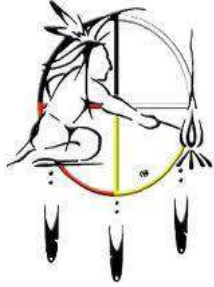


**FOREST COUNTY POTAWATOMI
UNIFORM COMMERCIAL CODE:
SECURED TRANSACTIONS
ORDINANCE**

CHAPTER 5-5 (05/09/2015)



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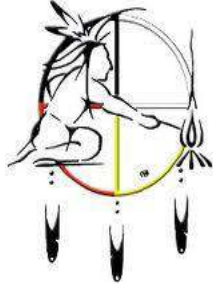
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**FOREST COUNTY POTAWATOMI
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Pursuant to the authority vested in the Forest County Potawatomi Community of Wisconsin by its Constitution, and particularly by Article IV, §1 (D) (1) and Article IV §1 (E) thereof, and pursuant to its power to enact, make know and enforce ordinances governing the conduct of persons within the jurisdiction of its Community, and having determined that the enactment of a comprehensive Tribal Uniform Commercial Code Secured Transactions Ordinance furthers the paramount intent of the Tribal Government to promote economic development on and off the reservation for the Tribe and its members and benefits the Tribe, its members and their general welfare, the General Council of the Forest County Potawatomi Community of Wisconsin adopts this Tribal Uniform Commercial Code Secured Transactions Ordinance.

§ 1. General

1.1. Purpose

This ordinance must be liberally construed and applied to promote its underlying purposes and policies, which are the promotion of economic development and the continued expansion of this Tribe's commercial practices.

1.2. Authority

This ordinance is enacted pursuant to Article IV, §1 (D) (1) and Article IV, §1 (E) of the Tribe's Constitution.

1.3. Effective Date and Title

This ordinance is hereby adopted and shall be known as the Forest County Potawatomi Uniform Commercial Code: Secured Transactions Ordinance and may be cited as the "FCPC UCC Code."

1.4. Sovereign Immunity

The Tribe, its agencies or instrumentalities, by adoption of this ordinance, does not waive their sovereign immunity in any respect, Absent an express waiver of sovereign immunity that is executed

in accordance with all applicable laws of the Forest County Potawatomi Community of Wisconsin (the “Tribe”).

1.5. Amendment or Repeal

This ordinance may be amended or repealed by a Supermajority vote of the Forest County Potawatomi General Council. All rules and regulations heretofore adopted by the Forest County Potawatomi General Council which are in conflict with the provisions of this ordinance are hereby repealed

1.6. Jurisdiction

The Forest County Potawatomi Tribal Court shall have original jurisdiction over all proceedings under this ordinance.

1.7. No Application To Property Not Alienable

This ordinance does not apply to any property interest that is subject to Federal or Tribal restrictions regarding sale, transfer, or encumbrance.

1.8. Definitions

Subject to the provisions of this ordinance dealing with course of performance, course of dealing, and usage of trade (see §1.16), the meaning of a term not defined by this ordinance is to be derived from the context involved, with due consideration for consistency in meaning with uniform principles of commercial and contract law operative in the United States and any case law from this Tribe’s Court.

“Accession” shall mean goods that are attached or united with another good; it retains its individual identity and can be removed from the other good without causing damage to the other good.

“Account” except as used in “account for”:

- (1) shall mean a right to payment of a monetary obligation, whether or not earned by performance:
 - (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;
 - (b) for services rendered or to be rendered;
 - (c) for a policy of insurance issued or to be issued;
 - (d) for a secondary obligation incurred or to be incurred;

- (e) for energy provided or to be provided;
 - (f) for the use or hire of a vessel under a charter or other contract;
 - (g) arising out of the use of a credit or charge card or information contained on or for use with the card; or
 - (h) as winnings in a lottery or other game of chance operated or sponsored by a tribe, governmental unit of a tribe, a person licensed or authorized by a tribe or governmental unit of a tribe to operate the game, a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State.
- (2) includes health-care-insurance receivables; and
- (3) does not include:
- (a) rights to payment evidenced by chattel paper or an instrument;
 - (b) commercial tort claims;
 - (c) deposit accounts;
 - (d) securities or investment accounts, including assets held in investment accounts;
 - (e) letter-of-credit rights or letters of credit; or
 - (f) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

“Account debtor” shall mean a person obligated on an account, chattel paper, or general intangible. The term does not include a person obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

“Agreement,” includes full recognition not only of the expressions of the parties but also of the surrounding circumstances including usage of trade, course of dealing and course of performance (as defined in §1.16). Applicable provisions of this ordinance and general contract law determine whether an agreement has legal consequences. To the extent that an agreement has legal consequences, it is a “contract.”

“As-extracted collateral” shall mean:

- (1) oil, gas, or other minerals that are subject to a security interest that:
 - (a) is created by a debtor having an interest in the minerals before extraction; and
 - (b) attaches to the minerals as extracted; or
- (2) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

“Buyer in ordinary course of business” shall mean a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under other applicable law may be a buyer in ordinary course of business. “Buyer in ordinary course of business” does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

“Cash proceeds” shall mean money, checks, deposit accounts, or the like.

“Certificated security” shall mean a security that is represented by a certificate.

“Certificate of title” shall mean a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

“Chattel paper” shall mean a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods.

“Collateral” shall mean the property subject to a security interest. The term includes:

- (1) proceeds to which a security interest attaches;
- (2) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- (3) goods that are the subject of a consignment.

“Commercial tort claim” shall mean a claim arising in tort with respect to which:

- (1) the claimant is an organization; or
- (2) the claimant is an individual and the claim:
 - (a) arose in the course of the claimant’s business or profession; and
 - (b) does not include damages arising out of personal injury to or the death of an individual.

“Consignee” shall mean a merchant to which goods are delivered in a consignment.

“Consignment” shall mean a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

- (1) the merchant:
 - (a) deals in goods of that kind under a name other than the name of the person making delivery;
 - (b) is not an auctioneer; and
 - (c) is not generally known by its creditors to be substantially engaged in selling the goods of others;
- (2) with respect to each delivery, the aggregate value of the goods is \$3,000 or more at the time of delivery;
- (3) the goods are not consumer goods immediately before delivery; and
- (4) the transaction does not create a security interest that secures an obligation.

“Consignor” shall mean a person that delivers goods to a consignee in a consignment.

“Consumer” shall mean an individual who enters into a transaction primarily for personal, family or household purposes.

“Consumer goods” shall mean goods that are used or bought for use primarily for personal, family, or household purposes.

“Consumer transaction” shall mean a transaction in which:

- (1) an individual incurs an obligation primarily for personal, family, or household purposes; and
- (2) a security interest secures the obligation.

“Continuation statement” shall mean an amendment of a financing statement which:

- (1) identifies, by its file number, the initial financing statement to which it relates; and
- (2) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

“Contract,” as distinguished from “agreement,” shall mean the total legal obligation that results from the parties’ agreement as determined by this ordinance as supplemented by any other applicable laws.

“Control,” with respect to a certificated security in registered form, shall mean that the certificate is delivered to the purchaser and:

- (1) endorsed to the secured party or in blank by an effective endorsement; or
- (2) registered in the name of the secured party, upon original issue or registration of transfer by the issuer.

“Control,” with respect to an investment account, shall mean that:

- (1) the secured party has become the holder of the investment account;
- (2) the investment intermediary has agreed that it will comply with orders relating to the investment account originated by the secured party without further consent by the holder of the investment account;
- (3) another person has control of the investment account on behalf of the secured party or, having previously acquired control of the investment account, acknowledges that it has control on behalf of the secured party; or
- (4) a security interest has been granted by the holder of the investment account to the holder’s own investment intermediary.

“Control,” with respect to mutual fund shares that are not in an investment account, shall mean that:

- (1) the mutual fund shares have been delivered to the secured party under applicable law; or
- (2) the issuer of the mutual fund shares has agreed that it will comply with instructions

originated by the secured party without further consent by the debtor.

“Debtor” shall mean:

- (1) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor on the debt secured;
- (2) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or
- (3) a consignee.

“Document” shall mean a record:

- (1) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers; and
- (2) that purports to be issued by or addressed to a bailee and to cover goods in the bailee’s possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods.

“Equipment” shall mean goods other than inventory, farm products, or consumer goods.

“Farm products” shall mean goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

- (1) crops grown, growing, or to be grown, including:
 - (a) crops produced on trees, vines, and bushes; and
 - (b) aquatic goods produced in aquacultural operations;
- (2) livestock, born or unborn, including wild game or aquatic goods produced in aquacultural operations;
- (3) supplies used or produced in a farming operation; or
- (4) products of crops or livestock in their unmanufactured states.

“Farming operation” shall mean raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, wild game or aquacultural operation.

“Financing statement” shall mean a record or records composed of an initial financing statement and

any filed record relating to the initial financing statement.

“Fixture filing” shall mean the filing of a financing statement covering goods that are, or are to become, fixtures and satisfying the requirements of this ordinance relating to contents of financing statements. The term includes the filing of a financing statement covering goods of a transmitting utility that are or are to become fixtures.

“Fixtures” shall mean goods that have become so related to particular real property that an interest in them arises under real property law.

“General intangible” shall mean any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, securities, investment accounts, letter-of-credit rights, letters of credit, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

“Goods” shall mean all things that are movable when a security interest attaches.

(1) The term includes:

- (a) fixtures;
- (b) standing timber that is to be cut and removed under a conveyance or contract for sale;
- (c) the unborn young of animals;
- (d) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes;
- (e) manufactured homes; and
- (f) a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if:
 - (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or
 - (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods; and

(2) The term does not include:

- (a) a computer program embedded in goods that consist solely of the medium in which the program is embedded; or

- (b) accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, securities, investment accounts, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

“Health-care-insurance receivable” shall mean an interest in or claim under a policy of insurance that is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.

“Instrument” shall mean a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment. The term does not include:

- (1) a security or an investment account;
- (2) a letter of credit; or
- (3) a writing that evidences a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

“Inventory” shall mean goods, other than farm products, which:

- (1) are leased by a person as lessor;
- (2) are held by a person for sale or lease or to be furnished under a contract of service;
- (3) are furnished by a person under a contract of service; or
- (4) consist of raw materials, work in process, or materials used or consumed in a business.

“Investment account” shall mean a financial account maintained by an investment intermediary to which securities or commodity contracts are or may be credited by agreement.

“Investment intermediary” shall mean a securities intermediary under applicable law or a commodity intermediary under applicable law.

“Lien creditor” shall mean:

- (1) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

- (2) an assignee for benefit of creditors from the time of assignment;
- (3) a trustee in bankruptcy from the date of the filing of the petition; or
- (4) a receiver in equity from the time of appointment.

“Manufactured home” shall mean any structure meeting the definitional requirements found under 42 U.S.C. 5402(6)(2004), as the same may be amended from time to time.

“Manufactured-home transaction” shall mean a secured transaction:

- (1) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
- (2) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

“Monetary obligation” shall mean an obligation secured by the goods or owed under a lease of the goods and includes such an obligation with respect to software used in the goods. The term does not include:

- (1) charters or contracts involving the use or hire of a vessel; or
- (2) records that evidence a right to payment arising out of the use of a credit or charge card, or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

“Obligor” shall mean a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:

- (1) owes payment or other performance of the obligation;
- (2) has provided property other than the collateral to secure payment of other performance of the obligation; or
- (3) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

“Organization” shall mean a person other than an individual.

“Payment intangible” shall mean a general intangible under which the account debtor’s principal obligation is a monetary obligation.

“Person” shall mean an individual, corporation, business trust, estate, trust, partnership, Limited Liability Company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

“Proceeds” shall mean the following property:

- (1) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (2) whatever is collected on, or distributed on account of, collateral;
- (3) rights arising out of collateral;
- (4) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
- (5) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

“Promissory note” shall mean an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

“Public-finance transaction” shall mean a secured transaction in connection with which:

- (1) debt securities are issued;
- (2) all or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and
- (3) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is, or is a governmental unit of, this Tribe or a State.

“Purchase” shall mean taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

“Purchaser” shall mean a person that takes by purchase.

“Pursuant to commitment,” with respect to an advance made or other value given by a secured party shall mean pursuant to the secured party’s obligation, whether or not a subsequent event of default or

other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

"Record," except as used in "for record," "of record," "record of legal title," and "record owner," shall mean information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

"Secondary obligor" shall mean an obligor to the extent that:

- (1) the obligor's obligation is secondary; or
- (2) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

"Secured party" shall mean:

- (1) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
- (2) a consignor;
- (3) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
- (4) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest is created or provided for; or
- (5) a person that holds a security interest arising under other applicable law.

"Security" includes mutual fund shares that are not in an investment account.

"Security agreement" shall mean an agreement that creates or provides for a security interest.

"Security interest" shall mean an interest in personal property or fixtures that secures payment or performance of an obligation. The term includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to this ordinance. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to the provisions of this ordinance distinguishing leases from security interests (see §1.11).

"Send," in connection with a record or notification, shall mean:

- (1) to deposit in the mail, deliver for transmission, or transmit by any other usual means

of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

- (2) to cause the record or notification to be received within the time that it would have been received if properly sent under subsection (A).

“Sign” shall mean, with the present intent to authenticate any record:

- (1) to execute or adopt a tangible symbol; or
- (2) to attach or logically associate an electronic symbol, sound, or process to or with a record.

“Software” shall mean a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

“State” shall mean a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, including any political subdivision, or any department, agency, or instrumentality thereof.

“Termination Statement” shall mean an amendment of a financing statement which:

- (1) identifies, by its file number, the initial financing statement to which it relates; and
- (2) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

“Transmitting Utility” shall mean a person primarily engaged in the business of:

- (1) operating a railroad, subway, street railway, or trolley bus;
- (2) transmitting communications electrically, electromagnetically, or by light;
- (3) transmitting goods by pipeline or sewer; or
- (4) transmitting or producing and transmitting electricity, steam, gas, or water.

“Tribal Business Day” shall mean a day on which the offices of the government of this Tribe are open for conduct of their ordinary business.

1.9. Notice; Knowledge

- (A) Notice Defined. Subject to §1.9 (F), a person has “notice” of a fact if the person:

- (1) has actual knowledge of it;
 - (2) has received a notice or notification of it; or
 - (3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.
- (B) Knowledge Defined. “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.
- (C) Discover Defined. “Discover,” “learn,” or words of similar import refer to knowledge rather than to reason to know.
- (D) Notifying or Giving Notice or Notification. A person “notifies” or “gives” a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.
- (E) Receipt Generally. Subject to §1.9 (F), a person “receives” a notice or notification when:
- (1) it comes to that person’s attention; or
 - (2) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.
- (F) Receipt by Organization. Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

1.10. Value

Except as otherwise provided under applicable laws dealing with negotiable instruments, bank deposits, letters of credit and bulk transfers and sales, a person gives value for rights if the person

acquires them:

- (A) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;
- (B) as security for, or in total or partial satisfaction of, a preexisting claim;
- (C) by accepting delivery under a preexisting contract for purchase; or
- (D) in return for any consideration sufficient to support a simple contract.

1.11. Lease Distinguished from Security Interest

- (A) Basic Test. Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.
- (B) Transactions that Create Security Interests. A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:
 - (1) the original term of the lease is equal to or greater than the remaining economic life of the goods;
 - (2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
 - (3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or
 - (4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.
- (C) Factors that Do Not Create Security Interests. A transaction in the form of a lease does not create a security interest merely because:
 - (1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

- (2) the lessee assumes risk of loss of the goods;
- (3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;
- (4) the lessee has an option to renew the lease or to become the owner of the goods;
- (5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or
- (6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

1.12. General Scope

- (A) General Scope of Ordinance. Except as otherwise provided in the section on excluded transactions (see §1.13), this ordinance applies to the following, if within the jurisdiction of this Tribe:
 - (1) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
 - (2) a sale of accounts, chattel paper, payment intangibles, or promissory notes;
 - (3) a consignment; and
 - (4) any other commercial activities, including sales of goods, leases of goods, other transactions in goods, negotiable instruments, bank deposits and collections, funds transfers, letters of credit, documents of title, and investment securities, to the extent those commercial activities are implicated in clauses (1), (2) or (3) of §1.12 (A).
- (B) Consistency in Application. Subject to the provisions of this ordinance dealing with course of performance, course of dealing, and usage of trade (see §1.16), the application of this ordinance to a type of transaction enumerated in §1.12 (A) (4) is to be derived from the context involved, with due consideration for consistency in application with uniform principles of commercial and contract law operative in the United States and any case law from this Tribe's Court.
- (C) Security Interest in Secured Obligation. The application of this ordinance to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this ordinance does not apply.

1.13. Excluded Transactions

This ordinance does not apply to:

- (A) a landlord's lien;
- (B) a lien given by statute or other rule of law for services or materials, but §9.18 (K) applies with respect to priority of the lien;
- (C) a Tribal lien;
- (D) an assignment of a claim for wages, salary, or other compensation of an employee;
- (E) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
- (F) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
- (G) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
- (H) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
- (I) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health care insurance receivable and any subsequent assignment of the right to payment, but §3.10 and §3.7 apply with respect to proceeds and priorities in proceeds;
- (J) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
- (K) a right of recoupment or set-off, but the section on agreements not to assert defenses against assignees (see §4.3) applies with respect to defenses or claims of an account debtor;
- (L) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
 - (1) a fixture filing; and
 - (2) security agreements covering personal and real property §6.4;

- (M) an assignment of a claim arising in tort, other than a commercial tort claim, except as provided with respect to proceeds and priorities in proceeds; or
- (N) an assignment of a deposit account, except as provided with respect to proceeds and priorities in proceeds.

1.14. Administration of Ordinance; Authority to Promulgate Regulations

The Forest County Potawatomi Community of Wisconsin Finance Department (the “Finance Department”), or its designated successor, is charged with and empowered to administer this ordinance and, to that end, shall adopt rules and regulations, both substantive and procedural, as necessary for the proper and efficient administration of this ordinance.

The Finance Department shall adopt such other rules and regulations necessary to interpret and administer this ordinance, to establish the manner and means for compliance with this ordinance, and to set forth the general tasks and responsibilities of the Finance Department and its offices as it relates to the administration of this ordinance.

1.15. Obligation of Good Faith

Every contract or duty within this ordinance imposes, with respect to its performance or enforcement, an obligation that each party be honest and act in a manner that is consistent with reasonable commercial standards of fair dealing.

1.16. Course of Performance, Course of Dealing, and Usage of Trade

- (A) Course of Performance Defined. A “course of performance” is a sequence of acts that constitute conduct between the parties to a particular transaction. A “course of performance” exists if:
 - (1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and
 - (2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.
- (B) Course of Dealing Defined. A “course of dealing” is a sequence of acts that constitute conduct concerning previous transactions between the parties to a particular transaction that is to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.
- (C) Usage of Trade Defined. A “usage of trade” is any practice or method of dealing,

including any custom or tradition of this Tribe, having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as fact. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

- (D) Effect. A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.
- (E) Practical Construction; Hierarchy. Except as otherwise provided in §subsection (F) below, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed, whenever reasonable, as consistent with each other. If such a construction is unreasonable:
 - (1) express terms prevail over course of performance, course of dealing, and usage of trade;
 - (2) course of performance prevails over course of dealing and usage of trade; and
 - (3) course of dealing prevails over usage of trade.
- (F) Subject to other applicable law, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.
- (G) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

1.17. Purchase-Money Security Interest

- (A) Definitions. In this section:
 - (1) "Purchase-money collateral" shall mean goods or software that secures a purchase-money obligation incurred with respect to that collateral.
 - (2) "Purchase-money obligation" shall mean an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

- (B) Purchase-Money Security Interest in Goods. A security interest in goods is a purchase-money security interest:
- (1) to the extent that the goods are purchase-money collateral with respect to that security interest;
 - (2) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and
 - (3) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.
- (C) Purchase-Money Security Interest in Software. A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:
- (1) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and
 - (2) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.
- (D) Consignor's Inventory Purchase-Money Security Interest. The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.
- (E) Application of Payment in Non-Consumer Transaction. In a transaction other than a consumer transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:
- (1) in accordance with any reasonable method of application to which the parties agree;
 - (2) if §1.17 (E) (1) does not apply, in accordance with the intention of the obligor manifested at or before the time of payment; or
 - (3) if neither §1.17 (E) (1) nor (2) applies, in the following order:

- (a) to obligations that are not secured; and
 - (b) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.
- (F) No Loss of Purchase-Money Security Interest in Non-Consumer Transaction. In a transaction other than a consumer transaction, a purchase-money security interest does not lose its status as such, even if:
 - (1) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;
 - (2) collateral that is not purchase-money collateral also secures the purchase-money obligation; or
 - (3) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.
- (G) Burden of Proof in Non-Consumer Transaction. In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

1.18. Sufficiency of Description

- (A) Sufficiency of Description. Except as otherwise provided in §1.18 (B) and (C), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.
- (B) Broad, Generic Descriptions Insufficient. In a security agreement, a description of collateral as “all the debtor’s assets” or “the entire debtor’s personal property” or using words of similar import does not reasonably identify the collateral.
- (C) Description by Type Insufficient. A description only by type of collateral defined in this ordinance is an insufficient description of:
 - (1) a commercial tort claim; or
 - (2) the term “any collateral” in a consumer transaction.

1.19. Parties’ Power to Choose Applicable Law

- (A) Choice of Law Generally. Except as provided in §1.19 (B) and unless preempted by

Federal law, if a transaction bears a reasonable relation to this Tribe and also to another Indian Tribe or Nation, State, or country, the parties may agree that the law either of this Tribe or of such other Tribe or Nation, State, or country governs their rights and duties. In the absence of an effective agreement, this ordinance applies to all transactions bearing an appropriate relation to this Tribe. The fact that the law of another Indian Tribe or Nation, State, or country is applicable as provided in this section does not affect the jurisdiction or venue of this Tribe or its Court, nor does it waive the sovereign immunity of this Tribe or of any agency or instrumentality thereof.

- (B) When Agreement Ineffective. An agreement otherwise effective under §1.19 (A) is ineffective in any of the following cases:
- (1) in a consumer transaction;
 - (2) to the extent the agreement purports to vary the provisions of §3.1 of this ordinance, concerning the law governing perfection and priority; or
 - (3) to the extent that application of the law of the Indian Tribe or Nation, State, or country designated in the agreement would be contrary to a fundamental policy of this Tribe.

§ 2. Effectiveness, Attachment and Rights of Parties

2.1. General Effectiveness of Security Agreement

- (A) General Effectiveness. Except as otherwise provided in this ordinance or other applicable law, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.
- (B) Applicable Consumer Laws and Other Law. A transaction subject to this ordinance is subject to any applicable rule of law which establishes a different rule for consumers and:
- (1) any other applicable Tribal, Federal or State statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit; and
 - (2) any applicable consumer-protection applicable law or regulation.
- (C) Other Applicable Law Controls. In case of conflict between this ordinance and a rule of law, statute, or regulation described in §2.1 (B), the rule of law, statute, or regulation prevails.

2.2. Attachment and Enforceability of Security Interest; Proceeds; Formal Requisites

- (A) Attachment. A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.
- (B) Enforceability. Except as otherwise provided in §2.2 (C) through (G), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:
 - (1) value has been given;
 - (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
 - (3) one of the following conditions is met:
 - (a) the debtor has signed a security agreement that provides a sufficient description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
 - (b) the collateral is in the possession of the secured party pursuant to the debtor's security agreement and this ordinance; or
 - (c) the collateral is a security or an investment account and the secured party has control pursuant to a security agreement.
- (C) Other Applicable Law. §2.2 (B) is subject to a collecting bank's interest in items under applicable law or agreement, any recognized security interest of a letter-of-credit issuer or nominated person under applicable law or agreement, a security interest arising under recognized sales and leases law, and a security interest in a security or in an investment account arising due to the purchase or delivery of the financial asset.
- (D) Proceeds. The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by this ordinance.
- (E) Lien Securing Right to Payment. The attachment of a security interest in a right to payment or performance secured by a security interest, mortgage or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.
- (F) Certain Items Credited to Investment Account. The attachment of a security interest in an investment account is also attachment of a security interest in any securities or

commodity contracts credited to the investment account.

- (G) Whether Other Persons Bound. Applicable law, other than this ordinance, determines when and if another person becomes bound by a security agreement entered into by a debtor.
- (H) Other Applicable Tribal Law. Other Tribal laws that may apply are:
 - 1. Garnishment of Earnings Ordinance. If there is an attempt to recover a default by garnishing the wages of a Tribal employee or Tribal member, the Garnishment of Earnings Ordinance controls.
 - 2. Foreign Judgment Enforcement Ordinance. If a judgment is obtained outside of this Tribe's Court system and is filed with the Tribal Court for enforcement, the Foreign Judgment Enforcement Ordinance controls.
 - 3. Revenue Allocation Ordinance. If a security interest in a Tribal member's payments under the Revenue Allocation Ordinance is sought, the Revenue Allocation Ordinance controls.

2.3. After-Acquired Collateral; Future Advances

- (A) After-Acquired Collateral. Except as otherwise provided in §2.3 (B), a security agreement may create or provide for a security interest in after-acquired collateral.
- (B) After-Acquired Property Clause Not Effective. A security interest does not attach under a term constituting an after-acquired property clause to:
 - (1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten (10) days after the secured party gives value; or
 - (2) a commercial tort claim.
- (C) Future Advances. A security agreement may provide that collateral secures or that accounts, chattel paper, or payment intangibles are sold in connection with future advances or other value, whether or not the advances or value are given pursuant to a commitment.

2.4. Rights and Duties When Collateral is in Secured Party's Possession or Control

- (A) Duty of Care when Secured Party in Possession. A secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession.

- (B) Right of Re-Pledge. A secured party having possession or control of securities or control of an investment account may create a security interest in the collateral.
- (C) Buyer of Certain Rights to Payment. If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, §2.4 (A) does not apply unless the secured party is entitled under an agreement:
 - (1) to charge back uncollected collateral; or
 - (2) to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral.

2.5. Additional Duties of Certain Secured Parties

- (A) Applicability of Section. This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.
- (B) Duty of Secured Party in Control of Investment Account. Within ten (10) Tribal business days after receiving a signed demand by the debtor, a secured party having control of an investment account shall send to the investment intermediary with which the investment account is maintained a signed statement that releases the investment intermediary from any further obligation to comply with instructions originated by the secured party.
- (C) Duty of Secured Party if Account Debtor has been Notified of Assignment. Within ten (10) Tribal business days after receiving a signed demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under the provisions of this ordinance dealing with discharge of an account debtor and notification of an assignment (see §4.3), a signed record that releases the account debtor from any further obligation to the secured party. However, §2.5 does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

2.6. Request for Accounting; Request Regarding List of Collateral or Statement of Account

- (A) A debtor may sign a record indicating what the debtor believes to be the aggregate amount of unpaid indebtedness as of a specified date and send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral, a debtor may similarly request the secured party to approve or correct a list of the collateral.

- (B) A secured party, other than a buyer of accounts, chattel paper, payment intangibles or promissory notes or a consignor, must comply with such a request within ten (10) Tribal business days after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor the secured party may indicate that fact in the reply and need not approve or correct an itemized list of such collateral. If the secured party no longer has an interest in the obligation or collateral at the time the request is received, the secured party must disclose the name and address of any known successor in interest. A successor in interest is not subject to this section until a request is received by the successor.
- (C) A debtor is entitled to such statement once every six (6) months without charge. The secured party may require payment of a charge not exceeding twenty five dollars (\$25) for each additional statement furnished.

§ 3. Perfection and Priority: Law Governing Perfection and Priority

3.1. Law Governing Perfection and Priority of Security Interests

Except as otherwise provided with respect to goods covered by a certificate of title (see §3.2), the following rules determine the law governing perfection, the effect of perfection or non-perfection, and the priority of a security interest in collateral:

- (A) Except as otherwise provided in this section, the laws of this Tribe governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in collateral:
 - (1) if the security interest is created pursuant to this ordinance;
 - (2) from the time that the debtor becomes subject to the jurisdiction of this Tribe (see §3.11 (D) and (E)); or
 - (3) from the time that the collateral is transferred to a person that thereby becomes a debtor and is subject to the jurisdiction of this Tribe.
- (B) Except as provided in §3.1 (A) (3), while goods are located in a jurisdiction, the local law of that jurisdiction governs:
 - (1) perfection of a security interest in the goods by filing a fixture filing; and
 - (2) perfection of a security interest in timber to be cut.
- (C) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or non-perfection, and the priority of a

security interest in as-extracted collateral.

- (D) This section does not determine the law governing matters not expressly referred to herein, including attachment, validity, characterization, and enforcement.

3.2. Law Governing Perfection and Priority of Security Interests in Goods Covered by a Certificate of Title

- (A) Applicability of Section. This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdictions under whose certificate of title the goods are covered and the goods or the debtor.
- (B) When Goods Covered by Certificate of Title. A certificate of title covers goods when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of:
 - (1) the time the certificate of title ceases to be effective under the law of the issuing jurisdiction; or
 - (2) the time the goods become covered subsequently by a Certificate of Title issued by another jurisdiction.
- (C) Applicable Law. The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

3.3. When Security Interest is Perfected, Continuity of Perfection

- (A) Perfection of Security Interest. Except as otherwise provided in this section and the next section dealing with security interests perfected upon attachment, a security interest is perfected if it has attached and all of the applicable requirements for perfection set forth in this ordinance have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.
- (B) Continuous Perfection; Perfection by Different Methods. A security interest is perfected continuously if it is originally perfected by one method under this ordinance and is later perfected by another method under this ordinance, without an intermediate period when it was unperfected.
- (C) Lien Securing Right to Payment. Perfection of a security interest in a right to

payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

- (D) Certain Items Credited to Investment Account. Perfection of a security interest in an investment account also perfects a security interest in any securities or commodity contracts credited to the investment account.

3.4. Security Interest Perfected Upon Attachment

The following security interests are perfected when they attach:

- (A) purchase-money security interest in consumer goods, except as otherwise provided in §3.6 (B) regarding goods subject to certain statutes, regulations or treaties;
- (B) a security interest created by an assignment of accounts which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignors outstanding accounts;
- (C) a sale of a payment intangible or a promissory note;
- (D) a security interest created by an assignment of a health-care-insurance receivable to the provider of the health-care goods or services;
- (E) a security interest created by an assignment of a beneficial interest in a decedent's estate; and
- (F) a security interest created by an assignment by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

3.5. When Filing Required to Perfect Security Interest; Security Interests to which Filing Provisions do not apply

- (A) General Rule: Perfection by Filing. Except as otherwise provided in §3.5 (B) and the section of this ordinance dealing with perfection of a security interest in money, a financing statement must be filed to perfect all security interests.
- (B) Exceptions: Filing not necessary. The filing of a financing statement is not necessary to perfect a security interest:
 - (1) that is perfected under §3.3 (C), dealing with liens securing rights to payment;
 - (2) that is perfected when it attaches under §3.4;

- (3) in property subject to a statute, regulation, or Treaty described in §3.6 (A);
 - (4) in goods in possession of a bailee which is perfected under §3.7 (D) (1) or (2);
 - (5) in certificated securities, negotiable documents, goods, or instruments which is perfected without filing or possession under §3.7 (E), (F) or (G);
 - (6) in collateral in the secured party's possession under §3.8;
 - (7) in a security or an investment account perfected by control under §3.9;
 - (8) in proceeds which is perfected under §3.10; or
 - (9) that is perfected under §3.11 relating to continued perfection of security interests perfected under the law of another jurisdiction.
- (C) Assignment of Perfected Security Interest. If a secured party assigns a perfected security interest, a filing under this ordinance is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

3.6. Perfection of Security Interests in Property Subject to Certain Statutes, Regulations, and Treaties

- (A) Security Interest Subject to Other Law. Except as otherwise provided in §3.6 (D), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:
- (1) any applicable law of the United States whose requirements for a security interest obtaining priority over the rights of a lien creditor with respect to the property preempt the provisions of this ordinance requiring that security interests be perfected by filing;
 - (2) any applicable certificate-of-title statute covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on the certificate as a condition or result of perfection, and any applicable central filing statute other than the one provided by this ordinance; or
 - (3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest obtaining priority over the rights of a lien creditor with respect to the property.

- (B) Compliance with other law. Compliance with the requirements of a statute, regulation, or Treaty described in §3.6 (A) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this ordinance. Except as otherwise provided in §3.6 (D) and the provisions of this ordinance providing for perfection by possession when goods covered by a certificate of title issued by one jurisdiction become covered by a certificate of title issued by another jurisdiction, a security interest in property subject to a statute, regulation, or Treaty described in §3.6 (A) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.
- (C) Duration and Renewal of Perfection. Except as otherwise provided in §3.6 (D) and the provisions of this ordinance providing for continued perfection when goods covered by a certificate of title issued by one jurisdiction become covered by a certificate of title issued by another jurisdiction, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or Treaty described in §3.6 (A) are governed by the statute, regulation, or Treaty. In other respects, the security interest is subject to this ordinance.
- (D) Inapplicability to Certain Inventory. During any period in which collateral subject to a statute specified in §3.6 (A) (2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

3.7. Perfection of Security Interests in Chattel Paper, Documents, Goods Covered by Documents, Instruments, and Money; Perfection by Permissive Filing; Temporary Perfection without Filing or Transfer of Possession

- (A) Perfection by Filing Permitted. A security interest in chattel paper, negotiable documents, instruments, securities, or investment accounts may be perfected by filing.
- (B) Possession of Money. Except as otherwise provided in the provisions of this ordinance dealing with perfection with respect to proceeds, a security interest in money may be perfected only by the secured party taking possession under the provisions of this ordinance dealing with perfection by possession.
- (C) Goods Covered by Negotiable Document. While goods are in the possession of a bailee that has issued a negotiable document covering the goods:
 - (1) a security interest in the goods may be perfected by perfecting a security

interest in the document; and

- (2) a security interest perfected in the document has priority over any security interest in the goods that becomes perfected by another method during that time.
- (D) Goods covered by nonnegotiable document. While goods are in the possession of a bailee that has issued a non-negotiable document covering the goods, a security interest in the goods may be perfected by:
- (1) issuance of a document in the name of the secured party;
 - (2) the bailee's receipt of notification of the secured party's interest; or
 - (3) filing as to the goods.
- (E) Temporary perfection: new value. A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of twenty (20) days from the time it attaches to the extent that it arises for new value given under a signed security agreement.
- (F) Temporary perfection: goods or documents made available to debtor. A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty (20) days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:
- (1) ultimate sale or exchange; or
 - (2) loading, unloading, storing, shipping, trans-shipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.
- (G) Temporary perfection: delivery of security certificate or instrument to debtor. A perfected security interest in a certificated security or instrument remains perfected for twenty (20) days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:
- (1) ultimate sale or exchange; or
 - (2) presentation, collection, enforcement, renewal, or registration of transfer.
- (H) Expiration of temporary perfection. After the twenty (20) day period specified in §3.6 (E), (F), or (G) expires, perfection depends upon compliance with this ordinance.

3.8. When Possession by Secured Party Perfects Security Interest without Filing

- (A) Perfection by possession. Except as otherwise provided in §3.8 (B), a secured party may perfect a security interest in certificated securities, negotiable documents, goods, instruments, money, or chattel paper by taking possession of the collateral.
- (B) Goods covered by certificate of title. With respect to goods covered by a certificate of title issued by this Tribe or a State, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in §3.11 (C), relating to continued perfection of goods covered by a certificate of title.
- (C) Collateral in possession of person other than debtor. With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtors business, when:
 - (1) the person in possession signs a record acknowledging that it holds possession of the collateral for the secured party's benefit; or
 - (2) the person takes possession of the collateral after having signed a record acknowledging that it will hold possession of collateral for the secured party's benefit.
- (D) Time of perfection by possession; continuation of perfection. If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.
- (E) Acknowledgment not required. A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.
- (F) Effectiveness of acknowledgment; no duties or confirmation. If a person acknowledges that it holds possession for the secured party's benefit:
 - (1) the acknowledgment is effective under §3.8 (C), even if the acknowledgment violates the rights of a debtor; and
 - (2) unless the person otherwise agrees or law other than this ordinance otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

3.9. Perfection by Control

A security interest in a security or an investment account may be perfected by control.

3.10. Secured Party's Rights on Disposition of Collateral and in Proceeds

- (A) Disposition of Collateral: Continuation of Security Interest; Proceeds. Except as otherwise provided in this ordinance and in any applicable law dealing with entrustment of goods:
 - (1) a security interest continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest; and
 - (2) a security interest attaches to any identifiable proceeds of collateral.
- (B) When Commingled Proceeds Identifiable. Proceeds that are commingled with other property are identifiable proceeds:
 - (1) if the proceeds are goods, to the extent provided by the provisions of this ordinance dealing with commingled goods; and
 - (2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this ordinance with respect to commingled property of the type involved.
- (C) Perfection of security interest in proceeds. A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.
- (D) Continuation of perfection. A perfected security interest in proceeds becomes unperfected on the twenty-first (21st) day after the security interest attaches to the proceeds unless:
 - (1) the following conditions are satisfied:
 - (a) a filed financing statement covers the original collateral;
 - (b) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and
 - (c) the proceeds are not acquired with cash proceeds;
 - (2) the proceeds are identifiable cash proceeds; or

- (3) the security interest in the proceeds is perfected other than under §3.10 (C) when the security interest attaches to the proceeds or within twenty (20) days thereafter.
- (E) When perfected security interest in proceeds becomes unperfected. If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under §3.10 (D) (1) becomes unperfected at the later of:
- (1) when the effectiveness of the filed financing statement lapses or is terminated under the provisions of this ordinance dealing with lapse or termination; or
 - (2) the twenty-first (21st) day after the security interest attaches to the proceeds.

3.11. Continued Perfection of Security Interest Following Change in Governing Law

(A) Definitions for this Section.

- (1) The term “place of business” shall mean a place where a debtor conducts its affairs.
- (2) The term “registered organization” shall mean an organization organized solely under the law of this Tribe, a single State, or the United States and as to which this Tribe, the State, or the United States must maintain a public record showing the organization to have been organized.

(B) General Rule: Effect on Perfection of Change in Governing Law. A security interest to which this ordinance becomes applicable that is perfected pursuant to the law of another jurisdiction remains perfected until the earliest of:

- (1) the time perfection would have ceased under the law of that jurisdiction;
- (2) the expiration of four (4) months after the debtor becomes subject to the jurisdiction of this Tribe §3.11 (D) and (E); or
- (3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is subject to the jurisdiction of this Tribe.

(C) Security Interest Perfected or Unperfected Under Law of this Tribe. If a security interest described in §3.11 (A) becomes perfected under the law of this Tribe before the end of the applicable period described in that subsection, it remains perfected thereafter until perfection lapses in accordance with this ordinance. Otherwise, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

- (D) Goods Covered by Certificate of Title from this Tribe. A security interest to which this ordinance becomes applicable which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this Tribe remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered. However, the security interest becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value, if the applicable requirements for perfection under §3.6 (B) or §3.8, dealing with perfection by compliance with other law or by possession, are not satisfied before the earlier of:
- (1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this Tribe; or
 - (2) the expiration of four (4) months after the goods had become so covered.
- (E) When debtor subject to jurisdiction of this Tribe for purposes of this section. For purposes of this section only, a debtor becomes subject to the jurisdiction of this Tribe if:
- (1) the debtor is an individual whose principal residence comes to be within the Tribe's jurisdiction or who becomes a member of this Tribe;
 - (2) the debtor is an organization, other than a registered organization, and its sole place of business or, if it has more than one place of business, its chief executive office, comes to be within the Tribe's jurisdiction; or
 - (3) the debtor comes to be:
 - (a) a registered organization that is organized solely under the law of this Tribe; or
 - (b) incorporated under a charter issued to a tribe by the United States Secretary of the Interior pursuant to 25 U.S.C. 477, as the same may be amended from time to time.
- (F) Continuation of jurisdiction: cessation of existence, etc. For purposes of §3.11 (D):
- (1) a person other than a registered organization continues to be subject to the jurisdiction of this Tribe notwithstanding the fact that it ceases to exist, have a residence, or have a place of business; and
 - (2) a registered organization continues to be subject to the jurisdiction of this

Tribe notwithstanding:

- (a) the suspension, revocation, forfeiture, or lapse of the registered organizations status as such; or
- (b) the dissolution, winding up, or cancellation of the existence of the registered organization.

3.12 Interests that Take Priority over Security Interest

- (A) Subordination to certain lien creditors and purchasers. A security interest is subordinate to the rights of:
 - (1) a person that becomes a lien creditor before the security interest is perfected;
 - (2) a buyer of tangible personal property (including instruments and tangible documents or chattel paper), a lessee of goods, a licensee of a general intangible, or a buyer of accounts or general intangibles or securities that:
 - (a) gives value;
 - (b) in the case of a buyer of tangible personal property, a lessee of goods, or a buyer of a security certificate, acquires possession; and
 - (c) in all cases to which this §3.12 (A) (2) applies, without knowledge of the security interest and before it is perfected;
 - (3) a secured party entitled to priority under §3.12 (C).
- (B) Purchase-Money Grace Period. Notwithstanding §3.12 (A), a purchase money secured party that files a financing statement before or within twenty (20) days after the debtor acquires possession of the collateral has priority over the rights of a buyer, lessee or lien creditor which arise between the time the security interest attaches and the time of filing.
- (C) General Rule for Priority Among Conflicting Secured Parties. Priority among conflicting security interests in the same collateral is determined as follows:
 - (1) Conflicting perfected security interests in the same collateral rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest is first perfected, if there is no period thereafter when there is neither filing nor perfection.
 - (2) A perfected security interest has priority over a conflicting unperfected

security interest.

- (3) The first security interest to attach has priority if conflicting security interests are unperfected.
- (D) Time of Perfection for Proceeds. The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds, except as provided in §3.13.
- (E) Priority in Proceeds. Except as provided elsewhere in this section, a security interest that has priority under §3.13 (E), (F) or (J) also has priority over a conflicting security interest in proceeds if:
 - (1) the security interest in proceeds is perfected;
 - (2) the proceeds are cash proceeds or of the same type as the collateral; and
 - (3) in the case of proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.
- (F) First-to-File Rule for Certain Collateral. If a security interest in chattel paper, negotiable documents, instruments, securities or investment accounts is perfected by a method other than filing, and if the proceeds are not cash proceeds, chattel paper, negotiable documents, instruments, securities, investment accounts or letter of credit rights, then priority in the proceeds is determined by the order of any filing.
- (G) Deferral to Other Applicable Law. If applicable law other than this ordinance gives a security interest or right of set-off to a collecting bank, an issuer or nominated person with respect to a letter of credit, a buyer, seller, or lessee of goods, or in personal property that is not subject to this ordinance, that law governs in the event of conflict with the provisions of this ordinance.

3.13. Particular Priority Rules

- (A) Relationship to §3.12 Section. This section creates exceptions to the general priority rules of §3.12.
- (B) Consignee Deemed to Have Rights of Consignor. For the purpose of this ordinance, while goods are in the possession of a consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer. If §3 of this ordinance results in the consignor having priority over a creditor of the consignee, law other than this ordinance determines the rights and title of the consignee with regard to that creditor.

- (C) Ordinary Course Buyers, Licensees and Lessees Take Free. Except as otherwise provided in this subsection, a buyer in ordinary course of business, a person that takes a non-exclusive license of a general intangible in ordinary course of business, or a person that takes a lease of goods in ordinary course of business, takes its interest in the collateral free of a security interest in the collateral created by the seller, licensor, or lessor, even if the security interest is perfected and the buyer, licensee or lessee knows of its existence. Whether a licensee or lessee takes its interest in ordinary course of business is to be determined by criteria parallel to those for a buyer in ordinary course of business (see §1.2 (A) (7)). This subsection does not apply to:
- (1) a buyer of farm products from a person engaged in farming operations, unless the buyer:
 - (a) obtains from the seller a notarized statement setting forth the name and address of any person that has a security interest in the farm products; and
 - (b) either (i) obtains a consent to the sale free of the security interest from the secured party or (ii) makes payment for the farm products jointly to the seller and the secured party; or
 - (2) a buyer of goods in the possession of the secured party (see §3.8).
- (D) Buyer of Consumer Goods Takes Free. A buyer of goods from a person who used or bought the goods for use primarily for personal, family or household purposes takes free of a security interest, even if perfected, if the buyer buys:
- (1) without knowledge of the security interest;
 - (2) for value;
 - (3) primarily for the buyer's personal, family, or household purposes; and
 - (4) in the case of goods having a value of \$5,000.00 or more, before the filing of a financing statement covering the goods.
 - (5) This subsection does not apply to a buyer of goods in the possession of the secured party (see §3.8).
- (E) Purchaser of Chattel Paper or Instrument.
- (1) A purchaser of chattel paper or an instrument has priority over a security interest if:

- (a) the purchaser, in good faith and in the ordinary course of the purchaser's business, gives new value and takes possession of the collateral;
 - (b) the collateral does not indicate that it has been previously assigned to an identified person other than the purchaser; and
 - (c) the purchaser is otherwise without knowledge that the purchase violates the rights of the secured party.
- (2) A purchaser with priority in chattel paper under §3.13 (E) (1) also has priority in proceeds of the chattel paper to the extent that:
 - a. the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the security interest in the proceeds is unperfected; or
 - b. §3.12 (C), (D) or (E) so provides.
- (F) Holder in Due Course and Others Protected. This ordinance does not limit the rights of, or impose liability on, a holder in due course of a negotiable instrument, a holder to which a negotiable document has been duly negotiated, or a person protected against the assertion of a claim to investment property under other applicable law. Filing under this ordinance is not notice of a claim or defense to the holder or protected person.
- (G) Priority of Future Advances.
 - (1) With respect to a conflicting security interest, the priority of an advance under a security agreement is determined under §3.12 (B), except that perfection dates from the time the advance is made if the security interest securing it is perfected only by attachment (see §3.4) or temporarily by law (see §3.7 (E), (F) or (G)) and is not made pursuant to a commitment entered into before or while the security interest is perfected by another means.
 - (2) With respect to a lien creditor, the security interest securing an advance is subordinate if the advance is made more than forty-five (45) days after the person becomes a lien creditor, unless the advance is made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.
 - (3) With respect to a buyer of goods other than a buyer in ordinary course of business (see §1.2 (A) (7)), and with respect to a lessee of goods that does not take its lease in ordinary course of business (see §3.13 (C)), the security

interest securing an advance is subordinate if the advance is made after the earlier of the time the secured party acquires knowledge of the purchase or forty-five (45) days after the purchase, unless the advance is made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the forty-five (45) day period.

- (4) §3.13 (G) (1) and (2) do not apply to a security interest held by a person that is a consignor or a buyer of accounts, chattel paper, payment intangibles or promissory notes.

(H) Purchase Money Super-Priority. The following rules govern the priority of a purchase money security interest and a conflicting security interest in collateral and its proceeds:

- (1) Goods other than inventory and livestock. A perfected purchase-money security interest in goods other than inventory or livestock that are farm products has priority over a conflicting security interest, and a perfected security interest in identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty (20) days thereafter.
- (2) Inventory and livestock. A perfected purchase-money security interest in inventory or livestock that are farm products has priority over a conflicting security interest if the purchase-money security interest is perfected when the debtor acquires possession of the goods and the purchase-money secured party sends timely and appropriate notice to the holder of the conflicting security interest, provided that no such notice is required unless the holder of the conflicting security interest has filed a financing statement covering the same types of goods:
 - (a) before the purchase-money security interest is perfected by filing; or
 - (b) if the purchase-money security interest is temporarily perfected under §3.7 (F), before the beginning of the applicable twenty (20) day period.

If a purchase-money secured party has priority in inventory under §3.13 (H) (2), it also has priority in chattel paper or an instrument constituting proceeds, in proceeds of the chattel paper except as otherwise provided in this section, and in identifiable cash proceeds received on or before delivery of the goods to a buyer. If a purchase-money secured party has priority in livestock that are farm products under this subsection §3.13 (H) (2), it also has priority in their identifiable proceeds and products in their unmanufactured states.

- (3) Software. A perfected purchase-money security interest in software has priority over a conflicting security interest, and a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods.
- (4) Priority among Purchase Money Security Interests. Notwithstanding the rest of §3.13 (F), if two or more purchase-money security interests are perfected in the same collateral, the security interest securing an obligation for the price has priority, and otherwise priority is determined by the rule of §3.12 (B).
- (I) Transferee of Money or Funds Takes Free. A transferee of money or of funds from a deposit account takes the money or funds free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.
- (J) Priority of Interest Perfected by Control; Possession of Certificated Security in Registered Form. A security interest in a security or an investment account perfected by control (see Section 9-314) has priority over a security interest perfected in another way. Multiple security interests perfected by control rank according to time of acquiring control; however, a security interest held by an investment intermediary in the investment account that it maintains has priority regardless of time of acquiring control. A security interest in a certificated security in registered form that is perfected by possession (see Section 9-313) and not by control has priority over a conflicting security interest perfected by a method other than control.
- (K) Possessory liens. A lien created by statute or rule of law which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business and whose effectiveness depends on the person's possession of the goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.
- (L) Priority of Tribal Liens. A lien created under the sovereign authority of this Tribe has priority over all other security interests no matter how created.

3.14. Priority of Security Interests in Fixtures and Crops

- (A) Security Interest in Fixtures under this Ordinance. A security interest under this ordinance may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this ordinance in ordinary building materials incorporated into an improvement on land.
- (B) Security Interest in Fixtures under Real-Property Law. This ordinance does not prevent creation of an encumbrance upon fixtures under real property law.

- (C) General Rule: Subordination of Security Interest in Fixtures. In cases not governed by §3.14 (D) through (H), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.
- (D) Fixtures Purchase-Money Priority. Except as otherwise provided in §3.13 (H), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:
- (1) the security interest is a purchase-money security interest;
 - (2) the interest of the encumbrancer or owner arises before the goods become fixtures; and
 - (3) the security interest is perfected by an appropriate filing before the goods become fixtures or within twenty (20) days thereafter.
- (E) Priority of Security Interest in Fixtures Over Interests in Real Property. A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:
- (1) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:
 - (a) is perfected by an appropriate filing before the interest of the encumbrancer or owner is of record; and
 - (b) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;
 - (2) before the goods become fixtures, the security interest is perfected by any method permitted by this ordinance and the fixtures are readily removable:
 - (a) factory or office machines;
 - (b) equipment that is not primarily used or leased for use in the operation of the real property; or
 - (c) replacements of domestic appliances that are consumer goods;
 - (3) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method

permitted by this ordinance; or

(4) the security interest is:

(a) created in a manufactured home in a manufactured-home transaction;
and

(b) perfected pursuant to a statute described in §3.6 (A) (2).

(F) Priority Based on Consent, Disclaimer, or Right to Remove. A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the encumbrancer or owner has, in a signed record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) the debtor has a right to remove the goods as against the encumbrancer or owner.

(G) Continuation of §3.14 (F) (2) Priority. The priority of the security interest under §3.14 (F) (2) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(H) Priority of Construction Mortgage. A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in §3.14 (E) and (F), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(I) Priority of Security Interest in Crops. A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

3.15. Accessions

(A) Creation of Security Interest in Accession. A security interest may be created in an accession and continues in collateral that becomes an accession.

(B) Perfection of Security Interest. If a security interest is perfected when the collateral

becomes an accession, the security interest remains perfected in the collateral.

- (C) Priority of Security Interest. Except as otherwise provided in §3.15 (D), the other provisions of this section determine the priority of a security interest in an accession.
- (D) Compliance with Certificate-of-Title Statute. A security interest in an accession is subordinate to a security interest in the whole that is perfected by compliance with the requirements of a certificate-of-title statute under §3.6 (B).
- (E) Removal of Accession after Default. After default, subject to §6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.
- (F) Reimbursement Following Removal. A secured party that removes an accession from other goods under §3.15 (E) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

3.16. Commingled Goods

- (A) “Commingled goods.” In this section, “commingled goods” shall mean goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.
- (B) No security interest in commingled goods as such. A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.
- (C) Attachment of security interest to product or mass. If collateral becomes commingled goods, a security interest attaches to the product or mass.
- (D) Perfection of security interest. If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under §3.16 (C) is perfected.
- (E) Priority of security interest. Except as otherwise provided in §3.16 (F) the other provisions of this section determine the priority of a security interest that attaches to the product or mass under §3.16 (C).

(F) Conflicting Security Interests in Product or Mass. If more than one security interest attaches to the product or mass under §3.16 (C), the following rules determine priority:

- (1) A security interest that is perfected under §3.16 (D) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.
- (2) If more than one security interest is perfected under §3.16 (D), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

3.17. Priority of Security Interests in Goods Covered by Certificate of Title

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this jurisdiction issues a certificate of title (§10.6 (A) (11)) that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

- (A) a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and
- (B) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under §3.6 (B), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

3.18. Priority Subject to Subordination

This ordinance does not preclude subordination by agreement by a person entitled to priority.

§ 4. Rights of Third Parties

4.1. Alienability of Debtor's Rights

Whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this ordinance; however, an agreement between a debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect. This section is subject to §4.4, which invalidates certain legal and contractual restrictions on transferability that generally would be effective under other law.

4.2. Secured Party, not Obligated on Contract of Debtor or in Tort

The existence of a security interest or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

4.3. Rights of Assignee

- (A) Waiver-of-Defense Clauses; Limitations Thereon. An agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment in good faith, and for value as defined in the applicable law governing negotiable instruments, except as to claims or defenses that may be asserted against a holder in due course of a negotiable instrument. However, such an agreement is not enforceable if:
- (1) the agreement relates to an obligation incurred on account of a sale or lease of goods or services;
 - (2) the account debtor seeks or acquires the goods or services primarily for personal, family or household use; and
 - (3) the assignor, in the ordinary course of its business, sells or leases goods or services to consumers.
- (B) Parallel Rule for Negotiable Instruments. If a negotiable promissory note represents an obligation incurred on account of a sale or lease of goods or service, and the issuer seeks or acquires the goods or services primarily for personal, family or household use, and the payee, in the ordinary course of its business, sells or leases goods or services to consumers, then the issuer may assert any claims and defenses against a person entitled to enforce the note, including a holder in due course.
- (C) Assignee's Rights Subject to Terms, Claims and Defenses. Except to the extent an agreement to the contrary is enforceable under §4.3 (A), the rights of an assignee are subject to reduction of the amount owed by reason of all terms of the contract between the account debtor and assignor, any defense or claim in recoupment arising from the transaction that gave rise to the contract, and any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives adequate notification of the assignment signed by the assignor or the assignee. This subsection does not apply to the assignee of a health-care-insurance receivable.
- (D) Discharge of Account Debtor or Party to Instrument. An account debtor or party to a negotiable promissory note may discharge its obligation by paying the assignor or person formerly entitled to enforce the note until, but not after, such account debtor or party receives:

- (1) adequate notification that performance is to be rendered to the assignee or transferee, signed:
 - (a) in the case of an account debtor, by the assignor or assignee: and
 - (b) in the case of a negotiable promissory note, by the transferor or transferee; and
- (2) if requested by such account debtor or party, reasonable proof of the assignment or transfer.

In the case of an account debtor, discharge under this subsection is effective notwithstanding an otherwise enforceable agreement not to assert claims or defenses. In the case of a party to a negotiable promissory note, discharge under this subsection is effective against a holder in due course.

- (E) Modifications of Contract. A modification of or substitution for an assigned contract is effective against an assignee to the extent provided by law other than this ordinance.

4.4. Restrictions on Assignment

- (A) Commercially Harmful Restrictions on Alienation Invalid. A commercially harmful restriction on alienation (see §4.4 (B), (C) and (D)) of personal property is invalid, unless it is a restriction placed by this Tribe regarding Tribal interests in personal property.
- (B) Commercially Harmful Defined for Certain Transactions. In an assignment of accounts other than health-care-insurance receivables, an assignment of chattel paper, an assignment of payment intangibles that is not a sale, or a transfer of promissory notes that is not a sale, the term “commercially harmful restriction on alienation” means a term in an agreement between an account debtor and an assignor, or in a promissory note, to the extent that it:
 - (1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note, to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the affected property; or
 - (2) provides that such an assignment, transfer, creation, attachment, perfection, or enforcement may give rise to a default or remedy.
- (C) Commercially Harmful Defined Less Broadly for Other Transactions. In an

assignment of a health-care-insurance receivable, a sale of promissory notes, a sale of payment intangibles, or a security interest in other general intangibles (including a contract, permit, or license, or franchise) that is not a sale, the term “commercially harmful restriction on alienation” has the same meaning as in §4.4 (B) except that the references to enforcement of a security interest appearing in §4.4 (B) (1) and (2) are excluded.

(D) Limitation on Effect in Such Other Transactions. To the extent a commercially harmful restriction on alienation under §4.4 (C) would otherwise be effective under law other than this ordinance, the creation, attachment, or perfection of the security interest:

- (1) does not impose a duty or obligation on the account debtor or person obligated on the promissory note;
- (2) is not enforceable against the account debtor or person obligated on the promissory note; and
- (3) does not entitle the secured party to:
 - (a) use the debtor’s rights in or to the property;
 - (b) have access to trade secrets or confidential information of the account debtor or person obligated on the promissory note; or
 - (c) enforce the security interest.

(E) Rule of Law as Commercially Harmful Restriction. In addition to the meanings set forth in §4.4 (B) and (C), the term “commercially harmful restriction on alienation” includes a rule of law to the extent that it:

- (1) requires the consent of a governmental body or official to the assignment or transfer of, or actions described in §4.4 (B) or (C), as applicable, regarding a security interest in, the property; or
- (2) has any of the effects of a commercially harmful restriction on alienation as defined in §4.4 (B) or (C), as applicable.

(F) Deferral to Consumer Law; Inapplicability. This section is subject to any applicable different rule in other law for a consumer. In addition, this section does not apply to an assignment of:

- (1) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. §104(a)(1) or (2), as the same may be amended from time to

time;

- (2) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. §1396p(d)(4), as the same may be amended from time to time.
- (3) a structured settlement payment right; or
- (4) a right to payment of winnings in a lottery or other game of chance regulated by law other than this ordinance.

§ 5. Filing

5.1. Acceptance, Refusal, and Effectiveness of Financing Statements; Administration

- (A) Place to File. The place to file a financing statement to perfect a security interest governed by this ordinance or another record relating to a security interest is the office of the State of Wisconsin Department of Financial Institutions. However, if (1) the collateral is as-extracted collateral or timber to be cut, or (2) the financing statement is filed as a fixture filing, the collateral is goods that are or are to become fixtures, and the debtor is not a transmitting utility, then the place to file the financing statement is the office designated for the filing or recording of a record of a mortgage on the related real property.
- (B) Pre-Filing; Acceptance and Refusal. A financing statement may be filed in the office of the Wisconsin Department of Financial Institutions before a security agreement is made or a security interest attaches in accordance with the Wisconsin Department of Financial Institutions' rules and regulations. A financing statement or other record may be accepted or refused in accordance with the Wisconsin Department of Financial Institutions' rules and regulations.
- (C) Effectiveness of Financing Statement; Minor Errors. A record in appropriate form and communicated to the filing office by an appropriate method is effective even if:
 - (1) it is improperly refused by the filing office, except as against a purchaser of the collateral for value in reasonable reliance on the absence of the record from the files;
 - (2) it is incorrectly indexed by the filing office; or
 - (3) it has minor errors or omissions in information required to perfect a security interest, unless the errors or omissions make the record seriously misleading. If a financing statement fails sufficiently to provide the name of the debtor, the name provided does not make the financing statement seriously misleading if a search of the filing office's records under the debtor's correct

name using the filing office's standard search logic, if any, would disclose the financing statement.

- (D) Subordination in Certain Cases of Reliance. If information that the filing office's regulations require to be included in a record, but that §5.2 (A) does not require for perfection of a security interest, is incorrect at the time the record is filed, the security interest is subordinate to a conflicting perfected security interest or the interest of a purchaser other than a secured party, to the extent that:
 - (1) the holder of the conflicting security interest gives value in reasonable reliance on the incorrect information; or
 - (2) the purchaser gives value and, in the case of a buyer or lessee of property capable of being possessed, takes possession, all in reasonable reliance on the incorrect information.
- (E) Fees. The fees for filing shall be determined and collected by the office of the Wisconsin Department of Financial Institutions.
- (F) Regulations. The Finance Department shall promulgate regulations to administer §5 of this ordinance. The Finance Department shall promulgate and make available the following, in both cases consistent with this ordinance and with Tribal commercial policy:
 - (1) regulations to the extent thought necessary for the effective implementation and enforcement of §5 of this ordinance; and
 - (2) an implementation manual providing guidance to persons entering into transactions governed by this ordinance.

5.2. Contents of Records; Authorization; Lapse; Continuation; Termination

- (A) Information Required for Perfection; Other Required Contents. A financing statement is sufficient to perfect a security interest only if it provides the name of the debtor, the name of the secured party or a representative of the secured party, and indicates the collateral covered by the financing statement with a description, whether or not specific, that reasonably identifies the collateral or states that it covers all assets or all personal property. A financing statement or a record of a mortgage that covers as-extracted collateral or timber to be cut, or that is filed as a fixture filing and covers goods that are or are to become fixtures, is sufficient only if in addition it includes such further information as required by filing office regulation. A record that constitutes a termination statement, assigns a record, continues a record, or otherwise amends a record must comply with the regulations of the filing office for such records.

- (B) Other Information and Filing Office Regulations. A record may include information other than that required by §5.2 (A), such as addresses for the debtor and secured party, the characterization of a party as an individual or an organization and, if an organization, the type of organization, and the jurisdiction of organization of the debtor, or a trade name for the debtor, and may use other terms such as “consignor,” “lessor,” or “licensor,” to the extent permitted by and in compliance with the regulations of the filing office, and shall include such other information to the extent required by such regulations.
- (C) Duration of Effectiveness. A validly filed financing statement is effective for five (5) years after the date of filing unless sooner terminated, except as follows:
- (1) If the financing statement correctly indicates that it is filed in connection with a manufactured home transaction or a public finance transaction, it is effective for thirty (30) years after the date of filing unless sooner terminated;
 - (2) If the debtor is a transmitting utility and the financing statement so indicates, the financing statement is effective until terminated; and
 - (3) A mortgage that is effective as a financing statement is effective until the mortgage is satisfied of record.
- (D) Continuation and Lapse. A financing statement lapses at the end of the period specified in §5.2 (C) unless a continuation statement is filed within six (6) months before the expiration of the period. A lapsed financing statement ceases to perfect the security interest unless it is perfected otherwise before lapse, and the security interest is deemed to never have been perfected against a purchaser of the collateral for value.
- (E) Effect of Continuation and Other Amendments. Upon proper continuation, the effectiveness of a filed financing statement continues for an additional period commencing on the date on which it otherwise would have become ineffective, and again may lapse unless further continued. An amendment to a financing statement other than a continuation statement does not extend the effectiveness of a financing statement, is effective only from its date of filing, and may be effective as a termination statement as prescribed in the regulations of the filing office.
- (F) Termination Statement. Upon the filing of a termination statement, the financing statement to which the termination statement relates ceases to be effective. A secured party or secured party of record shall file, cause to be filed, or send a termination statement in accordance with the regulations promulgated under this ordinance.
- (G) Persons Entitled to File. Only a person authorized by the debtor in compliance with this subsection or with regulations of the filing office, or a person otherwise designated by those regulations, may file a record that is effective. By signing a

security agreement, the debtor authorizes the filing of a financing statement and amendments covering (i) the collateral described in the security agreement and (ii) property that becomes collateral under §3.10 (A) (2), relating to identifiable proceeds.

- (H) Change of Name; Transfer of Collateral; New Person Becoming Bound. If a debtor so changes its name, or an organization its identity or corporate structure, that a filed financing statement becomes seriously misleading, the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an appropriate filing is made before the expiration of that time. If a security interest continues in collateral transferred by the debtor (§3.10 (A)), a filed financing statement with respect to collateral remains effective, even if the secured party knows of or consents to the transfer.

§ 6. Default

6.1. Rights after Default; Judicial Enforcement; Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes

- (A) Rights of Secured Party after Default. After default, a secured party has the rights provided in this part, the rights and duties related to possession or control of collateral (see §2.4) and, except as otherwise provided in the provisions of this ordinance dealing with waivers and variances of rights and duties (see §6.2), those provided by agreement of the parties. A secured party:
- (1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, by any available judicial procedure; and
 - (2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.
- (B) Rights Cumulative; Simultaneous Exercise. The rights under §6.2 (A) are cumulative and may be exercised simultaneously.
- (C) Rights of Debtor and Obligor. Except as otherwise provided in §6.2 (F) and under the provisions of this ordinance dealing with an unknown debtor or a secondary obligor (see §6.5), after default, a debtor and an obligor have the rights provided in this section and by agreement of the parties.
- (D) Lien of Levy after Judgment. If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:
- (1) the date of perfection of the security interest in the collateral;

- (2) the date of filing a financing statement covering the collateral; or
 - (3) any date specified in a statute under which the lien was created.
- (E) Execution Sale. A sale pursuant to an execution is a foreclosure of the security interest by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this ordinance, subject to the rights of any senior secured parties.
- (F) Consignor or Buyer of Certain Rights to Payment. Except as otherwise provided in the provisions of this ordinance dealing with commercially reasonable collection and enforcement (§6.6 (B)), this section imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

6.2. Waiver and Variance of Rights and Duties

Except as otherwise provided in the provisions of this ordinance dealing with waivers (see §6.22), to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following sections of this ordinance dealing with:

- (A) rights and duties when collateral is in a secured party's possession (see §2.4);
- (B) requests for an accounting or requests regarding a list of collateral or statement of an account (see §2.6);
- (C) commercially reasonable collection and enforcement (see §6.6 (B));
- (D) application of proceeds, deficiency and surplus (see §6.7 (A) and §6.13 (C)), to the extent that they deal with application or payment of non-cash proceeds of collection, enforcement, or disposition;
- (E) application of proceeds and the like (see §6.7 and §6.13 (D)), to the extent that they require accounting for or payment of surplus proceeds of collateral;
- (F) a secured party's right to take possession after default and limitations thereon (see §6.8), to the extent that it imposes upon the secured party taking possession of collateral without judicial process the duty to do so without breach of the peace and with consent of the debtor;
- (G) commercially reasonable disposition (see §6.9 (B)), notification before disposition of the collateral (see §6.10), and the contents and form of a notification before disposition of the collateral (see §6.12);

- (H) calculation of a deficiency or surplus when the fairness of the amount of proceeds is placed in issue (see §6.13 (E));
- (I) explanation of the calculation of a surplus or deficiency (see §6.14);
- (J) acceptance of collateral in satisfaction of obligation (see §6.18);
- (K) right to redeem collateral (see §6.19);
- (L) waivers (see §6.20); and
- (M) the secured party's liability for failure to comply with this ordinance (see §6.21 and §6.22).

6.3. Agreement on Standards Concerning Rights and Duties

The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in the provisions of this ordinance dealing with waiver or variance of rights and duties (see §6.2), if the standards are not manifestly unreasonable.

6.4. Procedure if Security Agreement Covers Real Property or Fixtures

- (A) Enforcement: Personal and Real Property. If a security agreement covers both personal and real property, a secured party may proceed:
 - (1) under this section as to the personal property without prejudicing any rights with respect to the real property; or
 - (2) as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this section do not apply.
- (B) Enforcement: Fixtures. Subject to §6.4 (C), if a security agreement covers goods that are or become fixtures, a secured party may proceed:
 - (1) under this part; or
 - (2) in accordance with the rights with respect to real property, in which case the other provisions of this section do not apply.
- (C) Removal of Fixtures. Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers

of the real property, the secured party, after default, may remove the collateral from the real property.

- (D) Injury Caused by Removal. A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

6.5. Unknown Debtor or Secondary Obligor

A secured party does not owe a duty based on its status as a secured party:

- (A) to a person that is a debtor or obligor, unless the secured party knows:
- (1) that the person is a debtor or obligor;
 - (2) the identity of the person; and
 - (3) how to communicate with the person; or
- (B) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
- (1) that the person is a debtor; and
 - (2) the identity of the person.

6.6. Collection and Enforcement by Secured Party

- (A) Collection and Enforcement Generally. If so agreed, and in any event after default, a secured party:
- (1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
 - (2) may take any proceeds to which the secured party is entitled under §3.6;
 - (3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation

of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

- (B) Commercially Reasonable Collection and Enforcement. A secured party shall proceed in a commercially reasonable manner if the secured party:
 - (1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and
 - (2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.
- (C) Expenses of Collection and Enforcement. A secured party may deduct from the collections made pursuant to §6.6 reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.
- (D) Duties to Secured Party Not Affected. This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

6.7. Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus

- (A) Application of Proceeds, Surplus, and Deficiency if Obligation Secured. If a security interest secures payment or performance of an obligation, the following rules apply:
 - (1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under §6.6 in the following order to:
 - (a) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
 - (b) the satisfaction of obligations secured by the security interest under which the collection or enforcement is made; and
 - (c) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest under which the collection or enforcement is made if the secured party receives a signed demand for proceeds before distribution of the proceeds is completed.

- (2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under §6.7 (A) (1) (c).
- (3) A secured party need not apply or pay over for application non-cash proceeds of collection and enforcement under §6.6 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application non-cash proceeds shall do so in a commercially reasonable manner.
- (4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

6.8. Secured Party's Limited Right to Take Possession after Default

- (A) Consent or Judicial Process. Unless otherwise agreed, a secured party has at the time of or after default the powers described in §6.8 (B), but such powers may be exercised only pursuant to judicial process or with the debtor's consent. Such consent is effective only if expressed after default by means of a separate dated and signed personal statement in the debtor's handwriting, describing the powers to be exercised by the secured party and expressly acknowledging and waiving the debtor's right to require that such exercise be pursuant to judicial process.
- (B) Possession, Rendering Equipment Unusable and Assembly of Collateral. Under the circumstances of §6.8 (A) the secured party may:
 - (1) take possession of the collateral;
 - (2) without removal, render equipment unusable and dispose of collateral on a debtor's premises under §6.9; and
 - (3) require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.
- (C) No Breach of the Peace. A secured party acting pursuant to the debtor's consent under §6.8 (A) must proceed without breach of the peace.

6.9. Disposition of Collateral after Default

- (A) Disposition after Default. After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following

any commercially reasonable preparation or processing.

- (B) Commercially Reasonable Disposition; Tribal Business Day. Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms. In order to protect the debtor's right to redeem collateral (see §6.19), a disposition of collateral shall take place only on a Tribal business day.
- (C) Purchase by Secured Party. A secured party may purchase collateral:
 - (1) at a public disposition; or
 - (2) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.
- (D) Warranties on Disposition. A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of applicable law accompany a voluntary disposition of property of the kind subject to the contract.
- (E) Disclaimer of Warranties. A secured party may disclaim or modify warranties under §6.9 (D):
 - (1) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or
 - (2) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.
- (F) Record Sufficient to Disclaim Warranties. A record is sufficient to disclaim warranties §6.9 (E) if it indicates "there is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

6.10. Notification before Disposition of Collateral

- (A) "Notification Date". In this section, "notification date" means the earlier of the date on which:
 - (1) a secured party sends to the debtor and any secondary obligor a signed

notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

(B) Notification of Disposition Required. Except as otherwise provided in §6.10 (D), a secured party that disposes of collateral under §6.9 shall send to the persons specified in §6.10 (C) a reasonable signed notification of disposition.

(C) Persons to be Notified. To comply with §6.10 (B), the secured party shall send a signed notification of disposition to:

(1) the debtor;

(2) any secondary obligor; and

(3) if the collateral is other than consumer goods:

(a) any other person from which the secured party has received, before the notification date, a signed notification of a claim of an interest in the collateral;

(b) any other secured party or lienholder that, fourteen (14) calendar days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(c) any other secured party that, fourteen (14) calendar days before the notification date, held a security interest in the collateral perfected by compliance with other applicable law (see §3.6).

(D) §6.10 (B) Inapplicable: Perishable Collateral; Recognized Market. §6.10 (B) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(E) Compliance with §6.10 (C) (3) (b). A secured party complies with the requirement for notification prescribed by subsection §6.10 (C) (3) (b) if:

(1) not later than twenty (20) calendar days or earlier than thirty (30) calendar

days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in §6.10 (C) (3) (b); and

- (2) before the notification date, the secured party:
 - a. did not receive a response to the request for information; or
 - b. received a response to the request for information and sent a signed notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

6.11. Timeliness of Notification before Disposition of Collateral

- (A) Reasonable Time is Question of Fact. Except as otherwise provided in §6.11 (B) whether a notification is sent within a reasonable time is a question of fact.
- (B) Safe Harbors for Sufficiency of Time. Unless a specific time for sending a notification of disposition is established by the court, a notification of disposition is sent within a reasonable time before the disposition when it is sent after default and:
 - (1) in a consumer transaction, twenty (20) calendar days or more before the earliest time of disposition set forth in the notification; or
 - (2) in all other transactions, ten (10) calendar days or more before the earliest time of disposition set forth in the notification.

6.12. Contents and Form of Notification before Disposition of Collateral

The following rules apply to notification before disposition of collateral:

- (A) The contents of a notification of disposition are sufficient if the notification:
 - (1) describes the debtor and the secured party;
 - (2) describes the collateral that is the subject of the intended disposition;
 - (3) states the method of intended disposition;
 - (4) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting;

- (5) states the time and place of a public disposition or the time after which any other disposition is to be made;
 - (6) describes any liability for a deficiency by the person receiving the notice; and
 - (7) states a telephone number or mailing address from which additional information concerning redemption, disposition and the obligation secured is available.
- (B) Whether the contents of a notification that lacks any of the information specified in §6.12 (A) are nevertheless sufficient is a question of fact.
 - (C) The contents of a notification providing substantially the information specified in §6.12 (A) are sufficient, even if the notification includes:
 - (1) information not specified by that subsection; or
 - (2) minor errors that are not seriously misleading.
 - (D) A particular phrasing of the notification is not required.

6.13. Application of Proceeds of Disposition; Liability for Deficiency and Right to Surplus

- (A) Application of Proceeds. A secured party shall apply or pay over for application the cash proceeds of disposition under §6.9 in the following order to:
 - (1) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
 - (2) the satisfaction of obligations secured by the security interest under which the disposition is made;
 - (3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:
 - (a) the secured party receives from the holder of the subordinate security interest or other lien a signed demand for proceeds before distribution of the proceeds is completed; and
 - (b) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

- (4) a secured party that is a consignor of the collateral if the secured party receives from the consignor a signed demand for proceeds before distribution of the proceeds is completed.
- (B) Proof of Subordinate Interest. If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under §6.13 (A) (3).
- (C) Application of Non-Cash Proceeds. A secured party need not apply or pay over for application non-cash proceeds of disposition under §6.9 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application non-cash proceeds shall do so in a commercially reasonable manner.
- (D) Surplus or Deficiency if Obligation Secured. If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by §6.13 (A) and permitted by §6.13 (C):
- (1) unless §6.13 (A) (4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and
 - (2) the obligor is liable for any deficiency.
- (E) Calculation of Surplus or Deficiency in Disposition to Person Related to Secured Party. The surplus or deficiency following a disposition is calculated based on the amount of proceeds received, but if the fairness of the amount of those proceeds is placed in issue and the disposition was to a person related to the secured party, the secured party has the burden of establishing that the amount is not significantly below the range of proceeds that are represented by at least the wholesale value of the collateral.
- (F) Cash Proceeds Received by Junior Secured Party. A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest under which the disposition is made:
- (1) takes the cash proceeds free of the security interest or other lien;
 - (2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and
 - (3) is not obligated to account to or pay the holder of the security interest or other

lien for any surplus.

6.14. Explanation of Calculation of Surplus or Deficiency

- (A) Explanation of Calculation. In a consumer transaction, a secured party must provide the debtor or consumer obligor a reasonably detailed explanation in a record of the manner in which any surplus or deficiency was calculated if the debtor or consumer obligor demands such an explanation or, in any event, ten (10) Tribal business days before commencing an action for a deficiency.
- (B) Charges for Responses. Each debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to §61.6(A). The secured party may require payment of a charge not exceeding \$25 for each additional response.

6.15. Rights of Transferee of Collateral

- (A) Effects of Disposition. A secured party's disposition of collateral after default:
 - (1) transfers to a transferee for value all of the debtor's rights in the collateral;
 - (2) discharges the security interest under which the disposition is made; and
 - (3) discharges any subordinate security interest or other subordinate lien unless the subordinate security interest or lien is payable to this Tribe.
- (B) Rights of Good-Faith Transferee. A transferee that acts in good faith takes free of the rights and interests described in §6.15 (A), even if the secured party fails to comply with this ordinance or the requirements of any judicial proceeding.
- (C) Rights of Other Transferee. If a transferee does not take free of the rights and interests described in §6.15 (A), the transferee takes the collateral subject to:
 - (1) the debtor's rights in the collateral;
 - (2) the security interest under which the disposition is made; and
 - (3) any other security interest or other lien.

6.16. Rights and Duties of Certain Secondary Obligors

- (A) Rights and Duties of Secondary Obligor. A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary

obligor:

- (1) receives an assignment of a secured obligation from the secured party;
 - (2) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or
 - (3) is subrogated to the rights of a secured party with respect to collateral.
- (B) Effect of Assignment, Transfer, or Subrogation. An assignment, transfer, or subrogation described in §6.16 (A):
- (1) is not a disposition of collateral under §6.9; and
 - (2) relieves the secured party of further duties under this ordinance.

6.17. Transfer of Record or Legal Title

- (A) “Transfer Statement.” In this section, “transfer statement” means a record authenticated by a secured party stating:
- (1) that the debtor has defaulted in connection with an obligation secured by specified collateral;
 - (2) that the secured party has exercised its post-default remedies with respect to the collateral;
 - (3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and
 - (4) the name and mailing address of the secured party, debtor, and transferee.
- (B) Effect of Transfer Statement. A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:
- (1) accept the transfer statement;
 - (2) promptly amend its records to reflect the transfer; and
 - (3) if applicable, issue a new appropriate certificate of title in the name of the

transferee.

- (C) Transfer not a Disposition; No Relief of Secured Party's Duties. A transfer of the record or legal title to collateral to a secured party under §6.17 (B) or otherwise is not of itself a disposition of collateral under this ordinance and does not of itself relieve the secured party of its duties under this ordinance.

6.18. Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Notification of Proposal; Effect of Acceptance; Compulsory Disposition of Collateral

- (A) Proposal to Accept Collateral in Full or Partial Satisfaction of Obligation. Except as provided in §6.18 (E), a secured party may, after default, propose to retain the collateral in full satisfaction of the obligation it secures or, in a transaction other than a consumer transaction, in partial satisfaction of such obligation.

- (B) Notification of Proposal to Accept Collateral. The secured party shall send notice of such proposal to:

- (1) the debtor;
- (2) any person from whom the secured party has received, before the debtor consented to the acceptance, a signed notification of a claim of an interest in the collateral;
- (3) any person that, fourteen (14) calendar days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by means of a financing statement or compliance with other law (see §3.6 (A)) that makes such interest reasonably discoverable; and
- (4) if the proposal is for partial satisfaction of the obligation, any secondary obligor.

- (C) Conditions to Acceptance. The proposal is not effective unless it is covered by §6.18 (A) and:

- (1) the debtor consents to the proposal in a record signed after default;
- (2) no other person specified in §6.18 (B), and no other person holding an interest in the collateral subject to the secured party's interest, objects to the proposal within fourteen (14) Tribal business days after notification was sent;
- (3) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the proposal.

- (D) Effect of Acceptance. A secured party's acceptance of collateral pursuant to this section:
- (1) discharges the obligation to the extent consented to by the debtor;
 - (2) transfers to the secured party all of the debtor's rights in the collateral;
 - (3) discharges the security interest that is the subject of the debtor's consent, and any security interest or other lien or interest that is subordinate thereto except this Tribe's security interest or lien, even if the secured party accepting the collateral fails to comply with this section.
- (E) Mandatory Disposition of Consumer Goods. A secured party that has taken possession of collateral shall dispose of the collateral pursuant to §6.9 through §6.14 if:
- (1) sixty percent (60%) of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or
 - (2) sixty percent (60%) of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

Such disposition shall be made within ninety (90) calendar days after taking possession, or within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and signed after default.

6.19. Right to Redeem Collateral

- (A) Persons that May redeem. A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.
- (B) Requirements for Redemption. To redeem collateral, a person shall tender:
- (1) fulfillment of all obligations secured by the collateral; and
 - (2) the reasonable expenses and attorney's fees described in §6.13 (A) (1), dealing with application of proceeds of disposition.
- (C) When Redemption May Occur. A redemption may occur at any time before a secured party:
- (1) has collected collateral under §6.6;

- (2) has disposed of collateral or entered into a contract for its disposition under §6.9; or
- (3) has accepted collateral in full or partial satisfaction of the obligation it secures under §6.18.

6.20. Waiver

- (A) Waiver of Disposition Notification. A debtor or secondary obligor may waive the right to notification of disposition of collateral under §6.10 only by an agreement to that effect entered into and signed after default.
- (B) Waiver of Mandatory Disposition. A debtor may waive the right to require disposition of collateral under §6.18 (E), which deals with mandatory disposition of consumer goods, only by an agreement to that effect entered into and signed after default.
- (C) Waiver of Redemption Right. In a transaction other than a consumer transaction, a debtor or secondary obligor may waive the right to redeem collateral under §6.19 only by an agreement to that effect entered into and signed after default. In a consumer transaction, a debtor or secondary obligor may not waive such right.

6.21. Remedies for Secured Party's Failure to Comply with Ordinance

- (A) Judicial Orders Concerning Noncompliance. If it is established that a secured party is not proceeding in accordance with this ordinance, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.
- (B) Damages for Noncompliance. Subject to §6.21 (C), (D), and (F), a person is liable for damages in the amount of any loss caused by a failure to comply with this ordinance. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing
- (C) Persons Entitled to Recover Damages, Statutory Damages where Collateral is Consumer Goods. Except as otherwise provided in §6.24, which deals with the non-liability and limitations on liability of a secured party and the liability of a secondary obligor:
 - (1) a person that, at the time a secured party failed to comply with this section, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under §6.21 (B) for its loss; and

- (2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this section may recover for that failure in any event an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the obligation or the time-price differential plus ten percent (10%) of the cash price.
- (D) Recovery when Deficiency Eliminated or Reduced. A debtor whose deficiency is eliminated under §6.22, which deals with actions in which a deficiency or surplus is in issue, may recover damages for the loss of any surplus.
- (E) Statutory Damages: Noncompliance with Specified Provisions. In addition to any damages recoverable under §6.21 (B), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars (\$500) in each case from a person that:
 - (1) fails to comply with the provisions of this ordinance dealing with additional duties of a secured party having control of an investment account (see §2.5 (B));
 - (2) fails to comply with the provisions of this ordinance dealing with duties of a secured party if an account debtor has been notified of assignment (see §2.5 (C));
 - (3) files a record that the person is not entitled to file under §5.2 (G);
 - (4) fails to file, cause to be filed or send a termination statement as required by §5.2 (F);
 - (5) fails to comply with the provisions of this ordinance dealing with explanations of calculations of surplus or deficiency (see §6.14 (A)), and whose failure is part of a pattern, or consistent with a practice, of noncompliance.
- (F) Statutory Damages: Noncompliance with the Provisions of this Ordinance Dealing with a Request for an Accounting. A debtor or consumer obligor may recover damages under §6.21 (B) and, in addition, five hundred dollars (\$500.00) in each case from a person that, without reasonable cause, fails to comply with a request for an accounting (see §2.6). A recipient of a request under §2.6 that never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of §6.21.
- (G) Limitation of Security Interest: Noncompliance with Ordinance. If a secured party fails to comply with a request regarding a list of collateral or a statement of account

under §2.6, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

6.22. Action in Which Deficiency or Surplus is in Issue

- (A) Applicable Rules if Amount of Deficiency or Surplus in Issue. In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:
- (1) A secured party need not prove compliance with the provisions of this section relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.
 - (2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.
 - (3) Except as otherwise provided in the provisions of this ordinance dealing with non-liability and limitations on liability of a secured party or secondary obligor (see §6.24), if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this section relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is subject to setoff for an amount as stated in the provision of this ordinance dealing with damages for noncompliance (see §6.21 (B)), which may be measured by the amount recovered for conversion of collateral.
 - (4) For purposes of §6.22 (A) (3), the liability of the debtor or a secondary obligor is calculated on the presumption that the proceeds of disposition equal the sum of the secured obligation, expenses, and allowable attorney's fees, but the secured party may rebut the presumption.
- (B) Consumer Transactions; No Inference. The limitation of the rules in §6.22 (A) to transactions other than consumer transactions is intended to leave to the Tribal Court the determination of the proper rules in consumer transactions. The Tribal Court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

6.23. Determination of Whether Conduct was Commercially Reasonable

- (A) Greater Amount Obtainable Under other Circumstances; No Preclusion of Commercial Reasonableness. The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time

or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

- (B) Dispositions which are Commercially Reasonable. A disposition of collateral is made in a commercially reasonable manner if the disposition is made:
 - (1) in the usual manner on any recognized market;
 - (2) at the price current in any recognized market at the time of the disposition; or
 - (3) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

- (C) Approval by Court or on Behalf of Creditors. A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:
 - (1) in a judicial proceeding;
 - (2) by a bona fide creditors' committee;
 - (3) by a representative of creditors; or
 - (4) by an assignee for the benefit of creditors.

Such approval need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

6.24. Non-liability and Limitation on Liability of Secured Party; Liability of Secondary Obligor

- (A) Limitation of Liability of Secured Party for Noncompliance with Ordinance. Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:
 - (1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this ordinance; and
 - (2) the secured party's failure to comply with this ordinance does not affect the liability of the person for a deficiency.

- (B) Limitation of Liability Based on Status as Secured Party. A secured party is not liable because of its status as a secured party:

- (1) to a person that is a debtor or obligor, unless the secured party knows:
 - (a) that the person is a debtor or obligor;
 - (b) the identity of the person; and
 - (c) how to communicate with the person; or
 - (2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
 - (a) that the person is a debtor; and
 - (b) the identity of the person.
- (C) Limitation of Liability if Reasonable Belief that Transaction is not a Consumer Transaction or Collateral is not Consumer Goods. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:
- (1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or
 - (2) an obligor's representation concerning the purpose for which a secured obligation was incurred.
- (D) Limitation of Liability for Statutory Damages. A secured party is not liable to any person under §6.21 (C) (2), which deals with statutory damages where the collateral is consumer goods, for its failure to comply with §6.14, which deals with explanations of calculations of surplus or deficiency.
- (E) Limitation of Multiple Liabilities for Statutory Damages. A secured party is not liable under §6.19 (C) (2), which deals with statutory damages where the collateral is consumer goods, more than once with respect to any one secured obligation.

6.25. Attorney's Fees in Consumer Transactions

If the secured party's compliance with this ordinance is placed in issue in an action with respect to a consumer transaction, the following rules apply:

- (A) If the secured party would have been entitled to attorney's fees as the prevailing

party, a consumer debtor or consumer obligor prevailing on the issue is entitled to the costs of the action and reasonable attorney's fees.

- (B) In other cases, the court may award to a consumer debtor or consumer obligor prevailing on that issue the costs of the action and reasonable attorney's fees.
- (C) In determining the attorney's fees, the amount of the recovery on behalf of the prevailing consumer debtor or consumer obligor is not a controlling factor.

§ 7. Miscellaneous Provisions

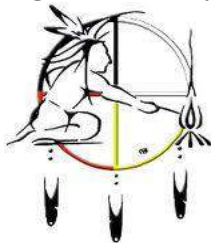
7.1. Effective Date

The ordinance shall take effect upon the later of the beginning of the first calendar month after ratification by the General Council or such date as is fixed by action of the Finance Department.

7.2. Severability

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

Legislative History for Forest County Potawatomi Uniform Commercial Code Ordinance:



| | |
|----------------------------------------------|----------|
| Approved by Executive Council | 02/01/10 |
| Recommended by the Ordinance Department..... | 02/01/10 |
| Approved by General Council | 05/09/15 |