

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHWESTERN DIVISION

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State Farm Insurance Companies	)	
Plaintiff,	)	1:12-cv-00094-CSM
	)	
vs.	)	MEMORANDUM IN SUPPORT OF
	)	DEFENDANTS, LLOYD AND BRENDA
Turtle Mountain Fleet Farm, LLC;	)	GREENWOOD'S, MOTION FOR
Rich's Construction, by its owner,	)	SUMMARY JUDGMENT
Rich Parisien; Lloyd Greenwood and	)	
Brenda Greenwood,	)	
Defendants.	)	

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Plaintiff's must utilize the Turtle Mountain Tribal Court to exhaust its tribal remedies before seeking the jurisdiction of the U.S. District Court for the District of North Dakota. Defendants Greenwood submit this Brief in support of its Motion for Summary Judgment.

**FACTS**

There are no disputed facts that would relieve jurisdiction from the Tribal Court. The Tribal Appellate Court called the facts "relatively straight forward." (See attached Ex. A) lawsuit that originally started as a collection action/defective workmanship matter between homeowner and contractor has evolved into disputed claims with the insurer, State Farm, for fraud or bad faith. The factual background of this lawsuit begins when tornadoes came through the Turtle Mountain region on July 7, 2008; the Greenwood's home suffered significant damage. The Greenwood's contacted their insurance company, Plaintiff State Farm and State Farm's Catastrophe Manager, Brent Taylor

(Taylor). Tribal Court has kept jurisdiction over this matter based in part “because State Farm voluntarily entered into a contractual relationship with the Greenwoods’ . . . and the contract pertained to a home physically located on the Turtle Mountain Indian Reservation (TMIR).” (Id.) Taylor has admitted in a previous deposition that after he inspected the Greenwood’s home, he prepared their home repair estimate for Rich’s Construction. The Greenwood’s will testify that it was Taylor who urged, or at least encouraged, the Greenwood’s to hire Defendant, Rich’s Construction and that Greenwood’s relied on Taylor’s expertise while on the Turtle Mountain Indian Reservation.

The Greenwood’s became dissatisfied with the workmanship of Rich’s Construction and Greenwood’s assert these complaints were made known to Taylor. Subsequently, the Greenwood’s stopped paying for what they contend was shoddy workmanship. Rich’s Construction sued the Greenwood’s in Tribal Court for a collection matter. The Greenwood’s responded and counterclaimed for defective workmanship and cross-claimed State Farm for its role in providing an allegedly inferior contractor. However, at trial, testimony by the Construction Foreman revealed 1) the Greenwood’s house should be torn down and 2) State Farm did not want to demolish and replace the Greenwood’s home. The surprising testimony by the Foreman was not only that State Farm was informed that the house should be demolished, but also the condition of the home was never made known to Greenwoods.

### **ARGUMENT**

#### **I. Tribal Court Jurisdiction.**

The issue now before this Court is whether the Tribal Court has jurisdiction over State Farm. As this Court has seen many times before, an analysis of the Tribal Court's jurisdiction starts with the United States Supreme Court's decision in Montana v. U.S. In the landmark case Montana v. U.S., the U.S. Supreme Court established two exceptions when Indian tribes possess civil legal authority over the conduct of non-members. Montana v. U.S., 450 U.S. 544, 1981. The first exception states, "[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements." Id., 450 U.S. at 565, 1981. The second exception states, "[a] tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." Id., 450 U.S. at 566, 1981. In sum, Indian tribes retain sovereignty over non-members in only two specific instances. Prior to Montana, the court held that state suits infringed on tribal authority and jurisdiction is prohibited if it would "undermine the authority of tribal courts over reservation affairs and hence would infringe on the right of the Indians to govern themselves." Williams v. Lee, 358 U.S. 217, 223 (1959). Furthermore, the Tribal Court regularly exercises jurisdiction over fee land owned by tribal members on the Reservation. The Tribal Court decides cases involving fee land owned by tribal members on the Reservation in probate and other suits. This tribal authority is confirmed by ample precedent. E.g. New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 1983. (tribe can regulate hunting on Reservation; state license laws did not apply). Additionally, the Tribal Court handles

suits brought by nonmembers against tribal members for matters that arise on the Reservation.

In Strate v. A-1 Contractors, 520 U.S. at 357, the United States Supreme Court listed cases that fit within the first Montana exception: Williams v. Lee, 358 U.S. 217, 223 (1959) (declaring tribal jurisdiction exclusive over lawsuit arising out of an on-reservation sales transaction between a non-member plaintiff and member defendants); Morris v. Hitchcock, 194 U.S. 384 (1904) (upholding tribe's permit tax on non-member-owned livestock within reservation boundaries); Buster v. Wright, 135 F.947 (8th Cir. 1905) (upholding tribe's permit tax on non-members for the privilege of conducting business within the tribe's boarders); Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134 (1980) (tribe's authority to tax on-reservation cigarette sales to non-members "is a fundamental attribute of sovereignty which the tribes retain unless divested of it by federal law or necessary implication of their dependent status"). In Allstate Indem. Co. v. Stump, 191 F.3d 1071, (1999 U.S. App.), an automobile insurer sued to enjoin the Tribal Court from exercising its jurisdiction in a bad faith matter. The Ninth Circuit held that the insurer was required to exhaust "remedies" in Tribal Court.

Pursuant to the first exception in Montana, the Tribal Court can exercise authority due to State Farm's consensual contractual agreement (insurance contract) with the Greenwood's as a homeowner on the Reservation. In this case, the first exception of Montana is found through an insurance contract entered into between the Greenwood's and State Farm. Selling a homeowner's policy to a reservation home satisfies the first exception of the Montana requirement. Further, Tribal Court jurisdiction is confirmed by

State Farm's actions and omissions occurring on the Turtle Mountain Indian

Reservation by allegedly:

1. Dealing directly with the contractor in charge of restoring the Greenwood's home;
2. Being privy to contractor information and failing to provide information to its insured about a twisted home;
3. Knowing that the Greenwood's home was recommended for demolition by the contractors;
4. Being privy to and failing to provide information to its insured that the home was recommended for demolition; and
5. Providing the cost estimate that the contractors would not or could not create and telling the contracts to, "make due."

The Turtle Mountain Tribal Court has jurisdiction over State Farm because it entered into a consensual relationship with both the Greenwood's and then Rich's Construction. The contract for insurance that State Farm had with the Greenwood's constitutes both commercial dealing and a contract. The relationship State Farm had with Rich's Construction, as noted in items 1 through 5 above, would fit within the Montana exception of "other arrangements" due to the involvement State Farm had with its insured and the significant ex parte communications State Farm had with the contractor.

## **II. Exhaustion of Tribal Court Remedies.**

The Greenwood's assert Tribal Court remedies is a matter of comity. It is well established "that principles of comity require that Tribal Court remedies be exhausted before a federal district court should consider relief in a civil case regarding tribal-related activities on reservation land." Krempel v. Prairie Island Indian Community, 125 F. 3d 621, 622 (8th Cir. 1997) (citing Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 845 (1971); Nat'l Farmers Union Ins. Co. v. Crow Tribe, 471 U.S. 845 (1985); Bruce H. Lien v. Three

Affiliated Tribes, 93 F. 3d 1412 (8th Cir. 1996). Case law mandates Tribal Court jurisdiction and the exhaustion of Tribal Court remedies must be completed, if applicable. See, Gaming World Int'l v. White Earth Band of Chippewa Indians, 317 F. 3d 840 (8th Cir. 2003), National Farmers Union Ins. Co. v. Crow Tribe of Indians, 471 U.S. 845 (1985), Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9 (1987), Duncan Energy Co. v. Three Affiliated Tribes, 27 F. 3d 1294 (8th Cir. 1994), Bruce H. Lien v. Three Affiliated Tribes, 93 F. 3d 1412 (8th Cir. 1996), Montana v. United States, 450 U.S. 544 (1981). Further, in an analogous case on point, the N.D. Supreme Court decided, in Gustafson v. Poitra, that lease agreements regarding members within the exterior boundaries of the reservation required Tribal Court exhaustion. Gustafson v. Poitra, 800 N.W. 2d 842 (N.D. 2011).

The United States Supreme Court has held that absent a cause for immediate federal court intervention, "a federal court should stay its hand 'until after the tribal court has had a full opportunity to determine its own jurisdiction.'" Strate v. A-1 Contractors, 520 U.S. 438, 449 (1997). As well as, in Nat'l Farmers Unions Ins. Co. v. Crow Tribe of Indians, the Supreme Court explained:

"Our cases have often recognized that Congress is committed to a policy of supporting tribal self-government and self-determination. That policy favors a rule that will provide the forum whose jurisdiction is being challenged the first opportunity to evaluate the factual and legal bases for the challenge." National Farmers Union Ins. Co. v. Crow Tribe of Indians, 471 U.S. 845 (1985).

Allowing the U.S. District Court suit to proceed will needlessly multiply the proceedings over the dispute arising on the Reservation. Tribal Court exhaustion of remedies would assist to expedite final judgment of this dispute by preventing waste of

time, effort, and judicial resources. In Duncan Energy v. Three Affiliated Tribes, 27 F.3d 1341 (8th Cir. 1994) (non-member oil company sued over tribal employment laws and oil tax; tribal forum deemed proper place to resolve disputes arising on the Reservation). The Tribal Court can exercise jurisdiction to resolve this matter. This is an important case for the Tribal Court to adjudicate. It is in the public interest to both avoid duplicate legal proceedings in multiple venues and to protect parties from being brought into venues which do not have jurisdiction over those parties and their activities. Because the federal court action will merely serve to duplicate and delay the legal proceedings in this matter, this Court should grant this summary judgment to avoid this duplication and delay.

### **III. Tribal Court Exhaustion is required.**

This Court has decided a recent Tribal Court jurisdictional case:

1. **Ford v. Raymond Poitra, 4:10-cv- 00042, decided March 2, 2011.** Tribal Court and Tribal Appellate Court was exhausted regarding the jurisdictional questions and found Tribal Court to have jurisdiction.

This Court stated, "It is well-established that principles of comity require that Tribal court remedies must be exhausted before the federal district should consider relief in a civil case regarding tribal-related activities on reservation land. Krempel v. Prairie Island Indian Community, 125 F.3d 621, 622 (8<sup>th</sup> Cir. 1997) (citing Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9 (1987); Nat'l Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845 (1985); Bruce H. Lien Co. v. Three Affiliated Tribes, 93 F.3d 1412 (8<sup>th</sup> Cir. 1996)).

"Exhaustion of tribal remedies means that tribal appellate courts must first have the opportunity to review the determinations of the lower tribal courts. LaPlante, 480 U.S. 9,17. In short, "[t]he tribal exhaustion doctrine is based on 'a policy of supporting self-government and self determination,'" and although the rule is prudential rather than jurisdictional, "[e]xhaustion is mandatory . . . when a case fits within the policy."



This Court found the first Montana exception applied to Ford and Dish Network

However, the Ninth Circuit Court of Appeals has explained that the first Montana exception applies when a party consents to tribal court jurisdiction:

“The power to exercise tribal civil authority over non-Indians derives not only from the tribe’s inherent power necessary to self-government and territorial management, but also from the power to exclude nonmembers from tribal land.” Babbitt Ford, Inc. v. Navajo Indian Tribe, 710 F.2d 587,592 (9<sup>th</sup> Cir. 1983) (citing Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 141-144 (1982)). If the power to exclude implies the power to regulate those who enter tribal lands, the jurisdiction that results is a consequence of the deliberate actions of those who would enter tribal lands to engage in commerce with the Indians. It is true that “a tribe has no authority over a nonmember until the nonmember enters tribal lands or conducts business with the tribe,” Merrion, 455 U.S. at 142.

### **CONCLUSION**

Tribal authority over the activities of non-members is an important part of Tribal Sovereignty and civil jurisdiction presumptively lies with the Tribal Court, unless affirmatively limited by a specific treaty or federal statute. This case implicates tribal sovereignty. As case-law dictates, Defendant, Greenwoods, respectfully assert this matter interferes with the sovereign nation of the Turtle Mountain Tribes and infringes on its law making authority. The Greenwoods did not know their contractors had informed State Farm Insurance Company that their home should be demolished. The testimony by Rich’s construction revealed it advised Taylor of State Farm to demolish the Greenwood’s home. Although the contractors recommended to have the house demolished, the insurance company paid out \$73,000 instead of \$108,000 for the home portion of the policy. This Court should declare the Turtle Mountain Tribal Court of the Court of Appeals of the Turtle Mountain Jurisdiction has jurisdiction over this matter and the Tribal Court should exhaust their remedies before seeking action with the U.S.



District Court for the District of North Dakota. Tribal Court exhaustion would assist to expedite final judgment of this dispute by preventing waste of time, effort, and judicial resources. For the above stated reasons, the defendant requests that this Court enter Summary Judgment in favor of the defendant in this action. A ruling should issue that requires a tribal forum to resolve the suit, pending in Tribal Court.

Dated this 30<sup>th</sup> day of July, 2013.

PRINGLE & HERIGSTAD, P.C.

BY: /s/ Reed A. Soderstrom

Reed A. Soderstrom (#04759)  
Attorney for Defendants, Lloyd  
and Brenda Greenwood  
2525 Elk Drive, P.O. Box 1000  
Minot, ND 58702-1000  
701-852-0381  
rsoderstrom@srt.com

CERTIFICATE OF SERVICE

I certify that on the 30<sup>th</sup> day of July, 2013 the following documents:

Defendant, Greenwoods, Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment, Ex. A.

was filed electronically with the Clerk of Court through ECF, and that ECF will send a Notice of Electronic Filing (NEF) to the following:

Christopher J. Thompson  
Attorneys at Law  
PO Box 998  
Minot, ND 58702-0998

Robert G. Ackre  
Attorney at Law  
PO Box 685  
Cando, ND 58324

/s/ Reed A. Soderstrom  
Reed A. Soderstrom (#04759)

TURTLE MOUNTAIN TRIBAL COURT OF APPEALS  
TURTLE MOUNTAIN INDIAN RESERVATION IN THE COURT OF APPEALS  
BELCOURT, NORTH DAKOTA

Turtle Mountain Fleet Farm LLC  
And Rich's Construction,  
Plaintiffs,

TMAC-10-021

vs.

MEMORANDUM DECISION

Lloyd and Brenda Greenwood,  
Defendants-Appellants.

vs.

State Farm Insurance Company,  
Defendant-Cross Claimant- Appellee

PER CURIAM:

The Greenwoods petitioned this Court for review of the lower court's denial of their request to re-join State Farm as a Defendant in this lawsuit brought by a contractor and supplier against them for services and supplies provided. They claim that although State Farm was dismissed from suit as a Defendant and cross-party Defendant they discovered new facts after commencement of the lawsuit that required the lower court to permit them to rejoin State Farm as a Defendant. This Court granted review on March 11, 2011 and oral argument was heard on the 17<sup>th</sup> day of June 2011 with the Greenwoods and State Farm appearing through counsel. No appearance was made by Turtle Mountain Fleet Farm.

The facts in this case are relatively straightforward. The Greenwoods suffered damages to their home on July 7, 2008 when a tornado hit the Belcourt area. State Farm Insurance Company provided homeowner's insurance for the Greenwoods and after the tornado a State Farm assessor wrote up the claim and submitted it to either Turtle Mountain Fleet Farm and Rich's Construction for repair or to the Greenwoods. This appears to be a factual dispute that has not yet been resolved by the lower court. The Greenwoods were paid by State Farm, but allegedly failed to pay the Plaintiffs who commenced this lawsuit against them and State Farm. The Greenwoods then filed a cross-claim against State Farm, asserting that it had referred them to a contractor who performed inadequate work on the house, but the carrier was dismissed from the suit and only the suit by the contractor against the Greenwoods and their counterclaim against the contractor proceeded to trial.



At trial one of the witnesses for the contractor testified that he advised State Farm's assessor that the home was a total loss and should be torn down. The Greenwoods allege that this came as a complete surprise to them because their insurance carrier never notified them of this. The State Farm agent allegedly told the contractor to "make due" with what it could as far as repairs.

The Greenwoods then asked for leave of the Court to rejoin State Farm as a cross-Defendant based upon this revelation, which the Greenwoods describe as a "bombshell." The lower court denied the request on the grounds that the lower court lacked jurisdiction over State Farm resulting in this appeal.

On appeal State Farm contends that this Court lacks jurisdiction over them because of the United States Supreme Court decision in Plains Commerce Bank v. Long Family Cattle Company. This Court respectfully disagrees with this assessment.

This Court's exercise of jurisdiction over a non-Indian Defendant is governed both by tribal and federal law. Before the lower Court may exercise jurisdiction it must have jurisdiction under the Turtle Mountain Tribal Code and under federal common law principles concocted by the United States Supreme Court, most recently in Plains Commerce Bank v. Long Family Cattle Company, 554 U.S. 316 (2008).

This Court finds that tribal law countenances the exercise of jurisdiction in this case because State Farm voluntarily entered into a contractual relationship with the Greenwoods, both of whom are tribal members, and the contract pertained to a home physically located on the Turtle Mountain Indian reservation.

However, jurisdiction must also lie under federal law because the United States Supreme Court has held that the tribal court exercise of jurisdiction over non-Indians is a federal question. See National Farmer's Union Insurance v. Crow Tribe, 471 US 845. There is a separate line of United States Supreme Court decisions that discuss the authority of tribal courts to adjudicate interests of non-Indians that also needs to be examined. In Montana v. United States, 450 U.S. 544 (1981) the United States Supreme Court severely proscribed the authority of Indian tribes to regulate the conduct of non-members on fee lands within reservation boundaries. Although that case had nothing to do with tribal court adjudicatory authority, it was cited by the Supreme Court as the controlling case on this issue of tribal court authority to hear disputes involving non-Indians in Strate v. A-1 Contractors, 520 U.S. 438, 445 (1997). There are two situations when tribal courts can adjudicate the interests of non-Indians: 1) when the non-Indian has entered into a consensual relationship with a tribal member and the subject matter of the lawsuit pertains to that consensual relationship and; 2) when the non-member's conduct "threatens or has some direct effect on the political integrity, the economic security, or health or welfare of the Tribe." Montana, at 566.

In Plains Commerce Bank v. Long Family Cattle Company, 554 U.S. 316 (2008), the United States Supreme Court carved out a narrow exception to the first prong of the Montana test so as to limit tribal court jurisdiction over any dispute that involves the

ownership or potential title to fee lands. It is telling that the fee lands in Plains Commerce were located on the Cheyenne River Indian reservation in that case. Despite this the Court held that a tribal court cannot entertain any legal dispute pertaining to such lands that may affect the title to such lands. The tribal court in the Plains Commerce Bank case had upheld tribal court jurisdiction over an action brought by Indian plaintiffs against a non-Indian Bank asserting that the Bank had discriminated against them by foreclosing on fee lands within a reservation and selling them to non-Indians on more favorable terms than those offered them. Even though the tribal court noted that the transaction between the Bank and the Long Family Cattle Company was certainly a consensual one and it arose on the reservation, the Supreme Court nonetheless held that because the result of the litigation could potentially impact the title to such lands, tribal court jurisdiction was foreclosed under Montana.

Even though this Court finds no such exception in the Montana decision itself, the reality tribal courts deal with is that their jurisdiction is oftentimes circumscribed by United States Supreme Court decisions that have no mooring in legal analysis, but instead appear to be the political will of a majority of Justices on the Supreme Court. In this case, however, it is clear to this Court that an insurance company who voluntarily insures an Indian insured on an Indian reservation, even if the insurance pertains to fee land, is subject to the jurisdiction of the Tribal Court if a dispute breaks out regarding the nature of the insurance coverage itself. In the case at bar the Greenwoods had a contractual relationship with State Farm that State Farm claims was extinguished when the Greenwoods accepted payment from it for the assessed damages to their home. The Greenwoods claim that they accepted that settlement under false pretences because its insurance company, which had a duty of good faith in dealing with them, failed to disclose that the contractor had notified its agent that the house was a complete loss.

If this Court were to hold that it lacks jurisdiction over State Farm herein it would in essence be holding that an insurance carrier promising to indemnify an on-reservation loss by a member of the Turtle Mountain Tribe is beyond the scope of tribal jurisdiction. Montana clearly holds that private consensual relationships, such as insurance, are disputes over which the lower court may exercise jurisdiction.

This case also does not fit into the Plains Commerce exception to Montana because in no way would the lower court's adjudication of the claim involving State Farm deprive a party of fee land.

Of course this case comes to us in a rather odd procedural posture because of the fact that State Farm paid the Greenwoods for the claim and the Greenwoods allegedly failed to pay the contractor and supplier. The legal issue presented, and one that should be addressed by the Court, was whether State Farm failed to act in good faith when it paid the Greenwoods the claim. If it failed to act in good faith certainly the insurance policy is a sufficient commercial relationship to warrant the lower court's exercise of jurisdiction.

Wherefore, after due consideration it is hereby

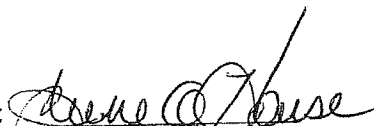
ORDERED, ADJUDGED, AND DECREED that the lower court's order dismissing State Farm Insurance for lack of jurisdiction is REVERSED and this case remanded to the lower court to make a determination whether State Farm acted in bad faith in this case and whether the previous dismissal of State Farm as a co-Defendant should be reconsidered.

So ordered this 28th day of November 2011.

CHIEF JUSTICE JONES for the Court:

  
CHIEF JUSTICE BJ JONES

ATTEST:

  
Clerk of Courts

**TURTLE MOUNTAIN APPELLATE COURT  
TURTLE MOUNTAIN JURISDICTION**

**BELCOURT, ND.  
APPELLATE DIVISION**

---

Lloyd and Brenda Greenwood,	)
Appellants	)
	)
VS.	)
	)
Turtle Mountain Fleet Farm LLC	)
And Rich's Construction,	)
Appellees	)
VS.	)
State Farm Insurance Company,	)
Cross-Claimant-Appellee)	)


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**NOTICE OF ENTRY OF  
APPELLATE ORDER**

TMAC-10-021

**YOU WILL PLEASE TAKE NOTICE, that the APPELLATE MEMORANDUM  
DECISION, in the above-entitled action was entered and docketed in the office of the  
Turtle Mountain Appellate Court in Belcourt, North Dakota, on the 28th day of  
November, 2011, a copy of which Response so entered is hereto attached and herewith  
served upon you.**

**Dated this 28th day of November, 2011.**

  
**Jolene A. House  
Chief Clerk of Court**

SEAL

TURTLE MOUNTAIN APPELLATE COURT  
TURTLE MOUNTAIN JURISDICTION

BELCOURT, ND.  
APPELLATE DIVISION

Lloyd and Brenda Greenwood, )

Appellants, )

VS. )

Turtle Mountain Fleet Farm LLC )

And Rich's Construction, )

Appellees, )

VS. )

State Farm Insurance Company, )

Cross-Claimant- Appellee

AFFIDAVIT OF SERVICE

TMAC-10-021

Jolene A. House, after being duly sworn on oath, deposes and says that the affiant is more than twenty-one years of age; and on the 28th day of November, 2011, said affiant devlivered a true copy of the following:

*Appellate Court Memorandum Decision*

&

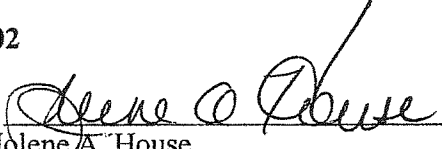
*Notice of Entry of Order*

in the above entitled action and directed to:

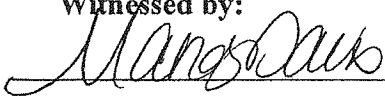
REED A SODERSTROM  
ATTORNEY AT LAW  
PO BOX 1000  
MINOT, ND 58702

ROBERT ACKRE  
ATTORNEY AT LAW  
PO BOX 685  
CANDO, ND 58324

COLLIN DOBROVOLNY  
ATTORNEY AT LAW  
PO BOX 998  
MINOT, ND 58702

  
Jolene A. House  
Chief Clerk of Court

Witnessed by:



Date:

  
11/28/11