

NO. 06-3093

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*In The United States Court Of Appeals  
For The Eighth Circuit*

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Plains Commerce Bank,

Plaintiff-Appellant,

v.

Long Family Land and Cattle Company, Inc. and  
Ronnie and Lila Long,

Defendants-Appellees.

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On Appeal from the United States District Court  
for the District of South Dakota  
District Court File No. 05-3002

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***APPELLEES LONG FAMILY LAND AND CATTLE COMPANY, INC. AND  
RONNIE AND LILA LONG'S SEPARATE APPENDIX***

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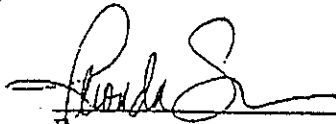
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SPECIAL INTERROGATORY ONE TO JURY

Did the Defendant Bank breach the December 5, 1996 loan agreement (Plaintiff's Exhibit 6) between the Long Family Land and Cattle Co. Inc and the Bank of Hoven?

YES 7 (Number of jurors voting yes)

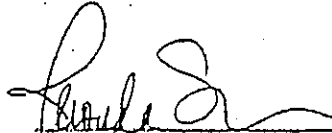
NO 0 (Number of jurors voting no)

  
\_\_\_\_\_  
Foreperson

SPECIAL INTERROGATORY TWO TO JURY

If you found in Interrogatory one that the Defendant Bank breached the loan agreement to the Plaintiffs, did that breach prevent the Plaintiffs Long Family Land and Cattle and Ronnie and Lila Long from performing under the lease with an option to purchase (Exhibit 7)?

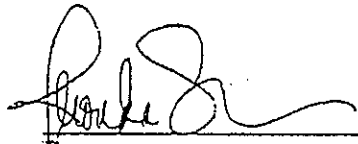
YES 7  
NO 0

  
\_\_\_\_\_  
Foreperson

SPECIAL INTERROGATORY THREE TO JURY

Did the Defendant Bank ~~attempt~~ use self-help remedies in an attempt to remove the Plaintiffs from the land that was subject to the lease with an option to purchase (Exhibit 7)?

YES 0  
NO 1


  
\_\_\_\_\_  
Foreperson

SPECIAL INTERROGATORY FOUR TO JURY

Did the Defendant Bank intentionally discriminate against the Plaintiffs Ronnie and Lila Long based solely upon their status as Indians or tribal members in the lease with option to purchase. (Exhibit 7)?

YES 7

NO 0

  
\_\_\_\_\_  
Foreperson




SPECIAL INTERROGATORY FIVE TO JURY

Did the Defendant Bank act in bad faith when it attempted to gain the increased guarantee from the Bureau of Indian Affairs as referenced in the loan agreement dated December 5, 1996? (Exhibit 6)

YES 7

NO 0

  
Foreperson

SPECIAL INTERROGATORY SIX TO JURY

If you answered no to Numbers 1,3,4, and 5 you should stop here and not award damages.

If you answered yes to Number 1, 3,4, or 5 what amount of damages should be awarded to the Plaintiffs?


\$ 750,000.<sup>00</sup>

AGREE 7

DISAGREE 0

Should interest be added to the Judgment?

YES 7  
NO 0

  
\_\_\_\_\_  
Foreperson



BANK OF HOVEN

April 26, 1996

Ronnie Long  
Box 272  
Timber Lake, S.D. 57656

Dear Ronnie,

This is an update to my letter written on April 17, 1996. I had previously talked to you about the bank foreclosing on the land base and the house in Timber Lake. The house would be sold with the sale proceeds applied to your BIA guaranteed debt, and the land base would be deeded to the bank and sold back to you on a contract.

There appears to be some difficulties in dealing with this situation in that manner. After talking to our legal counsel, David Von Wald, the only way the bank could sell this property back to you would be for you to secure financing through another financial institution or go through a government agency guaranteed loan such as FHA, BIA or SBA through our bank. This is because of possible jurisdictional problems if the bank ever had to foreclose on this land when it is contracted or leased to an Indian owned entity on the reservation.

Please call me at the bank if you have any questions on the above matter. We will try to proceed as soon as possible to secure financing through one of the above federal agencies or you can try to secure financing through another financial institution, as these appear to be the only ways we could sell the land base back to you. Thank You!

Sincerely,

*Charles Simon*

Charles Simon, VP  
Bank of Hoven  
P.O.Box 7  
Hoven, S.D. 57450

Attachment 2



L.App. 00007

Bank of Hoven



BANK OF HOVEN

January 16, 1997

Dennis Huber  
ND/SD Indian Business Development Center  
Bismarck, N.D. 58504

Dear Dennis,

The Bank of Hoven has received a deed to property previously owned by Kenneth Long, Timber Lake, S.D. worth \$468,000.00 on farm and range real estate and \$10,000.00 on a house in Timber Lake. This value of \$478,000.00 has been used to pay off prior real estate debt, taxes, attorney fees, title fees and bank debt owed by Long Family Land and Cattle Co., Inc., Timber Lake, S.D.

Longs are also in the process of receiving a rescheduling of the remaining present BIA guaranteed debt of \$343,874.42 over a 20 year term. They will also be receiving a BIA guaranteed operating loan for \$70,000.00 for annual operating expenses. Upon receiving the BIA guarantee shortly, they will also receive a direct bank loan for \$53,500.00 to be used to refinance bank debt and purchase feeder cattle.

These credits and loans would not have been possible without your expertise and assistance. We appreciate your efforts in helping the bank secure this loan package and reduction of bank debt for the Longs. Please call me at the bank if you have any questions on the above information. Thank You!

Sincerely,

Charles Simon VP  
Bank of Hoven  
P.O.Box 7  
Hoven, S.D. 57450

Attachment 4



L.App. 00008



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Aberdeen Area Office

115 Fourth Avenue S.E.

Aberdeen, South Dakota, 57401

REPLY REFER TO:

Community Services/Economic Development  
MC-305

FEB 14 1997

James Nielsen  
Assistant Vice President  
Bank of Hoven  
P.O. Box 7  
Hoven, South Dakota 57625

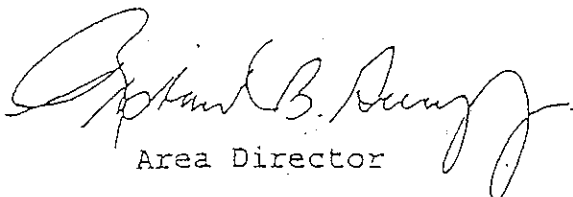
Dear Mr. Nielsen:

This letter is to recap your conversation with Loan Specialist, Stacey Johnston on February 3, 1997 and respond to your December 12, 1997 submittal on the Long Family Land Cattle Co. Inc..

Your December 12, 1997<sup>6</sup> request involved a restructure of the term guaranty, a new \$85,000 line of credit, a LIFO on \$41,000 to purchase livestock, and an increase of the guaranty percentage. Loan Specialist, Stacey Johnston informed you that this kind of request would have to be viewed as a modification, which requires a more complete application. Modification criteria is clearly outlined in your Loan Guaranty Agreement and 25 CFR 103.21. This reference material is the basis for our programs and should be adhered to when requesting, modifying, servicing and collecting guaranteed loans.

We understand the emergency situation caused by the severe winter conditions. Therefore, we concur with a loan for emergency expenses. These expenses should be documented and readily available to the Agency Superintendent. This decision is made with the intention of preserving collateral. Refer to 25 CFR 103.22 for further direction and documentation.

We will not act on your December 12, 1997<sup>6</sup> requests until we receive a complete application. Under separate cover, we are again sending a copy of 25 CFR 103.

  
Area Director

Attachment 5



L.App. 00009

12/01/98

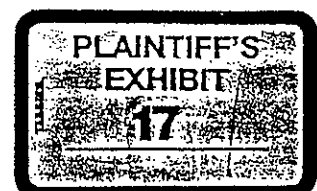
Steve Hageman, CEO  
Bank of Hoven  
P. O. Box 7  
Hoven SD 57450

Dear Steve:

This letter is a request for a 60 day extension on the land that Ronnie long has deeded to Bank of Hoven. I have 4 possibilities of refinancing and paying the debt off against the land that the bank holds the deed on. This will allow me the necessary time to try and secure financing for this endeavor. I have a bank interested and will be looking at the land in the next day or two. I also have been working on investors and have a individual out of Nebraska that is interested and this will allow me time to work out the necessary details to make this a reality.

Ronnie Long

Attachment 6



L.App. 00010

TELECOPIER COVER LETTER

TO John Lemka or Harley Henderson DATE 12-2-98

FROM: Charles Simon, BOH # OF PAGES 1

RECEIVED  
DEC 4 1998  
C.R.S.T. TRIBAL  
COURT

RE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COMMENTS/ACTION This letter will notify you and Ronnie Long that there will be no extension of time from the December 5, 1998 deadline for option to purchase. Possession of this property by lessee Long Family Land and Cattle Company, Inc., will terminate on December 5, 1998.

*Charles Simon*

REPLY REQUESTED: YES ( ) WHEN: \_\_\_\_\_  
NO ( )

The information contained in this facsimile message is legally privileged or entity above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the address below via the U.S. Postal Service.

D. ROY, 7 - Howard, South Dakota 57450 - Phone (605) 248-3314

THANK YOU!



Attachment 7

L.App. 00011



57-18  
3-22-99

Bank of Haven, A Corporation, PO Box 7

grantor of Porter

County, State of South Dakota for and in consideration of

Forty Nine Thousand Six Hundred Dollars and no/100 Dollars,

convey and quit claim to Ralph H. Pesicka Jr. and Norma J. Pesicka the

grantees, of Timber Lake, SD P. O. all interest in the following described real

estate in the County of Dewey in the State of South Dakota:

East Half of Section One, Township Fifteen, Range Twenty Four  
(E½ 1-15-24) Dewey County, South Dakota.

Transfer Fee  
\$50.00 pl.

Attachment 8



Dated this 17th day of March 1999

Bank of Haven, A Corporation

[Signature] VP

66494  
 STATE OF SOUTH DAKOTA }  
 County of Dewey } ss  
 OFFICE of REGISTER of DEEDS  
 Filed for record the 22nd day of  
March 1999, at  
9 o'clock and 30 Minutes A.M.  
 and recorded in Book 37 of Deeds  
 on page 189  
Jean Aldred Tebbe  
 Registrar of Deeds.  
 By \_\_\_\_\_ Deputy.  
 FW 1000

Prepared by Nancy Rausch  
Bank of Haven  
Box 7, Haven, SD 57450  
Phone 605-948-2216

STATE OF SOUTH DAKOTA. }  
County of Potter } ss

On this the 17th day of March 1999 before  
me Nancy K. Rausch, A Notary Public this undersigned  
officer, personally appeared Brent Hainert

known to me or satisfactorily proven to be the person whose  
name \_\_\_\_\_ subscribed to the within instrument and acknowl-  
edged that \_\_\_\_\_ executed the same for the purposes therein  
contained.

In witness whereof I hereunto set my hand and official seal.

Nancy K. Rausch

A Notary Public

My Commission Expires APRIL 10, 2001





TRIBAL ENROLLMENT  
PO BOX 325  
EAGLE BUTTE, SOUTH DAKOTA 57625  
605-964-6612/6613  
FAX: 605-964-6614

December 9, 2002

TO WHOM IT MAY CONCERN:

This is in regards to Edward and Mary Jo (Kraft) Macijewski and Ralph and Norma (Long) Pesicka. They are not enroll with the Cheyenne River Sioux Tribe.

Should you have any question please feel free to call.

Thanking you for your time and consideration of this letter.

Sincerely,

CHEYENNE RIVER SIOUX TRIBE

A handwritten signature in cursive script that reads "Charlene Anderson".

Charlene Anderson  
Enrollment Research Specialist

Attachment 12



L.App. 00013

CHEYENNE RIVER SIOUX TRIBAL COURT  
CHEYENNE RIVER SIOUX TRIBE  
CHEYENNE RIVER INDIAN RESERVATION

IN CIVIL COURT

\*\*\*\*\*

LONG FAMILY LAND AND CATTLE  
COMPANY, INC.-RONNIE AND LILA LONG,

Plaintiffs,

vs.

JUDGMENT

EDWARD AND MARY MACIEJEWSKI  
and RALPH H. AND NORMA J. PSICKA,  
and THE BANK OF HOVEN,

R-120-99

Defendants.

\*\*\*\*\*

The above-captioned matter came before this Court for trial on December 6, and 11, 2002. Plaintiffs' causes of action for breach of contract, bad faith, discrimination, and violation of self help remedies were submitted to the jury, and Defendant's counterclaim for unlawful entry and detainer was heard by the Court at the same time as the trial evidence was presented to the jury. The jury returned its verdict in the form of interrogatories: (1) for the Plaintiffs on breach of contract, bad faith, and discrimination; (2) for the Defendants on violation of self help remedies; (3) for the Plaintiffs advising the Court that Defendant Bank's breach of contract prevented the Plaintiffs from performing the lease with an option to purchase; (4) for the Plaintiffs a verdict in the amount of \$750,000 against the Defendant, Bank of Hoven, nka Plains Commerce Bank; and (5) directing the Court to award prejudgment interest to the Plaintiffs on the verdict amount of \$750,000. Defendant Bank moved this Court post trial for judgment notwithstanding the verdict, or in the alternative for a new trial, and this Court denied the Defendant Bank's motions by an Order dated January 3, 2003, which was recorded January 7,

Attachment 14

L.App. 00014

2003. Now, therefore, based on the decisions of the jury and upon good cause having been shown, it is

ORDERED, ADJUDGED, AND DECREED that judgment be entered in favor of the Plaintiffs, Long Family Land and Cattle Company, Inc. and Ronnie and Lila Long, and against Defendant, Bank of Hoven, nka Plains Commerce Bank, in the sum of \$750,000; and it is further

ORDERED, ADJUDGED, AND DECREED that judgment be entered in favor of the Plaintiffs, Long Family Land and Cattle Company, Inc. and Ronnie and Lila Long, against Defendant, Bank of Hoven, nka Plains Commerce Bank, for prejudgment interest in the sum of

~~\$267,210~~, and it is further

\$123,131.81

BJ Jones

ORDERED, ADJUDGED, AND DECREED that judgment

Plaintiffs, Long Family Land and Cattle Company, Inc. and Ronnie

Defendant, Bank of Hoven, nka Plains Commerce Bank, for costs at

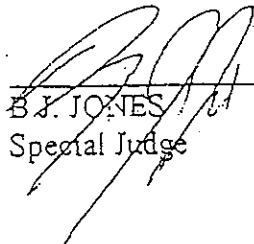
of \$2,850.65.

Plaintiff's  
allegation  
is  
rejected,  
Defendant's is  
accepted.

So ordered this 18th day of ~~January~~, 2003.

Feb.

BY ORDER OF THE C

  
B.J. JONES  
Special Judge

ATTEST: Dale Charging Cloud  
Dale Charging Cloud, Clerk

Dale Charging Cloud Clerk of the  
Cheyenne River Sioux Tribal Court, do  
hereby certify that the foregoing is a true,  
correct and complete copy of the instrument  
herewith set out as appears on file  
and of record in my said office.

Date this 25th day of Feb 2003

Dale Charging Cloud  
Clerk, Cheyenne River Sioux Tribal Court

By ACC

the advantage of the applicant in the operation of an economic enterprise.

(d) No loans will be guaranteed or insured for the financing of a relending program.

#### 103.4 Management and technical assistance.

(a) Prior to and concurrent with the issuance of a guaranty certificate for a loan to finance an economic enterprise, the Commissioner will assure under Article V of the Indian Financing Act that competent management and technical assistance are available for preparation of the application and/or administration of funds granted consistent with the nature of the enterprise proposed to be or that is in fact funded. Assistance may be provided by available Bureau of Indian Affairs staff, other government agencies including states, a tribe, or other sources which the Commissioner considers competent to provide the needed assistance. Contracting for management and technical assistance may be used only when adequate assistance is not available without additional cost. Contracts for providing borrowers with competent management and technical assistance shall be in accordance with applicable Federal Procurement Regulations, and the Buy Indian Act of April 30, 1908, chapter 431, section 25 (36 Stat. 861).

(b) When submitting to the Commissioner a request for guaranty or insurance of a loan to finance an economic enterprise, a lender will include, as part of the request, or separately, its evaluation of the applicant's need for management and technical assistance, specific areas of need, and whether the lender will provide such assistance to the applicant. A lender making loans under the provisions of a general insurance agreement may determine each applicant's need for management and technical assistance when financing of an economic enterprise is involved. If a lender determines that an applicant will need management and technical assistance, it will notify the Commissioner in writing indicating the specific areas of need, and whether it will provide such assistance.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34975, Aug. 23, 1989]

#### § 103.5 Preservation of historical and archeological data.

Lenders making guaranteed or insured loans to finance activities involving excavations, road construction, and land development or involving the disturbance of land on known or reported historical or archeological sites will take appropriate action to assure compliance with applicable provisions of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469), as amended by the Act of May 24, 1974 (Pub. L. 93-291, 88 Stat. 174), relating to the preservation of historical and archeological data. Lenders receiving applications for loans which include funds for purposes which may involve compliance with the provisions of the Act of June 27, 1960, as amended, may request assistance and guidance from the Commissioner in assuring compliance with the requirements of the Act.

#### § 103.6 Environmental and flood disaster protection.

Applications for loans to purchase or construct buildings or other improvements which require compliance with any provisions of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 975), and provisions of the National Environmental Policy Act of 1969 (Pub. L. 91-190; 42 U.S.C. 4321) and Executive Order 11514 will not be approved until the lender has received assurance of compliance with any applicable provisions of these Acts. Lenders receiving applications which include funds for purposes which may involve compliance with the provisions of one or both of these Acts may request assistance and guidance from the Commissioner in assuring compliance.

#### § 103.7 Eligible organizations.

Tribes and Indian organizations having a form of organization satisfactory to the Commissioner recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs, and indicating reasonable assurance of repayment, are eligible for guaranteed or insured loans. If Indian ownership of an economic enterprise falls below 51 percent, the borrower shall be in default and the guaranty shall cease and the interest subsidy

**§ 103.12 Insured loans.**

(a) Eligible lenders, as prescribed in § 103.9, and tribes making loans from their own funds to other tribes or Indian organizations, may make insured loans, except those excluded in § 103.10 pursuant to the provisions of an insurance agreement entered into between the Commissioner and the lender. Insurance agreements may be entered into by the Commissioner and eligible lenders which will authorize the lenders to make insured loans to eligible applicants without the Commissioner's approval of each individual loan. Separate insurance agreements will be issued by the Commissioner for those loans which require the issuance of individual insurance agreements.

(b) Lenders will make loans only when there is a reasonable prospect of repayment. The insurance on any loan made under the provisions of an insurance agreement will not be effective until receipt of the insurance premium by the Commissioner.

**§ 103.13 Amount of guaranty.**

(a) The percentage of a loan that is guaranteed shall be the minimum necessary to obtain financing for an applicant, but may not exceed 90 percent of the unpaid principal and interest. The liability under the guaranty shall increase or decrease pro rata with an increase or decrease in the unpaid portion of the principal amount of the obligation. No loan to an individual Indian, partnership, or other non-tribal organization may be guaranteed for an unpaid principal amount in excess of \$500,000 or such maximum amount provided in any amendments to the Indian Financing Act of 1974.

(b) Applications of minors as determined by applicable state and federal law, may not be approved unless the natural parents or legal guardians, with reputations as being responsible individuals, co-sign the promissory note(s) and securing document(s). Not more than one guaranteed loan may be in effect with the same borrower at any time without the prior approval of the Commissioner.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34975, Aug. 23, 1989; 57 FR 46473, Oct. 8, 1992]

**§ 103.14 Amount of insurance.**

(a) The insurance provisions will apply to loans made by a particular lender under the terms of an insurance agreement entered into between the Commissioner and the lender. The insurance procedure will be used primarily for loans to finance small economic enterprises and secondarily for housing. A lender may be reimbursed for a loss on a particular loan in an amount not to exceed 90 percent of the loss on principal and unpaid accrued interest on the loan. However, the total reimbursement to a lender for losses may not exceed 15 percent of the aggregate of insured loans made by it.

(b) Loans for any amount made by tribes from their own funds to other tribes or Indian organizations will not be insured without the prior approval of the Commissioner. No loan to finance an economic enterprise with a principal amount in excess of \$50,000 shall be insured without the prior approval of the Commissioner. No loan to an individual Indian may be insured which would cause the total unpaid principal amount to exceed \$100,000. Any loan to an individual Indian having a principal amount in excess of \$50,000 will require prior approval of the Commissioner. No loan to an individual with a principal amount of less than \$2,500 or for a term of less than one year may be insured. No loan to a tribe or Indian organization for a principal amount of less than \$10,000 for a term of less than one year may be insured. An exception may be made to these limitations on amounts and time, if approved by the Commissioner.

(c) Applications of minors may not be approved unless the natural parents or legal guardians, with reputations as being responsible individuals, co-sign the promissory note(s) and securing documents. Not more than one insured loan may be in effect with the same borrower at any time without the prior approval of the Commissioner.

**§ 103.15 Applications for loan guaranties or insurance.**

(a) Applicants for loans will deal directly with lenders for both guaranteed and insured loans. The form of loan applications will be determined by the

(8) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

(9) Any other interference with the process, proceeding, or dignity of the Court or a Judge of the Court while in the performance of his official duties.

Sec. 1-3-2 Civil Contempt.

(1) A civil contempt is prosecuted to preserve, protect, enforce or restore the duly adjudicated rights of a party to a civil action against one under legal obligation to do or refrain from doing something as a result of a judicial decree or order.

(2) Relief in a civil contempt proceeding may be coercive or compensatory in nature as to the complaining party and may include a fine payable to the Court or to the complaining party or imprisonment of the party in contempt to secure compliance, or both.

Sec. 1-3-3 Criminal Contempt.

(1) Conduct which is directed at, or is detrimental to, the dignity and authority of the Court is a criminal contempt.

(2) Criminal contempt is an offense which may be punishable, at the discretion of the Court based on the nature of the conduct in question, with a fine of up to \$500.00 and/or up to six (6) months in jail.

Sec. 1-3-4 Contempt Procedure.

(1) A direct contempt is one committed in the presence of the Court or so near thereto as to be disruptive of the Court proceedings, and such may be adjudged and punished summarily.

(2) All other contempts shall be determined at a hearing at which the person accused of contempt is given notice and an opportunity to be heard.

CHAPTER IV. JURISDICTION

Sec. 1-4-1 Jurisdiction - Tribal Policy.

It is hereby declared as a matter of Tribal policy, that the public interest and the interests of the Cheyenne River Sioux Tribe demand that the Tribe provide itself, its members, and other persons living within the territorial jurisdiction of the Tribe as set forth in Section 4 of the Act of March 2, 1889, (48 Stat. 888) with an effective means of redress in both civil and criminal cases against

members and non-Tribal members who through either their residence, presence, business dealings, other actions or failures to act, or other significant minimum contacts with this Reservation and/or its residents commit criminal offenses against the Tribe or incur civil obligations to persons or entities entitled to the Tribes protection. This action is deemed necessary as a result of the confusion and conflicts caused by the increased contact and interaction between the Tribe, its members, and other residents of the Reservation and other persons and entities over which the Tribe has not previously elected to exercise jurisdiction. The jurisdictional provisions of this Code, to insure maximum protection for the Tribe, its members and other residents of the Reservation, should be applied equally to all persons, members and non-members alike.

Sec. 1-4-2 Territorial Jurisdiction.

(1) The Jurisdiction of the Courts of the Cheyenne River Sioux Tribe shall extend to the territory within the exterior boundaries as set forth in Section 4 of the Act of March 2, 1889 (48 Stat. 888) and to such other lands without such boundaries as may hereafter be added to the Reservation or held in Trust for the Tribe under any law of the United States or otherwise.

Sec. 1-4-3 Personal Jurisdiction.

(1) As used in these jurisdictional provisions, the word "person" shall include any individual, firm, company, association, or corporation.

(2) Subject to any contrary provisions, exceptions or limitations contained in either federal law, the Tribal Constitution, or as expressly stated elsewhere in this Code, the Courts of the Cheyenne River Sioux Tribe shall have civil and criminal jurisdiction over the following persons:

A. Any person residing, located or present within the Reservation for:

1. Any civil cause of action; or
2. Any charge of criminal offense prohibited by this Code or other ordinance of the Tribe when the offense is alleged to have occurred within the Reservation.

B. Any person who transacts, conducts, or performs any business or activity within the Reservation, either in person or by an agent or representative, for any civil cause of action or charge of criminal offense for any act expressly

1-4-3

prohibited by this Code or other ordinance of the Tribe arising from such business or activity.

C. Any person who owns, uses or possesses any property within the Reservation, for any civil cause of action or charge of criminal offense prohibited by this Code or other ordinance of the Tribe arising from such ownership, use or possession.

D. Any person who commits a tortious act or engages in tortious conduct within the Reservation, either in person or by an agent or representative, for any civil cause of action arising from such act or conduct.

E. Any person who commits a criminal offense prohibited by this Code or other ordinance of the Tribe, by his own conduct or the conduct of another for which he is legally accountable, if:

1. The conduct occurs either wholly or partly within the Reservation; or
2. The conduct which occurs outside the Reservation constitutes an attempt, solicitation, or conspiracy to commit an offense within the Reservation, and an act in furtherance of the attempt or conspiracy occurs within the Reservation; or
3. The conduct which occurs within the Reservation constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense prohibited by this Code or ordinances of the Tribe and such other jurisdiction.

(3) None of the foregoing bases of jurisdiction is exclusive, and jurisdiction over a person may be established upon any one or more of them as applicable.

#### Sec. 1-4-4 Jurisdiction Over Property.

Subject to any contrary provisions, exceptions, or limitations contained in either federal laws and regulations, the Tribal Constitution, or as expressly stated elsewhere in this Code, the Courts of the Cheyenne River Sioux Tribe shall have jurisdiction over any real or personal property located on the Reservation to determine the ownership thereof or rights therein or to determine the application of such property to the satisfaction of a claim for which the owner of the property may be liable.



**Sec. 1-4-5 General Subject Matter Jurisdiction - Limitations.**

Subject to any contrary provisions, exceptions, or limitations contained in federal law, or the Tribal Constitution, the Courts of the Cheyenne River Sioux Tribe shall have jurisdiction over all civil causes of action, and over all offenses prohibited by this Code except the Courts of the Cheyenne River Sioux Tribe shall not assume jurisdiction over any civil or criminal matter which does not involve either the Tribe, its officers, agents, employees, property or enterprises, or a member of the Tribe, or a member of a federally recognized tribe, if some other forum exists for the handling of the matter and if the matter is not one in which the rights of the Tribe or its members may be directly or indirectly affected.

**Sec. 1-4-6 Concurrent Jurisdiction.**

The jurisdiction involved by this Code over any person, cause of action, or subject shall be concurrent with any valid jurisdiction over the same of the courts of the United States, any state, or any political subdivision thereof; provided, however, this Code does not recognize, grant, or cede jurisdiction to any political or governmental entity in which jurisdiction does not otherwise exist in law.

**Sec. 1-4-7 Exclusive Original Jurisdiction.**

(1) The Courts of the Cheyenne River Sioux Tribe shall have exclusive original jurisdiction in all matters in which the Cheyenne River Sioux Tribe or its officers or employees are parties in their official capacities.

(2) Nothing contained in the preceding paragraph or elsewhere in this Code shall be construed as a waiver of the sovereign immunity of the Tribe or its officers or enterprises unless specifically denominated as such.

**CHAPTER V. COUNSELORS AND PROFESSIONAL ATTORNEYS**

**Sec. 1-5-1 Lay Counsel.**

(1) Any person appearing as a party in any judicial proceeding before a Court of the Cheyenne River Sioux Tribe shall have the right to be represented by a lay counselor (not a professional attorney) and to have such person assist in the preparation and presentation of his case.

(2) The Cheyenne River Sioux Tribe shall have no obligation to provide or pay for such lay counselors and such

Attachment to Form 5-4755  
 Request for loan Guaranty - Long Family Land & Cattle Co.  
 Modification #1  
 (f). Other Conditions

1. The loans will be structured as follows:

Operating Line of Credit	\$50,000	84% guaranty	3 yrs
Total Note #1	50,000		
Cattle Purchases	85,000	84% guaranty	20 yrs
Existing Guaranty	293,930	84% guaranty	20 yrs
Total Note #2	428,930		
Real Estate	211,750	-0-	guaranty 20 yrs
Total Note #3	211,750		

2. The loan subsidy will be limited to 2.5%, fixed, and will be provided for the first three years. At the end of the third year, the need for the subsidy will be reviewed on an annual basis for the following two years.
3. Security for this guaranty will consist of a first lien on all receivables, livestock, feed, grain, crops, machinery, equipment now owned or hereafter acquired and a second lien on all real estate and vehicles.
4. No additional real estate loans will be advanced and the note will not contain a balloon clause.
5. A UCC/EFS will be executed in favor of the Bank of Hoven to perfect the security interest in the BIA guaranteed notes.
6. Proceeds from the sale of livestock or other products will first be applied to the BIA line of credit and term loan payment, followed by the scheduled payment on the unguaranteed notes. Any excess proceeds will be made available to offset operating funds for subsequent year. Such funds will directly reduce borrowers line of credit borrowing limit.

FEB 26 1992

Date

(SOD) DONALD E. WHITENER

Assistant Area Director  
 Indian Programs

Accepted by Bank of Hoven, Hoven, South Dakota

3-10-92

Date

*Donald E. Whitener*  
 Signature

*Asst. Cashier*

Title

to secure the same by mortgage, pledge or other lien;  
(e) to enter into any kind of activity, to have all of the powers of the South Dakota Business Corporation Act, and to perform and carry out contracts of any kind necessary for or in connection with, or incidental to the accomplishment of the purposes of the Corporation.

ARTICLE IV

The corporation shall have the authority to issue ONE HUNDRED THOUSAND (100,000) shares of capital stock of said corporation with par value of One Dollar (\$1.00) per share, for a total authorized capital stock of ONE HUNDRED THOUSAND DOLLARS. (\$100,000.)

ARTICLE V

The corporation will not commence business until consideration of the value of at least ONE THOUSAND (1,000.00) has been received from the issuance of shares.

ARTICLE VI

The Address of its registered office is Post Office Box 272, Timber Lake, South Dakota 57656, and the name of its registered agent at such address is Ronnie Long.

ARTICLE VII

The number of directors constituting the Board of Directors are four and the name and address of the directors is as follows:

- Ronnie Long                      Box 272, Timber Lake, South Dakota 57656
- Weta Long                        Box 272, Timber Lake, South Dakota 57656
- Kenneth Long                    Box 186, Timber Lake, South Dakota 57656
- Maxine Long                     Box 186, Timber Lake, South Dakota 57656

STATE OF SOUTH DAKOTA - BUREAU OF ADMINISTRATION - OFFICE OF RECORDS MANAGEMENT - OFFICIAL - ORIGINAL OF AFFIDAVIT  
THIS CERTIFICATE IS THE PROPERTY OF THE BUREAU OF ADMINISTRATION. IT IS TO BE RETURNED TO THE BUREAU OF ADMINISTRATION WITHIN 10 BUSINESS DAYS OF THE DATE OF ISSUANCE. IF IT IS NOT RETURNED WITHIN THE SPECIFIED TIME PERIOD, IT WILL BE REPRODUCED AND MADE AVAILABLE TO THE PUBLIC.  
DATE MICROFILMED: 2/28/87  
ROLL NO. 276  
DATE MICROFILMED: 2/28/87  
OFFICIAL COPY





STATE OF SOUTH DAKOTA)  
SS.  
COUNTY OF DEWEY)

Ronnie Long being first duly sworn on oath deposes and states that he is the person described in and who signed the foregoing Articles of Incorporation as an incorporator herein; that he has read such articles and knows the contents thereof; that the incorporator intends in good faith to form a corporation for the purposes of the promotion of a lawful business as set forth in said articles; and not for the purpose of enabling any corporation or corporations to avoid provisions of 1967 SDCI 37-1 relating to unlawful trust and combinations and laws amendatory therein.

*Ronnie Long*  
\_\_\_\_\_  
Ronnie Long

Subscribed and sworn to before me this 23rd day of March, 1987.

*Andrew Aberle*  
\_\_\_\_\_  
Andrew Aberle, Notary Public,  
South Dakota

My Commission Expires: 10/15/90.

(SEAL)

ORIGINAL RECORD AND COPY OF ORIGINAL PHOTOGRAPHIC PROCESS USED FOR MOUNTING IN PHOTOLOGICAL FILE  
FBI - DEPT. OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
REPRODUCTION OF ORIGINAL RECORDS  
DATE MICROFILMED  
OPERATOR

Receipt No. 057002  
File No. DB-36-237

Filed at Request of  
Ronnie Long  
Box 277  
Timber Lake, SD 57656

ARTICLES OF INCORPORATION OF  
LONG FAMILY LAND AND CATTLE COMPANY, INC.  
100,000 shares, \$1 par value  
\$100,000.00

State of South Dakota ss.  
Office of Secretary of State

Filed in the office of the Secretary of State on  
the 24th day of March 19 87

*Joyce Hazelton*  
Secretary of State

By \_\_\_\_\_  
Deputy

Fee Received \$60

SOS:CRP 491 4/81

REPRODUCTION PROHIBITED  
ROLL NO. 660  
DATE MICROFILMED  
CAMERA OPERATOR

# Last Will and Testament

I, Kenneth L. Long, of Timber Lake, Dewey County, South Dakota, being of sound mind and disposing memory, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all other Wills and Codicils by me heretofore made.

I.

I hereby direct that all expenses of my last illness and funeral be paid out of my estate.

II.

I hereby devise unto Paulette Rowley my house and lots and all improvements thereon together with all personal property contents in said improvements and my car.

III.

I hereby devise unto my children, Myrna Fiddler, Ronnie Long, Robert Long and Terry Long all the rest and residue of my estate equally in undivided interests.

IV.

I hereby nominate and appoint Paulette Rowley executrix (personal representative) of my estate and I further request that she not be compelled to furnish bond or security.

IN WITNESS WHEREOF, I hereunto set my hand this 29<sup>th</sup> day of June, 1995.

Kenneth L. Long  
Kenneth L. Long

THIS INSTRUMENT was, on the date last above written, signed, published and declared by the said Kenneth L. Long to be his Last Will and Testament in our presence, who at his request have subscribed our names thereto as witnesses in his presence and in the presence of each other.

Linda DeLoren residing at Timber Lake SD 57654

Rita DeLoren residing at Timber Lake SD 57654

Attachment 21

L.App. 00028







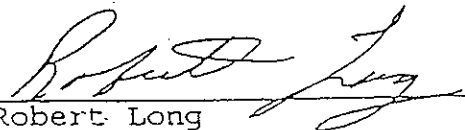
ACKNOWLEDGMENT RELINQUISHING AND TRANSFERRING INTEREST

This agreement is made and entered into on this 26 day of December 1995, by and between Ronnie Long, P.O. Box 272, Timber Lake, South Dakota 57656, Robert Long, P.O. Box 55, Timber Lake, South Dakota 57656, Myrna Fiddler, 2645 Cottontail Drive, Apartment 306, Sturgis, South Dakota 57785, and Terry Long, 330 Philadelphia, Apartment 507, Rapid City, South Dakota 57701.

This agreement is precipitated by the death of our father, Kenneth Long, who died on July 17, 1995. The names and addresses of his children are set forth in the immediately preceding paragraph. At the time of his death our father owned shares in a South Dakota corporation called Long Family Land And Cattle Company, Inc., constituting 49% of the total ownership of the corporation as well as approximately 2,225 acres of land in Dewey County, South Dakota. The 2,225 acres of land had prior to his death been pledged as collateral to the Bank of Hoven for operating and other expenses and debts of the corporation. The principal and interest owing to the Bank of Hoven at the present time is approximately \$681,665.

It is the desire of the persons whose signatures are listed below, namely Robert Long, Myrna Fiddler, and Terry Long, all of whom are brothers and sister, to transfer each of their interests in the estate of Kenneth Long, including any shares in the Long Family Land And Cattle Company, Inc. and the real estate referred to above, to their brother, Ronnie Long.

By this agreement, each of the persons whose signatures are listed below, for One Dollar and other consideration, hereby do transfer each of their interests in the estate of Kenneth Long, including shares in the Long Family Land And Cattle Company, Inc., and the real estate owned by Kenneth Long to their brother, Ronnie Long.

  
Robert Long

\_\_\_\_\_  
Myrna Fiddler

\_\_\_\_\_  
Terry Long

L.App. 00030



STATE OF SOUTH DAKOTA )

DEWEY )  
COUNTY OF PENNINGTON )

S.S.

On this, the 26<sup>th</sup> day of December 1995, before me, the undersigned officer, personally appeared Robert Long, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes herein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Douglas A. Berger  
Notary Public

(SEAL)

My Commission Expires: 2-6-1996

AGREEMENT RELINQUISHING AND TRANSFERRING INTEREST

This agreement is made and entered into on this 4 day of December 1995, by and between Ronnie Long, P.O. Box 272, Timber Lake, South Dakota 57656, Robert Long, P.O. Box 55, Timber Lake, South Dakota 57656, Myrna Fiddler, 2645 Cottontail Drive, Apartment 306, Sturgis, South Dakota 57785, and Terry Long, 330 Philadelphia, Apartment 507, Rapid City, South Dakota 57701.

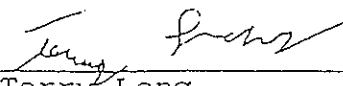
This agreement is precipitated by the death of our father, Kenneth Long, who died on July 17, 1995. The names and addresses of his children are set forth in the immediately preceding paragraph. At the time of his death our father owned shares in a South Dakota corporation called Long Family Land And Cattle Company, Inc., constituting 49% of the total ownership of the corporation as well as approximately 2,225 acres of land in Dewey County, South Dakota. The 2,225 acres of land had prior to his death been pledged as collateral to the Bank of Hoven for operating and other expenses and debts of the corporation. The principal and interest owing to the Bank of Hoven at the present time is approximately \$681,665.

It is the desire of the persons whose signatures are listed below, namely Robert Long, Myrna Fiddler, and Terry Long, all of whom are brothers and sister, to transfer each of their interests in the estate of Kenneth Long, including any shares in the Long Family Land And Cattle Company, Inc. and the real estate referred to above, to their brother, Ronnie Long.

By this agreement, each of the persons whose signatures are listed below, for One Dollar and other consideration, hereby do transfer each of their interests in the estate of Kenneth Long, including shares in the Long Family Land And Cattle Company, Inc., and the real estate owned by Kenneth Long to their brother, Ronnie Long.

\_\_\_\_\_  
Robert Long

\_\_\_\_\_  
Myrna Fiddler

  
\_\_\_\_\_  
Terry Long

STATE OF SOUTH DAKOTA )  
 ) S.S.  
COUNTY OF PENNINGTON )

On this, the \_\_\_\_\_ day of December 1995, before me, the undersigned officer, personally appeared Robert Long, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes herein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH DAKOTA )  
 ) S.S.  
COUNTY OF PENNINGTON )

On this, the \_\_\_\_\_ day of December 1995, , before me, the undersigned officer, personally appeared Myrna Fiddler, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes herein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires: \_\_\_\_\_

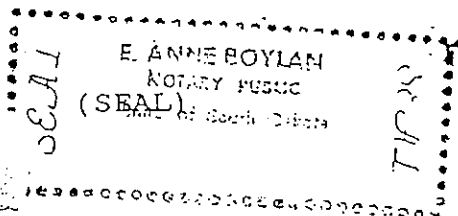
STATE OF SOUTH DAKOTA )  
 ) S.S.  
COUNTY OF PENNINGTON )

On this, the 4 day of December 1995, before me, the undersigned officer, personally appeared Terry Long, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes herein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

E. Anne Boylan  
Notary Public

My Commission Expires: ~~\_\_\_\_\_~~ MY COMMISSION EXPIRES 2/19/99



AGREEMENT RELINQUISHING AND TRANSFERRING INTEREST

This agreement is made and entered into on this 18 day of December 1995, by and between Ronnie Long, P.O. Box 272, Timber Lake, South Dakota 57656, Robert Long, P.O. Box 55, Timber Lake, South Dakota 57656, Myrna Fiddler, 2645 Cottontail Drive, Apartment 306, Sturgis, South Dakota 57785, and Terry Long, 330 Philadelphia, Apartment 507, Rapid City, South Dakota 57701.

This agreement is precipitated by the death of our father, Kenneth Long, who died on July 17, 1995. The names and addresses of his children are set forth in the immediately preceding paragraph. At the time of his death our father owned shares in a South Dakota corporation called Long Family Land And Cattle Company, Inc., constituting 49% of the total ownership of the corporation as well as approximately 2,225 acres of land in Dewey County, South Dakota. The 2,225 acres of land had prior to his death been pledged as collateral to the Bank of Hoven for operating and other expenses and debts of the corporation. The principal and interest owing to the Bank of Hoven at the present time is approximately \$681,665.

It is the desire of the persons whose signatures are listed below, namely Robert Long, Myrna Fiddler, and Terry Long, all of whom are brothers and sister, to transfer each of their interests in the estate of Kenneth Long, including any shares in the Long Family Land And Cattle Company, Inc. and the real estate referred to above, to their brother, Ronnie Long.

By this agreement, each of the persons whose signatures are listed below, for One Dollar and other consideration, hereby do transfer each of their interests in the estate of Kenneth Long, including shares in the Long Family Land And Cattle Company, Inc., and the real estate owned by Kenneth Long to their brother, Ronnie Long.

\_\_\_\_\_  
Robert Long

Myrna Fiddler  
Myrna Fiddler

\_\_\_\_\_  
Terry Long

STATE OF SOUTH DAKOTA )  
 ) S.S.  
COUNTY OF PENNINGTON )

On this, the \_\_\_\_\_ day of December 1995, before me, the undersigned officer, personally appeared Robert Long, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes herein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH DAKOTA )  
 ) S.S.  
COUNTY OF Meade PENNINGTON )

On this, the 18 day of December 1995, before me, the undersigned officer, personally appeared Myrna Fiddler, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes herein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Aisa G. Hunt  
Notary Public

(SEAL)

My Commission Expires: May 3, 1997

STATE OF SOUTH DAKOTA )  
 ) S.S.  
COUNTY OF PENNINGTON )

On this, the \_\_\_\_\_ day of December 1995, before me, the undersigned officer, personally appeared Terry Long, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes herein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires: \_\_\_\_\_

(April 1975)

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

ASSIGNMENT OF INTEREST

Bank of Hoven 46-0108210  
Lender I. D. No.  
PO Box 7  
Address  
Hoven, SD 57450  
Zip Code

Long Family Land & Cattle Co. Inc.  
Borrower  
Box 272  
Address  
Timber Lake, SD 57656  
Zip Code

G922D1A0103 5-15-92  
Guaranty Certificate Number and Date

Insurance Agreement Number and Date

1. In consideration of \$ 378,340.23 received from the United States Government, representing 84 % of the net loss claimed by the Lender as provided in the Guaranty Certificate or Loan Insurance Agreement executed by the Commissioner of Indian Affairs, in the amount of \$ 428,930.00, the undersigned hereby grants, conveys, transfers, and sets over unto the United States Government all its right, title and interest, now and in the future to come, in the following promissory note and collateral securing documents.
2. Promissory note executed by Long Family Land & Cattle Co. Inc., dated 4-1-97, in the amount of \$ 420,515.40, bearing interest at the rate of 9.50 % per annum, having a balance this date of \$ 420,515.40 unpaid principal and \$ 29,889.64 unpaid accrued interest & Late Charges.
3. The following documents are hereby assigned to the United States Government:
  - a) Promissory note dated 4-1-97, in the amount of \$ 420,515.40
  - b) S/A dated 4-1-97 & 9-28-88
  - c) S/A dated 1-8-97
  - d) Personal Guarantees dated 4-1-97
  - e) UCC/EFS dated 10-18-88
  - f) Promissory Notes dated 4-1-97



12-30-97  
Date

Bank of Hoven  
Lender  
By James E. Nelson  
Title AVP

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

ASSIGNMENT OF INTEREST

Bank of Hoven 46-010821  
Lender I. D. No.  
PO Box 7  
Address  
Hoven, SD 57450  
Zip Code

Long Family Land & Cattle Co. Inc.  
Borrower  
Box 272  
Address  
Timber Lake, SD 57656  
Zip Code

G924C1A0113 2-22-93  
Guaranty Certificate Number and Date

Insurance Agreement Number and Date

1. In consideration of \$ 14,628.32 received from the United States Government, representing 80 % of the net loss claimed by the Lender as provided in the Guaranty Certificate or Loan Insurance Agreement executed by the Commissioner of Indian Affairs, in the amount of \$ 60,000.00, the undersigned hereby grants, conveys, transfers, and sets over unto the United States Government all its right, title and interest, now and in the future to come, in the following promissory note and collateral securing documents.
2. Promissory note executed by Long Family Land & Cattle Co. Inc., dated 4-1-97, in the amount of \$ 17,604.73, bearing interest at the rate of 9.50 % per annum, having a balance this date of \$ 17,604.73 unpaid principal and \$ 680.68 unpaid accrued interest. & Late Charges
3. The following documents are hereby assigned to the United States Government:
  - a) Promissory note dated 4-1-97, in the amount of \$ 17,604.73
  - b) S/A dated 4-1-97 & 9-28-88
  - c) S/A dated 1-8-97
  - d) Personal Guarantees dated 4-1-97
  - e) UCC/EFS dated 10-18-88
  - f)

12-30-97  
Date

Bank of Hoven  
Lender  
By James E. Nelson  
Title AVP



UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

Plains Commerce Bank,

CIV 05-3002

Plaintiff,

vs.

Long Family Land and Cattle Company,  
Inc., and Ronnie and Lila Long,

Defendants.

**AFFIDAVIT OF RONNIE AND LILA  
LONG IN SUPPORT OF DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

State of South Dakota:

ss

County of Pennington :

Ronnie and Lila Long, being first duly sworn upon their oaths, state to the best of their knowledge in support of Defendants' Motion for Summary Judgments, as follows:

1. The affiants are named as Defendants in this action.
2. The affiants, Ronnie and Lila Long, are familiar with each of the documents attached to Defendants' Brief in Support of Defendants' Motion for Summary Judgment as described in the Index of Attachments to Defendants' Brief in Support of Defendants' Motion for Summary Judgment.

Attachment 1 is a true and correct copy of the jury verdicts.

Attachment 2 is a true and correct copy of Trial Exhibit 4.

Attachment 3 is a true and correct copy of Trial Exhibit 3.

Attachment 4 is a true and correct copy of Trial Exhibits 6 and 7.

Attachment 5 is a true and correct copy of Trial Exhibit 11.

Attachment 6 is a true and correct copy of Trial Exhibit 17.

Attachment 7 is a true and correct copy of Trial Exhibit 18.

Attachment 8 is a true and correct copy of Trial Exhibit 19.

Attachment 9 is a true and correct copy of Trial Exhibit 20.

Attachment 10 is a true and correct copy of the Notice to Quit to Long Family Land and Cattle Co., Inc. and Ronnie Long from Bank of Hoven dated 5/19/99 and Certificate of Service signed by CRST Tribal Court Chief Judge dated 6/15/99.

Attachment 11 is a true and correct copy of Trial Exhibit 21.

Attachment 12 is a true and correct copy of Trial Exhibit 26.

Attachment 13 is a true and correct copy of the Order entered 1/3/03 by CRST Special Trial Court Judge B. J. Jones.

Attachment 14 is a true and correct copy of the Judgment entered 2/18/03 by CRST Special Trial Court Judge B. J. Jones.

Attachment 15 is a true and correct copy of the Supplemental Judgment entered 2/18/03 by CRST Special Trial Court Judge B. J. Jones.

Attachment 16 is a true and correct copy of the Memorandum Opinion and Order entered 11/22/04 by CRST Court of Appeals Chief Justice Frank Pommersheim and Associate Justices Everett Dupris and Patrick Lee.

Attachment 17 is a true and correct copy of the CFR § 103.7 which requires a corporation to be 51% Indian owned to be eligible for BIA guaranteed bank loans.

Attachment 18 is a true and correct copy of the Chapter IV Sec. 1-4-1 of the CRST Law and Order Code - Jurisdiction.

Attachment 19 is a true and correct copy of the BIA Guaranty of Bank of Hoven loans to Longs which requires first lien on all receivables, livestock, feed, grain, crops, machinery, equipment, and a second lien on all real estate and vehicles.

Attachment 20 is a true and correct copy of Trial Exhibit 1.

Attachment 21 is a true and correct copy of Trial Exhibit 3.

Attachment 22 is a true and correct copy of Trial Exhibit 16.

3. Defendant, Long Family Land and Cattle Company, Inc., is a South Dakota corporation with its principal place of business located in Dewey County, South Dakota, on the Cheyenne River Sioux Indian Reservation (referred to as the Longs' corporation). The Longs' corporation has been and continues to be controlled by Native American tribal members who at all times owned at least 51% of the outstanding stock in the corporation, as provided in Article IX of the Articles of Incorporation of Long Family Land and Cattle Company, Inc. (Attachment 20)

4. The Longs' corporation was required to be controlled by Native Americans who at all times own at least 51% of the outstanding stock in the corporation in order to qualify for the Bureau of Indian Affairs (BIA) guarantees of the loans of the Bank of Hoven to the Longs' corporation as required by 25 C.F.R. § 103.7. (Attachment 17)

5. Ronnie Long is the son of Kenneth and Maxine Long. Ronnie Long's wife is Lila Long. The Longs have lived on the CRST Reservation all of their lives farming and ranching raising crops and livestock.

6. Maxine Long and her son, Ronnie Long, and his wife, Lila Long, are all members of the Cheyenne River Sioux Tribe. Kenneth Long was not a member of the CRST.

7. Kenneth and Maxine Long owned 2,230 acres of deeded agricultural land located within the CRST Indian Reservation. This land had been owned by the Longs for over forty years. When Maxine Long died, her ownership in the land passed to her husband, Kenneth Long.

8. The Long Family Land and Cattle Co., Inc. was formed to obtain BIA guaranteed bank loans for the Longs' family farming and ranching business. The Longs' corporation owned livestock and machinery, grew crops, and pastured its livestock on the land owned by Kenneth and Maxine Long, and pastured livestock on the Indian Range Unit leased by Ronnie Long and his daughter, Bonita Richter, who are both CRST Tribal members.

9. Through his will, Kenneth Long gave his land and his shares in Longs' corporation to his four children. Three of the children transferred their interests to Ronnie Long. Thus, Ronnie Long inherited Kenneth Long's land and his 49% of the Longs' corporation under the will of Kenneth Long. (Tr. Ex. 2 and 3) (Attachment 21) After Kenneth Long's death in July 1995, Ronnie and Lila Long owned 100% of the Longs' corporation.

10. Loans made by the Bank of Hoven to the Longs' corporation were guaranteed by the BIA. The BIA guarantees required a first lien on the cattle, machinery, crops, and feed of the Longs' corporation, and a second lien (mortgage) on the land owned by Kenneth and Maxine Long. (Attachment 19) Kenneth and Maxine Long, and Ronnie and Lila Long were required to sign personal guarantees of the loans of Bank of Hoven to the Longs' corporation. (Attached Guarantees) Kenneth and Maxine Long mortgaged their land to the Bank of Hoven to provide real estate collateral for the loans made by the Bank of Hoven to the Longs' corporation as required by the BIA guarantee. The BIA guarantees are noted in the real estate mortgage on the land. (Attached mortgages) Ronnie Long, Lila Long, Kenneth Long, and Maxine Long all granted bank security interests in and liens on their personal equipment, vehicles, crops, feed, grain, and livestock on the 2,230 acres located within the CRST Reservation.

11. In the spring of 1996, after Kenneth Long's death, an officer of the Bank of Hoven came on the Longs' land on the CRST Reservation and inspected the land, cattle, hay,

and machinery on the land. Bank of Hoven proposed a new loan agreement to Ronnie Long. Discussions concerning the new loan agreement took place with bank officers, Ronnie and Lila Long, and CRST Tribal officers at the CRST Tribal offices on the CRST Reservation. The bank proposed a deed in lieu of foreclosure transferring the Longs' land and house to the bank, and in return the bank would credit \$478,000 against the debt owed by the Longs to the bank, and the bank agreed it would finance the sale of the Longs' land back to the Longs on a contract for deed financed by the bank.

12. Sometime later the bank changed the agreement. The bank sent a letter to Ronnie Long, which was admitted into evidence without objection, wherein the bank told Ronnie Long the bank would not finance the sale of the land back to the Longs on a contract for deed because of possible jurisdictional problems with an Indian owned entity on the Reservation. (Attachment 2)

13. In the revised agreement the bank changed the terms from a contract for deed to a two-year lease with option to purchase. The Longs could buy the land back from the bank by paying the bank \$468,000 in a lump sum at the end of only two years. (Attachment 3)

14. The revised agreement prepared by the bank involved several main points:

- (a) when the 2,230 acres of land and house was deeded to the bank, the bank would credit \$478,000 against debt owed to the bank by Ronnie and Lila Long and the Longs' corporation;
- (b) the Longs would lease the land from the bank for a period of two years, and at the end of the two years they could buy the land back from the bank;
- (c) the bank would make the Longs a new operating loan of \$70,000 to care of their cattle and crops;
- (d) the bank would make the Longs a loan of \$37,500 to purchase 110 calves to be fed and pastured with the Longs' calves to increase their income so they could buy back the land from the bank; and
- (e) the bank would

enter into a lease purchase agreement which would provide that the Longs could buy back the 2,230 acres of land from the bank at the end of two years. (Attachment 3)

15. During the discussions concerning the agreement and the drafting and signing of the written agreement, the bank was represented by its lawyer, but the Longs were not represented by a lawyer.

16. The 2,230 acres of land were transferred to the bank. Ronnie Long was bequeathed 100% of the ownership of the land that was owned by Kenneth Long when he died, under his will and the assignments of the other children. (Attachment 21) When the bank received deed to the land, the credit for the land paid off debts owed to the bank by Longs' corporation and owed by Ronnie and Lila Long individually. (Attachment 3) The agreement was prepared by the bank in two documents entitled: (a) Loan Agreement, and (b) Lease With Option to Purchase. Both documents were signed the same day on December 5, 1996. The two documents are part of the same agreement. (Attachment 3)

17. Ronnie and Lila Long and Long Family Land and Cattle Company, Inc. claimed at trial that the agreement was breached by the bank in several material respects: The bank received a deed to all of Longs' land, received their CRP payments, and received the house proceeds, however, (a) the new operating loan of \$70,000 was never made by the bank; and (b) the new loan for \$35,500 to purchase 110 calves was never made by the bank. The purpose of these new loans was to put the Longs in a stronger financial position so they could purchase back their 2,230 acres of land from bank in two years. The Longs claimed at trial that the bank breached these promises of new loans needed to pay for necessary operating expenses and to purchase additional calves. As a direct result, the Longs were unable to feed or care for their livestock during the severe winter of 1996-1997. The Longs claimed the bank knew that the

Longs did not have operating money to move their hay 20 miles to their cattle on Ronnie Long's Indian range unit that needed the hay. The Longs claimed the bank knew that the cattle did not have feed, and that cattle without feed cannot survive for very long in winter weather. The Longs claimed that because the bank failed to make the \$70,000 operating loan as promised, and did not make an emergency loan to care for the cattle, the Longs lost 230 cows, 277 yearlings, and 8 horses. The livestock that died in the winter of 1996-1997, plus lost calf crops were a substantial loss for the Longs. (Tr. Ex. 23)

18. At trial the Longs claimed that ownership of the 2,230 acres and house valued by the bank at \$478,000 were transferred to the bank, the bank received CRP payments of approximately \$88,000, and received proceeds from the sale of the house of approximately \$25,000, but the bank did not make the loans that the Longs needed. The promised operating loan of \$70,000 would have enabled the Longs to move their hay to their cattle and take care of their cattle during the winter. The Longs claimed at trial that the bank's failure to make the loans as promised caused the Longs to suffer losses of \$1,236,792. (Tr. Ex. 23) At trial the Longs contended the bank got \$566,000 from the Longs through the deed to the land, the Longs' CRP payments, and house proceeds, but the Longs did not get from the bank what the bank promised and what the Longs needed.

19. At trial the Longs claimed that the failure of the bank to make the loan of \$70,000 to pay operating expenses, and the loan of \$37,500 to purchase additional calves, made it impossible for the Longs to exercise the option to buy back their land. The purpose of buying the 110 calves was to increase Longs' income over the next two years so they could afford to buy back their land. The Longs were unable to purchase the additional calves, and they lost the income from these calves. In addition, they were unable to care for and feed the cattle they had,

and as a direct result they suffered substantial losses of cattle. With these losses it was impossible for the Longs to buy back their land. The failure of the bank to perform made it impossible for the Longs to perform and buy back their land from the bank. (Jury Verdict Two) (Attachment 1)

20. The Bank of Hoven owned the 2,230 acres of land located on the CRST Reservation formerly owned by the Longs from 1996 until the bank sold the land to non-tribal members in 1999. The Longs never gave up possession of the 2,230 acres.

21. Kenneth Long had a CRP contract on the land. Under the terms of the Lease With Option to Purchase, the CRP annual payments of approximately \$44,000 a year were assigned to the bank. (Tr. Ex. 7) (Attachment 3) The bank received the CRP payments for two years.

22. On March 17, 1999, the bank sold 320 acres to nonmembers, Ralph and Norma Pesicka. (Tr. Ex. 19) (Attachment 8) On June 25, 1999, the bank sold 1,905 acres to nonmembers, Edward and Mary Jo Maciejewski, on a contract for deed. (Tr. Ex. 21) (Attachment 11) The Maciejewskis took possession of a portion of the land which the bank labeled Parcel One of about 960 acres. The contract for deed provides that the bank is in the process of evicting the Longs from the land, and that the Maciejewskis shall have possession of Parcel Two when the eviction is accomplished. (Tr. Ex. 21) (Attachment 11) The bank sold 320 acres to Pesickas for \$155 per acre, but the bank required Longs to pay \$210 per acre. The bank sold Longs' land to non-member Pesickas for \$55 less per acre, which is \$17,600 less than the bank required Longs to pay for the 320 acres.

The bank also sold 1,905 acres to Maciejewskis, who are not Indians or tribal members, on a contract for deed with favorable terms at 7.75% interest, with ten years to pay in



annual payments of \$23,229. (Tr. Ex. 21,25) (Attachment 11) FSA payments on the land of \$23,000 per year paid the payments for Maciejewskis on the contract for deed. (Tr. Ex. 23a) The bank's terms of sale for Maciejewskis are more favorable than the terms the bank required of Longs. The bank required Longs to pay 9.25% interest to restructure the note (Tr. Ex. 8), and 8.5% on the Lease With Option to Purchase (Tr. Ex. 7), but the bank charged Maciejewskis only 7.75% interest. (Tr. Ex. 21) (Attachment 11) The bank required Longs to pay the full purchase price of \$468,000 in a cash lump sum in two years, but Maciejewskis got ten years to pay for the land in payments of \$23,329 a year. (Tr. Exs. 7, 21) (Attachments 3, 11) A contract for deed would have made it substantially easier for Longs to buy back their land, where the annual FSA payments and annual crop production would pay the contract for deed payments over ten years.

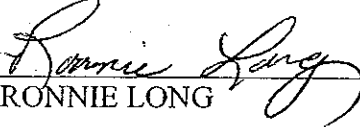
23. Judge Jones determined that the above facts are prima facie evidence that the bank denied Longs the privilege of favorable bank financing on a contract for deed solely because of their status as Indians and tribal members, and thus submitted Longs' discrimination claim to the jury. (Attachment 13) The jury determined that the bank intentionally discriminated against Longs solely on their status as Indians or tribal members in connection with the Lease With Option to Purchase. (Jury Verdict Four) (Attachment 1) Judge Jones correctly denied the bank's motion to dismiss for lack of jurisdiction, and the CRST Court of Appeals affirmed.

24. In June of 1999, the bank sent a letter to the CRST Court requesting that the CRST Court serve a Notice to Quit on Ronnie Long. The CRST Court accommodated the bank. The request was approved ex parte by Chief Judge Bluespruce on June 15, 1999, and was served on the Longs by the CRST Court on June 16, 1999. (Tr. Ex. 20) (Attachment 10) The bank voluntarily came into the CRST Court requesting the assistance of the Court without reserving any objection or reservation to the jurisdiction of the CRST Court over the bank as party to such

eviction action. (Attachment 10) Ronnie and Lila Long and their children did not move off the land and did not remove their cattle, machinery, crops, or hay off of the 2,230 acres of land.

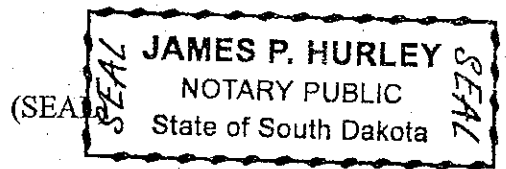
25. At the trial the jury determined that the bank breached the Loan Agreement (Jury Interrogatory One), that the bank intentionally discriminated against the Longs based solely on their status as Indians or tribal members in the Lease With Option to Purchase (Jury Verdict Four), and that the bank acted in bad faith when it attempted to gain the increased guarantee from the BIA as required by the Loan Agreement (Jury Verdict Five). The jury awarded the Longs damages of \$750,000, and determined that prejudgment interest should be added to the judgment. (Jury Verdict Six) (Attachment 1)


Dated this 8 day of December, 2005.

  
\_\_\_\_\_  
RONNIE LONG

  
\_\_\_\_\_  
LILA LONG

Subscribed and sworn to before me this 8 day of December, 2005.



  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: October 6, 2006  
My Commission Expires: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, James P. Hurley, do hereby certify that on the 8<sup>th</sup> day of December, 2005, I caused copies of the foregoing Affidavit of Ronnie and Lila Long in Support of Defendants' Motion for Summary Judgment to be electronically served upon:

Steven J. Gunn  
Civil Justice Clinic  
Washington University School of Law  
Anheuser-Busch Hall  
One Brookings Drive, Campus Box 1120  
St. Louis, MO 63130

and on the 9<sup>th</sup> day of December, 2005, I caused a copy thereof to be served upon

David A. Von Wald  
Attorney at Law  
P.O. Box 468  
Hoven, SD 57450

Roger K. Heidenreich  
Sonnenschein, Nath & Rosenthal LLP  
One Metropolitan Square, Suite 3000  
St. Louis, MO 63102

Robert V. Atmore  
Lindquist and Vennum PLLP  
80 S. 8<sup>th</sup> St.  
4300 IDS Center  
Minneapolis, MN 55402

Thomas J. Van Norman  
Cheyenne River Sioux Tribe  
Legal Department  
P.O. Box 590  
Eagle Butte, SD 57625

by depositing copies of the same in envelopes securely sealed and with first class postage fully prepaid thereon in the United States Mail at Rapid City, South Dakota, and addressed to the above-named persons at the foregoing addresses, the same being the last-known addresses of those persons.

Dated this 8<sup>th</sup> day of December, 2005.

  
\_\_\_\_\_  
JAMES P. HURLEY

SECURITY AGREEMENT - GENERAL FORM

September 28, 1988 (Date)

1. PARTIES - PROPERTY: The undersigned Debtor (jointly and severally) for value received hereby grants to the undersigned Secured Party or Lender, a security interest in the following described property:

All equipment, all machinery, all farm vehicles, all crops, all feed and grain; all livestock, all supplies used or produced in farming operations, all contract rights and accounts, all warehouse receipts or other documents of title affecting such goods, and all rights of debtor or payments in kind and ASCS farm program payments under the terms set between the debtor and the U.S. Dept. of Ag., whether now owned or hereafter acquired.

all products of, additions to and replacements thereof and all accessories, occasions, parts and equipment now or hereafter affixed thereto or used in connection therewith, and the proceeds of all property secured hereby as set out below.

2. IF FARM PRODUCTS, CROPS OR FIXTURES ARE COLLATERAL: If this instrument includes livestock, then as additional collateral, Debtor assigns, transfers and conveys to Secured Party a security interest in and to all increase and issue thereof and additions, replacements and substitutions therefor, and all feed, both hay and grain, owned by Debtor, all water privileges, and all equipment, used in feeding and handling said livestock and also all of Debtor's right, title and interest in all leases covering lands for pasture and grazing purposes. If crops, this agreement includes annual and perennial crops and products thereof growing or planted on the following described property; either before or after harvest and all additions and substitutions therefor; or if the property covered hereby is livestock, crops or fixtures; it is and will be located on the following described property in \_\_\_\_\_

County, South Dakota:

3. IF INVENTORY IS COLLATERAL: If this instrument includes inventory then Debtor hereby grants to Lender a security interest in all of his inventory now owned or hereafter acquired and all replacements, substitutions, and additions thereto, and a security interest in all of Debtor's merchandise, raw materials, work in process and finished products.

A. Upon execution of this agreement and upon request of Secured Party at any time while the indebtedness hereby secured remains unpaid, Debtor will furnish to Secured Party a signed statement, in form satisfactory to Secured Party, showing the current status of the inventory herein secured to include for any given period designated by Secured Party the opening inventory, inventory acquired, inventory sold and delivered, inventory sold and held for future delivery, inventory returned or repossessed, inventory used or consumed in Debtor's business, and closing inventory.

B. If at any given time the value of the collateral does not equal or exceed the total amount of indebtedness of Debtor to Secured Party, Debtor shall at once pay the excess of indebtedness to Secured Party or transfer additional collateral to Secured Party to meet Secured Party's satisfaction.

4. OBLIGATIONS SECURED - OPEN END: This security interest is given to secure the performance of the covenants and agreements herein set forth and for the payment of an indebtedness in the face amount of \$ \_\_\_\_\_ as evidenced by a promissory note(s) or other instrument(s) executed by Debtor payable to the order of said Secured Party as therein provided, and with interest as therein set forth and for the payment of all extensions and renewals thereof and all changes in form of said indebtedness which may be from time to time effected by agreement between Secured Party and Debtor; and for all advances made by Secured Party for taxes, levies, premiums of insurance and repairs to or maintenance of said collateral or to protect or preserve the collateral against the claims of others and all money heretofore and hereafter advanced by Secured Party at his option to or for the account of Debtor and all other present or future, direct or contingent liabilities of Debtor to Secured Party of any nature whatsoever and however arising or acquired; and for interest on any money expended by the Secured Party for taxes, levies and repairs to or maintenance of said collateral. All sums payable hereunder shall be paid, at the place stated in the promissory note or instrument, if any, and if none then at the location of the Secured Party as stated below, and if none, then at the place of residence of the Secured Party.

5. This instrument shall be void upon payment of all obligations secured hereby.

6. INFORMATIONAL (Check one or more).

- The address of the Debtor, below, is his residence. Such address is the Debtors chief place of business.
Such address is where the Collateral is kept. Debtor is a non-resident of South Dakota.

7. USE OF PROPERTY: Debtor warrants, covenants and agrees that: The property is or is to be used by Debtor primarily (check 1, 2 or 3):

- 1. In business: Equipment, Inventory
2. For personal, family or household purposes: Farm Products, Farm Equipment
3. In farming operations: Farm Products, Farm Equipment

8. PURPOSE: The security interest herein is given on this collateral for a purchase money loan; otherwise.

9. THIS AGREEMENT SPECIFICALLY INCLUDES ALL OF THE ADDITIONAL PROVISIONS SET FORTH ON THE REVERSE SIDE HEREOF, THE SAME BEING INCORPORATED HEREIN BY REFERENCE. DEBTOR ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT FULLY COMPLETED.

BANK OF HOVEN HOVEN, SOUTH DAKOTA 57450

Kenneth Long (Debtor)

Maxine Long (Debtor)

Ronnie Long (Debtor)

Lila Long (Debtor)

Box 186 Timber Lake, SD (City)

Dewey South Dakota (County) (State)

By Don Bohr, VP (Secured Party)

\*Consider the desirability of joinder of spouse.

GUARANTY

HOVEN

(City)

SD

(State)

APRIL 1, 1997

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce BANK OF HOVEN, P.O. BOX 7, HOVEN, SD 57450 (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of LONG FAMILY LAND & CATTLE CO. INC.

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

- A. If this [X] is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: LOANS TO LONG FAMILY LAND AND CATTLE CO. INC. and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").
B. If this [ ] is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s):

The term "Indebtedness" as used in this guaranty shall not include any obligations entered into between Borrower and Lender after the date hereof (including any extensions, renewals or replacements of such obligations) for which Borrower meets the Lender's standard of creditworthiness based on Borrower's own assets and income without the addition of a guaranty, or for which a guaranty is required but Borrower chooses someone other than the joint Undersigned to guaranty the obligation.

The Undersigned further acknowledges and agrees with Lender that:

- 1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.
2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof.
3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured.
4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ UNLIMITED (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto.
5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is [ ] unsecured; [ ] secured by a mortgage or security agreement dated \_\_\_\_\_; [ ] secured by \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

X Ronnie Long
RONNIE LONG

X Lila Long
LILA LONG

L.App. 00050

BH 0623

# GUARANTY

In consideration of financial accommodations given or to be given or continued to Maxine Long herein called "Borrower" by Bank of Hoven, A SD Corporation herein called "Bank", the undersigned irrevocably and unconditionally guarantee to the Bank, payment when due, whether by acceleration or otherwise, of any and all Liabilities of the Borrower as defined below to the Bank, together with all interest thereon; all attorneys' fees, costs, and expenses of collection incurred by the Bank in enforcing any of such Liabilities of the Borrower; and all attorneys' fees, costs, and expenses incurred by the Bank in foreclosing, preserving, protecting, retaking, holding, and selling of any collateral as a result of the enforcement or foreclosure of any security interest or mortgage given by Borrower to Bank.

The term "Liabilities of the Borrower" shall mean and include:

- A.  if checked, all indebtedness, liabilities or obligations, direct or contingent, secured or unsecured, joint, several, or joint and several, of the Borrower to Bank, created or incurred for any purpose whatsoever, now existing or hereafter arising, due or to become due to, or held or to be held, by the Bank for its own account or as agent for another or others, whether created or incurred directly or acquired by assignment or otherwise. (THERE IS NOT A LIMIT TO THE AMOUNTS COVERED BY THIS GUARANTY).
- B.  if checked, the debts, liabilities, or obligations, direct or contingent, secured or unsecured, joint, several, or joint or several of the Borrower to Bank evidenced by the following: subject to terms of collateral note

and any extensions, renewals, modifications or replacements thereof. (THIS GUARANTY IS LIMITED TO \$ 322,967.26).

The undersigned waive notice of the following: acceptance of this Guaranty and notice of the incurring of any of the Liabilities of the Borrower; presentment, demand for payment, protest, notice of protest, notice of dishonor or nonpayment of any instrument evidencing any of the Liabilities of the Borrower; notice of any alleged default, or notice of right to cure any default with respect to any of the Liabilities of the Borrower to the Bank; and notice of any lawsuit filed by or on behalf of the Bank against Borrower, or the taking of any other action by the Bank against, and any other notice to, any party liable for any of the Liabilities of Borrower (including the undersigned).

The Bank may at any time and from time to time (whether or not after revocation or termination of this Guaranty) without the consent of, or notice to, the undersigned; without incurring responsibility to the undersigned; and without impairing or releasing the obligations of the undersigned hereunder, do one or more of the following:

(1) renew, alter, or change in any manner the terms of any instrument evidencing any of the Liabilities of the Borrower, including any change in a) the rate of interest, and b) place, terms, or time of payment of any debt, liability, or obligation incurred directly or indirectly in respect thereof. This Guaranty shall apply to the Liabilities of the Borrower to the Bank as so changed, extended, renewed, or altered;

(2) sell, exchange, substitute, release, surrender, realize upon, or otherwise deal with in any manner and in any order any property by whomsoever at any time pledged, mortgaged, or otherwise securing any of the Liabilities of the Borrower to the Bank hereby guaranteed or any debts, liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and/or exercise any right of setoff it may have.

(3) exercise or refrain from exercising any rights against the Borrower or others (including the undersigned) or otherwise act or refrain from acting;

(4) settle or compromise any of the Liabilities of the Borrower to the Bank hereby guaranteed or any security therefor, or any debt, liability, or obligation (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part of the Liabilities of the Borrower to the payment of any debt, liability, or obligation (whether due or not) of the Borrower to creditors of the Borrower other than the Bank and the undersigned; and

(5) apply any sums by whomsoever paid or howsoever realized to any Liabilities of the Borrower (regardless of the origin thereof) to the Bank, regardless of the nature of any of the Liabilities of the Borrower to the Bank which remain unpaid and regardless of the Borrowers' application or use of the consideration, if any, received in connection with any of the Liabilities of the Borrower to the Bank.

No invalidity, irregularity, or unenforceability of all or any part of the Liabilities of the Borrower to the Bank hereby guaranteed, or in any of the documents securing all or any part of the Liabilities of the Borrower, shall affect, impair, or be a defense to this Guaranty, and this Guaranty is a primary obligation of the undersigned.

The undersigned agree that the obligations and guaranty of the undersigned and the rights of the Bank in any collateral by whomsoever at any time pledged, conveyed, or mortgaged to secure, or howsoever securing any of the liabilities of the Borrower, shall not be released, discharged, or in any way affected, nor shall the undersigned have any rights against the Bank, by reason of the fact that (i) a valid or perfected lien, security interest, or encumbrance in any of the collateral may not be conveyed to, obtained by, or created in favor of Bank; (ii) any of the collateral may be subject to equities or defenses or claims in favor of others or may be invalid or defective in any way; (iii) the value of any of the collateral, or the financial condition of the Borrower, of any obligor, of any guarantor, or any of the collateral may not have been correctly estimated or may have changed or may hereafter change; or (iv) there is any deterioration, waste, or loss by fire, theft, or otherwise of any of the collateral.

The undersigned agree that the Bank shall not be required to resort first for payment to the Borrower, or other persons or corporations, their properties or estates, whether by lawsuit or otherwise, before enforcing this Guaranty. The undersigned further agree that Bank shall not be required to have any collateral or security applied to Liabilities of the Borrower (including other guaranties) before enforcing this Guaranty. The undersigned further agree that the Bank shall have a general lien on and security interest in and a right of setoff against all property of the undersigned including without limitation all deposits, cash, securities, notes, cash equivalents, or certificates of deposit now or hereafter in the Bank's possession or on deposit with the Bank, whether held in a general or special account, or for safekeeping or otherwise, and such lien, security interest, and right of setoff may be enforced or exercised without demand upon or notice to the undersigned.

If box A is checked above, this Guaranty is a continuing one and all of the Liabilities of the Borrower to the Bank to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. As to each of the undersigned, this Guaranty shall continue until written notice of revocation signed by such undersigned, or until written notice of the death of such undersigned shall in each case have been actually received by the Bank, notwithstanding revocation by, or the death of, or complete or partial release for any cause of, any one or more of the remainder of the undersigned, or of the Borrower, or of anyone liable or obligated in any manner for any of the Liabilities of the Borrower hereby guaranteed or for the debts, liabilities, or obligations (including those hereunder) incurred directly or indirectly in respect thereof or hereof. No revocation or termination hereof shall affect in any manner rights arising under this Guaranty with respect to (a) Liabilities of the Borrower to the Bank which shall have been created, contracted, assumed, or incurred prior to receipt by the Bank of written notice of such revocation or termination or (b) Liabilities of the Borrower to the Bank which shall have been created, contracted, assumed, or incurred after receipt of such written notice pursuant to any contract entered into by the Bank prior to receipt of such notice; and the sole effect of revocation or termination hereof shall be to exclude from this Guaranty Liabilities of the Borrower to the Bank thereafter arising which are unconnected with Liabilities of the Borrower to the Bank arising or transactions entered into before the date of revocation or termination.

If claim is ever made upon the Bank for payment or recovery of any amount or amounts repaid by the Bank in payment or on account of any of the Liabilities of the Borrower to the Bank and the Bank repays all or part of said amount by reason of (a) any judgment, decree, or order of any court or administrative body having jurisdiction over the Bank or any of its property, or (b) any settlement or compromise of any such claim effected by the Bank with any such claimant (including the Borrower), then and in such event the undersigned agree that any such judgment, decree, order, settlement, or compromise shall be binding upon the undersigned, notwithstanding any revocation hereof or the cancellation of any note or other instrument evidencing any of the Liabilities of the Borrower to the Bank, and the undersigned shall be and remain liable to the Bank hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by the Bank.

Any acknowledgment or new promise, whether by payment of principal or interest or otherwise and whether by the Borrower or others (including the undersigned), with respect to any of the Liabilities of the Borrower to the Bank shall, if the statute of limitations in favor of the undersigned against the Bank shall have commenced to run, toll the running of such statute of limitations and, if the period of such statute of limitations shall have expired, prevent the operation of such statute of limitations.

No delay on the part of the Bank in exercising any of its options, powers, or rights, or partial or single exercise thereof, shall constitute a waiver thereof. No waiver of any of its rights hereunder, and no modification or amendment of this Guaranty, shall be deemed to be made by the Bank unless the same shall be in writing, duly signed on behalf of the Bank, and each such waiver, if any, shall apply only with respect to the specific instance involved, and shall in no way impair the rights of the Bank or the obligations of the undersigned to the Bank in any other respect at any other time.

The undersigned waive all rights of subrogation to Bank's rights against the Borrower until all of the Liabilities of the Borrower to the Bank guaranteed hereunder shall have been fully paid and discharged.

This Guaranty and the rights and obligations of the Bank and of the undersigned hereunder shall be governed and construed in accordance with the laws of the State of South Dakota; and this Guaranty is binding upon the undersigned, his, her, their, or its executors, administrators, successors, or assigns, and shall inure to the benefit of the Bank, its successors, or assigns.

The undersigned, if more than one, shall be jointly and severally liable hereunder and the term "undersigned" wherever used herein shall mean the undersigned or any one or more of them. Anyone signing this Guaranty shall be bound hereby, whether or not anyone else signs this Guaranty at any time. The term "Bank" includes any agent of the Bank acting for it.

If any of the provisions of this Guaranty shall contravene or be held invalid under the laws of the applicable jurisdiction, this Guaranty shall be construed as if not containing those provisions and the rights and obligations of the parties shall be construed and enforced accordingly.

In addition to the other provisions contained herein, this Guaranty is secured by \_\_\_\_\_

Dated: September 28, 19 88

Maxine Long  
Maxine Long

Box 186, Timber Lake, SD 57656  
(Address)

(Address)

INDIVIDUAL ACKNOWLEDGEMENT

State of South Dakota )  
County of Potter ) ss.

On this 28 day of September, 19 88, before me, a Notary Public, personally appeared Maxine Long, to me known to be the identical person(s) who executed the foregoing instrument, and it is executed as a voluntary act and deed.

Nancy K. Rausch  
Notary Public

My Commission expires: NANCY K. RAUSCH  
Notary Public, POTTER COUNTY, S. DAK.  
My Commission Expires APRIL 10, 1993

CORPORATE ACKNOWLEDGEMENT

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, before me, a Notary Public, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn did say that he/she is the \_\_\_\_\_ of \_\_\_\_\_ a Corporation; that the seal affixed to the instrument is the seal of said Corporation (or that no seal has been provided by said Corporation); that said instrument was signed (and sealed) on behalf of said Corporation by authority of its Board of Directors; and the said \_\_\_\_\_ acknowledged the execution of said instrument to be the voluntary act and deed of said Corporation.

Notary Public

My Commission expires: \_\_\_\_\_

# GUARANTY

In consideration of financial accommodations given or to be given or continued to Long Family Land & Cattle Co., Inc. herein called "Borrower" by Bank of Hoven herein called "Bank", the undersigned irrevocably and

unconditionally guarantee to the Bank, payment when due, whether by acceleration or otherwise, of any and all Liabilities of the Borrower as defined below to the Bank, together with all interest thereon; all attorneys' fees, costs, and expenses of collection incurred by the Bank in enforcing any of such Liabilities of the Borrower; and all attorneys' fees, costs, and expenses incurred by the Bank in foreclosing, preserving, protecting, retaking, holding, and selling of any collateral as a result of the enforcement or foreclosure of any security interest or mortgage given by Borrower to Bank.

The term "Liabilities of the Borrower" shall mean and include:

A.  If checked, all indebtedness, liabilities or obligations, direct or contingent, secured or unsecured, joint, several, or joint and several, of the Borrower to Bank, created or incurred for any purpose whatsoever, now existing or hereafter arising, due or to become due to, or held or to be held, by the Bank for its own account or as agent for another or others, whether created or incurred directly or acquired by assignment or otherwise. (THERE IS NOT A LIMIT TO THE AMOUNTS COVERED BY THIS GUARANTY).

B.  If checked, the debts, liabilities, or obligations, direct or contingent, secured or unsecured, joint, several, or joint or several of the Borrower to Bank evidenced by the following: \_\_\_\_\_

and any extensions, renewals, modifications or replacements thereof. (THIS GUARANTY IS LIMITED TO \$ \_\_\_\_\_).

The undersigned waive notice of the following: acceptance of this Guaranty and notice of the incurring of any of the Liabilities of the Borrower; presentment, demand for payment, protest, notice of protest, notice of dishonor or nonpayment of any instrument evidencing any of the Liabilities of the Borrower; notice of any alleged default, or notice of right to cure any default with respect to any of the Liabilities of the Borrower to the Bank; and notice of any lawsuit filed by or on behalf of the Bank against Borrower, or the taking of any other action by the Bank against, and any other notice to, any party liable for any of the Liabilities of Borrower (including the undersigned).

The Bank may at any time and from time to time (whether or not after revocation or termination of this Guaranty) without the consent of, or notice to, the undersigned; without incurring responsibility to the undersigned; and without impairing or releasing the obligations of the undersigned hereunder, do one or more of the following:

(1) renew, alter, or change in any manner the terms of any instrument evidencing any of the Liabilities of the Borrower, including any change in a) the rate of interest, and b) place, terms, or time of payment of any debt, liability, or obligation incurred directly or indirectly in respect thereof. This Guaranty shall apply to the Liabilities of the Borrower to the Bank as so changed, extended, renewed, or altered;

(2) sell, exchange, substitute, release, surrender, realize upon, or otherwise deal with in any manner and in any order any property by whomsoever at any time pledged, mortgaged, or otherwise securing any of the Liabilities of the Borrower to the Bank hereby guaranteed or any debts, liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and/or exercise any right of setoff it may have.

(3) exercise or refrain from exercising any rights against the Borrower or others (including the undersigned) or otherwise act or refrain from acting;

(4) settle or compromise any of the Liabilities of the Borrower to the Bank hereby guaranteed or any security therefor, or any debt, liability, or obligation (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part of the Liabilities of the Borrower to the payment of any debt, liability, or obligation (whether due or not) of the Borrower to creditors of the Borrower other than the Bank and the undersigned; and

(5) apply any sums by whomsoever paid or howsoever realized to any Liabilities of the Borrower (regardless of the origin thereof) to the Bank, regardless of the nature of any of the Liabilities of the Borrower to the Bank which remain unpaid and regardless of the Borrowers' application or use of the consideration, if any, received in connection with any of the Liabilities of the Borrower to the Bank.

No invalidity, irregularity, or unenforceability of all or any part of the Liabilities of the Borrower to the Bank hereby guaranteed, or in any of the documents securing all or any part of the Liabilities of the Borrower, shall affect, impair, or be a defense to this Guaranty, and this Guaranty is a primary obligation of the undersigned.

The undersigned agree that the obligations and guaranty of the undersigned and the rights of the Bank in any collateral by whomsoever at any time pledged, conveyed, or mortgaged to secure, or howsoever securing any of the liabilities of the Borrower, shall not be released, discharged, or in any way affected, nor shall the undersigned have any rights against the Bank, by reason of the fact that (i) a valid or perfected lien, security interest, or encumbrance in any of the collateral may not be conveyed to, obtained by, or created in favor of Bank; (ii) any of the collateral may be subject to equities or defenses or claims in favor of others or may be invalid or defective in any way; (iii) the value of any of the collateral, or the financial condition of the Borrower, of any obligor, of any guarantor, or any of the collateral may not have been correctly estimated or may have changed or may hereafter change; or (iv) there is any deterioration, waste, or loss by fire, theft, or otherwise of any of the collateral.

The undersigned agree that the Bank shall not be required to resort first for payment to the Borrower, or other persons or corporations, their properties or estates, whether by lawsuit or otherwise, before enforcing this Guaranty. The undersigned further agree that Bank shall not be required to have any collateral or security applied to Liabilities of the Borrower (including other guaranties) before enforcing this Guaranty. The undersigned further agree that the Bank shall have a general lien on and security interest in and a right of setoff against all property of the undersigned including without limitation all deposits, cash, securities, notes, cash equivalents, or certificates of deposit now or hereafter in the Bank's possession or on deposit with the Bank, whether held in a general or special account, or for safekeeping or otherwise, and such lien, security interest, and right of setoff may be enforced or exercised without demand upon or notice to the undersigned.

If box A is checked above, this Guaranty is a continuing one and all of the Liabilities of the Borrower to the Bank to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. As to each of the undersigned, this Guaranty shall continue until written notice of revocation signed by such undersigned, or until written notice of the death of such undersigned shall in each case have been actually received by the Bank, notwithstanding revocation by, or the death of, or complete or partial release for any cause of, any one or more of the remainder of the undersigned, or of the Borrower, or of anyone liable or obligated in any manner for any of the Liabilities of the Borrower hereby guaranteed or for the debts, liabilities, or obligations (including those hereunder) incurred directly or indirectly in respect thereof or hereof. No revocation or termination hereof shall affect in any manner rights arising under this Guaranty with respect to (a) Liabilities of the Borrower to the Bank which shall have been created, contracted, assumed, or incurred prior to receipt by the Bank of written notice of such revocation or termination or (b) Liabilities of the Borrower to the Bank which shall have been created, contracted, assumed, or incurred after receipt of such written notice pursuant to any contract entered into by the Bank prior to receipt of such notice; and the sole effect of revocation or termination hereof shall be to exclude from this Guaranty Liabilities of the Borrower to the Bank thereafter arising which are unconnected with Liabilities of the Borrower to the Bank arising or transactions entered into before the date of revocation or termination.



If claim is ever made upon the Bank... repayment or recovery of any amount or amount received by the Bank in payment or on account of any of the Liabilities of the Borrower... the Bank and the Bank repays all or part of such amount by reason of (a) any judgment, decree, or order of any court or administrative body having jurisdiction over the Bank or any of its property, or (b) any settlement or compromise of any such claim effected by the Bank with any such claimant (including the Borrower), then and in such event the undersigned agree that any such judgment, decree, order, settlement, or compromise shall be binding upon the undersigned, notwithstanding any revocation hereof or the cancellation of any note or other instrument evidencing any of the Liabilities of the Borrower to the Bank, and the undersigned shall be and remain liable to the Bank hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by the Bank.

Any acknowledgment or new promise, whether by payment of principal or interest or otherwise and whether by the Borrower or others (including the undersigned), with respect to any of the Liabilities of the Borrower to the Bank shall, if the statute of limitations in favor of the undersigned against the Bank shall have commenced to run, toll the running of such statute of limitations and, if the period of such statute of limitations shall have expired, prevent the operation of such statute of limitations.

No delay on the part of the Bank in exercising any of its options, powers, or rights, or partial or single exercise thereof, shall constitute a waiver thereof. No waiver of any of its rights hereunder, and no modification or amendment of this Guaranty, shall be deemed to be made by the Bank unless the same shall be in writing, duly signed on behalf of the Bank, and each such waiver, if any, shall apply only with respect to the specific instance involved, and shall in no way impair the rights of the Bank or the obligations of the undersigned to the Bank in any other respect at any other time.

The undersigned waive all rights of subrogation to Bank's rights against the Borrower until all of the Liabilities of the Borrower to the Bank guaranteed hereunder shall have been fully paid and discharged.

This Guaranty and the rights and obligations of the Bank and of the undersigned hereunder shall be governed and construed in accordance with the laws of the State of South Dakota; and this Guaranty is binding upon the undersigned, his, her, their, or its executors, administrators, successors, or assigns, and shall inure to the benefit of the Bank, its successors, or assigns.

The undersigned, if more than one, shall be jointly and severally liable hereunder and the term "undersigned" wherever used herein shall mean the undersigned or any one or more of them. Anyone signing this Guaranty shall be bound hereby, whether or not anyone else signs this Guaranty at any time. The term "Bank" includes any agent of the Bank acting for it.

If any of the provisions of this Guaranty shall contravene or be held invalid under the laws of the applicable jurisdiction, this Guaranty shall be construed as if not containing those provisions and the rights and obligations of the parties shall be construed and enforced accordingly.

In addition to the other provisions contained herein, this Guaranty is secured by all assets

Dated: 3/5, 1992.

Kenneth Long  
\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

INDIVIDUAL ACKNOWLEDGEMENT

State of South Dakota )  
 ) ss.  
County of Potter )

On this 5th day of March, 1992, before me, a Notary Public, personally appeared Kenneth Long, to me known to be the identical person(s) who executed the foregoing instrument, and it is executed as a voluntary act and deed.

Charles E. Simon  
Notary Public

My Commission expires: CHARLES E. SIMON  
Notary Public, POTTER COUNTY, S. DAK.  
My Commission Expires MARCH 2, 1995

CORPORATE ACKNOWLEDGEMENT

State of \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, a Notary Public, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn did say that he/she is the \_\_\_\_\_ of \_\_\_\_\_ a Corporation; that the seal affixed to the instrument is the seal of said Corporation (or that no seal has been provided by said Corporation); that said instrument was signed (and sealed) on behalf of said Corporation by authority of its Board of Directors; and the said \_\_\_\_\_ acknowledged the execution of said instrument to be the voluntary act and deed of said Corporation.

Notary Public

My Commission expires: \_\_\_\_\_

THIS MORTGAGE, made this 5th day of March in the year 1992, by Kenneth Long, a Single Man

of Dewey County and State of South Dakota Mortgagee, to Bank of Hoven, a Corporation, Box 7 of Hoven P. O. County of Potter and state of South Dakota Mortgagee

WITNESSETH, that said Mortgagor hereby mortgage to said Mortgagee the following described premises situated in the County of Dewey and State of South Dakota, to-wit: Northwest Quarter of Section Twenty Five, Township Seventeen, Range Twenty Five (NW 25-17-25), All of Section Twenty Eight, Township Seventeen, Range Twenty Five (28-17-25), East Half of Section Thirty Two, Township Seventeen, Range Twenty Five (E 32-17-25), All of Section Thirty Three, Township Seventeen, Range Twenty Five (33-17-25), and the Southwest Quarter of Section Thirty Four, Township Seventeen, Range Twenty Five (SW 34-17-25), All in Dewey County, South Dakota, And the East Half of Section One, Township Fifteen, Range Twenty Four (E 1-15-24), All in Dewey County, South Dakota as security for the payment to said mortgagee at Hoven, South Dakota

of the principal sum of Three Hundred Seventy Eight Thousand Nine Hundred thirty Dollars & 00/100 and interest thereon at 9.25% per cent per annum from date, according to One certain promissory note bearing even date herewith, due Dec. 1st 2011 \$378,930.00 note dated March 5th, 1992, with 20 annual installments of \$41,343.96 beginning Dec. 1st, 1992 and ending Dec. 1st, 2011 with 84% BIA guarantee.

SAID MORTGAGOR further agree to pay all taxes and assessments that may be levied upon said premises, before the same shall become delinquent (and to keep the buildings, if any, upon said premises safely insured for the benefit of said Mortgagee in the sum of \$50,000 Dollars against loss by fire and deliver the insurance policies to said Mortgagee.)

In case of the Mortgagor's failure to pay said taxes or assessments before the same become delinquent or to pay insurance premiums for insurance on said buildings, said Mortgagee or assignee may do so and the amounts so paid, with interest at 15 per cent, from date of payment, shall be added to and deemed a part of the money secured by this mortgage. Said Mortgagor hereby relinquish his rights of homestead in said premises and warrant that he the owner in fee of said premises, and that the same are free from all incumbrances

In case of default in the payment of said principal sum of money or any part thereof, or interest thereon at the time or times above specified for payment thereof, or in case of non-payment of any taxes, assessments, or insurance as aforesaid, or of breach of any covenant or agreement herein contained, then and in either case, the whole principal and interest of said note shall at the option of the holder thereof, immediately become due and payable, and this mortgage may be foreclosed by action, or by advertisement as provided by statute or the rules of practice relating thereto, and this paragraph shall be deemed as authorizing and constituting a power of sale as mentioned in said statutes or rules, and any amendatory thereof.

Kenneth Long

L.App. 00055

BH 0437

# MORTGAGE — COLLATERAL REAL ESTATE MORTGAGE

THIS MORTGAGE, made this 15th day of November in the year 19 90 by Kenneth and Maxine Long, Husband and Wife

of Dewey County and State of South Dakota Mortgagor s  
to Bank of Hoven, A Corporation, Box 7  
of Hoven P. O., County of Potter and state of  
South Dakota, Mortgagee

WITNESSETH, that said Mortgagor s hereby mortgage to said Mortgagee the following described premises situated in the County of Dewey and State of South Dakota, to-wit: Northwest Quarter of Section Twenty Five, Township Seventeen, Range Twenty Five (NW $\frac{1}{4}$  25-17-25), All of Section Twenty Eight Township Seventeen, Range Twenty Five (28-17-25), East Half of Section Thirty Two, Township Seventeen, Range Twenty Five (E $\frac{1}{2}$  32-17-25), All of Section Thirty Three, Township Seventeen, Range Twenty Five (33-17-25), and the Southwest Quarter of Section Thirty Four, Township Seventeen, Range Twerny Five (SW $\frac{1}{4}$  34-17-25) all in Dewey County, South Dakota, And the East Half of Section One, Township Fifteen, Range Twenty Four (E $\frac{1}{2}$  1-15-24), All in Dewey County, South Dakota, as security for the payment to said mortgagee at Hoven, South Dakota

of a principal sum not to exceed \$ 472,275.00, in accordance with promissory notes, credit agreements, checks, or any other indebtedness or commitments between Mortgagor and Mortgagee; whether or not evidenced by a written instrument or agreement, and whether or not the same exists as of the date hereof, or is hereafter created or acquired by Mortgagee; all such indebtedness and commitments being hereinafter referred to as the 'Obligations,' said Obligations not to be in excess of \$ 472,275.00, but nothing herein shall be considered as limiting the amounts which shall be secured when advanced to protect the security.

THE PARTIES AGREE THAT THIS MORTGAGE CONSTITUTES A COLLATERAL REAL ESTATE MORTGAGE PURSUANT TO SDCL 44-8-26.

This Mortgage shall, notwithstanding the fact that from time to time during the term hereof no indebtedness shall be due from Mortgagor to Mortgagee, constitute a continuing lien against the Property for the amount stated herein. If at any time the indebtedness due Mortgagee is zero, the Mortgagee shall, within ten days after receipt of written demand therefor by Mortgagor, execute and record a satisfaction of this Mortgage.

The original term of this Mortgage is five years unless such term is extended by the filing of an Addendum to this Mortgage. Any addendum to this Mortgage need be signed only by the Mortgagee. Upon the timely filing of such an addendum to this Mortgage, the effectiveness hereof shall be continued for five years after the date of filing this Mortgage whereupon it shall lapse unless another addendum to this Mortgage continuing the effectiveness of its lien is filed prior to such lapse. Succeeding addendums to this Mortgage may be filed in the same manner to continue the effectiveness of the lien hereof.





MORTGAGE - COLLATERAL REAL ESTATE MORTGAGE

THIS MORTGAGE, made this 20th day of September in the year 1988, by Kenneth and Maxine Long, Husband and Wife

of Dewey County and State of South Dakota Mortgagee to Bank of Hoven, A South Dakota Corporation, Box 7 of Hoven P. O., County of Potter and state of South Dakota Mortgagee

WITNESSETH, that said Mortgagor hereby mortgage to said Mortgagee the following described premises situated in the County of Dewey and State of South Dakota, to-wit: Lot 7 and South 40' of Lot 8, Block 29, in the Town (now City) of Timber Lake, Dewey County, South Dakota, together with carpets, drapes, T.V. and C.D. antenna and refrigerator.

as security for the payment to said mortgagee at Hoven, South Dakota

of a principal sum not to exceed \$ 322,967.26 in accordance with promissory notes, credit agreements, checks, or any other indebtedness or commitments between Mortgagor and Mortgagee, whether or not evidenced by a written instrument or agreement, and whether or not the same exists as of the date hereof, or is hereafter created or acquired by Mortgagee; all such indebtedness and commitments being hereinafter referred to as the "Obligations," said Obligations not to be in excess of \$ 322,967.26 but nothing herein shall be considered as limiting the amounts which shall be secured when advanced to protect the security.

THE PARTIES AGREE THAT THIS MORTGAGE CONSTITUTES A COLLATERAL REAL ESTATE MORTGAGE PURSUANT TO SDCL 44-8-26.

This Mortgage shall, notwithstanding the fact that from time to time during the term hereof no indebtedness shall be due from Mortgagor to Mortgagee, constitute a continuing lien against the Property for the amount stated herein. If at any time the indebtedness due Mortgagee is zero, the Mortgagee shall, within ten days after receipt of written demand therefor by Mortgagor, execute and record a satisfaction of this Mortgage.

The original term of this Mortgage is five years unless such term is extended by the filing of an Addendum to this Mortgage. Any addendum to this Mortgage need be signed only by the Mortgagee. Upon the timely filing of such an addendum to this Mortgage, the effectiveness hereof shall be continued for five years after the date of filing this Mortgage whereupon it shall lapse unless another addendum to this Mortgage continuing the effectiveness of its lien is filed prior to such lapse. Succeeding addendums to this Mortgage may be filed in the same manner to continue the effectiveness of the lien hereof.

SAID MORTGAGOR further agree to pay all taxes and assessments that may be levied upon said premises, before the same shall become delinquent (and to keep the buildings, if any, upon said premises safely insured for the benefit of said Mortgagee in the sum of \$ 50,000.00 Dollars against loss by fire and deliver the insurance policies to said Mortgagee).

BH 0474

Received SEP 17 2002

CHEYENNE RIVER SIOUX TRIBAL COURT  
CHEYENNE RIVER SIOUX TRIBE  
CHEYENNE RIVER INDIAN RESERVATION

IN CIVIL COURT

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LONG FAMILY LAND AND CATTLE  
COMPANY, Inc. - RONNIE AND LILA LONG,  
Plaintiffs,

vs.

MOTION FOR SUMMARY  
JUDGMENT

EDWARD AND MARY MACIEJEWSKI  
and RALPH H. AND NORMA J. PESICKA,  
and THE BANK OF HOVEN,

R-120-99

Defendants.

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Comes now Defendant, Plains Commerce Bank, formerly known as the Bank of Hoven, by and through its attorney, David A. Von Wald, and moves the Court for Summary Judgment on its counterclaim for the following reasons:

1. This Motion is brought pursuant to Rule 56 of the Rules of Civil Procedure of the Cheyenne River Sioux Tribal Law and Order Code.
2. The Court has jurisdiction over Long Family Land and Cattle Company, Inc. and Ronnie Long and Lila Long in that the majority ownership of the corporation is owned by Ronnie Long and Lila Long, enrolled members of the Cheyenne River Sioux Tribe and the Court has jurisdiction over the subject matter of this action.
3. There are no genuine issues of material fact.
4. Plaintiffs have wrongfully held over possession of a portion of the real estate described in Plaintiff's Amended Complaint after the execution of a Lease With An Option To Purchase entered into on December 5, 1996.
5. The Lease With Option To Purchase wherein Bank of Hoven, now Plains Commerce Bank, was the Lessor and Long Family Land and Cattle Company, Inc. by its terms expired on expired December 5, 1998.

6. Defendant, Plains Commerce Bank, has sold a portion of the real estate which was leased to the Long Corporation to Ralph H. and Norma J. Pesicka and the remaining portion to Edward Maciejewski and Mary Jo Maciejewski. The Maciejewskis, however, have been able to take possession of only about one half of the real estate they bought since Plaintiffs are wrongfully holding over possession of a portion of the real estate. The legal description of the wrongfully retained real estate is as follows:

The Northwest Quarter (NW $\frac{1}{4}$ ) of Section Twenty Five (25), all of Section Twenty Eight (28), and the Southwest Quarter (SW $\frac{1}{4}$ ) of Section Thirty Four (34), all in Township Seventeen (17), Range Twenty Five (25), East of the Black Hills Meridian, subject to easements, reservations and conveyances, if any, existing and of record.

7. This Motion is made based on the Affidavit of Charles Simon, attached hereto as Exhibit "1", the depositions of the parties, the pleadings and the entire file in this case.

WHEREFORE, Defendant, Plains Commerce Bank, prays the Court grant its Motion for Summary Judgment against Plaintiffs and order that Plaintiffs be evicted from possession of said real estate, granting Defendants possession of the same. And additionally, the Court enter a judgment against Plaintiffs for damages sustained by Defendants for the wrongful possession of said real estate by Plaintiffs, and for whatever other relief as to the Court is deemed just and equitable in the premises.

Dated this <sup>12<sup>th</sup></sup> day of September, 2002.



David A. Von Wald, Attorney  
for Plains Commerce Bank  
P.O. Box 468  
Hoven, SD 57450  
605-948-2550