



Prairie Island Indian Community Commercial Ordinance¹

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¹ Note of Adoption: Note of Amendment: The Community Council adopted this Commercial Code, numbered Title 4 of the Judicial Code, on January 9, 1996, by Resolution Number 96-1-9-4. The 1996 Title 4: Commercial Code replaced the Interim Commercial Code adopted on March 6, 1990, by Resolution Number 90-14. The Community Council amended the 1996 Title 4: Commercial Code on September 14, 2022, by Resolution Number 22-9-14-154 to add Notes of Amendment summarizing the legislative history of this Title. The notes of amendment are for convenience only and should not be relied on as mandatory authority. That resolution also renumbered the Commercial Code as Title 6 of the Judicial Code, standardized subsection-numbering throughout this Title, and corrected spelling errors. These technical changes were intended to increase usability and is not intended to affect any content of this Title. The Community Council reformatted the ordinance on January 25, 2023, by Resolution Number 23-1-25-14 to increase the usability of this ordinance and of tribal law, and renamed the Ordinance the Prairie Island Indian Community Commercial Ordinance.

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CHAPTER 1. GENERAL COMMERCIAL PROVISIONS

PART 1: SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THIS ORDINANCE

Section 1. Short Title. This Ordinance shall be known and may be cited as the Prairie Island Indian Community Commercial Ordinance and consists of the following chapters: General Commercial Provisions, Sales, and Secured Transactions.

Section 2. No Waiver of Sovereign Immunity. The sovereign immunity of neither the Community, nor of any of its agencies or instrumentalities, is waived with respect to any provision of any transaction subject to this Ordinance, absent a recorded, properly ratified, express waiver of sovereign immunity.

Section 3. Purposes; Rules of Construction; Variation by Agreement.

- a. This Ordinance shall be liberally construed and applied to promote its underlying purposes and policies.
- b. Underlying purposes and polices of this Ordinance are
 1. To simplify, clarify and modernize the law governing commercial transactions on the Prairie Island Indian Community Reservation, and
 2. To permit the continued expansion of commercial practices through custom, usage and agreement of the parties.
- c. The effect of provisions of this Ordinance may be varied by agreement, except as otherwise provided in this Ordinance and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Ordinance may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.
- d. The presence in certain provisions of this Ordinance of the words “unless otherwise agreed” or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection c.
- e. In this Ordinance unless the context otherwise requires
 1. Words in the singular number include the plural, and in the plural include the singular, and
 2. Words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

Section 4. Supplementary General Principles of Law Applicable. Unless displaced by the particular provisions of this Ordinance, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

Section 5. Construction Against Implicit Repeal. This Ordinance being a general law intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Section 6. Territorial Application of This Ordinance; Parties' Power to Choose Applicable Law.

- a. Except as provided hereafter in this section, when a transaction bears a reasonable relation to this Reservation and also to another reservation, state or nation the parties may agree that the law either of this Reservation or of such other reservation, state or nation shall govern their rights and duties. Failing such agreement this Ordinance applies to transactions bearing an appropriate relation to this Reservation.
- b. Where one of the following provisions of this Ordinance specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:
 1. Rights of creditors against sold goods. Chapter 2, Part 4, Section 2.
 2. Perfection provisions of the Chapter on Secured Transactions.

Section 7. Remedies to Be Liberally Administered.

- a. The remedies provided by this Ordinance shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this Ordinance or by other rule of law.
- b. Any right or obligation declared by this Ordinance is enforceable by action unless the provision declaring it specifies a different and limited effect.

Section 8. Waiver or Renunciation of Claim or Right After Breach. Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

Section 9. Severability. If any provision or clause of this Ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 10. Section Captions. Section captions are parts of the laws contained in this Ordinance.

Section 11. Application to Pre-Existing Transactions. Except as provided in this Ordinance to the contrary, this Ordinance shall not apply to any pending disputes or legal proceeding or any transaction entered into prior to the effective date of this Ordinance.

Section 12. Internal References.² Unless indicated otherwise, Part and Section references are to the Chapter in which the references are located.

² Note of Amendment: The Community Council amended this section of the ordinance on January 25, 2023, by Resolution Number 23-1-25-14 to clarify the internal references used throughout the Commercial Ordinance.

PART 2: GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

Section 1. General Definitions.³ Subject to additional definitions contained in the subsequent Chapters of this Ordinance which are applicable to specific Chapters or Parts thereof, and unless the context otherwise requires, in this Ordinance:

- a. “Action” in the sense of judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.
- b. “Aggrieved party” means a party entitled to resort to a remedy.
- c. “Agreement” means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Ordinance (Part 2, Section 5 of this and Chapter 2, Part 2, Section 8). Whether an agreement has legal consequences is determined by the provisions of this Ordinance, if applicable; otherwise by the law of contracts. (Compare “Contract.”)
- d. “Appellate Court” means the Appellate Court of the Prairie Island Mdewakanton Dakota Community Tribal Court.
- e. “Bank” means any person engaged in the business of banking.
- f. “Bearer” means the person in possession of an instrument, document of title, or certificate security payable to bearer or indorsed in blank.
- g. “Bill of lading” means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. “Airbill” means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment not or air waybill.
- h. “Branch” includes a separately incorporated foreign branch of a bank.
- i. “Burden of establishing” a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.
- j. “Buyer in ordinary course of business” means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. “Buying” may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- k. “Community” means the Prairie Island Indian Community in the State of Minnesota, a federally recognized Indian tribe.

³ Note of Amendment: The Community Council amended this section of the ordinance on January 25, 2023, by Resolution Number 23-1-25-14 to remove the definition of telegraph.

- l. "Community Council" means the constitutionally authorized governing body of the Community.
- m. "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of form is "conspicuous" if it is in larger or other contrasting type or color. Whether a term or clause is "conspicuous" or not is for decision by the Tribal Court.
- n. "Contract" means the total legal obligation which results from the parties' agreement as affected by this Ordinance and any other applicable rules of law. (Compare "Agreement.")
- o. "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.
- p. "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.
- q. "Delivery" with respect to instruments, documents of title, chattel paper, or certificate securities means voluntary transfer of possession.
- r. "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.
- s. "Fault" means wrongful act, omission or breach.
- t. "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Ordinance to the extent that under a particular agreement or document unlike units are treated as equivalents.
- u. "Genuine" means free of forgery or counterfeiting.
- v. "Good faith" means honesty in fact in the conduct or transaction concerned.
- w. "Holder" means a person who is in possession of a document of title or an instrument or a certificate investment security drawn, issued, or indorsed to him or his order or to bearer or in blank.
- x. To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of credit.
- y. "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

- z. A person is “insolvent” who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.
- aa. “Money” means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.
- bb. A person has “notice” of a fact when:
 - 1. He has actual knowledge of it,
 - 2. He has received a notice or notification of it, or
 - 3. From all the facts and circumstances known to him at the time in question he has reason to know that it exists.
- cc. A person “knows” or has “knowledge” of a fact when he has actual knowledge of it. “Discover” or “learn” or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Ordinance.
- dd. A person “notifies” or “gives” a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person “receives” a notice or notification when
 - 1. It comes to his attention, or
 - 2. It is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.
- ee. “Notice,” “knowledge” or a “notice” or “notification” received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.
- ff. “Organization” includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.
- gg. “Party,” as distinct from “third party,” means a person who has engaged in a transaction or made an agreement within this Ordinance.
- hh. “Person” includes an individual or an organization.
- ii. “Presumption” or “presumed” means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its non- existence.

- jj. “Purchase” includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.
- kk. “Purchaser” means a person who takes by purchase
- ll. “Remedy” means a remedial right to which an aggrieved party is entitled with or without resort to a tribunal.
- mm. “Representative” includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.
- nn. “Reservation” or “Prairie Island Indian Community Reservation” means all territory subject to the Community’s jurisdiction.
- oo. “Rights” includes remedies.
- pp. “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Chapter 2, Part 4, Section 1) is limited in effect to a reservation of a “security interest.” The term also includes any interest of a buyer of accounts or chattel paper which is subject to the Secured Transaction Chapter. The special property interest of a buyer of goods on identification of such goods to a contract for sale under Chapter 2, Part 4, Section 1 is not a “security interest,” but a buyer may also acquire a “security interest” by complying with the Secured Transactions Chapter. Unless a lease or consignment is intended as security, reservation of title thereunder is not a “security interest” but a consignment is in any event subject to the provisions on consignment sales (Chapter 2, Part 3, Section 26). Whether a lease is intended as security is to be determined by the facts of each case; however, 1. the inclusion of an option to purchase does not of itself make the lease one intended for security, and 2. an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.
- qq. “Send” in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.
- rr. “Signed” includes any symbol executed or adopted by a party with present intention to authenticate a writing.
- ss. “Term” means that portion of an agreement which relates to a particular matter.
- tt. “Tribal Court” means the Prairie Island Mdewakanton Dakota Community Tribal Court.
- uu. A person gives “value” for rights if he acquires them:

1. 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,
 2. As security for or in total or partial satisfaction of a pre-existing claim,
 3. By accepting delivery pursuant to a pre-existing contract for purchase, or
 4. Generally, in return for any consideration, sufficient to support a simple contract.
- vv. “Warehouse receipt” means a receipt issued by a person engaged in the business of storing goods for hire.
- ww. “Written” or “writing” includes printing, typewriting or any other intentional reduction to tangible form.

Section 2. Prima Facie Evidence by Third Party Documents. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher’s or inspector’s certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

Section 3. Obligation of Good Faith. Every contract or duty within this Ordinance imposes an obligation of good faith in its performance or enforcement.

Section 4. Time; Reasonable Time; Seasonably.

- a. Whenever this Act requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.
- b. What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.
- c. An action is taken “seasonably” when it is taken at or within the time agreed, or if no time is agreed, at or within a reasonable time.

Section 5. Course of Dealing and Usage of Trade.

- a. A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.
- b. A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the Tribal Court.
- c. A course of dealing between parties, and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware, give particular meaning to and supplement or qualify terms of an agreement.

- d. the express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.
- e. An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.
- f. Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the Tribal Court finds sufficient to prevent unfair surprise to the latter.

Section 6. [RESERVED]

Section 7. Performance or Acceptance Under Reservation of Rights. A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as “without prejudice,” “under protect” or the like are sufficient.

Section 8. Option to Accelerate At Will. A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or “when he deems himself insecure” or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

Section 9. Subordinated Obligations. An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate his right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.

CHAPTER 2. SALES

PART 1: SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

Section 1. Short Title. This Chapter shall be known and may be cited as the Prairie Island Indian Community Commercial Ordinance - Sales Chapter.

Section 2. Scope; Certain Security and Other Transactions Excluded From This Chapter.

- a. Unless the context otherwise requires, this Chapter applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Chapter impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

- b. In the absence of other applicable law, the provisions of this Chapter may be applied by analogy to a transaction which is primarily or totally a sale of services rather than goods, if the Tribal Court determines that:
 - 1. The policies underlying the provisions apply to the transaction, and
 - 2. Application of provisions is:
 - A. Commercially reasonable, and
 - B. Not contrary to the reasonable expectations of the parties.

Section 3. Definitions and Index of Definitions.

- a. In this Chapter unless the context otherwise requires:
 - 1. “Buyer” means a person who buys or contracts to buy goods.
 - 2. “Good faith” in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
 - 3. “Receipt” of goods means taking physical possession of them.
 - 4. “Seller” means a person who sells or contracts to sell goods.
- b. Other definitions applying to this Chapter or to specified Parts thereof, and the sections in which they appear are: “Acceptance.” Part 6, Section 6. “Banker’s Credit.” Part 3, Section 25. “Between Merchants.” Part 1, Section 4. “Cancellation.” Part 1, Section 6.d.

Section 4. Definitions: “Merchant,” “Between Merchants,” and “Financing Agency.”

- a. “Merchant” means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices of goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.
- b. “Financing agency” means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. “Financing agency” includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Part 7, Section 7).
- c. “Between merchants” means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Section 5. Definitions: Transferability; “Goods,” “Future” Goods, “Lot,” and “Commercial Unit.”

- a. “Goods” means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities and things in action. “Goods” also includes the

unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Part 1, Section 7).

1. Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are “future” goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.
 2. There may be a sale of a part interest in existing identified goods.
 3. An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller’s interest in the bulk be sold to the buyer when then becomes an owner in common.
- b. “Lot” means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.
 - c. “Commercial unit” means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as single whole.

Section 6. Definitions: “Contracts,” “Agreement,” “Contract for Sale,” “Sale,” “Conforming” to Contract, “Termination, and “Cancellation.”

- a. In this Chapter, unless the context otherwise requires, “contract” and “agreement” are limited to those relating to the present or future sale of goods. “Contract for sale” includes both a present sale of goods and a contract to sell goods at a future time. A “sale” consists in the passing of title from the seller to the buyer for a price (Part 4, Section 1). A “present sale” means a sale which is accomplished by the making of the contract.
- b. Goods or conduct including any part of a performance are “conforming” or conform to the contract when they are in accordance with the obligations under the contract.
- c. “Termination” occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On “termination” all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.
- d. “Cancellation” occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of “termination” except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

Section 7. Goods to Be Severed From Realty; Recording.

- a. A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this Chapter if they are to be severed by the seller but until severance a purported present

sale thereof which is not effective as a transfer of an interest in land is effective only as contract to sell.

- b. A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection a. or of timber to be cut is a contract for the sale of goods within this Chapter whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.
- c. The provisions of this section are subject to any third-party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.
- d. Nothing in this Chapter shall be construed as affecting the responsibilities of the parties to comply with Tribal laws and regulations concerning the use of land or federal laws and regulations concerning the sale of goods such as timber, minerals, oil or gas from land which is held in trust or which is subject to restrictions against alienation.

PART 2: FORM, FORMATION AND READJUSTMENT OF CONTRACT

Section 1. Formal Requirements; Statute of Frauds.

- a. Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.
- b. Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection a. against such party unless written notice of objection to its contents is given within 10 days after it is received.
- c. A contract which does not satisfy the requirements of subsection a. but which is valid in other respects is enforceable:
 - 1. If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement,
 - 2. If the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted, or

3. With respect to goods for which payment has been made and accepted or which have been received and accepted (Part 6, Section 6).

Section 2. Final Written Expression; Parol or Extrinsic Evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

- a. By course of dealing or usage of trade (Part 2, Section 5) or by course of performance (Part 2, Section 8), and
- b. By evidence of consistent additional term unless the Tribal Court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Section 3. Seals Inoperative. The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

Section 4. Formation in General.

- a. A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.
- b. An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.
- c. Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

Section 5. Firm Offers. An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three (3) months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

Section 6. Offer and Acceptance in Formation of Contract.

- a. Unless otherwise unambiguously indicated by the language or context:
 1. An offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.
 2. An order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

- b. Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not noticed of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

Section 7. Additional Terms in Acceptance or Confirmation.

- a. A definite and reasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.
- b. The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:
 - 1. The offer expressly limits acceptance to the terms of the offer,
 - 2. They materially alter it, or
 - 3. Notification of objection to them has already been given or is given within a reasonable time after notice of them is received.
- c. Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Ordinance.

Section 8. Course of Performance or Practical Construction.

- a. Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.
- b. The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (Part 2, Section 5).
- c. Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

Section 9. Modification, Rescission and Waiver.

- a. An agreement modifying a contract with this Chapter needs no considerations to be binding.
- b. A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

- c. The requirements of the statute of frauds section of this Chapter (Part 2, Section 1) must be satisfied if the contract as modified is within its provisions.
- d. Although an attempt at modification or rescission does not satisfy the requirements of subsection b. or c. it can operate as a waiver.
- e. A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

Section 10. Delegation of Performance; Assignment of Rights.

- a. A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.
- b. Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.
- c. Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation of the assignee of the assignor's performance.
- d. An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.
- e. The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (Part 6, Section 9).

PART 3: GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

Section 1. General Obligations of Parties. The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

Section 2. Unconscionable Contract or Clause.

- a. If the Tribal Court as a matter of law finds the contract or any clause of contract to have been unconscionable at the time it was made, the Court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

- b. When it is claimed or appears to the Court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the Court in making the determination.

Section 3. Allocation or Division of Risks. Where this Chapter allocates a risk or a burden as between the parties “unless otherwise agreed,” the agreement may not only shift the allocation but may also divide the risk or burden.

Section 4. Price Payable in Money, Goods, Realty, or Otherwise.

- a. The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.
- b. Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller’s obligations with reference to them are subject to this Chapter, but not the transfer of the interest in realty or the transferor’s obligations in connection therewith.

Section 5. Open Price Term.

- a. The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if:
 - 1. Nothing is said as to price,
 - 2. The price is left to be agreed by the parties and they fail to agree, or
 - 3. The price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.
- b. A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.
- c. When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as canceled or himself fix a reasonable price.
- d. Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is not contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price on account.

Section 6. Output, Requirements and Exclusive Dealings.

- a. A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.
- b. A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

Section 7. Delivery in Single Lot or Several Lots. Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots in price if it can be apportioned may be demanded for each lot.

Section 8. Absence of Specified Place for Delivery. Unless otherwise agreed:

- a. The place for delivery of goods is the seller's place of business or if he has non his residence, but
- b. In a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery, and
- c. Documents of title may be delivered through customary banking channels.

Section 9. Absence of Specific Time Provisions; Notice of Termination.⁴

- a. The time for shipment or delivery or any other action under a contract if not provided in this chapter or agreed upon shall be a reasonable time.
- b. Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.
- c. Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

Section 10. Open Time for Payment or Running of Credit; Authority to Ship Under Reservation. Unless otherwise agreed:

- a. Payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery,
- b. If the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (Part 5, Section 13),
- c. If delivery is authorized and made way of documents of title otherwise than by subsection b. then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received, and
- d. Where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

Section 11. Options and Cooperation Respecting Performance. An agreement for sale which is otherwise sufficiently definite (subsection c. of Part 2, Section 4) to be a contract is

⁴ Note of Amendment: The Community Council added this section of the ordinance on January 25, 2023, by Resolution Number 23-1-25-14 as it had inadvertently been left out.

not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

- a. Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsection a.3. and c. of Part 3, Section 19 specifications or arrangements relating to shipment are at the seller's option.
- b. Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:
 1. Is excused for any resulting delay in his own performance, and
 2. May also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

Section 12. Warranty of Title and Against Infringement; Buyer's Obligation Against Infringement.

- a. Subject to subsection b. there is a contract for sale a warranty by the seller that:
 1. The title conveyed shall be good, and its transfer rightful, and
 2. The goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.
- b. A warranty under subsection a. will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.
- c. Unless otherwise agreed, a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

Section 13. Express Warranties by Affirmation, Promise, Description, Sample.

- a. Express warranties by the seller are created as follows:
 1. Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.
 2. Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.
 3. Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

- b. It is not necessary to the creation of an express warranty that the seller use formal words such as “warrant” or “guarantee” or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller’s opinion or commendation of the goods does not create a warranty.

Section 14. Implied Warranty: Merchantability; Usage of Trade.

- a. Unless excluded or modified (Part 3, Section 16), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.
- b. Goods to be merchantable must be at least such as:
 - 1. Pass without objection in the trade under the contract description,
 - 2. In the case of fungible goods, are of fair average quality within the description,
 - 3. Are fit for the ordinary purposes for which such goods are used,
 - 4. Run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved, and
 - 5. Are adequately contained, packages of fact made on the container or label if any.
- c. Unless excluded or modified (Part 3, Section 16) other implied warranties may arise from course of dealing or usage of trade.
- d. Notwithstanding this section or section 15 of this Chapter there is no implied warranty on the sale of cattle, hogs, sheep, horses, mules, goats, poultry or rabbits that such cattle, hogs, sheep, horses, mules, goats, poultry or rabbits are free from disease.
- e. Notwithstanding this section or section 15 of this Chapter there are no implied warranties which arise on the sale of human blood, blood plasma, or other human tissue or organs from a blood bank, clinic, hospital or other reservoir of such blood, tissue or organs.

Section 15. Implied Warranty: Fitness for Particular Purpose. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller’s skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

Section 16. Exclusion or Modification of Warranties.

- a. Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Chapter on Parol or extrinsic evidence (Part 2, Section 2) negation or limitation is inoperative to the extent that such construction is unreasonable.
- b. Subject to subsection c., to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the

exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that “There are no warranties which extend beyond the description on the face hereof.”

- c. Notwithstanding subsection b.:
 1. Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like “as is,” “with all faults” or other language which in common understanding calls the buyer’s attention to the exclusion of warranties and makes plain that there is no implied warranty,
 2. When the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him, and
 3. An implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.
- d. Remedies for breach of warranty can be limited in accordance with the provisions of this Chapter on liquidation or limitation of damages and on contractual modification of remedy (Part 7, Sections 18 and 19).

Section 17. Cumulation and Conflict of Warranties Express or Implied. Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

- a. Exact or technical specifications displace an inconsistent sample or model or general language of description.
- b. A sample from an existing bulk displaces inconsistent general language of description.
- c. Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

Section 18. Third Party Beneficiaries of Warranties Express or Implied. A seller’s warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty. A seller may not exclude or limit the operation of this section with respect to injury to the person of an individual to whom the warranty extends.

Section 19. F.O.B. and F.A.S. Terms.

- a. Unless otherwise agreed the term F.O.B. (which means “free on board”) at a named place, even though used only in connection with the stated price, is a delivery term under which:
 1. When the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Chapter (Part 5, Section 4) and bear the expense and risk of putting them into the possession of the carrier.

2. When the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Chapter (Part 5, Section 3).
 3. When under either 1. or 2. the term is also F.O.B. vessel, care or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Chapter on the form of bill of lading (Part 3, Section 23).
- b. Unless otherwise agreed the term F.A.S. vessel (which means “free alongside” at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must
 1. At his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer, and
 2. Obtain and tender a receipt for the goods in exchange for which the carrier is under the duty to issue a bill of lading.
 - c. Unless otherwise agreed in any case falling within subsection a.1. or a.3. or subsection b. the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or B.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this Chapter (Part 3, Section 11). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.
 - d. Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

Section 20. C.I.F. and C. & F. Terms.

- a. The terms C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.
- b. Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at this own expense and risk to:
 1. Put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering and entire transportation to the named destination,
 2. Load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for,
 3. Obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of

lading and provided for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance,

4. Prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract, and
 5. Forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.
- c. Unless otherwise agreed the term C.& F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.
 - d. Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against sender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

Section 21. C.I.F. or C. & F.: "Net Landed Weights;" "Payment on Arrival;" Warranty of Condition on Arrival. Under a contract containing a term C.I.F. or C. & F.:

- a. Where the price is based on or is to be adjusted according to "net landed weights," "delivered weights," "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.
- b. An agreement described in subsection a. or any warranty of quality or condition of the goods on arrival placed upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.
- c. Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

Section 22. Delivery "Ex-Ship."

- a. Unless otherwise agreed, a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.
- b. Under such a term unless otherwise agreed:
 1. The seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods, and
 2. The risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

Section 23. “No Arrival, No Sale” Term.

Under the term “no arrival, no sale” or terms of like meaning, unless otherwise agreed:

- a. The seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival, and
- b. Where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (Part 6, Section 13).

Section 24. “Letter of Credit” Term; “Confirmed Credit.”

- a. Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.
- b. The delivery to seller of a proper letter of credit suspends the buyer’s obligation to pay. If the letter of credit is dishonored, the seller may on reasonable notification to the buyer require payment directly from him.
- c. Unless otherwise agreed the term “letter of credit” or “banker’s credit” in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term “confirmed credit” means that the credit must also carry the direct obligation of such an agency which does business in the seller’s financial market.

Section 25. Sale on Approval and Sale or Return; Consignment Sales and Rights of Creditors.

- a. Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:
 1. A “sale on approval” if the goods are delivered primarily for use, and
 2. A “sale or return: if the goods are delivered primarily for resale.
- b. Except as provided in subsection c., goods held on approval are not subject to the claims of the buyer’s creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer’s possession.
- c. Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as “on consignment” or “on memorandum.” However, this subsection is not applicable if the person making delivery:
 1. Complies with an applicable law providing for a consignor’s interest or the like to be evidenced by a sign,

2. Established that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or
 3. Complies with the filing provisions of the Chapter on Secured Transactions.
- d. Any “or return” term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Chapter (Part 2, Section 1) and as contradicting the sale aspect of the contract within the provisions of this Chapter on parol or extrinsic evidence (Part 2, Section 2).

Section 26. Special Incident of Sale on Approval and Sale or Return.

- a. Under a sale on approval unless otherwise agreed:
 1. Although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance,
 2. Use of the goods consistent with the purpose of trial is not acceptable but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole, and
 3. After due notification of election to return, the return is at the seller’s risk and expense but a merchant buyer must follow any reasonable instructions.
- b. Under a sale or return otherwise agreed:
 1. The option to return extends to the whole or any commercial unit of the goods while in substantially their original conditions, but must be exercised seasonably, and
 2. The return is at the buyer’s risk and expense.

Section 27. Sale by Auction.

- a. In a sale by auction, if goods are put up in lots, each lot is the subject of a separate sale.
- b. A sale by auction is complete when auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.
- c. Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer’s announcement of completion of the sale, but a bidder’s retraction does not revive any previous bid.
- d. If the auctioneer knowingly receives a bid on the seller’s behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

PART 4: TITLE, CREDITORS AND GOOD FAITH PURCHASERS

Section 1. Passing of Title; Reservation for Security; Limited Application of This

Section. Each provision of this Chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other parties applies irrespective of title to the goods except where the provisions refers to such title. Insofar as situations are not covered by the other provisions of this Chapter and matters concerning title become material the following rules apply:

- a. Title to goods cannot pass under a contract for sale prior to their identification to the contract (Part 5, Section 1), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this Ordinance. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Chapter on Secured Transactions, title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.
- b. Unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading
 1. If the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver then at destination, title passes to the buyer at the time and place of shipment; but
 2. If the contract requires delivery at destination, title passes on tender there.
- c. Unless otherwise explicitly agreed where delivery is to be made without moving the goods:
 1. If the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents, or
 2. If the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.
- d. A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such reversioning occurs by operation of law and is not a "sale."

Section 2. Rights of Seller's Creditors Against Sold Goods.

- a. Except as provided in subsection b. and c., rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Chapter (Part 5, Sections 2 and Part 7, Section 16).
- b. A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under

any rule of law of the jurisdiction where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

- c. Nothing in this Chapter shall be deemed to impair the rights of creditors of the seller:
 - 1. Under the provisions of the Chapter on Secured Transactions, or
 - 2. Where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Chapter constitute the transaction a fraudulent transfer or voidable preference.

Section 3. Power to Transfer; Good Faith Purchase or Goods; “Entrusting.”

- a. A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though:
 - 1. The transferor was deceived as to the identity of the purchaser,
 - 2. The delivery was in exchange for a check which is later dishonored,
 - 3. It was agreed that the transaction was to be a “cash sale,” or
 - 4. The delivery was procured through fraud punishable as larcenous under the criminal law.
- b. Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.
- c. “Entrusting” includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor’s disposition of the goods have been such as to be larcenous under the criminal law.
- d. The rights of other purchasers of goods and of lien creditors are governed by the Chapter on Secured Transactions, or other applicable laws.

PART 5: PERFORMANCE

Section 1. Insurable Interest in Goods; Manner of Identification of Goods.

- a. The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by parties. In the absence of explicit agreement identification occurs:

1. When the contract is made if it is for the sale of goods already existing and identified,
 2. If the contract is for the sale of future goods other than those described in paragraph 3., when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers, or
 3. When the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.
- b. The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.
 - c. Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

Section 2. Buyer's Right to Goods on Seller's Insolvency.

- a. Subject to subsection b. and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.
- b. If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

Section 3. Manner of Seller's Tender of Delivery.

- a. Tender of Delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this Chapter, and in particular:
 1. Tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession, but
 2. Unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.
- b. Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.
- c. Where the seller is required to deliver at a particular destination tender requires that he comply with subsection a. and also in any appropriate case tender documents as described in subsection d. and e. of this section.
 1. Where goods are in the possession of a bailee and are to be delivered without being moved,

2. Tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods, but
 3. Tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable documents of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.
- d. Where the contract requires the seller to deliver documents:
1. He must tender all such documents in correct form, except as provided in this Chapter with respect to bills of lading in a set (Part 3, Section 23.b.), and
 2. Tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection.

Section 4. Shipment by Seller.

- a. Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must:
1. Put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case,
 2. Obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade, and
 3. Promptly notify the buyer of the shipment.
- b. Failure to notify the buyer under paragraph 3. or to make a proper contract under paragraph 1. is a ground for rejection only if material delay or loss ensues.

Section 5. Seller's Shipment Under Reservation.

- a. Where the seller has identified goods to the contract by or before shipment:
1. His procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.
 2. A non-negotiable bill of lading to himself for his nominee reserves possession of the goods as security but except in a case of conditional delivery (Part 5, Section 7.b.) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

- b. When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder or a negotiable document.

Section 6. Right of Financing Agency.

- a. A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.
- b. The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face.

Section 7. Effect of Seller's Tender; Delivery on Condition.

- a. Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.
- b. Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

Section 8. Cure by Seller of Improper Tender or Delivery; Replacement.

- a. Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.
- b. Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he reasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

Section 9. Risk of Loss In the Absence of Breach.

- a. Where the contract requires or authorizes the seller to ship the goods by carrier
 - 1. If it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Part 5, Section 5), but
 - 2. If it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

- b. Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:
 - 1. On his receipt of a negotiable document of title covering the goods,
 - 2. On acknowledgment by the bailee of the buyer's right to possession of the goods, or
 - 3. After his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection d.2. of Part 5, Section 3.
- c. In any case not within subsection a. or b., the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.
- d. The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Chapter on sale on approval (Part 3, Section 27) and on effect of breach on risk of loss (Part 5, Section 10).

Section 10. Effect of Breach on Risk of Loss.

- a. Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.
- b. Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.
- c. Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

Section 11. Tender of Payment by Buyer; Payment by Check.

- a. Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.
- b. Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.
- c. Subject to the provisions of any applicable law on the effect of an instrument on an obligation, payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

Section 12. Payment by Buyer Before Inspection.

- a. Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless:
 - 1. The non-conformity appears without inspection, or
 - 2. By agreement payment is to be made pursuant to a letter of credit and, despite tender of the required documents, under applicable law the issuer of the credit may be excused from honoring a demand for payment.

- b. Payment pursuant to subsection a. does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

Section 13. Buyer's Right to Inspection of Goods.

- a. Unless otherwise agreed and subject to subsection c., where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner, when the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.
- b. Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.
- c. Unless otherwise agreed and subject to the provisions of this Chapter on C.I.F. contracts (Part 3, Section 21.c.), the buyer is not entitled to inspect the goods before payment of the price when the contract provides:
 - 1. For delivery "C.O.D." or on other like terms, or
 - 2. For payment against documents of title, except where such payment is due only after the goods are to become available for inspection.
- d. A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

Section 14. When Documents Deliverable on Acceptance; When on Payment. When otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment.

Section 15. Preserving Evidence of Goods in Dispute. In furtherance of the adjustment of any claim of dispute:

- a. Either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other, and
- b. The parties may agree to a third-party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

PART 6: BREACH, REPUDIATION AND EXCUSE

Section 1. Buyer's Rights on Improper Delivery. Subject to the provisions of this Chapter on breach in installment contracts (Part 6, Section 12) and unless otherwise agreed under the sections on contractual limitations of remedy (Part 7, Sections 18 and 19), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may:

- a. Reject the whole,

- b. Accept the whole, or
- c. Accept any commercial unit or units and reject the rest.

Section 2. Manner and Effect of Rightful Rejection.

- a. Rejection of goods must be within a reasonable time after their delivery of tender. It is ineffective unless the buyer seasonably notifies the seller.
- b. Subject to the provisions of the two following sections on rejected goods (Part 6, Sections 3 and 4):
 - 1. After rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller, and
 - 2. If the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this Chapter (Part 7, Section 11.c.), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them, but
 - 3. The buyer has no further obligations with regard to goods rightfully rejected.
- c. The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Chapter on seller's remedies in general (Part 7, Section 3).

Section 3. Merchant Buyer's Duties as to Rightfully Rejected Goods.

- a. Subject to any security interest in the buyer (Part 7, Section 11.c.), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threatened to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.
- b. When the buyer sells goods under subsection a., he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten percent on the gross proceeds.
- c. In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

Section 4. Buyer's Options as to Salvage of Rightfully Rejected Goods. Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

Section 5. Waiver of Buyer's Objections by Failure to Particularize.

- a. The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection preclude him from relying on the unstated defect to justify rejection or to establish breach:
 - 1. Where the seller could have cured it if stated seasonably, or
 - 2. Between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.
- b. Payment against documents made without reservation of rights preclude recovery of the payment for defects apparent on the face of the documents.

Section 6. What Constitutes Acceptance of Goods.

- a. Acceptance of goods occurs when the buyer:
 - 1. After a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity,
 - 2. Fails to make an effective rejection (Part 6, Section 2.a.), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them, or
 - 3. Does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.
- b. Acceptance of a part of any commercial unit is acceptance of that entire unit.

Section 7. Effect of Acceptance; Notice of Breach; Burden of Establishing Breach After Acceptance; Notice of Claim of Litigation to Person Answerable Over.

- a. The buyer must pay at the contract rate for any goods accepted.
- b. Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Chapter for non-conformity.
- c. Where a tender has been accepted:
 - 1. The buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy, and
 - 2. If the claim is one for infringement or the like (Part 3, Section 12.c.) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.
- d. The burden is on the buyer to establish any breach with respect to the goods accepted.
- e. Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over:

1. He may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by and determination of fact common to both parties then, unless the seller after reasonable receipt of the notice, does come in and defend, he is so bound.
2. If the claim is one for infringement or the like (Part 3, Section 12.c.) the original seller may demand in writing that his buyer turn over to him control of the litigation settlement or else be barred from any remedy over and if he also agrees to bear all expenses and to satisfy any adverse judgment, then unless the buyer after reasonable receipt of the demand does turn over control the buyer is so barred.
- f. The provisions of subsection c., d. and e. apply to any obligation of a buyer to hold the seller harmless against infringement or the like (Part 3, Section 12.c.).

Section 8. Revocation of Acceptance in Whole or in Part.

- a. The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it:
 1. On the reasonable assumption that is non-conformity would be cured and it has not been seasonably cured, or
 2. Without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.
- b. Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.
- c. A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

Section 9. Right to Adequate Assurance of Performance.

- a. A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.
- b. Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.
- c. Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.
- d. After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

Section 10. Anticipatory Repudiation. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

- a. For a commercially reasonable time await performance by the repudiating party, or
- b. Resort to any remedy for breach (Part 7, Sections 3 or 11), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction, and
- c. In either case suspend his own performance or proceed in accordance with the provisions of this Chapter on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (Part 7, Section 4).

Section 11. Retraction of Anticipatory Repudiation.

- a. Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation canceled or materially changed his position or otherwise indicated that he considers the repudiation final.
- b. Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Chapter (Part 6, Section 9).
- c. Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

Section 12. "Installment Contract;" Breach.

- a. An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.
- b. The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection c. and the seller gives adequate assurance of its cure the buyer must accept that installment.
- c. Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

Section 13. Casualty to Identified Goods. Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (Part 3, Section 24) then:

- a. If the loss is total the contract is avoided, and

- b. If the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

Section 14. Substituted Performance.

- a. Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.
- b. If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

Section 15. Excuse by Failure of Presupposed Conditions. Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

- a. Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs 2. and 3. is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.
- b. Where the causes mentioned in paragraph 1. affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.
- c. The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph 2., of the estimated quota thus made available for the buyer.

Section 16. Procedure On Notice Claiming Excuse.

- a. Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Chapter relating to breach of installment contracts (Part 6, Section 12), then also as to the whole:
 - 1. Terminate and thereby discharge any unexecuted portion of the contract, or
 - 2. Modify the contract by agreeing to take his available quota in substitution.

- b. If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.
- c. The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section.

PART 7: REMEDIES

Section 1. Remedies for Breach of Collateral Contracts Not Impaired. Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Chapter.

Section 2. Seller's Remedies on Discovery of Buyer's Insolvency. Where the seller discovers the buyer to be insolvent, he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Chapter (Part 7, Section 5).

- a. Where the seller discovers that the buyer has received goods on credit while the insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.
- b. The seller's right to reclaim under subsection b. is subject to the rights of a buyer in ordinary course or other good faith purchaser under this Chapter (Part 4, Section 3). Successful reclamation of goods excludes all other remedies with respect to them.

Section 3. Seller's Remedies in General. Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (Part 6, Section 12), then also with respect to the whole undelivered balance, the aggrieved seller may:

- a. Withhold delivery of such goods,
- b. Stop delivery by any bailee as hereafter provided (Part 7, Section 5),
- c. Proceed under the next section respecting goods still unidentified to the contract,
- d. Resell and recover damages as hereafter provided (Part 7, Section 6),
- e. Recover damages for non-acceptance (Part 7, Section 8) or, in a proper case, the price (Part 7, Section 9), or
- f. Cancel.

Section 4. Seller's Right to Identify Goods to the Contract Notwithstanding Breach or to Salvage Unfinished Goods.

- a. An aggrieved seller under the preceding section may:
 - 1. Identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control,
 - 2. Treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.
- b. Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

Section 5. Seller's Stoppage of Delivery in Transit or Otherwise.

- a. The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (Part 7, Section 2) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.
- b. As against such buyer the seller may stop delivery until:
 - 1. Receipt of the goods by the buyer,
 - 2. Acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer,
 - 3. Such acknowledgment to the buyer by a carrier by reshipment or as warehouseman, or
 - 4. Negotiation to the buyer of any negotiable document of title covering the goods.
- c. To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
 - 1. After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.
 - 2. If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.
 - 3. A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

Section 6. Seller's Resale Including Contract for Resale.

- a. Under the conditions stated in Part 7, Section 3 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the

difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Chapter (Part 7, Section 10), but less expenses saved in consequence of the buyer's breach.

- b. Except as otherwise provided in subsection c. or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.
- c. Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.
- d. Where the resale is at public sale:
 - 1. Only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind,
 - 2. It must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale,
 - 3. If the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders, and
 - 4. The seller may buy.
- e. A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.
- f. The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Part 7, Section 7) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (Part 7, Section 11.c.).

Section 7. "Person in the Position of a Seller."

- a. A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other rights in goods similar to that of a seller.
- b. A person in the position of a seller may as provided in this Chapter withhold or stop delivery (Part 7, Section 5) and resell (Part 7, Section 6) and recover incidental damages (Part 7, Section 10).

Section 8. Seller's Damages for Non-acceptance or Repudiation.

- a. Subject to subsection b. and to the provisions of this Chapter with respect to proof of market price (Part 7, Section 23), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Chapter (Part 7, Section 10), but less expenses saved in consequence of the buyer's breach.
- b. If the measure of damages provided in subsection a. is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Chapter (Part 7, Section 10), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

Section 9. Action for the Price.

- a. When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price:
 1. Of goods accepted or of conforming goods lost or damages within a commercially reasonable time after risk of their loss has passed to the buyer, and
 2. Of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.
- b. Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.
- c. After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make payment due or has repudiated (Part 6, Section 10), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section.

Section 10. Seller's Incidental Damages. Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

Section 11. Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods.

- a. Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Part 6, Section 12), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as had been paid:

1. “Cover” and have damages under the next section as to all the goods affected whether or not they has been identified to the contract, or
 2. Recover damages for non-delivery as provided in this Chapter (Part 7, Section 13).
- b. Where the seller fails to delivery or repudiates the buyer may also:
1. If the goods have been identified recover them as provided in this Chapter (Part 5, Section 2), or
 2. In a proper case obtain specific performance or replevy the goods as provided in this Chapter (Part 7, Section 16).
- c. On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Part 7, Section 6).

Section 12. “Cover;” Buyer’s Procurement of Substitute Goods.

- a. After a breach within the preceding section the buyer may “cover” by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.
- b. The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Part 7, Section 15), but less expenses saved in consequence of the seller’s breach.
- c. Failure of the buyer to effect cover within this section does not bar him from any other remedy.

Section 13. Buyer’s Damages for Non-Delivery or Repudiation.

- a. Subject to the provisions of this Chapter with respect to proof of market price (Part 7, Section 23), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provide in this Chapter (Part 7, Section 15), but less expenses saved in consequence of the seller’s breach.
- b. Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

Section 14. Buyer’s Damages for Breach in Regard to Accepted Goods.

- a. Where the buyer has accepted goods and given notification (Part 6, Section 7.c.) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller’s breach as determined in any manner which is reasonable.

- b. The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they proximate damages of a different amount.
- c. In a proper case any incidental and consequential damages under the next section may also be recovered.

Section 15. Buyer's Incidental and Consequential Damages.

- a. Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.
- b. Consequential damages resulting from the seller's breach include:
 - 1. Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise, and
 - 2. Injury to person or property proximately resulting from any breach of warranty.

Section 16. Buyer's Right to Specific Performance or Replevin.

- a. Specific performance may be decreed where the goods are unique or in other proper circumstances.
- b. The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the Tribal Court may deem just.
- c. The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

Section 17. Deduction of Damages From the Price. The buyer, on notifying the seller of his intention to do so, may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

Section 18. Liquidation or Limitation of Damages; Deposits.

- a. Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipates or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.
- b. Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds:
 - 1. The amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection a., or

2. In the absence of such terms, twenty percent of the value of the total performance for which the buyer is obligated under the contract or \$500, whichever is smaller.
- c. The buyer's right to restitution under subsection b. is subject to offset to the extent that the seller establishes:
 1. a right to recover damages under the provisions of this Chapter other than subsection a., and
 2. the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.
- d. Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purpose of subsection b.; but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this Chapter on resale by an aggrieved seller (Part 7, Section 6).

Section 19. Contractual Modifications of Limitation of Remedy.

- a. Subject to the provisions of subsections b. and c. of this section and of the preceding section on liquidation and limitation of damages,
 1. The agreement may provide for remedies in addition to or in substitution for those provided in this Chapter and may limit or alter the measure of damages recoverable under this Chapter, as by limited the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts, and
 2. Resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.
- b. Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be held as provided in this Ordinance.
- c. Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitations of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

Section 20. Effect of "Cancellation" or "Rescission" on Claims for Antecedent Breach.

Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

Section 21. Remedies for Fraud. Remedies for material misrepresentation or fraud include all remedies available under this Chapter for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

Section 22. Who Can Sue Third Parties for Injury to Goods. Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract:

- a. A right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other.
- b. If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract.
- c. Either party may, with the consent of the other, sue for the benefit of whom it may concern.

Section 23. Proof of Market Price: Time and Place.

- a. If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (Part 7, Sections 8 or Section 13) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.
- b. If evidence of a price prevailing at the time or places described in this Chapter is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.
- c. Evidence of a relevant price prevailing at a time or place other than the one described in this Chapter offered by one party is not admissible unless and until he has given the other party such notice as the Tribal Court finds sufficient to prevent unfair surprise.

Section 24. Admissibility of Market Quotations. Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

Section 25. Statute of Limitations in Contracts for Sale.

- a. An action for breach of any contract for sale must be commenced within four years after the cause of action has occurred. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.
- b. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performances the cause of action accrues when the breach is or should have been discovered.
- c. Where an action commenced within the time limited by subsection a. is so terminated as to leave available a remedy by another action for the same breach such other action may

be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

- d. This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which accrued before this Ordinance became effective.

CHAPTERS 3 - 8 [RESERVED]⁵

CHAPTER 9. SECURED TRANSACTIONS⁶

PART 1: SHORT TITLE, APPLICABILITY AND DEFINITIONS

Section 1. Short Title. This Chapter shall be known and may be cited as the Prairie Island Indian Community Commercial Ordinance - Secured Transactions.

Section 2. Purpose. This Chapter 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 commercial practices involving the Community.

Section 3. No Application to Property Not Alienable. This Chapter does not apply to any property interest that is subject to federal restrictions regarding sale, transfer, or encumbrance.

Section 4. General Definitions. The meaning of a term not defined by this Chapter 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. In this Chapter:

- a. "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.
- b. "Account," except as used in "account for:"
 - 1. Means 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,

⁵ Note of Amendment: The Community Council repealed Chapter 3 of the Ordinance on January 25, 2023, by Resolution Number 23-1-25-14.

⁶ Note of Amendment: The Community Council amended this Chapter on January 25, 2023, by Resolution Number 23-1-25-14 to repeal Chapter 9, Secured Transactions, and adopt the Model Tribal Uniform Secured Transactions Act.

- 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.
- c. “Account debtor” means 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.
 - d. [RESERVED]
 - e. “Agreement,” as distinguished from “contract,” means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in the section on those terms (Part 1, Section 14).
 - f. “Agricultural lien” means an interest in farm products:
 1. Which secures payment or performance of an obligation for:
 - A. Goods or services furnished in connection with a debtor’s farming operation, or
 - B. Rent on real property leased by a debtor in connection with its farming operation,
 2. Which is created by Ordinance in favor of a person that:
 - A. In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor’s farming operation, or
 - B. Leased real property to a debtor in connection with the debtor’s farming operation, and

3. Whose effectiveness does not depend on the person's possession of the personal property.
- g. "As-extracted collateral" means:
 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.
 - h. "Buyer in ordinary course of business" means 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.
 - i. "Cash proceeds" means money, checks, deposit accounts, or the like.
 - j. "Certificated security" means a security that is represented by a certificate.
 - k. "Certificate of title" means a written certificate issued by a governmental unit of a state or tribe or other record maintained by a governmental unit of a state or tribe with respect to which an Ordinance provides for the security interest in question to be indicated on the certificate or record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.
 - l. "Chattel paper" means 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. In this paragraph, "monetary obligation" means 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.

- m. “Collateral” means the property subject to a security interest or agricultural lien. 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.
- n. “Commercial tort claim” means 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.
- o. [RESERVED]
- p. “Consignee” means a merchant to which goods are delivered in a consignment.
- q. “Consignment” means 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.
- r. “Consignor” means a person that delivers goods to a consignee in a consignment.
- s. “Consumer” means an individual who enters into a transaction primarily for personal, family, or household purposes.
- t. “Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.
- u. “Consumer transaction” means 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.
- v. “Continuation statement” means 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.
- w. “Contract,” as distinguished from “agreement”, means the total legal obligation that results from the parties’ agreement as determined by this Chapter as supplemented by any other applicable laws.
- x. “Control,” with respect to a certificated security in registered form, means that the certificate is delivered to the secured party and:
1. Indorsed to the secured party or in blank by an effective indorsement, or
 2. Registered in the name of the secured party, upon original issue or registration of transfer by the issuer.
- y. “Control,” with respect to an investment account, means 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.
- z. “Control,” with respect to mutual fund shares that are not in an investment account, means 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.
- aa. “Debtor” means:
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.

- bb. "Document" means 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.
- cc. "Equipment" means goods other than inventory, farm products, or consumer goods.
- dd. "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and that 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.
- ee. "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, wild game or aquacultural operation.
- ff. "Filing office" means an office designated in Part 5 as the place to file a financing statement.
- gg. "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.
- hh. "Fixture filing" means the filing of a financing statement covering goods that are, or are to become, fixtures and satisfying the requirements of this Chapter relating to contents of financing statements. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.
- ii. "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.
- jj. "General intangible" means 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.
- kk. "Goods" means all things that are movable when a security interest attaches. The term:
1. 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.
2. 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.
- ll. “Health-care-insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.
- mm. “Instrument” means 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 indorsement 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.
- nn. “Inventory” means 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.

- oo. "Investment account" means a financial account maintained by an investment intermediary to which securities or commodity contracts are or may be credited by agreement.
- pp. "Investment intermediary" means a securities or commodity intermediary under applicable law.
- qq. "Lien creditor" means:
 - 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.
- rr. "Manufactured home" means a structure meeting the definitional requirements found under 42 U.S.C § 5402(6), as amended from time to time.
- ss. "Manufactured-home transaction" means 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.
- tt. "Obligor" means 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 or 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.
- uu. "Organization" means a person other than an individual.
- vv. "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.
- ww. "Person" means 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.
- xx. "Proceeds" means 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.
- yy. “Promissory note” means 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.
- zz. “Public-finance transaction” means 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 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, the Community or a state.
- aaa. “Publicly searchable record” means a record that is available to the public for inspection and that:
1. Is filed with or issued by the Community, a state, or the United States to form or organize an organization and any record filed with or issued by the Community, a state, or the United States which amends or restates the initial record, or
 2. Consists of legislation enacted by the Community, a state, or the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the Community, a state, or the United States which amends or restates the name of the organization.
- bbb. “Purchase” means 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.
- ccc. “Purchaser” means a person that takes by purchase.
- ddd. “Pursuant to commitment,” with respect to an advance made or other value given by a secured party, means 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.
- eee. “Record,” except as used in “for record,” “of record,” “record or legal title,” and “record owner,” means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.
- fff. “Registered organization” means an organization formed or organized solely under the law of the Community, a single state, or the United States by the filing of a publicly

searchable record with, the issuance of a publicly searchable record by, or the enactment of legislation by the Community, the state, or the United States.

ggg. “Secondary obligor” means 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.

hhh. “Secured party” means:

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 person that holds an agricultural lien,
3. A consignor,
4. A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold,
5. A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest is created or provided for, or
6. A person that holds a security interest arising under other applicable law.

iii. “Security” includes mutual fund shares that are not in an investment account.

jjj. “Security agreement” means an agreement that creates or provides for a security interest.

kkk. “Security interest” means an interest in personal property or fixtures which 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 Chapter. 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 Part 1, Section 7.

lll. “Send,” in connection with a record or notification, means:

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 subparagraph 1.

mmm. “Sign” means, with the present intent to authenticate or adopt a record:

1. To execute or adopt a tangible symbol, or
2. To attach to or logically associate with the record an electronic symbol, sound, or process.

nnn. “Software” means 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.

ooo. “State” means 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.

ppp. “Supporting obligation” means a guaranty, rights under a letter of credit, or other similar obligation that supports the payment or performance of an obligation.

qqq. “Termination statement” means an amendment of a financing statement that:

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.

rrr. “Transmitting utility” means 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.

sss. “Tribal business day” means a day on which the offices of the government of the Community are open for conduct of their ordinary business.

ttt. “Tribe” means a federally recognized tribe as defined in 25 U.S.C. § 4103(1)(b), as amended from time to time.

Section 5. Notice; Knowledge.

a. Notice Defined. Subject to subsection 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 subsection 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.

Section 6. 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.

Section 7. 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.

Section 8. General Scope.

- a. General Scope of Chapter. Except as otherwise provided in Section 9, this Chapter applies to the following, if within the jurisdiction of the Community:
 1. Any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract,
 2. An agricultural lien,
 3. A sale of accounts, chattel paper, payment intangibles, or promissory notes,
 4. A consignment, and
 5. Any other commercial activity, including a sale of goods, lease of goods, other transaction in goods, a negotiable instrument, bank deposit and collection, funds transfer, letter of credit, document of title, and investment security, to the extent the commercial activity is implicated in paragraph 1., 3. or 4.
- b. Consistency In application. Subject to Section 12, the application of this Chapter to a type of transaction enumerated in subsection a.5. 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.

- c. Security Interest In Secured Obligation. The application of this Chapter 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 Chapter does not apply.

Section 9. Excluded Transactions. This Chapter does not apply to:

- a. A landlord's lien, other than an agricultural lien,
- b. A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Part 3, Section 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 Part 3, 15 and 17 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 Part 4, Section 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 in Part 6, Section 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.

Section 10. [RESERVED]

Section 11. Obligation of Good Faith. Every contract or duty within this Chapter imposes, with respect to its performance and enforcement, an obligation that each party be honest and act in a manner that is consistent with reasonable commercial standards of fair dealing.

Section 12. Course of Performance, Course of Dealing, and Usage of Trade.

- a. Course of Performance Defined. A “course of performance” is a sequence of conduct between the parties to a particular transaction that 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 conduct concerning previous transactions between the parties to a particular transaction that is fairly 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 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 facts. 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., 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 Tribal Court finds sufficient to prevent unfair surprise to the other party.

Section 13. Purchase-Money Security Interest.

- a. Definitions. In this section:
 1. “Purchase-money collateral” means goods or software that secures a purchase-money obligation incurred with respect to that collateral.
 2. “Purchase-money obligation” means 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 paragraph 1. does not apply, in accordance with the intention of the obligor manifested at or before the time of payment, or
 3. If paragraphs 1. and 2. do not apply, 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.
- h. Non-Consumer-Goods Transactions; No Inference. The limitation of the rules in subsections e., f., and g. to transactions other than consumer-goods transactions is intended to leave to the Tribal Court the determination of the proper rules in consumer-goods transactions. The Tribal Court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

Section 14. Sufficiency of Description.

- a. Sufficiency of Description. Except as otherwise provided in subsections c. and d., a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.
- b. Examples of Reasonable Identification. Except as otherwise provided in subsection d., a description of collateral reasonably identifies the collateral if it identifies the collateral by:
1. A type of collateral defined in this Chapter, or
 2. Except as otherwise provided in subsection c., any other method, if the identity of the collateral is objectively determinable.
- c. Broad, Generic Descriptions Insufficient. In a security agreement, a description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral.
- d. Description by Type Insufficient. A description only by type of collateral defined in this Chapter is an insufficient description of:
1. A commercial tort claim, or
 2. In a consumer transaction, any collateral.

Section 15. Parties' Power to Choose Applicable Law.

- a. Choice of Law Generally. Except as provided in subsection b. and unless preempted by federal law, if a transaction bears a reasonable relation to the Community and also to another tribe, state, or country, the parties may agree that the law either of the Community or of the other tribe, state, or country governs the parties' rights and duties. In the absence of an effective agreement, this Chapter applies to all transactions bearing an appropriate relation to this Community. The fact that the law of another tribe, state, or country is applicable as provided in this section does not affect the jurisdiction or venue of this Community, nor does it waive the sovereign immunity of the Community or of any agency or instrumentality the Community.
- b. When Agreement Ineffective. An agreement otherwise effective under subsection 1. 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 Sections 1-24 of Part 3 of this Chapter, concerning the law governing perfection and priority, or
 3. To the extent that application of the law of the tribe, state, or country designated in the agreement would be contrary to a fundamental policy of this Community.

PART 2: EFFECTIVENESS, ATTACHMENT AND RIGHTS OF PARTIES

Section 1. General Effectiveness of Security Agreement.

- a. General Effectiveness. Except as otherwise provided in this Chapter 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 under this Chapter is subject to:
 1. Any applicable rule of law which establishes a different rule for consumers,
 2. 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
 3. Any consumer-protection statute or regulation.
- c. Other Applicable Law Controls. If a conflict exists between this Chapter and a rule of law, statute, or regulation described in subsection b., the rule of law, statute, or regulation prevails.

Section 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 subsections 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 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 Chapter, or
 - C. The collateral is a security or an investment account and the secured party has control pursuant to the debtor's security agreement.
- c. Other Applicable Law. Subsection 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 and Supporting Obligations. The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by this Chapter and is also attachment of a security interest in a supporting obligation for the collateral.
- 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. Other Persons Bound. Law other than this Chapter determines if and when another person becomes bound by a security agreement entered into by a debtor.

Section 3. After-Acquired Collateral; Future Advances.

- a. After-acquired Collateral. Except as otherwise provided in subsection 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 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 commitment.

Section 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 Repledge. 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, subsection 1. does not apply unless the secured party is entitled under an agreement:
 1. To charge back uncollected collateral, or
 2. Otherwise 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.

Section 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 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 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 (Part 4, Section 3), a signed record that releases the account debtor from any further obligation to the secured party. However, this subsection does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

Section 6. No Interest Retained in Right to Payment That is Sold; Retained Power of Seller of Account or Chattel Paper.

- a. Seller Retains No Interest. A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the property sold.

- b. Power of Debtor with Respect to Account or Chattel Paper Sold. A debtor that has sold an account or chattel paper has the power to transfer a security interest in the account or chattel paper:
 - 1. While the buyer's security interest is unperfected, or
 - 2. To a person that, before the sale, filed a financing statement identifying the account or chattel paper sold as collateral, while the financing statement remains effective.

Section 7. 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 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 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 months without charge. The secured party may require payment of a charge not exceeding \$25 for each additional statement furnished.

PART 3: PERFECTION AND PRIORITY

Section 1. Law Governing Perfection and Priority of Security Interests.

Except as otherwise provided in Part 3, Section 3, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

- 1. Except as otherwise provided in this section, the local law of the Community governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:
 - A. If the security interest is created pursuant to this Chapter,
 - B. From the time that the debtor becomes subject to the jurisdiction of the Community under Part 3, Section 16.d. and e., or
 - C. From the time that the collateral is transferred to a person that thereby becomes a debtor and is subject to the jurisdiction of the Community.

2. Except as provided in paragraph 3., while goods are located in a jurisdiction, the local law of that jurisdiction governs:
 - A. Perfection of a security interest in the goods by filing a fixture filing,
 - B. Perfection of a security interest in timber to be cut, and
 - C. Perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on farm products.
3. The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.
4. This section does not determine the law governing matters not expressly referred to herein, including attachment, validity, characterization, and enforcement.

Section 2. [RESERVED]

Section 3. Law Governing Perfection and Priority of Security Interests in Goods covered by 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 jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.
- b. When Goods Covered By Certificate of Title. Goods become covered by a certificate of title 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 the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or 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 nonperfection, 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.

Section 4. [RESERVED]

Section 5. [RESERVED]

Section 6. [RESERVED]

Section 7. [RESERVED]

Section 8. When Security Interest or Agricultural Lien is Perfected; Continuity of Perfection.

- a. Perfection of Security Interest. Except as otherwise provided in this section and Section 9., a security interest is perfected if it has attached and all of the applicable requirements for perfection set forth in this Chapter have been satisfied. A security interest is

perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

- b. Perfection of Agricultural Lien. An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection set forth in this Chapter have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.
- c. Continuous Perfection; Perfection by Different Methods. A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this Chapter and is later perfected by another method under this Chapter, without an intermediate period when it was unperfected.
- d. Supporting Obligation. Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.
- e. 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.
- f. 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.

Section 9. Security Interest Perfected Upon Attachment. The following security interests are perfected when they attach:

- a. A purchase-money security interest in consumer goods, except as otherwise provided in Section 11.b. regarding goods subject to certain ordinances, 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 assignor's 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.

Section 10. When Filing Required to Perfect Security Interest or Agricultural Lien; Security Interests and Agricultural Liens to Which Filing Provisions Do Not Apply.

- a. General Rule: Perfection by Filing. Except as otherwise provided in subsection b. and Sections 12 and 13, a financing statement must be filed to perfect all security interests and agricultural liens.

- b. Exceptions: Filing Not Necessary. The filing of a financing statement is not necessary to perfect a security interest:
 - 1. That is perfected under Section 8c., dealing with liens securing rights to payment,
 - 2. That is perfected when it attaches under Section 9,
 - 3. In property subject to a Ordinance, regulation, or treaty described in Section 11a.,
 - 4. In goods in possession of a bailee which is perfected under Section 12.d.1. or 2.,
 - 5. In certificated securities, negotiable documents, goods, or instruments which is perfected without filing or possession under Section 12.e., f. or g.,
 - 6. In collateral in the secured party's possession under Section 13,
 - 7. In a security or an investment account perfected by control under Section 14,
 - 8. In proceeds which is perfected under Section 15, or
 - 9. That is perfected under Section 16 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 or agricultural lien, a filing under this Chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

Section 11. Perfection of Security Interests in Property Subject to Certain Ordinances, Regulations, and Treaties.

- a. Security Interest Subject to Other Law. Except as otherwise provided in subsection d., the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:
 - 1. Any 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 Chapter requiring that security interests be perfected by filing.
 - 2. A statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title 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 an ordinance, regulation, or treaty described in subsection a. for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Chapter. Except as otherwise provided in subsection d. and the provisions of this Chapter 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 an Ordinance, regulation, or treaty described in subsection 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 subsection d. and the provisions of this Chapter 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 ordinance, regulation, or treaty described in subsection a. are governed by the ordinance, regulation, or treaty. In other respects, the security interest is subject to this Chapter.
- d. Inapplicability to Certain Inventory. During any period in which collateral subject to an ordinance specified in subsection 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.

Section 12. Perfection of Security Interests in Chattel Paper, Document, 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 Chapter 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 Chapter 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 nonnegotiable 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 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 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, transshipping, 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 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 20-day period specified in subsection e., f., or g. expires, perfection depends upon compliance with this.

Section 13. When Possession by Secured Party Perfects Security Interest Without Filing.

- a. Perfection by Possession. Except as otherwise provided in subsection 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.
- Goods Covered by Certificate of Title. With respect to goods covered by a certificate of title issued by the Community 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 Section 16.c., relating to continued perfection of goods covered by a certificate of title.
- b. 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 debtor's 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.
- c. 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.
- d. Acknowledgment Not Required. A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

- e. 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 subsection c., even if the acknowledgment violates the rights of a debtor, and
 - 2. Unless the person otherwise agrees or law other than this Chapter otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

Section 14. Perfection by Control. A security interest in a security or an investment account may be perfected by control.

Section 15. Secured Party's Rights on Disposition of Collateral and in Proceeds.

- a. Disposition of Collateral: Continuation of Security Interest or Agricultural Lien; Proceeds. Except as otherwise provided in this Chapter and in any applicable law dealing with entrustment of goods:
 - 1. A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien, 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 Chapter 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 Chapter 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 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 subsection c. when the security interest attaches to the proceeds or within 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 subsection 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 Chapter dealing with lapse or termination, or
 - 2. The 21st day after the security interest attaches to the proceeds.

Section 16. Continued Perfection of Security Interest Following Change in Governing Law.

- a. Definition: “Place of Business”. In this section, “place of business” means a place where a debtor conducts its affairs.
- b. General rule: effect on perfection of change in governing law. A security interest to which this Chapter 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 months after the debtor becomes subject to the jurisdiction of the Community under subsections e. and f., 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 the Community.
- c. Security Interest Perfected or Unperfected Under Law of the Community. If a security interest described in subsection b. becomes perfected under the law of the Community before the end of the applicable period described in subsection b., it remains perfected thereafter until perfection lapses in accordance with this Chapter. 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 the Community. A security interest to which this Chapter 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 the Community 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 Section 11b. or 13 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 the Community, or
 - 2. The expiration of four months after the goods had become so covered.
- e. When Debtor Subject to Jurisdiction of the Community. In this section, a debtor is subject to the jurisdiction of the Community if:

1. The debtor is an individual whose principal residence is within this jurisdiction or who becomes a member of the Community,
 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, is within this jurisdiction, or
 3. the debtor becomes:
 - A. A registered organization that is organized solely under the law of the Community, 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 amended from time to time.
- f. Continuation of Jurisdiction: Cessation of Existence, Etc. For purposes of subsection e.:
1. A person other than a registered organization continues to be subject to the jurisdiction of the Community 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 the Community notwithstanding:
 - A. The suspension, revocation, forfeiture, or lapse of the registered organization's status, or
 - B. The dissolution, winding up, or cancellation of the existence of the registered organization.
- g. Effect of Filed Financing Statement With Respect to After-Acquired Collateral. If a security interest remains perfected under subsection a.2.:
1. A financing statement that perfected the security interest under the law applicable before the debtor becomes subject to the jurisdiction of the Community is effective to perfect a security interest in collateral to which a security interest attaches after the debtor becomes subject to the jurisdiction of the Community until the earlier of the times or events described in subsection b.1. and 2., and
 2. Subsection c. applies to after-acquired collateral to the same extent that it applies to collateral to which the security interest attached before the debtor became subject to the jurisdiction of the Community.

Section 17. Interests That Take Priority Over Security Interest or Agricultural Lien.

- a. Subordination to Certain Lien Creditors and Purchasers. Subject to subsection b., security interest or agricultural lien 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, lessee of goods, licensee of a general intangible, or buyer of accounts or general intangibles or securities which:
 - A. Gives value,

- B. For a buyer of tangible personal property, lessee of goods, or buyer of a security certificate, acquires possession, and
 - C. Lacks knowledge of the security interest or agricultural lien before it is perfected, or
3. A secured party entitled to priority under subsection c.
- b. Purchase-Money Grace Period. A purchase-money secured party that files a financing statement before or within 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 and agricultural liens in the same collateral is determined as follows:
 - 1. Conflicting perfected security interests and agricultural liens 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 or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.
 - 2. A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.
 - 3. The first security interest or agricultural lien to attach has priority if conflicting security interests and agricultural liens 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 Section 18.
 - e. Priority in Proceeds. Except as provided elsewhere in this part, a security interest that has priority under Section 18.e., f. or g. 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. The order of filing determines priority in proceeds if:
 - 1. A security interest in chattel paper, a negotiable document, instrument, security or investment account is perfected by a method other than filing, and
 - 2. The proceeds are not cash proceeds, chattel paper, negotiable documents, instruments, securities, investment accounts or letter-of-credit rights.

- g. Deferral to Other Applicable Law. If applicable law other than this Chapter 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 [or seller] or lessee of goods, or in personal property that is not subject to this Chapter, that law governs a conflict with this Chapter.

Section 18. Particular Priority Rules.

- a. Relationship to Preceding Section. This section creates exceptions to the priority rules of Section 17.
- b. Consignee Deemed to Have Rights of Consignor. For the purpose of this Chapter, 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 Part 3 of this Chapter results in the consignor having priority over a creditor of the consignee, law other than this Chapter determines the rights and title of the consignee with regard to that creditor.
- c. Ordinary-Course Buyer, Licensee and Lessee Takes 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 determined by criteria parallel to those used to determine whether a buyer is a buyer in ordinary course of business under Section 6.h. 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, and
 - 2. A buyer of goods in the possession of the secured party under Section 13.
- d. Buyer of Consumer Goods Takes Free of Security Interest. Unless goods are in the possession of the secured party under Section 13, 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. For goods having a value of \$5,000 or more, before the filing of a financing statement covering the goods.
- e. Purchaser of Chattel Paper or Instrument. The following rules apply to a purchaser of chattel paper or an instrument:
 1. The 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 previously has been 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. The purchaser with priority in chattel paper under paragraph a. 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. Section 17.c., d., or e. so provides.
- f. Holder in Due Course and Others Protected. This Chapter 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 law. Filing under this Chapter is not notice of a claim or defense to the holder or protected person.
- g. Priority of Future Advance. The following rules govern priority of a security interest to the extent that it secures a future advance:
 1. For a conflicting security interest, the priority of an advance under a security agreement is determined under Section 17.b., except that perfection dates from the time the advance is made if the security interest securing it is perfected only by attachment under Section 9 or temporarily by law under Section 12.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. For a lien creditor, the security interest securing an advance is subordinate if the advance is made more than 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. For a buyer of goods other than a buyer in ordinary course of business under Part 1, Section 4.h., and with respect to a lessee of goods that does not take its lease in ordinary course of business under Section 18.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 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 45-day period.

4. Paragraphs 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 Security Interest 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 in the same goods and in identifiable proceeds of the goods, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 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 notice is not 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 Section 12.f., before the beginning of the applicable 20-day period.
 3. If a purchase-money secured party has priority in livestock that are farm products under this paragraph b., it has priority in their identifiable proceeds and products in their unmanufactured states. If a purchase-money secured party has priority in inventory under paragraph b., it has priority in chattel paper or an instrument constituting proceeds, in:
 - A. Proceeds of the chattel paper except as otherwise provided in this section, and
 - B. Identifiable cash proceeds received on or before delivery of the goods to a buyer.
 4. 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.
 5. Priority Among Purchase-Money Security Interests. Notwithstanding this subsection, 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 under Section 17.b.

- i. Transferee of Money or Funds Takes Free of Security Interest. 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 under Section 14 has priority over a security interest perfected by a method other than control. 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 under Section 13 and not by control has priority over a conflicting security interest perfected by a method other than control.
- k. Possessory Lien. A lien on goods created by Ordinance or rule of law which secures payment or performance of an obligation for services or materials furnished with respect to the 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 or agricultural lien in the goods unless the possessory lien is created by a statute that expressly provides otherwise.

Section 19. Priority of Security Interests in Fixtures and Crops.

- a. Security Interest in Fixtures Under This Chapter. A security interest under this Chapter may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this Chapter in ordinary building materials incorporated into an improvement on land.
- b. Security Interest in Fixtures Under Real-Property Law. This Chapter 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 subsections 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 subsection 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 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 Chapter 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 Chapter, or
 - 4. The security interest is:
 - A. created in a manufactured home in a manufactured-home transaction, and
 - B. perfected pursuant to an Ordinance described in Section 11.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 Subsection f.2. Priority. The priority of the security interest under subsection f.2. continues for a reasonable time if the debtor 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 subsections d. and e., 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.

Section 20. 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 subsection d., the other provisions of this part 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 which is perfected by compliance with the requirements of a certificate-of-title statute under Section 11.b.
- e. Removal of Accession After Default. After default, subject to Part 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 subsection 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.

Section 21. Commingled Goods.

- a. “Commingled Goods.” In this section, “commingled goods” means 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 subsection c. is perfected.

- e. Priority of Security Interest. Except as otherwise provided in subsection f., the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection c.
- f. Conflicting Security Interests in Product or Mass. If more than one security interest attaches to the product or mass under subsection c., the following rules determine priority:
 - 1. A security interest that is perfected under subsection 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 subsection d., the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

Section 22. 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 (Part 1, Section 4.k.) 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:

- 1. 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
- 2. The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under Section 11.b., after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

Section 23. Priority Subject to Subordination. This Chapter does not preclude subordination by agreement by a person entitled to priority.

PART 4: RIGHTS OF THIRD PARTIES

Section 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 Chapter; 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 Part 4, Section 4, which invalidates certain legal and contractual restrictions on transferability that generally would be effective under other law.

Section 2. Secured Party Not Obligated on Contract of Debtor or in Tort. The existence of a security interest, agricultural lien, 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.

Section 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 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 subsection 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,
 - B. In the case of a negotiable promissory note, by the transferor or transferee, and
 - C. If requested by such account debtor or party, reasonable proof of the assignment or transfer.
 2. 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 Chapter.

Section 4. Restrictions on Assignment.

- a. Commercially Harmful Restrictions on Alienation Invalid. A commercially harmful restriction on alienation (subsections b., c. and d.) of property is invalid.
- 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 subsection b. except that the references to enforcement of a security interest appearing in subsection b.1. and 2. are excluded.
- d. Limitation on Effect in such Other Transactions. To the extent a commercially harmful restriction on alienation under subsection b.1. would otherwise be effective under law other than this Chapter, 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 subsections 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 subsection 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 subsection b. or c., as applicable.
- f. Deferral to Consumer Law; Inapplicability. This section is subject to any 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 Chapter.

PART 5: FILING

Section 1. Filing Requirements.

- a. Except as provided in subsection b. below, a secured party or his assignee who complies in all respects with the requirements of Minn. Stat. § 336.9, as it exists now or shall be amended hereafter, including but not limited to the time, place and manner of filing and the form of financing statements or any assignment thereof, shall be recognized as having obtained a perfected security interest in accordance with this Chapter.
- b. A security interest in vehicles or other property described in Minn. Stat. § 336.9, as it now exists or shall be amended thereafter, which has been perfected in accordance with Minn. Stat. § 336.9 shall be recognized as a perfected security interest in accordance with this Chapter.
- c. A person having rights in property subject to a security interest which has been perfected under subsections a. or b. above or Section 2 below shall be entitled to enforce all of the obligations provided by Minnesota Statutes §336.9 against the secured party or his assignee, including the right to require the filing of a termination statement or other release of the security interest.

Section 2. Place of Filing for Fixtures on Trust or Restricted Land. Financing statements relating to goods which are to become fixtures on land which is held in trust by the federal government or land which is held subject to a restriction against alienation under federal law shall be filed in the land title and mortgage records maintained by the Bureau of Indian Affairs, United States Department of the Interior.

PART 6: DEFAULT

Section 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 under Part 2, Section 4 and, except as otherwise provided in Section 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, or agricultural lien 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 subsection a. are cumulative and may be exercised simultaneously.
 - c. Rights of Debtor and Obligor. Except as otherwise provided in subsection f. and Section 5, after default, a debtor and an obligor have the rights provided in this part 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 or agricultural lien in the collateral,
 2. The date of filing a financing statement covering the collateral, or
 3. Any date specified in an Ordinance under which the agricultural lien was created.
 - e. Execution Sale. A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien 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 Chapter.
 - f. Consignor or Buyer of Certain Rights to Payment. Except as otherwise provided in Section 7.b., this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

Section 2. Waiver and Variance of Rights and Duties. Except as otherwise provided in the provisions of this Chapter dealing with waivers (Part 6 – Section 24), 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 Chapter dealing with:

- a. Rights and duties when collateral is in a secured party's possession (Part 2, Section 4),
- b. Requests for an accounting or requests regarding a list of collateral or statement of an account (Part 2, Section 7),
- c. Commercially reasonable collection and enforcement (Part 6, Section 7.b.),
- d. Application of proceeds, deficiency and surplus (Part 6, Sections 8.a. and 15.c.), to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition,
- e. Application of proceeds and the like (Part 6, Sections 8 and 15.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 (Part 6, Section 9), 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 (Part 6, Section 10.b.), notification before disposition of the collateral (Part 6, Section 11), and the contents and form of a notification before disposition of the collateral (Part 6, Section 13),
- h. Calculation of a deficiency or surplus when the fairness of the amount of proceeds is placed in issue (Part 6, Section 15.e.),
- i. Explanation of the calculation of a surplus or deficiency (Part 6, Section 16),
- j. Acceptance of collateral in satisfaction of obligation (Part 6, Section 20),
- k. Right to redeem collateral (Part 6, Section 23),
- l. Waivers (Part 6, Section 24),
- m. The secured party's liability for failure to comply with this Chapter (Part 6, Sections 25 and 26), and
- n. Attorney's fees (Part 6, Section 29).

Section 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 Chapter dealing with waiver or variance of rights and duties (Part 6, Section 3), if the standards are not manifestly unreasonable.

Section 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 part 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 part do not apply.
- b. Enforcement: Fixtures. Subject to subsection 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 part 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.

Section 5. Unknown Debtor or Secondary Obligor. A secured party does not owe a duty based on its status as 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.

Section 6. Time of Default for Agricultural Lien. For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the Ordinance under which it was created.

Section 7. 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 Part 3, Section 11, or
 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 subsection b. 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.

Section 8. 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 or agricultural lien 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 Section 7 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 or agricultural lien 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 or agricultural lien 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 paragraph 1.C.
 - 3. A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 7 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash 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.

Section 9. 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 subsection 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 subsection 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 Section 10, 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 subsection a. must proceed without breach of the peace.

Section 10. 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 (Part 6, Section 23), 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 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 subsection 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 under subsection 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.

Section 11. 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 subsection d., a secured party that disposes of collateral under Section 10 shall send to the persons specified in subsection c. a reasonable signed notification of disposition.
- c. Persons to be Notified. To comply with subsection 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, 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, 14 calendar days before the notification date, held a security interest in the collateral perfected by compliance with other applicable law (Part 3, Section 11).
- d. Subsection b. Inapplicable: Perishable Collateral; Recognized Market. Subsection 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 Subsection c.3.B. A secured party complies with the requirement for notification prescribed by subsection c.3.B. if:
 - 1. Not later than 20 calendar days or earlier than 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 subsection 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.

Section 12. Timeliness of Notification Before Disposition of Collateral.

- a. Reasonable Time is Question of Fact. Except as otherwise provided in subsection 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 Tribal 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, 20 calendar days or more before the earliest time of disposition set forth in the notification, or
 2. In all other transactions, 10 calendar days or more before the earliest time of disposition set forth in the notification.

Section 13. 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 paragraph a. are nevertheless sufficient is a question of fact.
- c. The contents of a notification providing substantially the information specified in paragraph a. are sufficient, even if the notification includes:
 1. Information not specified by that paragraph, or
 2. Minor errors that are not seriously misleading.

- d. A particular phrasing of the notification is not required.

Section 14. [RESERVED]

Section 15. 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 Section 10 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 or agricultural lien under which the disposition is made, and
 - 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
 - C. 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 subsection a.3.
- c. Application of Noncash Proceeds. A secured party need not apply or pay over for application noncash proceeds of disposition under Section 10 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash 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 subsection a. and permitted by subsection c.:
 - 1. Unless subsection 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 Secured Party or Related Person. Following a disposition to the secured party or a person related to the secured party, the surplus or deficiency is calculated based on the amount of proceeds that would have

been realized in a hypothetical disposition complying with this part to a person other than the secured party or a person related to the secured party, if the debtor establishes that the amount of proceeds of the actual disposition is significantly below the range of proceeds that would have been brought by the hypothetical disposition. In this section, a secondary obligor is a person related to the secured party.

- 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 or agricultural lien 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.

Section 16. 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, 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 subsection a.2. The secured party may require payment of a charge not exceeding \$25 for each additional response.

Section 17. 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.
- b. Rights of Good-Faith Transferee. A transferee that acts in good faith takes free of the rights and interests described in subsection a., even if the secured party fails to comply with this Chapter 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 subsection a., the transferee takes the collateral subject to:
 - 1. The debtor's rights in the collateral,
 - 2. The security interest or agricultural lien under which the disposition is made, and
 - 3. Any other security interest or other lien.

Section 18. 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 subsection a.:
 1. Is not a disposition of collateral under Section 10, and
 2. Relieves the secured party of further duties under this Chapter.

Section 19. Transfer of Record or Legal Title.

- a. “Transfer Statement.” In this section, “transfer statement” means a record signed 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 subsection b. or otherwise is not of itself a disposition of collateral under this Chapter and does not of itself relieve the secured party of its duties under this Chapter.

Section 20. 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 subsection 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. A secured party shall send notice of a proposal under subsection a. 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, 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 that makes the interest reasonably discoverable, and
 4. If the proposal is for partial satisfaction of the obligation, any secondary obligor.
- c. Conditions to Acceptance. A proposal under this section is not effective unless it is covered by subsection a. and:
 1. The debtor consents to the acceptance in a record signed after default and if the record consists of a form supplied by the secured party, the term expressing consent is separately signed by the debtor,
 2. No other person specified in subsection b., and no other person holding an interest in the collateral subject to the secured party's interest, objects to the acceptance within 14 tribal business days after notification was sent, and
 3. If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance.
- 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, and
 3. Discharges the security interest or agricultural lien that is the subject of the debtor's consent, and any security interest or other lien or interest that is subordinate thereto, even if the secured party accepting the collateral fails to comply with this Chapter.
- e. Mandatory Disposition of Consumer Goods. A secured party that has taken possession of collateral shall dispose of the collateral pursuant to Sections 10 through 16 if:
 1. 60 percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods, or

2. 60 percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.
- f. A disposition under subsection e. must be made no later than 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.

Section 21. [RESERVED]

Section 22. [RESERVED]

Section 23. 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 Section 15.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 Section 7,
 2. Has disposed of collateral or entered into a contract for its disposition under Section 10, or
 3. Has accepted collateral in full or partial satisfaction of the obligation it secures under Section 20.

Section 24. Waiver.

- a. Waiver of Disposition Notification. A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 11 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 Section 20.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 Section 23 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.

Section 25. Remedies for Secured Party's Failure to Comply with Chapter.

- a. Judicial Orders Concerning Noncompliance. If it is established that a secured party is not proceeding in accordance with this Chapter, the Tribal Court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

- b. Damages for Noncompliance. Subject to subsections c., d., and e., a person is liable for damages in the amount of any loss caused by a failure to comply with this Chapter. 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 Section 28, which deals with the nonliability and limitations on liability of a secured party and the liability of a secondary obligor:
 - 1. A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection 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 part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.
- d. Recovery When Deficiency Eliminated or Reduced. A debtor whose deficiency is eliminated under Section 26, 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 subsection b., the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover \$500 in each case from a person that:
 - 1. Fails to comply with the provisions of this Chapter dealing with additional duties of a secured party having control of an investment account (Part 2, Section 5.b.),
 - 2. Fails to comply with the provisions of this Chapter dealing with duties of a secured party if an account debtor has been notified of assignment (Part 2, Section 5.c.),
 - 3. Files a record that the person is not entitled to file under Part 5, Section 2.g.,
 - 4. Fails to file, cause to be filed or send a termination statement as required by Part 5, Section 2.f., or
 - 5. Fails to comply with the provisions of this Chapter dealing with explanations of calculations of surplus or deficiency (Section 16.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 Chapter Dealing With a Request for an accounting. A debtor or consumer obligor may recover damages under subsection b. and, in addition, \$500 in each case from a person that, without reasonable cause, fails to comply with a request for an accounting (Part 2, Section 7). A recipient of a request under Part 2, Section 7 which 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 this subsection.

- g. Limitation of Security Interest: Noncompliance with Chapter. If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Part 2, Section 7, 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.

Section 26. Action in which Deficiency or Surplus is an Issue. In an action in which the amount of a deficiency or surplus is in issue, the following rules apply:

- a. A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.
- b. 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.
- c. If, with respect to a consumer transaction, a secured party fails to prove that a collection was conducted in accord with Section 7.b. or that a disposition was conducted in accordance with Section 10b., or fails to comply with Sections 9.c. or 23, the proceeds of the collection or disposition fully satisfy the sum of the secured obligation, expenses, and allowable attorney's fees.
- d. Except as provided in paragraph c. or in Section 28, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part 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 Section 25.b., which may be measured by the amount recovered for conversion of collateral.
- e. For purposes of paragraph d., 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.

Section 27. 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 That 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.
1. A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:
 - A. In a judicial proceeding,
 - B. By a bona fide creditors' committee,
 - C. By a representative of creditors, or
 - D. By an assignee for the benefit of creditors.
 2. Such approval need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

Section 28. Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor.

- a. Limitation of Liability of Secured Party for Noncompliance with Chapter. 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 Chapter, and
 2. The secured party's failure to comply with this Chapter 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 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 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 Section 25.c.2., which deals with statutory damages where the collateral is consumer goods, for its failure to comply with Section 16, which deals with explanations of calculations of surplus or deficiency.
 - e. Limitation of Multiple Liability for Statutory Damages. A secured party is not liable under Section 23.c.2., which deals with statutory damages where the collateral is consumer goods, more than once with respect to any one secured obligation.

Section 29. Attorneys Fees in Certain Transactions. If the secured party's compliance with this Chapter is placed in issue in an action, the following rules apply:

- a. If the secured party would have been entitled by agreement to attorney's fees as the prevailing party, and the original principal amount of the indebtedness secured does not exceed \$25,000, a debtor or obligor prevailing on the issue is entitled to the costs of the action and reasonable attorney's fees.
- b. In other cases, the Tribal 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 debtor or obligor is not a controlling factor.

PART 7: MISCELLANEOUS PROVISIONS

Section 1. Severability. If any provision of this Chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.