenience and necessity; (h) whether the proposed service interferes with existing services provided by the electric utility in whose service area extension is requested; and (i) duplication of services is not deemed unreasonable by the Commission. Notwithstanding the provisions of § 20-6-104, any electric utility may extend electric lines for electric service to its own utility property and facilities.

20-6-107. ENFORCEMENT OF

CHAPTER. If any electric utility violates or threatens to violate any of the provisions of this Chapter or interferes with or threatens to interfere with the system of any other electric utility, the Commission, after complaint, notice and hearing, shall make its order restraining and enjoining such electric utility from constructing or extending its interfering lines, plant or system. In addition to the restraint imposed, the Commission shall prescribe such terms and conditions as it shall deem reasonable and proper. Nothing herein contained shall be construed to prohibit or limit any person whose property or business has been injured by reason of a violation of this Chapter by any

electric utility, from bringing an action for damages in Tribal Court to recover damages.

20-6-108. TERMS BY WHICH FACILITIES OF ONE UTILITY MAY CROSS THOSE OF ANOTHER UTILITY.

Whenever public convenience and necessity requires that an electric distribution or transmission line of any electric utility cross a line of another electric utility and the electric utilities have failed to agree upon the terms and conditions or compensation for the same, the Commission, after notice and hearing, may prescribe reasonable terms, conditions, and compensation on which the crossing shall be permitted.

20-6-109. USE BY ONE UTILITY OF THE FACILITIES OF ANOTHER UTILITY.

Whenever upon hearing, after due notice, the Commission has found that the public convenience and necessity requires the use by one electric utility of the conduits, wires, poles, pipes or other equipment or any part thereof on, over or under any street or highway and belonging to another electric utility, and that such use will not result in irreparable injury to the owner or other users of such equipment, nor any substantial detriment to the service, and that such electric utilities have failed to agree upon such use or terms and conditions or compensation for the same, the Commission, by order, may direct that such use be permitted, and prescribe reasonable compensation and reasonable terms and conditions for such joint use. If such use is directed, the electric utility to which the use is permitted shall be liable to the owner or other users of such equipment for such damages as may result therefrom to the property of such owner or other users thereof.

CHAPTER 7 – ELECTRIC UTILITY RATES AND TARIFFS

- 20-7-101. Changes In Tariff Rates; Notice To Commission
- 20-7-102. Hearing By Commission On Proposed Change Of Rates
- 20-7-103. Factors In Establishing Rate Adjustments
- 20-7-104. Non-Interference With Federal Programs
- 20-7-105. Reasonable Rates
- 20-7-106. Testing Meters; Gas; Electric – *Reserved*
- 20-7-107. Publishing Of Schedules

20-7-108. Rate Preference Prohibited
20-7-109. Valuation Of Electric Utility
Property – *Reserved*

20-7-101. CHANGES IN TARIFF RATES; NOTICE TO COMMISSION. No change shall be made by any electric utility in any tariffs, rates, joint rates, wheeling rates, charges, fares, tolls, schedules, classifications or service which have been filed and published by any electric utility pursuant to this Title, except after 30 days notice to the Commission. Such notice shall state plainly the changes proposed. The Commission, for good cause shown, may allow changes upon less than the notice herein specified either in particular instances or by a general order applicable to special or peculiar circumstances or conditions. Except as provided in this Chapter, any action by the Commission on a request for changes in tariff rates by an electric utility shall be in conformance with the complaint procedures in Chapter Fourteen below.

20-7-102. HEARING BY COMMISSION ON PROPOSED CHANGE OF RATES. Whenever a notice or any schedule stating an individual or joint rate, classification, contract, practice, rule, or regulation, increasing or decreasing or resulting in an increase or decrease in any rate, classification, contract, practice, rule or regulation, provided that the period of suspension thereof shall not extend more than 11 months beyond the time when such change otherwise would go into effect. Upon complaint or upon its own initiative without complaint, the Commission may order a hearing, upon due notice, concerning the propriety of such rate, classification, contract, practice, rule or regulation. On such hearing, the Commission shall establish the rates, classifications, contracts, practices, rules, or regulations proposes, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. At any such hearing, the burden to show that the increased rate or proposed change of rate, classification, regulation, rule or practice is just and reasonable shall be upon the electric utility making application therefore. All such rates, classifications, contracts, practices, rules, or regulations not so suspended, on the expiration of 30 days after filing the same with the Commission, or of such lesser time as the Commission may grant, shall go in effect and be the established and effective rates, classifications, contracts, practices, rules

and regulations, subject to the power of the Commission, after a hearing had on its own motion or upon complaint, to alter or modify them.

Any utility may, at its own expense, notify customers of the date and place of a rate change hearing.

20-7-103. FACTORS IN ESTABLISHING RATE ADJUSTMENTS. In reaching its decision on any request for change in tariffs, rates, joint rates, wheeling rates, charges, fares, tolls, schedules, or classifications of an electric utility, the Commission may adopt, in whole or in part, those rates approved or allowed by the State Public Service Commission for the same type or classification of service provided to customers outside the boundaries of the Reservation and within the State. The Commission may adopt such state rates on an interim basis pending full investigation and collection and analysis of data relevant to such rates. Nothing in this Section shall be construed to be a consent to jurisdiction of the State, its agencies or political subdivisions, with respect to the regulation of utilities within the boundaries of the Reservation, such jurisdiction residing exclusively with the Tribe and the Tribal Utility Commission of any tariff, rate, joint rate, wheeling rate, fare, toll, schedule, or classification established by the State Public Service Commission under this Section shall not affect or in any way limit implementation and enforcement by the Commission of any other provision of this Title relating to tribal regulation of electric utilities within the Reservation.

20-7-104. NON-INTERFERENCE WITH FEDERAL PROGRAMS. In establishing rates under this Chapter for any rural electric cooperative or similar entity operating or providing service within the Reservation, the Commission shall take into consideration the obligations of such electric utilities to the federal government, including the Rural Electrification Administration, and the requirements under federal law applicable to such obligations. Any rates established by the Commission with respect to cooperative electric utilities shall be established so as not to interfere with any federal loan requirements or other federal regulations relating to such electric utilities.

20-7-105. REASONABLE RATES. Every rate made, demanded, or received by any utility, or by two or more utilities jointly, shall be just and reasonable. Rates shall not be

unreasonably preferential, unreasonably prejudicial or discriminatory, but shall be sufficient, equitable and consistent in application to a class of consumers. To the maximum reasonable extent, the Commission shall set rates to encourage energy conservation and renewable energy use. Any data as to reasonableness should be resolved in favor of the consumer.

20-7-106. TESTING METERS; GAS; ELECTRIC. [RESERVED]

20-7-107. PUBLISHING OF SCHEDULES.

Every utility shall file with the Commission schedules showing all rates, tolls, tariffs and charges which it has established and which are in force at the time for any service performed by it within the Reservation, or for any service in connection therewith or performed by any utility controlled or operated by it.

Every utility shall file with and as a part of the schedule all rules which, in the judgment of the Commission, in any manner affect the service or product, or for any service in connection therewith or performed by any utility controlled or operated by it.

Every utility shall file with and as a part of the schedule all rules which, in the judgment of the Commission, in any manner affect the service or product, or the rates charged or to be charged for any service or product, as well as any contracts, agreements or arrangements relating to the service or product or the rates to be charged for any service or product to which the schedule is applicable as the Commission may by general or special order direct.

Except as provided in Chapter Five, no utility shall directly or indirectly, by any device whatsoever, or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the utility applicable thereto when filed in the manner provided herein, nor shall any person knowingly receive or accept any service from a utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a utility upon January 1, 1992, may be contingent until schedules are filed.

Every utility shall keep copies of the schedules open to public inspection under rules and regulations as the Commission may prescribe.

20-7-108. RATE PREFERENCE

PROHIBITED. Except as provided in Chapter Five, no utility shall, as to rates or service, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage.

20-7-109. VALUATION OF ELECTRIC UTILITY PROPERTY. [RESERVED]

CHAPTER 8 – TELECOMMUNICATIONS COMPANIES [RESERVED]

CHAPTER 9 – PIPELINE UTILITIES [RESERVED]

CHAPTER 10 – GAS UTILITIES [RESERVED]

CHAPTER 11 – WATER COMPANIES [RESERVED]

CHAPTER 12 – HEATING UTILITIES [RESERVED]

CHAPTER 13 – OTHER PUBLIC UTILITIES [RESERVED]

CHAPTER 14 – PROCEDURE ON REGULATION

- 20-14-101. Complaints
- 20-14-102. Decisions Of Commission; Rescission or Amendment
- 20-14-103. Effective Date Of Orders and Decisions
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- 20-14-110. Copies Of Documents As Evidence
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- 20-14-117. Appeal To Tribal Appeals Court
- 20-14-118. Excessive or Discriminatory Charges; Reparation
- 20-14-119. Standards; Classifications

20-14-101. COMPLAINTS.

(1) On its own motion, or upon a complaint made against any utility, by the Tribe, by another utility, by the Commission, or by any 15 consumers of the particular utility, that any of the rates, tolls, tariffs, charges, or schedules or any joint rate or any regulation, measurement, practice, act or omission affecting or relating to the production, transmission, delivery or furnishing of any utility or any service and connection therewith is in any respect unreasonable, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, or that such utility is in violation of any of the requirements of this Title, the Commission shall proceed, with notice, to make such investigation as it may deem necessary. The Commission may dismiss any complaint without a hearing if in its opinion a hearing is not in the public interest.

(2) The Commission shall, prior to any formal hearing, notify the utility complained of that a complaint has been made, and ten days after such notice has been given the Commission may proceed to set a time and place for a hearing and an investigation as provided in this Section.

(3) The Commission shall give the utility and the complainant ten days' notice of time and place when and where the hearing will be held and such matters to be considered and determined. Both the utility and complainant shall be entitled to be heard and to be represented by counsel.

(4) Notice shall also be given to the Council, any affected municipality within the boundaries of the Reservation, and to any other persons the Commission shall deem necessary. The notice under this section may be combined with the notice under

Subsection (3) above, but if combined, the notice shall not be less than ten days.

(5) Service of Notice. Service of notice of all hearings, investigations or proceedings pending before the Commission and of complaints, reports, orders and other documents shall be made personally or by mail as provided in this Title.

(6) Separate Rate Hearings. The Commission may, in its discretion, when complaint is made of more than one rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at times it may prescribe.

(7) Summary Investigations.

(a) Whenever the Commission has reason to believe that any rate or charge may be unreasonable or unjustly discriminatory or that any service is inadequate or cannot be obtained or that an investigation of any matter relating to any utility should for any reason be made, it may on its own motion summarily investigate the same with or without notice.

(b) If, after making the summary investigation, the Commission becomes satisfied that sufficient grounds exist to warrant a formal hearing as to the matters investigated, it shall set a time and place for a hearing.

(c) Notice of the time and place for the hearing shall be made as provided under this Title.

(8) Lawful Rates; Reasonable Services.

(a) Whenever, upon an investigation made under the provisions of this Title, the Commission shall find rates, tolls, charges, schedules or joint rates to be unjust, unreasonable, insufficient, preferential or unjustly discriminatory or otherwise unreasonable or unlawful, the Commission shall determine and by order fix reasonable rates, tolls, charges, schedules or joint rates to be imposed, observed and followed in the future in lieu of those found to be unreasonable or unlawful.

(b) Whenever the Commission shall find any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise unreasonable or unlawful, or shall find any service which can be reasonably demanded cannot be obtained, the Commission shall determine and by order fix reasonable measurements, regulations, acts, practices or service to be furnished, imposed, observed and followed in the future in lieu of those found to be unreasonable, inadequate or otherwise

unlawful, and shall make any other order respecting measurements, regulations, acts, practices or services as shall be just and reasonable.

(c) A copy of any order issued pursuant to this Section shall be served upon the person against whom it runs or his attorney, and notice thereof shall be given to the other parties to the proceedings or their attorneys.

20-14-102. DECISIONS OF COMMISSION; RESCISSION OR

AMENDMENT. The Commission may at any time, on its own motion or upon motion of an interested party, and upon notice to the utility and after opportunity to be heard, rescind, alter or amend any order or decision made by the Commission and may reopen any case following the issuance of an order or decision therein, or the taking of further evidence or for any other purpose. Any order rescinding, altering, amending or reopening a prior order or decision shall have the same effect as an original order or decision.

20-14-103. EFFECTIVE DATE OF ORDERS AND DECISIONS. Every decision made by the Commission constituting an order or decision shall be effective and enforced 20 days after it has been filed and has been served by personal delivery or by mailing a copy thereof to all parties to the proceeding in which the decision was made or to their attorneys, unless the Commission shall specify a different date upon which the order or decision shall be effective.

20-14-104. CONCLUSIVE EFFECT OF ORDERS AND DECISIONS OF COMMISSION. In all collateral actions or proceedings before any court or administrative agency of competent jurisdiction, the orders and decisions of the Commission which have become final shall be conclusive.

20-14-105. REHEARINGS BEFORE COMMISSION.

(1) Within 20 days after service by the Commission of any decision constituting an order or decision, any party to the proceeding and any other person aggrieved by the decision and directly affected thereby, may apply to the Commission for a rehearing in respect to any matters determined in the decision. The Commission may grant a rehearing on any or all matters raised in the request for rehearing, if in its discretion sufficient reason exists.

(2) Applications for rehearing shall be governed by general rules which the Commission may establish. If, after rehearing, it shall appear that the original order or decision is in any respect unlawful or unreasonable, the Commission may reverse, change, modify or suspend the original action accordingly. No order of the Commission shall become effective until the time for filing an application for rehearing expires or while a rehearing is pending and until ten days after any such application for a rehearing is either denied, or the Commission has announced its final determination on rehearing, whichever first occurs.

(3) The grant or denial of a rehearing shall be discretionary with the Commission. A request for rehearing shall not be deemed a condition precedent to judicial review of a final administrative order or decision.

20-14-106. SUBPOENA; WITNESSES; FEES; MILEAGE. The Commission or a Commissioner may issue subpoenas and all necessary process in proceedings pending before the Commission; and each process shall extend to all parts of the Reservation and may be served by any person authorized to serve process under this Code. Each witness who shall appear before the Commission, or at a hearing, or whose deposition is taken, shall receive for attendance the fees and mileage, if any, provided for witnesses in civil cases in Tribal Court.

20-14-107. OATHS; CONTEMPT; EXAMINER'S POWERS. The Commission or Commissioners may administer oaths and examine witnesses in proceedings pending before the Commission. In case of failure on the part of any person to comply with any subpoena, or in the case of the refusal of any witness to testify concerning any matter on which a witness may be interrogated lawfully, the Tribal Court, on application of the Commission, may compel obedience by proceedings for contempt as in the case of disobedience to the requirements of a subpoena issued from the Tribal Court or a refusal to testify therein.

20-14-108. DEPOSITIONS. The Commission or any party to the proceedings may, in any investigation or hearing before the Commission, cause the deposition of witnesses residing within or without the Reservation to be taken in the manner prescribed by law for taking depositions in civil actions in the Tribal Court.

20-14-109. TESTIMONY AND PRODUCTION OF RECORDS; PERJURY.

No person shall be excused from testifying or from producing any books, document, paper, or account in any investigation, or inquiry by, or hearing before, the Commission or any Commissioner, or person designated by it to conduct hearings, when ordered to do so, upon the ground that the testimony or evidence, book, document, paper, or account required may tend to incriminate the person or subject the person to penalty or forfeiture; but no person shall be prosecuted, punished, or subjected to any forfeiture or penalty for or on account of any act, transaction, matter, or thing concerning which the person shall have been compelled under oath to testify to, or produce documentary evidence of; provided, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed in testimony.

20-14-110. COPIES OF DOCUMENTS AS EVIDENCE.

Copies of official documents and orders filed or deposited according to law in the office of the Commission, certified by the Commission under the official seal of the Commission to be true copies of the originals shall be evidence in like manner as the original, in all matters before the Commission and in the Tribal Court.

20-14-111. ORDERS AND FINDINGS IN WRITING.

Every order, finding, authorization, or certificate issued or proved by the Commission under any provisions of this Title shall be in writing and filed in the office of the Commission. A certificate under seal of the Commission that any order, finding, authorization, or certificate has not been modified, stayed, suspended, or revoked, shall be received as evidence in any proceeding as to the facts therein stated.

20-14-112. PUBLIC RECORDS. All decisions, transcripts, and orders of the Commission shall be public records, subject to § 20-4-113.

20-14-113. TRANSCRIBED RECORD TO BE KEPT. A full and complete record shall be kept of all proceedings at any formal hearing of the Commission and all testimony shall be taken down by a reporter appointed by the Commission. A copy of the transcript shall be furnished on demand to any party to the proceedings upon payment of reasonable costs of reproduction.

20-14-114. APPEAL FROM DECISION OF COMMISSION.

Any party to any proceeding heard by the Commission who is aggrieved by the decision or by the entry of any final order or decision of the Commission therein may seek judicial review therefrom in the Tribal Court. The rules of civil procedure and the civil provisions of this Code shall be fully applicable to any such judicial review.

20-14-115. JUDICIAL REVIEW.

(1) right of Review of Final Commission Action.

(a) Any party to any proceeding heard by the Commission who is aggrieved by the decision or by the entry of any final order or decision of the Commission is entitled to judicial review thereof in the Tribal Court. A preliminary, procedural, or intermediate Commission action is not subject to review.

(b) An action in the Tribal Court seeking relief other than damages, attorneys fees or costs against the Commission or an officer or employee thereof shall not be dismissed nor relief be denied on the ground that it is against the Tribe or that the Tribe is an indispensable party and, for the limited purposes of this Title, the Tribe hereby waives the sovereign immunity of the Director, the Commission, and its members for the limited purpose of Tribal Court review of decisions of the Director and the Commission. Such waiver of immunity if further limited to prospective, equitable relief, including declaratory and injunctive relief, and does not include money damages of any kind.

(c) Nothing herein either affects other limitations on judicial review or the power or duty of the Tribal Court to dismiss any action or deny relief on any other appropriate legal or equitable grounds; or confers authority to grant relief if any other tribal law that grants consent to suit expressly or impliedly forbids the relief which is sought.

(2) Relief Pending Review. When the Commission finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required, and to the extent necessary, to prevent irreparable injury, the Tribal Court may issue all necessary and appropriate process to postpone the effective date of a Commission action or to preserve the status quo or rights pending conclusion of the review proceeding.

(3) Scope of Review. To the extent necessary to decision and when presented,

the Tribal Court shall decide all relevant questions of law, interpret constitutional provisions and all other tribal law, and determine the meaning or applicability of the terms of the Commission's action. The Tribal Court may:

(a) Compel Commission action unlawfully withheld or unreasonably delayed;

(b) Hold unlawful and set aside Commission action, findings, and conclusions found to be:

(i) Arbitrary capricious, an abuse of discretion, or otherwise not in accordance with law;

(ii) Contrary to any right, power, privilege, or immunity accorded by the Tribal Constitution or the Indian Civil Rights Act, 25 U.S.C. § 1301, et seq., as amended;

(iii) In excess of jurisdiction, authority, or limitations granted by tribal law;

(iv) Without observance of procedure required by law;

(v) In an adjudicatory proceeding only, unsupported by substantial evidence. In making the foregoing determinations, the Tribal Court shall review the whole record before the Commission or those parts of it cited by a party.

20-14-116. STAY ON JUDICIAL

REVIEW; BOND. In case the order or decision of the Commission is stayed or suspended by order of the Tribal Court, the order of the Tribal Court shall not become effective until a suspending bond first shall have been executed and filed with and approved by the Tribal Court, payable to the Tribal Utility Commission, and sufficient in amount and security to insure the prompt payment by the party appealing of all damages caused by the delay in the enforcement of the order or decision of the Commission and of all monies which any person may be compelled to pay, pending appeal or review, for transportation, transmission, product, commodity, or service in excess of the charges fixed by the order or decision of the Commission, in case such order or decision is sustained. The Tribal Court, in case it stays or suspends the order or decision of the Commission in any matter affecting rates, also by order shall direct the utility affected to pay into the Court, from time to time, there to be impounded until the final decision of the case, under such conditions as the Tribal Court may prescribe, all sums of money which may collect from any person in excess of the sum which such person would have been compelled to pay if the order or decision of the Commission had not been

stayed or suspended. Upon a final determination of the Tribal Court, the Court shall make an appropriate order disposing of the impounded funds in accordance with such determination. In the event the utility shall fail to comply with the conditions of the stay bond, the Commission may sue thereon for the use and benefit of the patrons or others who have suffered damage by reason of the stay.

20-14-117. APPEAL TO TRIBAL APPEAL COURT.

Any party to an appeal to the Tribal Court who is aggrieved by the judgment in the Tribal Court upon judicial review of a final order or decision of the Commission, may prosecute an appeal to the Tribal Appeals Court under the provisions of this Code.

20-14-118. EXCESSIVE OR DISCRIMINATORY CHARGES;

REPARATION. When complaint has been made to the Commission concerning any rate or charge for any product or commodity furnished or service performed by any utility, and the Commission has found, upon a hearing after notice given as required by this Title, that the utility has charged an excessive or discriminatory amount for such product, commodity, or service, in excess of the schedules, rates, and tariffs on file with the Commission, or has discriminated under such schedules against the complainant, the Commission may order that the utility make due reparation to the complainant therefore, with interest from the date of collection, if no discrimination will result from such reparation.

20-14-119. STANDARDS;

CLASSIFICATIONS. The Commission, after hearing upon reasonable notice upon its own motion or upon complaint, may ascertain and fix just and reasonable standards, classifications, rules or practices to be observed and followed by any or all public utilities with respect to the service to be furnished; ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, initial voltage, or other condition pertaining to the supply of the service; prescribe reasonable rules for the examination and testing of the service and for the measurement thereof; establish or approve reasonable rules, specifications, and standards to secure the accuracy of all meters, instruments and equipment used for the measurement of any service of any utility. Any standards, classifications, rules or practices now or

hereafter observed or followed by any utility may be followed by it with the Commission, and the same shall continue in force until amended by the utility or until changed by the Commission as herein provided.

CHAPTER 15 – CIVIL INFRACTIONS

20-15-101.	Purpose
20-15-102.	Civil Action For Penalties
20-15-103.	Violation Of This Title or Commission Order or Rule
20-15-104.	Cumulative Fines

20-15-101. PURPOSE. The civil fines imposed under this Chapter are intended to be remedial and not punitive and are designed to compensate the Tribe for the damage done to the peace, security, economy and general welfare of the Tribe and the Rosebud Indian Reservation and to compensate the Tribe for damages sustained by the Tribe by reason of violations of this Title and the costs incurred by the Tribe in enforcing this Title. The civil fines under this Chapter are also intended to coerce persons into complying with this Title and the laws and regulations of the Rosebud Sioux Tribe and not to punish such persons for violation of such laws and regulations.

20-15-102. CIVIL ACTION FOR PENALTIES. In enforcing the civil infraction provisions of this Chapter, the Tribal Utility Commission shall proceed, in the name of the Tribe, against a person for violation of such provision by civil complaint pursuant to the provisions of this Code. The Commission in such action shall have the burden of showing by the preponderance of the evidence that such person violated the applicable provision of this Title.

20-15-103. VIOLATION OF THIS TITLE OR COMMISSION ORDER OR RULE. Any person who violates or fails to comply with any provision of this Title, or who fails, omits, or neglects to obey, observe, or comply with any order, decision, decree, rule, direction, demand, or requirement of the Commission, or any part or provision thereof, shall be liable for a civil fine not to exceed \$1,000 for each violation thereof. Each day during which any such violation or failure to comply continues shall constitute a separate violation of this Title. The amount of the civil fine, when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the Tribal Court.

20-15-104. CUMULATIVE FINES. All civil fines accruing under this Chapter shall be cumulative and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, or judgment, penalty, forfeiture or damages; nor bar the power to punish for contempt; nor bar any criminal prosecution by the Tribal Court against any utility or any officer, director, agent, or employee thereof, or any other person.

CHAPTER 16 – USER FEE FUND

20-16-101.	Purpose Of Fund – <i>Amendment</i>
20-16-102.	User Fee Fund Established – <i>Amendment</i>
20-16-103.	Annual Intrastate User Fee Levied-Amount – <i>Amendment</i>
20-16-104.	Annual Report Of User Fee Receipts-Filing Date-Verification-Annual Rate Setting and Assessment – <i>Amendment</i>
20-16-105.	User Fee Payment Date – <i>Amendment</i>
20-16-106.	Penalty For Late Payment-Collection Procedure – <i>Amendment</i>
20-16-107.	Use Of Fund For Utilities and Telecommunications Companies Regulation Expenses-Payment On Warrants-Expenditure Authorized – <i>Amendment</i>
20-16-108.	Rosebud Sioux Tribe Utilities Commission Regulatory Assessment Fee Fund Created-Deposits-Amount – <i>Amendment</i>
20-16-109.	Deposit Used To Defray Analyzing and Ruling Expenses-Payment On Warrants – <i>Amendment</i>
20-16-110.	Record Of Expenditures-Determination Of Surplus or Deficiency-Notice To Company-Objection-Hearing-Appeal – <i>Amendment</i>
20-16-111.	Actual Costs Assessed To Electric or Gas Utility or To A Utility's Supplier – <i>Amendment</i>

20-16-101. PURPOSE OF FUND. It is hereby declared to be in the public interest, in order to permit full and adequate regulation of public utilities as defined in Chapter 20-1-102, and telecommunications

companies as defined in Chapter 20-4-101 (1) (a), to establish a fund known as the Rosebud Sioux Tribe Utilities Commission User Fee Fund.

20-16-102. USER FEE FUND

ESTABLISHED. There is hereby established the Rosebud Sioux Tribe Utilities Commission User Fee Fund to be maintained as a special fund by the treasurer of the Rosebud Sioux Tribe. the fund shall be invested as provided by law and the interest earned shall be credited to the fund.

20-16-103. ANNUAL INTRASTATE USER FEE LEVIED - - AMOUNT.

There is hereby levied on each public utility as defined in Chapter Two 20-2-101 (9), which is subject to the rate regulation of the Commission, and all telecommunications companies as defined in 20-4-101 (1) (a), a user fee of not more than .0015 or two hundred fifty dollars, whichever is greater upon the annual intrastate user fee receipts derived by the public utility or telecommunications company from its customers within the Rosebud Sioux Reservation 20-1-104 (1) (2) (3) (4), during the preceding calendar year. The two hundred fifty dollar minimum user fee does not apply to telecommunications companies providing local exchange service or to radio common carriers.

20-16-104. ANNUAL REPORT OF USER FEE RECEIPTS - - FILING DATE - - VERIFICATION - - ANNUAL RATE

SETTING AND TAX ASSESSMENT. On April first of each year, each company shall file with the RST Utilities Commission, on forms prescribed by the Commission, the amount of its user fee receipts derived from the company's customers within the Rosebud Sioux Reservation 20-1-104 (1) (2) (3) (4) during the preceding calendar year. Such report shall be sworn to and verified by an officer of the company. On May first of each year the Commission shall, by order, establish the rate and assess the user fee authorized in 20-16-103 which, together with any funds remaining from the current fiscal year and the two hundred fifty dollar minimum user fee receipt, will fund the Commission's budget for the next fiscal year and provide a contingency reserve in an amount not to exceed the prior year's budget.

20-16-105. USER FEE PAYMENT DATE.

The user fee levied by this Chapter is due

and payable to the Rosebud Sioux Tribe treasurer on July fifteenth of each year.

20-16-106. PENALTY FOR LATE PAYMENT – COLLECTION PROCEDURE.

If the user fee levied under this Chapter is not paid on the due date, a penalty often percent of the amount of the user fee shall be imposed for each month of such delinquency. The user fee may be enforced and collected by RST Chapter 5 Enforcement, Section 5-10.

20-16-107. USE OF FUND FOR UTILITIES AND TELECOMMUNICATIONS COMPANIES REGULATION EXPENSES - - PAYMENT ON WARRANTS – EXPENDITURE

AUTHORIZED. All amounts deposited in the Rosebud Sioux Tribe Utilities Commission user fee fund are appropriated to the use of the RST Utilities Commission for its expenses in regulating public utilities and telecommunications companies. Such expenses may be paid out of the fund on warrants drawn by the Tribal Treasurer upon duly itemized vouchers. The funds necessary for such expenses are hereby authorized to be expended. The funds may not be expended for any other operations of tribal government.

20-16-108. ROSEBUD SIOUX TRIBE UTILITIES COMMISSION REGULATORY USER FEE FUND CREATED - - DEPOSITS

- - AMOUNT. There is created a special fund within the tribal finance department to be known as the Rosebud Sioux Tribe Utilities Commission Regulatory User Fee Fund. The RST Utilities Commission may require a public utility as defined in Chapter Two 20-2-101 (9) to make a deposit of up to one hundred thousand dollars when it files for approval of a general rate case, regardless of the number of issues involved, or files an integrated resource plan. The Commission may require a deposit of up to one hundred twenty-five thousand dollars for a filing which combines a general rate case and an integrated resource plan. The Commission may require a deposit of up to fifty thousand dollars for the filing of a tariff for approval under the Rosebud Sioux Law and Order Code Title 20: Utilities. The deposits shall be made to the Rosebud Sioux Tribe Utilities Commission Regulatory User Fee Fund, the amount to be designated by Commission order. The fund shall be invested as provided by law, and the interest earned shall be credited to the fund.

20-16-109. DEPOSIT USED TO DEFRAY ANALYZING AND RULING EXPENSES - - PAYMENT ON WARRANTS. The amount deposited under 20-16-108 shall be used by the RST Utilities Commission to defray the expense incident to analyzing and ruling upon the filing of the company making the deposit and the amount expended may be recovered as an immediate adjustment to rates by the company. The deposit is appropriated to the use of the RST Utilities Commission for such purpose. Such expenses may be paid out of the fund on warrants drawn by the Tribal Treasurer upon duly itemized vouchers, and the funds necessary for such expenses are continuously appropriated.

20-16-110. RECORD OF EXPENDITURES - - DETERMINATION OF SURPLUS OR DEFICIENCY - - NOTICE TO COMPANY - - OBJECTION - - HEARING - - APPEAL. The RST Utilities Commission shall keep and maintain a detailed record of the amount expended from each deposit by each company making a deposit pursuant to 20-16-108. Upon the final decision of the RST Utilities Commission, the Commission shall make a determination as to the surplus or deficiency of the deposit and shall give the company making the deposit, within thirty days of the final decision, notice in writing of the itemization and the amount that is proposed to be returned or charged to such company. The company making the deposit may thereafter within thirty days file with the Commission objections setting out the grounds upon which it is claimed that an excessive amount has been expended. The Commission shall within thirty days of receiving such objections hold a hearing and issue an order in accordance with its findings as to the proper amount to be returned or charged to the company. The order may be appealed pursuant to RST Administrative Procedures and Rules.

20-16-111. ACTUAL COSTS ASSESSED TO ELECTRIC OR GAS UTILITY OR TO A UTILITY'S SUPPLIER. If an electric utility or gas utility, as defined in Chapter 4, 20-4-101 (d), respectively, or any person providing or who proposes to provide wholesale electric or gas service to an electric or gas utility for resale, which is exempt from payment of the user fee receipts fund assessed under 20-16-103, is a party to a docket before the Rosebud Sioux Tribe Utilities Commission, the Commission may assess the actual cost to the party for its

respective cost. The assessment shall be limited to actual amounts expended by the Commission for Commission employee time, expert witnesses, court reporter fees, document and exhibit preparation, and other necessary and related expenses, incurred by the Commission. The party may, within thirty days after the assessment is mailed, file written objections with the Commission stating the grounds upon which it claims that the assessment is not reasonable. The Commission shall within thirty days of receiving such objections hold a hearing and issue an order in accordance with its findings as to the proper amount to be assessed to the party. The order may be appealed pursuant to RST Administrative Procedures and Rules.

SUPREME COURT OF THE ROSEBUD SIOUX TRIBE

RULES OF PROCEDURE

Notes – Appellate Procedures, Supreme Court of the Rosebud Sioux Tribe.

Appeal – A proceeding undertaken to have a decision reconsidering by bringing it to a higher authority; esp. the submission of a lower court's or agency's decision to a higher court for review and possible reversal.

Appeal by Right - An appeal to a higher court from which permission need not be first obtained.

Appeal to the Supreme Court of the Rosebud Sioux Tribe – Governed by RULES OF PROCEDURE, SUPREME COURT OF THE ROSEBUD SIOUX TRIBE.

Procedures -

(1) Notice of Appeal – filed with Clerk of Court (a) 30 days Civil entry of judgment (b) 10 days Criminal entry of final judgment. Clerk transfers certified copy of the Notice of Appeal to Clerk of Supreme Court within 10 days.

(2) Appellant posts appeal bond (a) Civil \$50.00 (b) Criminal is amount of cash bail bond schedule (c) exception is In Forma Pauperis. No Interlocutory appeals allowed unless expressly authorized by the Presiding Justice (Interlocutory: interim or temporary order, not constituting a final resolution of the whole controversy (Black's Law Dictionary)).

Rule 1. – Name of Court: Supreme Court of the Rosebud Sioux Tribe.

Rule 2. – Notice of Appeal and Bond.

Rule 3. – Clerk of Court: The Clerk will file, docket, record, etc. Preference in calendaring is given to criminal and juvenile. Service on a party represented by an attorney or counselor of record shall be made on the attorney or counselor.

Rule 4. – Attorneys and Counselors: Attorneys and Counselors admitted to practice in tribal court are eligible for

admission to practice before the Supreme Court.

Rule 5. – Contents of Notice of Appeal.

Rule 6. – Designation of Record.

Rule 7. – Contents and Form of Briefs.

Rule 8. – Scheduling Orders by the Clerk of Court.

Rule 9. – Clerical.

Rule 10. – Oral Arguments.

Rule 11. – Motions.

Rule 12. – Summary Disposition.

Rule 13. – Expedited Procedure.

Rule 14. – Ex Parte Communication.

Rule 15. – Rules of the Court.

Rule 16. – Duties of the Chief Justice.

Rule 17. – All Justices shall have Full Power of Contempt.

Rule 18. – Rules may be Amended or Modified by the Justices of the Appellate Court.

SCOPE OF RULES. These rules govern all appeals to the Supreme Court of the Rosebud Sioux Tribe and shall be effect upon adoption by Resolution of the Rosebud Sioux Tribal Council. Upon such adoption, these Rules shall govern only those appeals filed thereafter.

RULE 1. NAME OF COURT - This Court shall be referred to in the caption of all proceedings filed with the Clerk of Courts as the Supreme Court of the Rosebud Sioux Tribe.

RULE 2. NOTICE OF APPEAL AND BOND
– A timely filing of a Notice of Appeal commences the appellate process. The Notice of Appeal shall be filed with the Clerk of Court of Tribal Court. Notice of Appeal shall be filed within thirty (30) days of notice of entry of judgment in all civil cases; and shall be filed within ten (10) days of notice of entry of judgment or other appealable order

in all criminal cases. No extension of these deadlines will be granted. The Clerk of Court of the Tribal Court shall within ten (10) days transfer a certified copy of the Notice of Appeal to the Clerk of the Supreme Court.

Upon filing of the Notice of Appeal, the Appellant shall also be required to post an Appellant bond. In civil matters, the bond shall be set at \$50.00, plus the Appellant shall be required to file a statement of financial responsibility equal to the amount of the Judgment in Tribal Court. If the Appellant is unable to file the required financial statement, they shall be required to post cash or other sureties equal to the amount of the Tribal Court judgment.

In all criminal matters, bond shall be in the amount set in the Tribal Court bond schedule for each offense being appealed. Additionally, Appellants who have proceeded in the lower Court In Forma Pauperis, shall be allowed to proceed In Forma Pauperis through the appellate proceedings, upon application. The Chief Justice shall also be allowed to consider and grant In Forma Pauperis petitions for leave to file In Forma Pauperis shall be accompanied by an Affidavit, sworn to under penalties of perjury, that the Appellant is indigent.

No Interlocutory Appeals shall be allowed in either criminal or civil matters unless expressly authorized by the Presiding Justice. The decision of whether or not to accept Interlocutory Appeals shall be based upon the finding of fact, conclusions of law and ruling entered by the Tribal Judge upon the Appellant's motion to file Interlocutory appeal.

RULE 3. CLERK OF COURT –The Clerk of Supreme Court of the Rosebud Sioux Tribe shall take an oath of office and shall be bonded. The Clerk shall not practice as an attorney or counselor in any court while he or she continues in office. Nor shall he or she give any legal advice/counseling concerning the merits of the Appeal. The office of the Clerk of Court shall be open during business hours on all days except Saturdays, Sundays and legal holidays, unless otherwise ordered by the Court.

The Clerk shall keep a docket and shall enter therein each case. Cases shall be assigned consecutive file numbers. The file number of each case shall be noted on the folio of the docket. A numbered case file shall be created for each case with a case activity

sheet appended inside the case folder. All papers filed with the Clerk for each case and all process, orders of judgments shall be entered chronologically on docket and case activity sheet for that case. Entries shall be brief but shall show the date, nature and title for each document entered. The Clerk shall also keep an alphabetical index of cases contained in the docket by Appellant and Appellee names so that the case number can be cross referenced.

The Clerk shall prepare, under the direction of the Court, a calendar of cases pending argument. Preference shall be given to criminal or juvenile court appeals.

Immediately upon the entry of an Order of Judgment by the Supreme Court, the Clerk shall serve Notice of Entry or Order/Judgment by certified mail upon each party to the proceeding with a copy of any opinion respecting the Order of Judgment and shall note the date of mailing on the case activity sheet for that case including a copy of all cover letters in the file. Service on a party represented by an attorney or counselor of record shall be made on the attorney or counselor. Certified mail return receipts shall be stapled to the copy of the document mailed when returned by the postal service.

The Clerk shall have custody of the records and papers of the Court. He or she shall not permit any original record or paper to be taken from his or her custody except as authorized by Order of the Court. Original record transmitted from the lower Court shall be returned to the Court upon disposition of the case appealed. The Clerk shall preserve copies of all briefs and documents filed.

RULE 4. ATTORNEYS AND

COUNSELORS – Any professional Attorney (qualified) or Counselor admitted to practice before the Rosebud Sioux Tribal Court shall be eligible for admission to the bar of the Supreme Court of the Rosebud Sioux Tribe. An applicant shall file with the Clerk of Court of Supreme Court, on a form prescribed by the Clerk, an application for admission containing his or her personal statement showing eligibility for membership along with an application fee of One hundred dollars annually. At the foot of the application the applicant shall take and subscribe to the following oath:

I, _____, do solemnly swear that I will support and defend

the Constitution of the Rosebud Sioux Tribe against all enemies, foreign and domestic, that I have studied and am familiar with the laws of the Rosebud Sioux Tribe, and that I will conduct myself with honor towards those whom I represent and with respect for the Court of the Rosebud Sioux Tribe.

Thereafter, upon written or oral motion of a member of the bar of this Court, or upon the Court's own motion, the Court will act upon the application.

The Supreme Court may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney or counselor who practices before it, for failure to comply with these rules or violation of the above oath for conduct unbecoming a member of the bar of the Court. Disciplinary action may consist of either reprimand, suspension or disbarment.

RULE 5. CONTENTS OF NOTICE OF

APPEAL – A notice of Appeal shall contain the following instructions:

- (1) The name, address, phone number (if applicable) of the party taking the appeal and their attorney or counselor of record (if represented).
- (2) The date and title of the Tribal Court Order or Judgment from which the appeal is taken.
- (3) The names, addresses, and phone numbers (if known) of all other parties to the Tribal Court action and their attorneys or counselors of record.
- (4) An itemization of all assignments of error or legal or factual issues desired to be considered in the appeal. A brief statement of issues being appealed.
- (5) A certificate of Service indicating of the Notice of Appeal upon all opposing parties and the date and manner of such service.

RULE 6. DESIGNATION OF RECORD –

The party taking the appeal shall file with the Clerk of Court of this Court a Designation of Record indicating all pleadings and papers filed with the Tribal Court which will constitute the record of appeal. Such Designation of Record shall be filed with the Notice of Appeal with a Certificate of Service indicating service upon all opposing parties and the date and manner of such service. Such Designation of Record shall include the date, time and portion of any Tribal Court hearing which the Appellant believes must be transcribed for purpose of the appeal.

The Appellee shall have fifteen (15) days after service of the Designation of Record upon him to file an Appellee's Statement of Issues and Designation of Record indicating any additional issues, record documents or transcripts which the Appellee would like included in the appeal.

Copies of the Designation of Appeal and Appellee's Statement of Issues and Designation of Record shall be served upon the Clerk of Court of the Tribal Court who shall within the time allowed, transmit only those portions of the record indicated by the parties. The Tribal Clerk of Court shall include a table of contents indicating the names and dates of all documents included chronologically.

RULE 7. CONTENTS AND FORM OF

BRIEFS – All briefs shall be served and filed accordance with the applicable provisions of the Law and Order Code of the Rosebud Sioux Tribe, governing action. The brief of the Appellant shall contain:

- (1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes or other authorities cited, with reference to the pages of the brief where they are cited;
- (2) A statement of issues presented for review;
- (3) A statement of the case, indicating the nature of the case, the course of proceedings in Tribal Court, and its disposition in Tribal Court;
- (4) An itemization of all assignments of error or legal or factual issues desired to be considered in the appeal;
- (5) An argument, which shall contain the contentions of the Appellant with respect to the issues presented, the reasons therefore, with citations to the authorities, statutes and parts of the record relied upon;
- (6) A short conclusion stating the precise relief sought; and
- (7) A request for oral argument, if argument is desired, after the conclusion stating the reasons why argument is needed and why the Court should not decide the matter based on briefs and records. Or, the Court may on its own motion, grant oral argument. The decision to grant oral argument shall be discretionary with the Chief Justice.

The brief of the Appellee shall conform to the requirements outlined above for Appellant's brief.

The Appellant shall be entitled to file a reply brief within fifteen (15) days subsequent to service of Appellee's brief.

All briefs filed with this Court shall be limited to twenty-five (25) pages, exclusive of pages containing the table of contents, tables of citations, and any addendum included as exhibits, unless otherwise ordered by the Court. All briefs shall be submitted on 8 1/2 x 11" paper only and shall be typed and double spaced and shall be attached at the left margin.

Amicus Curiae Briefs, which may be filed with leave of the Court, shall be served and filed after leave is granted. Amicus Curiae shall conform to the requirements of Appellant's brief.

RULE 8. SCHEDULING ORDERS BY THE CLERK OF COURT – Unless otherwise ordered by the Clerk of Court or the Court, the following schedule as it pertains to briefs shall be in effect:

(1) Appellant's brief shall be filed within thirty (30) days after the last Designation of Record is filed with the Clerk of Supreme Court of the Rosebud Sioux tribe. The transcript as designated under Rule 6 has been delivered to the Appellant. Appellant's brief must contain a Certificate of Service indicating the date, place and manner in which service to the other party was made.

(2) Appellee's brief shall be filed with twenty (20) days after receipt of Appellant's brief. Appellee's brief must also contain the Certificate of Service as outlined above.

(3) Appellant's reply brief shall be filed with the Clerk of Court within fifteen (15) days after receipt of the Appellee's brief.

(4) Work days, weekends and holidays shall be counted as days when computing the time requirements of this code. Don't count first day, count last day. In computing any period of time prescribed or allowed by this section, by Order of Court, the day of the act, event or default from which the designed period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Failure of either party to file briefs in a timely manner, as required by this Code shall be sanctioned by the Court subjecting the case to summary dismissal, unless the failure to file is specifically excused by the Appellate panel.

RULE 9. DISCRETION TO ENTER

ORDERS – Upon consultation with the Chief Justice, the Clerk of this Court shall have the discretion to enter Orders on behalf of this Court in procedural matters, including but not limited to:

(a) Transmittal of records of the Tribal Court Clerk to the Supreme Court.

(b) Preparation of transcripts. Copies of transcripts shall be set at \$1.50 per page and shall be available upon written request and prepayment of transcript fees by either party. Indigents who have been allowed to proceed In Forma Pauperis shall not be charged costs of copies.

(c) Briefing schedules.

(d) Scheduling of oral arguments and other hearings.

(e) Extensions of brief schedules.

RULE 10. ORAL ARGUMENTS – In all cases where oral argument is granted, Appellant and Appellee shall be limited to thirty (30) minutes each to present their case, unless otherwise ordered by the Court. The Appellant is entitled to open and conclude argument by reserving ten (10) minutes to their allocable time for closing.

Arguments shall be limited to those issues to be addressed on appeal and neither party shall be permitted to attempt to try the case de novo. Nor shall witnesses be allowed to testify unless permission is granted by the Court.

Any request to waive oral argument must be filed in writing with the Presiding Judge or Clerk a minimum of seven (7) days prior to scheduling arguments. Failure to provide such notice shall subject the moving party to sanctions, (including dismissal of the action).

RULE 11. MOTIONS – All motions to the Court of Appeals shall be considered only if accompanied by memoranda in support of the motion. Oral argument on any motion shall not be allowed unless requested and granted by the Court. The opposing party shall be permitted the opportunity to respond to any motion made to the Court. An original and three copies of all motions shall be submitted on 8 1/2 x 11" paper, and shall state with particularity the grounds on which

it is based, and shall set forth the order or relief sought. Any party may file a response in opposition to a motion within seven (7) days after service for procedural orders may be acted upon at any time by the Court without awaiting a response thereto.

A motion for Stay filed with the Supreme Court shall not be considered unless the moving party certifies that Motion for Stay was denied by the Tribal Court, except motions authorized by the Law and Order Code of the Rosebud Sioux Tribe. All Motions for Stay shall include attached thereto a copy of the Tribal Court Order, Decision, Judgment, Decree or Opinion denying the movant's request to stay. Motions for Stay may be presented to and considered by any Justice of the Appellate panel. Orders denying or granting the stay shall be included in the record.

RULE 12. SUMMARY DISPOSITION – The parties may at any time, file a Motion for Summary Disposition, i.e., Summary Affirmance or Summary Reversal. Such a motion shall have attached thereto any relevant pleadings filed in the Tribal Court together with a written memorandum in support thereof. The Appellee must file a Motion to Dismiss for lack of jurisdiction within fifteen (15) days after the Notice of Appeal is filed unless leave to file such motion is otherwise granted by the Court. Such Motion shall conform to Rule 11.

RULE 13. EXPEDITED PROCEDURE – The Court for good cause shown on the motion of any party, or on its own motion, may advance any case to be heard and may accelerate the briefing schedule so as to ensure that a minimum, opening briefs will be filed prior to the date scheduled for oral argument.

The Appellate panel shall also be empowered to waive the requirements of filing briefs, if the interests of justice will be served.

RULE 14. EX PARTE COMMUNICATION – There shall be no ex parte communication between any Justice of the Appellate Court and any attorney or counselor of record, or other interested party, in regards to any case on appeal. Upon being contacted by any attorney, counseling, or interested party regarding such case, the Justice shall promptly inform the party of this rule and direct any questions or comments to the Clerk of Courts, and such communication shall not be considered an ex parte

communication. Conferences may be scheduled with the Justices or a Justice, when appropriate, through the Clerk of Court after all attorneys, counselors or interested parties have been given notice and opportunity to appear.

In addition to the above, there shall be no ex parte communication between any member of the Rosebud Sioux Tribal Council and any Justice of the Appellate Court, in an attempt to influence, by any means, the outcome or decision of the Supreme Court of the Rosebud Sioux Tribe.

Any Justice of the Supreme Court of the Rosebud Sioux Tribe shall have Powers of Contempt for a violation of this rule.

RULE 15. RULES OF THE COURT – In deciding upon any procedural issues that raise defects either in the Tribal Court for the Supreme Court process, not covered by the provisions of this Code or the Law and Order Code of the Rosebud Sioux Tribe, the Supreme Court of the Rosebud Sioux Tribe shall follow and apply the Federal Rules of Criminal or Civil Procedures, as applicable.

Upon convening, the Supreme Court of the Rosebud Sioux Tribe shall meet to determine the costs for filing the appeal, waiver of filing fee, bond in lieu of filing, assessment of costs, etc.

The Supreme Court of the Rosebud Sioux Tribe shall convene two (2) times per year at the Rosebud Sioux Tribal Court, at times to be determined by the Chief Justice of the Supreme Court. In the event that the Chief Appellate Justice should determine that emergency or additional meetings of the Supreme Court are necessary, he shall forthwith notify the remaining Justices of the time and place for such meetings.

RULE 16. DUTIES OF THE CHIEF JUSTICE – The duties of the Chief Justice shall include, but not limited to: granting oral arguments upon request; designating alternate Justices to hear cases in instances of conflict or unavailability of permanent Justices; assigning cases to individual Justices for opinion writing; scheduling and order of presentation of cases; and, scheduling meetings or additional sessions of the Supreme Court of the Rosebud Sioux Tribe.

The Chief Justice shall be nominated and elected by the other members of the

Appellate Court. The term of office for the Chief Justice shall be one year.

RULE 17. ALL JUSTICES SHALL HAVE FULL POWERS OF CONTEMPT – All Justices of the Supreme Court of the Rosebud Sioux Tribe shall have full powers of contempt when acting in the capacity of Appellate Justice of this Court.

RULE 18. RULES MAY BE AMENDED OR MODIFIED – These rules may be amended or modified by the Justices of the Appellate Court, but shall not be in effect or binding until ratified by four (4) of the six (6) Justices.