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**TITLE 16. PROPERTY**

**ARTICLE I**

**IN GENERAL**

[NOTE: Except as otherwise noted, the provisions of Article I, Title 16 were enacted on November 2, 2005 by Res. No. 40-2005.]

**CHAPTER 1. GENERALLY**

**Sec. 16-1101. Applicability of Title.**

Except as otherwise expressly provided, this Title shall apply to any and all arrangements, formal or informal, written or oral, or by the practice of the parties, related to any and all forms of property.

**Sec. 16-1102. Jurisdiction.**

(a) This Title shall apply to all persons and property, personal and real, subject to the jurisdiction of the Tribe as established by Article I of the Constitution, the inherent sovereignty of the Tribe, and other applicable laws, regulations, and ordinances.

(b) Nothing in this Title shall be construed as a limitation on the Tribe's authority and power to enforce the terms of this Title in a manner permitted by law but not expressly provided herein.

(c) Nothing in this Title shall be construed as a limitation upon the sovereignty or sovereign immunity of the Tribe or jurisdiction of the Tribe or any adjudicatory authority established by the Tribe.

**Sec. 16-1103. Purpose and Intent.**

This Title shall be interpreted and construed to fulfill the following purposes:

- (a) To protect and preserve the property, natural resources, culture, and tradition of the Tribe;
- (b) To preserve the peace, harmony, safety, health and general welfare of the members of the Tribe and others residing on the Settlement;
- (c) To clarify the law governing the occupation and use of Tribal lands;
- (d) To provide regulations for the assignment of Tribal lands under Article XI of the Constitution;
- (e) To clarify the law governing the rights, duties, and obligations of persons who occupy or use Tribal land;

- (f) To establish procedures governing condemnation of property by the Tribe or other exercises of the Tribe's power of eminent domain;
- (g) To establish laws and procedures governing the repossession and removal of personal property from the Settlement; and
- (h) To establish laws and procedures governing recordation, foreclosure and evictions in connection with mortgages given to secure loans made by mortgagees.

**Sec. 16-1104. Definitions.**

Unless the context requires otherwise, as used in this Title, "Tribal land" means any land or estate or interest therein owned by the Tribe, whether held in trust for the Tribe by the United States of America, subject to a restriction against alienation by the United States of America, owned in fee simple by the Tribe, or otherwise.

**Sec. 16-1105. Management of Tribal Land.**

Pursuant to Article XI of the Constitution, the Tribal Council shall manage all Tribal land which is not assigned, leased, licensed, or otherwise used for the benefit of the Tribe in accordance with the laws of the Tribe.

**Sec. 16-1106. Occupancy of Tribal Land.**

- (a) No person shall be permitted to occupy or use Tribal lands without permission from the Tribe, granted pursuant to this Title or other applicable law.
- (b) Any person occupying or using Tribal lands in violation of this Section is committing trespass.

**Sec. 16-1107. Severability.**

If any chapter, section, or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections or provisions of this Title and amendments made by this Title shall continue in full force and effect.

**CHAPTER 2. TRIBAL REALTY DEPARTMENT****Sec. 16-1201. Duties of Realty Department.**

- (a) The Tribe shall establish and maintain within its government a Department, referred to in this Title as the Realty Department, to which the Council delegates the powers:

(1) to negotiate on behalf of the Tribe for the purchase of real property, provided that the Realty Department shall not have the authority to enter into any contracts which bind the Tribe to purchase real property;

(2) to take all actions on behalf of the Tribe related to assignment of real property, except as otherwise stated in this Title;

(3) to take all actions related to the lease of real property, except as otherwise stated in this Title;

(4) to act as the complaining witness and to take other actions seeking the prosecution of any person who trespasses onto tribal property; provided that the power stated herein does not extend to taking actions supporting prosecution or complaints against other tribal officers who were acting in their official capacity or against any other tribal departments or enterprises, and that the power stated herein does not include the power to sue, be sued, or waive the Tribe's sovereign immunity or the immunity of any tribal officer or agent; and,

(5) to take all other actions permitted in this Title.

(b) The Realty Department shall not have any authority to encumber any interest which the Tribe holds in real property, whether of a tangible or intangible nature. Where there is an alleged encumbrance of property in violation of this provision:

(1) The promise or term is unenforceable because it is in violation of public policy; and

(2) In an action filed by the Tribe, a court may award restitution to the Tribe, but may not award restitution to any other party to the purported contract or promise.

(3) Notwithstanding any delegation of power, function or duty to the Realty Department under this Title, the Tribal Council may delegate any of the Realty Department's powers, duties or functions to any special board or committee of community members or other department.

(Subsection (b) (3) was added to this section by Tribal Council Resolution 8-2006, effective March 1, 2006.)

### **Sec. 16-1202. Tribal Council Review of Decisions of the Realty Department**

Where the Realty Department makes a decision granting, denying, terminating, modifying, or canceling a land assignment or lease, or where otherwise provided by law, an interested person may request review of the Realty Department's decision. The following procedural and substantive laws apply to such review:

(a) the request for review must be in writing and must be received by the head of the Realty Department or the Tribal Executive Director within thirty days of the date the decision complained of was placed in the mail, or within such shorter period as otherwise provided for by law;

(b) unless otherwise authorized by the Tribal Council in writing, upon notice that a request for review has been filed, the Realty Department shall not assign or lease the land which is the subject of the request for review or otherwise act to carry out its decision until the Tribal Council renders its decision on the request for review;

(c) the Tribal Council shall provide the Realty Department, the assignee (if applicable); and the person filing the request for review with written notice, at least three calendar days in advance, of the date that the Tribal Council will consider the appeal;

(d) at the time set for hearing, or at such later date if tabled by the Tribal Council in its discretion, the Tribal Council shall provide any interested party present an opportunity to be heard by the Tribal Council prior to the Tribal Council rendering a decision;

(e) the Tribal Council decision shall be final, and there shall be no right to judicial review or appeal; and

(f) Except as otherwise provided for in Tribal Statute, the Tribal Council may adopt any suitable mode of proceeding when considering a request for review under this Title.

**TITLE 16. PROPERTY**

**ARTICLE II**

**ASSIGNMENT OF TRIBAL LAND**

[NOTE: Except as otherwise noted, the provisions of Article II, Title 16 were enacted on November 2, 2005 by Res. No. 40-2005.]

**CHAPTER 1. GENERAL PROVISIONS**

**Sec. 16-2101. Applicability and Construction of Article.**

(a) This Article shall apply to assignments of Tribal land to any member of the Tribe eligible to receive a land assignment under Article XI of the Constitution.

(b) This Article is intended to supplement Article XI of the Constitution of the Sac & Fox Tribe of the Mississippi in Iowa and shall be construed and interpreted in accordance with said Article XI of the Constitution. If any conflict should arise between the provisions of this Article and said Article XI of the Constitution, the Constitution shall control.

**Sec. 16-2102. Definitions.**

Unless the context requires otherwise, as used in this Title:

(a) “Applicant” means an eligible member of the Tribe who has applied for a land assignment pursuant to this Article and Article XI of the Constitution.

(b) “Assignee” means a person or entity, who has been granted a land assignment pursuant to this Article.

(c) “Land assignment” means an assignment of Tribal land to a member of the Tribe pursuant to Article XI of the Constitution and this Article.

**Sec. 16-2103. Effect on Existing Land Assignments.**

(a) Land assignments issued prior to the enactment of this Article shall continue in full force and effect subject to the provisions of this Article and provided that the assignee has been using the Tribal land for the assigned purpose during the two years prior to the date of enactment of this Article.

(b) Any agreement of assignment entered into prior to the enactment of this Article shall remain in full force and effect, but all provisions of this Article shall be deemed to become terms of such agreement of assignment. In the event any term of an agreement of assignment and any provision of this Article should conflict, the provisions of this Article shall govern and the conflicting term in the agreement of assignment shall be deemed null and void and stricken from the agreement of assignment.

**Sec. 16-2104. Rights of Non-members.**

Nothing in this Article shall be construed to grant an estate, interest, right, or privilege in Tribal lands to any nonmember residing with a Tribal member on a land assignment made under this Article.

**CHAPTER 2. ADMINISTRATIVE PROVISIONS****Sec. 16-2201. Authority of Tribe to Administer Lands.**

(a) No person shall be permitted to occupy or use Tribal lands without permission from the Tribe.

(b) The negotiation, approval, granting, and executing of any land assignment shall be in the sole discretion of the Tribe and nothing in this Article shall be deemed to create or establish a right or interest in favor of an applicant, assignee, or any other person in obtaining a land assignment.

**Sec. 16-2202. Eligibility for Assignment of Land.**

(a) Land assignments may be made only to and held only by:

(1) Male members of the Tribe;

(2) Female members of the Tribe who are not married to or cohabiting with an individual that is not a member of the Tribe; or

(3) Tribal enterprises.

(b) Subject to subsection (a) of this Section, every enrolled member of the Tribe who is not delinquent on a debt owed to the Tribe and who has reached the age of eighteen (18) or is married shall be considered eligible to receive or hold a land assignment under this Article at the discretion of the Tribe; provided that no applicant who is under the age of 25 years old may be assigned a tribally owned house.

(c) Subject to subsections (a) and (b) of this Section, applicants must reside within Tama County for six (6) months prior to the submission of an application for land assignment.

(Subsection (c) was added to this section by Tribal Council Resolution 16-2006, effective April 5, 2006.)

**Sec. 16-2203. Purpose of Assignments.**

A land assignment made under this Article may be for residential, business, agricultural, or any other use permitted under Tribal law. However, a particular land assignment under this Article may only be used for the purpose designated in the agreement of assignment, unless a change in use is granted in accordance with this Article.

**Sec. 16-2204. Procedures for Assignment of Land.**

Tribal lands assigned under this Article shall be assigned in conformity with the following rules:

(a) Except in the case of Tribal enterprises, application for a land assignment shall be made in writing to Realty Department. The application shall be made on a form prescribed by the Realty Department and approved by the Tribal Council, and contain the following information:

- (1) The name of the applicant;
- (2) Information sufficient to determine the eligibility of the applicant;
- (3) Identification of the proposed purpose of the land assignment;
- (4) Identification of the need for the proposed land assignment;
- (5) Identification of the tract of Tribal land desired for the proposed land assignment (if applicable);
- (6) If the land assignment is for residential purposes, identification of all other individuals who will reside on the land assignment and their relationship to the applicant;
- (7) If the land assignment is for business purposes, identification of:
  - (i) The type of business to be performed on the land assignment; and,
  - (ii) The ownership structure and interests in the business; and,
- (8) Any other relevant or necessary information.

(b) Application for a land assignment to a Tribal enterprise shall be made directly to the Tribal Council or other designee of the Tribal Council.

(c) Upon receipt of an application, the Realty Department shall assign the application a unique application number and then determine if the applicant is eligible for the type of land assignment applied for, and shall send notice of its decision on that issue to the applicant within sixty days of the submission of the application.

- (1) Where the Realty Department determines that an applicant is not eligible, the notice sent to the applicant shall inform the applicant that he or she may obtain Tribal Council review of the Realty Department's decision, and that a request for Tribal Council review must be in writing and received by the head of the Realty Department or Tribal Executive Director within thirty days of the date the Realty Department decision was mailed.

(2) Where the Realty Department determines that an applicant is eligible, it shall apply standardized procedures to determine whether the applicant qualifies for immediate housing or to determine the applicant's place on any applicable waiting list for housing. If the applicant is placed on a waiting list for more than sixty days, then at the time the Realty Department considers assigning a particular tract of Tribal land to the applicant, the Realty Department must determine whether applicant remains eligible for a land assignment.

(d) Before assigning any particular tract of Tribal land, the Realty Department shall post a notice at the Tribal Office and on the Tribal land at issue. The notice shall:

- (1) Identify the tract of Tribal land being considered for assignment;
- (2) Identify the applicant and application number;
- (3) Include the date on which the notice was posted;
- (4) Include notice that the Realty Department will consider the application at a date which is not less than thirty days nor more than 60 days after the date the notice is posted;
- (5) Include notice that anyone who claims prior rights in or to the Tribal land in question or who desires to make any other comment for or against the application must submit those comments to the Realty Department within thirty days of the date that the notice is posted, and that comments must be in writing and contain the application number or other information which clearly identifies the application to which it applies; and,
- (6) Include notice that the Realty Department will send its written decision to any person who submits a comment which also includes the submitting comments or any other person who requests notice of the decision.

(e) Once an application is made and notice posted for at least thirty days, the Realty Department shall, within the next thirty, days take up and consider the application and any comments received regarding the application, and shall then promptly decide whether to grant an assignment and shall promptly send notice of its decision to the Tribal Council and shall also send notice by regular mail to applicant and to any person who requested a copy.

- (f) The notice of the Realty Department's decision shall identify:
- (1) The location of the Tribal land at issue;
  - (2) The tract of Tribal land being assigned;
  - (3) The amount of Tribal land at issue;
  - (4) The name of the applicant;

- (5) The application number;
- (6) The purpose for which the assignment was requested;
- (7) Whether the Realty Department granted or denied the application;
- (8) That an interested person may obtain Tribal Council review of the Realty Department's decision, and that a request for Tribal Council review must be in writing and received by the Tribal Realty Department or Tribal Executive Director within ten days of the date the decision was mailed;
- (9) Any other relevant or necessary information; and
- (10) If the application was for agricultural purposes and the application was granted, the duration of the assignment.

(g) No sooner than ten days after the Realty Department mails notice of its decision regarding assignment, the Tribe and the assignee shall enter into a written agreement of assignment which shall include:

- (1) The location of the Tribal land assigned;
- (2) A description of the Tribal land assigned;
- (3) The amount of Tribal land assigned;
- (4) The purpose for which the Tribal land is assigned;
- (5) If the land is assigned for agricultural purposes, the duration of the assignment;
- (6) Designation of an eligible person to receive the land assignment upon the assignees death;
- (7) The signature of the assignee and the signature of an authorized representative of the Tribe; and,
- (8) Any other relevant or necessary terms or information.

(h) Agricultural land assignments shall not exceed five years in duration, provided that there is no limitation on the number of times an applicant may, upon submission of a renewal application, have the assignment renewed for additional periods of up to five years each.

(i) Unless a request for Tribal Council review is timely filed, the decision of the Realty Department shall be final. If review is sought, the decision of the Tribal Council to grant or not grant a land assignment shall be final and not subject to review or challenge in any court or tribunal. Nothing

stated in this section shall prevent an applicant whose application is denied from submitting a subsequent application for a land assignment.

**Sec. 16-2205. Conflicting Land Uses.**

(a) A land assignment shall be made in such a way that the land assignment does not conflict with long range or overall Tribal plans for land use or any zoning or land use laws of the Tribe.

(b) A land assignment shall be made in such a way that the purpose of the land assignment does not conflict with existing uses of neighboring or surrounding Tribal lands.

(c) In the event such a conflict arises, an otherwise eligible applicant may be denied an assignment for one piece of Tribal land and be encouraged instead to apply for a land assignment in a different area.

**Sec. 16-2206. Priority of Assignments.**

(a) Assignments of Tribal land for homesite purposes shall be given priority over assignments of Tribal land for agricultural or business purposes.

(b) Assignments of Tribal land to members of the Tribe for homesite purposes shall be given priority over assignments of Tribal land to Tribal enterprises.

(c) Assignments of Tribal land to Tribal enterprises shall be given priority over assignments of Tribal land to members of the Tribe for agricultural or business purposes.

**Sec. 16-2207. Size of Land Assignments.**

The amount of Tribal land which is included in each land assignment shall be based upon the ability of the applicant to make beneficial use of the Tribal land. In general:

(a) The size of agricultural land assignments will be determined by the Tribe in its discretion;

(b) Land assignments for residential or business use will generally be no more than one acre, but more or less than this amount may be assigned at the discretion of the Tribe; and,

(c) Where the size of the assignment granted by the Realty Department is different from that which an interested person advocated in written documents filed with the Realty Department, the interested person is permitted to seek Tribal Council review of the size of the assignment.

**Sec. 16-2208. Changes in Land Assignments.**

(a) If an assignee wishes to temporarily give up a land assignment or change the use for which the Tribal land was assigned, if permitted under this Article, it will be the responsibility of the assignee to

obtain the approval of the Tribe for these changes. Such request shall be made in writing and shall follow the same procedures outlined in this Article for the initial assignment of Tribal land.

(b) If an assignee wishes to have his land assignment enlarged or increased to include additional area, the assignee shall apply for a new land assignment that includes both the original land assignment and the additional area in accordance with the procedures outlined in this Article for the initial assignment of Tribal land.

**Sec. 16-2209. Leasing, Permitting, and Condemnation of Land Assignments.**

(a) The Tribe may grant a lease or permit, including oil and mineral leases, on a land assignment in whole or in part, in accordance with the laws of the Tribe, with the consent of the assignee. In addition, the Tribe may grant a lease or permit, including oil and mineral leases, on several adjoining land assignments together, in whole or in part, in accordance with the laws of the Tribe, with the consent of each assignee. Any purported lease, permit, license, or rental of a land assignment or any portion thereof or interest therein by an assignee without the approval of the Tribe shall be void.

(b) The Tribe may grant or take an easement or right-of-way across any land assignment or otherwise condemn any land assignment or portion thereof, in accordance with the laws of the Tribe, with or without the consent of the assignee.

(c) If an assignee or the assignees of several adjoining land assignments desire to grant a lease, permit, easement, or right-of-way across or on their land assignments, the assignee or assignees shall be required to obtain a tribal grant for such interests across or on their land assignments.

(d) In the event the Tribe grants a lease, permit, easement, or right-of-way across a land assignment, any income from such grant shall be allocated between the Tribe and the assignee based upon their respective interests in the Tribal land.

**Sec. 16-2210. Transfer and Inheritance of Land Assignments.**

(a) If an assignee desires to transfer his land assignment to another eligible member of the Tribe, it will be the responsibility of the assignee to obtain the approval of the Tribe for the transfer. Such request shall be made in writing and shall follow the same procedures outlined in this Article for the initial assignment of Tribal land. Any purported transfer of a land assignment or any portion thereof or interest therein by an assignee not in conformance with this subsection shall be void and the land assignment shall be deemed vacated and relinquished.

(b) Upon the death of an assignee, the Tribe shall reassign the land assignment to the person named by the assignee in the agreement of assignment, provided:

(1) The assignee is in compliance with the agreement of assignment and the provisions of this Article; and

(2) The person named in the agreement of assignment needs the Tribal land for his own use and is able and willing to use the Tribal land.

(c) In the event the person designated in an agreement of assignment is ineligible, a land assignment may be devised or inherited in accordance with the laws of the Tribe governing wills and intestate succession if the assignee is in compliance with the agreement of assignment and the provisions of this Article, subject to the following:

(1) The Tribe may reassign a land assignment to an heir or devisee of the assignee, *provided:*

(i) The heir or devisee is eligible to receive a land assignment under this Article;

(ii) The heir or devisee takes the land assignment subject to the same conditions existing at the time of reassignment as the deceased assignee; and,

(iii) The heir or devisee needs the Tribal land for his own use and is able and willing to use the Tribal land.

(2) If an assignee dies leaving a non-member surviving spouse and minor children who are members of the Tribe and the assignee fails to devise his land assignment or devises his land assignment to the non-member spouse, the Tribe may lease a land assignment for homesite purposes or the homesite portion of a land assignment for agricultural purposes to the non-member surviving spouse for the benefit of the minor children until all children who are members of the Tribe reach majority. In the case of agricultural land assignments, the surviving spouse shall only be permitted to lease and occupy the homesite for the benefit of the minor children and the remainder of the land assignment shall automatically terminate; provided that if there are crops planted on an agricultural assignment at the time the assignee dies, the surviving spouse shall be permitted to harvest such crops for up to eight months after the death of the assignee. Except as stated above, a non-member surviving spouse shall not be permitted to lease or otherwise utilize or occupy any portion of a land assignment for agricultural, business, or other non-residential purposes.

(3) If an assignee dies without an eligible heir or devisee, the land assignment shall terminate, revert to the Tribe, and be subject to reassignment or other use in the discretion of the Tribe.

**Sec. 16-2211. Personal Property Left on Land Assignments.**

(a) If a land assignment made under this Article is relinquished, any personal property left on the Tribal land after the date the relinquishment is deemed effective under section 16-2402(b) shall be deemed abandoned and shall become the property of the Tribe.

(b) If a land assignment made under this Article is terminated, the assignee shall be provided at least three days and may be provided longer in the Realty Department's discretion, to remove all personal property from the Tribal land, and any personal property left after that time period shall be deemed abandoned and shall become the property of the Tribe.

(c) If an assignment reverts to the Tribe under section 16-2210(c)(3) but the assignee has an heir or devisee for personal property, the heir or devisee shall be provided at least thirty days, and may be provided longer in the Realty Department's discretion, to removal all personal property from the Tribal land, and any personal property left after that time period shall be deemed abandoned and shall become the property of the Tribe.

(d) Where personal property is deemed abandoned under this section, the Realty Department shall remove that property from the land. The Realty Department shall then issue a decision that the assignee or assignee's estate owes the Tribe the full cost for removing the property. That decision is subject to Tribal Council review under this Title. Where assignee or assignee's estate has not paid the bill or sought Tribal Council review within thirty days of the date the decision is placed in the mail for delivery, the Tribe may offset any payments due assignee (including per capita payments) or assignee's estate against the amount due.

**Sec. 16-2212. Fees and Charges for Land Assignments.**

(a) Land assignments for homesite purposes only shall be provided at no charge or fee to the Tribal member, but the Tribe may require the assignee to pay all utility charges and costs of maintenance and upkeep of the land assignment.

(b) An assignee of a land assignment for agricultural, business, or other purpose which results in income to the assignee shall pay a periodic fee to the Tribe for the privilege of their land assignment in accordance with the terms of the agreement of assignment as follows:

(1) The periodic fee may be a flat rate, or may be based upon a percentage of income the assignee obtains from the use and possession of the Tribal land, or may be based on both a flat rate and a percentage of income the assignee obtains from the use and possession of the Tribal land;

(2) If the periodic fee is based solely on a flat rate, the fee shall be adjusted no less than every five years to account for changes in the value of the land assignment. The fee may also be converted to a fee based on a percentage of income the assignee obtains from the use and possession of the Tribal land or to a combination of a flat rate and a percentage of income the assignee obtains from the use and possession of the Tribal land, in which case no further adjustments need be made; and,

(3) Any agreement of assignment for agricultural or business purposes which does not contain a provision for the payment of a periodic fee shall be amended to contain a provision complying with this Section. If an assignee refuses to consent to an amendment to his agreement of assignment in accordance with this Section or otherwise refuses to consent to paying a periodic

fee for the benefit of the land assignment, the land assignment shall automatically terminate upon such refusal.

### CHAPTER 3. NATURE AND USE OF LAND ASSIGNMENTS

#### Sec. 16-2301. Rights of Tribe in Assigned Land.

The Tribe shall maintain the following rights in all Tribal lands assigned under this Article:

- (a) Title to the land;
- (b) All mineral and subsurface rights, including the power and responsibility of leasing, permitting, and removing such minerals and subsurface rights;
- (c) All water rights, including the leasing, permitting, and use thereof;
- (d) To take, grant, or create easements and rights-of-way or grant licenses on or across land assignments;
- (e) To place roads, trails, utility lines, and the like across the Tribal land without compensation or payment to the assignee;
- (f) The power to lease or rent the land assignment, with the consent of the assignee;
- (g) The power and responsibility to zone, from time to time, the land area within which the land assignment may be situated;
- (h) The power and responsibility to condemn the Tribal land pursuant to the Tribe's power of eminent domain;
- (i) The power and responsibility to control the manner and method of inheritance and devise of the land assignment;
- (j) The power and responsibility to control the cutting of timber;
- (k) The power to exclude persons from the land assignment, which shall be in addition to and superior to the power of the assignee to exclude any person;
- (l) The power and responsibility to exercise all governmental authority over the land assignment and all persons and property located on the land assignment; and,
- (m) Any and all other powers, responsibilities, and rights not granted to the assignee.

**Sec. 16-2302. Rights of Assignees in Assigned Land.**

(a) Assignments of Tribal land under this Article are rights of use and occupancy which shall be held until relinquished by the assignee or terminated by the Tribe. Except as otherwise expressly provided by the laws of the Tribe, the relinquishment, expiration, termination or other cancellation of a land assignment shall result in the reversion of all rights and interests of the assignee in the Tribal land to the Tribe.

(b) Subject to the laws of the Tribe and the rights, responsibilities, and powers of the Tribe, the following rights shall be deemed granted by the Tribe to an assignee:

- (1) Recognition by the Tribe that the Tribal land has been assigned to the assignee, provided the assignee has complied with the terms and conditions under which the assignment was made and the provision of this Title;
- (2) To use the Tribal land in accordance with the agreement of assignment, this Article, the purpose for which the Tribal land is assigned, and any other laws of the Tribe;
- (3) To construct buildings, structures, homes, residences, fences, or other improvements in accordance with the agreement of assignment, this Article, the purpose for which the Tribal land is assigned, and any other laws of the Tribe;
- (4) To remove, dispose of, destroy, alter, or demolish any buildings, structures, homes, residences, fences, or other improvements owned by the assignee;
- (5) To collect for damages or destruction, as a result of the issuance of any easement or right-of-way by the Tribe, of any improvement owned by the assignee; and,
- (6) To transfer, devise, or allow the inheritance of the land assignment, subject to the laws of the Tribe governing the same.

**Sec. 16-2303. Improvements and Property on Assigned Land.**

(a) An assignee shall not sell, remove, destroy, or injure or permit the sale, removal, destruction, or injury of any of the following from his land assignment without the express permission of the Tribe, as they shall be considered part of the land assignment:

- (1) Any structures, residences, homes, fences, or other improvements constructed or placed upon the Tribal land at the expense of the Tribe;
- (2) Any fixtures attached to any structures, residences, homes, fences, or other improvements at the expense of the Tribe;
- (3) Wells, including the curbing and casings;

- (4) Concrete ditching;
- (5) Mature trees, vines, and other vegetation, except nursery stock and farm produce or unless for the personal use of the assignee;
- (6) All native timber unless for personal use of the assignee;
- (7) Land, dirt, and rocks; and,
- (8) Any other property owned by the Tribe.

(b) Buildings, structures, homes, residences, fences, and other improvements placed upon a land assignment by the assignee or any other person other than the Tribe shall be deemed the personal property of the assignee or other person placing the improvement on the Tribal land. If the land assignment is relinquished, terminated, revoked, or otherwise canceled or, upon the death of the assignee, if the land assignment is transferred to a person who is not a relative, heir, or devisee of the assignee, the assignee or his heirs may sell or remove such improvements under the supervision of the Tribe.

(c) Subject to the laws of the Tribe, an assignee may remove, dispose of, destroy, alter, or demolish any buildings, structures, homes, residences, fences, and other improvements placed upon a land assignment by the assignee or any other person other than the Tribe as the assignee desires so long as the Tribal land and other Tribal property is not destroyed or injured or is returned to a condition substantially similar to its condition at the time of assignment.

**Sec. 16-2304. Obligations of Occupiers and Users of Tribal Land.**

Assignees shall have the following duties, obligations, and responsibilities:

- (a) To comply with the applicable provisions of this Article, the Constitution, and all other laws of the Tribe;
- (b) To comply with all terms and conditions of the written agreement applicable to the land assignment;
- (c) To pay any and all charges and fees in full in a timely manner;
- (d) To maintain the land assignment and all improvements thereon in as good condition as at the time of assignment, excepting normal changes resulting from the authorized use of the Tribal land;
- (e) To not permit the land assignment to deteriorate;
- (f) To act as protector of the land assignment within the context of Tribal law and policy; and
- (g) To perform those other duties, obligations, and responsibilities generally expected of a Tribal member who uses and occupies Tribal lands.

**CHAPTER 4. DISPUTES AND TERMINATION OF LAND ASSIGNMENTS****Sec. 16-2401. Authority of Tribe.**

- (a) In accordance with this Article, the Tribe shall have the following authority:
  - (1) To terminate, cancel, and revoke any and all land assignments;
  - (2) To accept a relinquishment of any land assignment;
  - (3) To settle any disputes involving the extent of, possession to, or use of any land assignment; and,
  - (4) To exercise any other authority vested in the Tribe.
- (b) In resolving disputes under and enforcing the provisions of this Article, the Tribe may:
  - (1) Terminate, cancel, or revoke an entire land assignment or any part thereof;
  - (2) Impose specific conditions on the continued holding of the land assignment in lieu of termination, cancellation, or revocation; and,
  - (3) Take any other lawful action within its powers and authority necessary to remedy the dispute, conflict, or other situation.
- (c) Except in cases of automatic or voluntary termination, cancellation, or revocation as provided in this Article, prior to finally terminating, canceling, or revoking any land assignment or finally resolving any dispute involving a land assignment, the Tribal Council shall give all interested parties the opportunity to be heard in accordance with procedures promulgated by the Tribal Council.
- (d) The Tribal Council may enforce any of its orders or decisions under this Section by any means within its power and not prohibited by law.
- (e) Unless Tribal law or the Tribal Council expressly provides otherwise, any action taken by the Tribal Council under this Section shall not be subject to review or attack before any other body or tribunal.

**Sec. 16-2402. Relinquishment of Land Assignments.**

- (a) An assignee may relinquish his land assignment or any portion of such land assignment by delivering written notice of such relinquishment to the Realty Department or by vacating the land assignment or portion thereof.
- (b) A relinquishment shall be deemed effective upon the earliest of:

- (1) Any date of relinquishment stated in the notice of relinquishment;
  - (2) The actual date the assignee vacates the land assignment or portion thereof relinquished; or
  - (3) Thirty days from receipt of the notice of relinquishment.
- (c) An assignee who fails to vacate his land assignment after providing a notice of relinquishment shall be deemed in trespass unless the assignee notifies the Realty Department in writing, prior to the effective date of relinquishment, that he revokes his relinquishment.
- (d) Any property which assignee leaves on the property after the relinquishment is deemed effective shall be subject to the provisions of section 16-2211.

**Sec. 16-2403. Termination of Land Assignments.**

- (a) The Realty Department may terminate any land assignment made under this Article, or portion thereof, for one or more of the following reasons:
- (1) Failure to use the Tribal land or portion thereof as assigned for a period of two or more consecutive years;
  - (2) Use of the Tribal land or portion thereof in violation of the agreement of assignment;
  - (3) Failure or refusal to pay any fee or charge for the benefit of the land assignment which is imposed pursuant to the agreement of assignment or this Article;
  - (4) Use of the Tribal land or portion thereof in any manner to the injury of the Tribe in general;
  - (5) Use of the Tribal land or portion thereof improperly;
  - (6) Violation of any laws of the Tribe or customs and traditions of the Tribe related to the use of the Tribal land or expectations of conduct related to occupancy of Tribal land;
  - (7) Violation of or failure to obey any lawful order or decision of the Tribe related to the use and occupancy of the Tribal land;
  - (8) Violation of or failure to perform any of the duties, obligations, and responsibilities of occupiers and users of Tribal land;
  - (9) Attempt to lease, rent, grant, or otherwise transfer the land assignment or any interest therein or portion thereof to another without the express permission of the Tribe or as otherwise provided in this Article;

(10) Permitting an individual to reside on the land assignment who has been excluded from the Settlement or otherwise is not permitted to reside on the land assignment;

(11) Condemnation pursuant to the Tribe's power of eminent domain; or

(12) Failure to fulfill any other obligations, responsibilities, or duties of assignees of Tribal land.

(b) When the Realty Department terminates a land assignment, it shall send notice of its action to the assignee by mail and shall also send notice to the Tribal Council. The notice to the assignee shall inform the assignee that he or she has the right to seek Tribal Council review of the termination, and that any request for review must be received by the Realty Department or the Tribe's Executive Director within ten days of the date the notice of termination is placed into the mail for service on the assignee. If the assignee requests Tribal Council review, that request stays the termination of the land assignment until the Tribal Council either lifts the stay or issues a final order after review.

(c) A land assignment shall automatically terminate without any action of the Tribe upon the occurrence of any of the following events:

(1) Failure to use the Tribal land as assigned for a period of two consecutive years; or

(2) For Tribal land assigned to a female member of the Tribe, if the female member becomes married to or begins cohabiting with a non-member of the Tribe.

(d) No land assignment will be terminated for nonuse under this Article if the assignee has been prevented from using the Tribal land as assigned due to a natural disaster or other event beyond the control of the assignee.

(e) For land assignments made for agricultural purposes, "use as assigned" means clearing and planting farm lands and clearing and using pasture land. Merely building and maintaining fences around the assigned area does not qualify as "use as assigned."

#### **Sec. 16-2404. Effect of Termination**

The final and effective termination, cancellation, revocation, or relinquishment of a land assignment shall terminate the assignees duties, responsibilities, and obligations as to that land assignment or portion thereof as well as the Tribe's reciprocal duties, responsibilities, and obligations to the assignee as holder of that land assignment or portion thereof.

**TITLE 16  
ARTICLE III**

**MORTGAGE ASSISTANCE PROGRAM FOR  
MEMBERS OF THE TRIBE**

[NOTE: Except as otherwise noted, the provisions of Article III, Title 16 were enacted on November 2, 2005 by Res. No. 40-2005.]

**CHAPTER 1. GENERAL PROVISIONS**

**Sec. 16-3101. Establishment and Applicability of Article.**

The Tribe hereby establishes a Mortgage Assistance Program to provide homeownership opportunities for members of the Tribe who are not eligible for land assignments under Article XI of the Constitution, or who reside off the Settlement through choice or necessity, in order to provide for the welfare of such members and their children in a manner consistent with the Constitution, customs, and traditions of the Tribe.

This Article shall apply to qualified enrolled female members of the Tribe who are not eligible for land assignments under Article XI of the Constitution, and who have reached the age of twenty-five (25), or married or cohabiting with an individual that is not a member of the Tribe.

This Article shall apply to enrolled male members who would be eligible for a land assignment but who reside off the Settlement.

**Sec. 16-3102. Definitions.**

Unless the context requires otherwise, as used in this Title:

(a) “Indian Area” means the area within which the Tribe operates affordable housing programs or the area in which the Tribe or Tribally Designated Housing Entity has the authority to provide housing for purposes of Section 184 of the Housing and Community Development Act of 1992.

(b) “Mortgagor” means any eligible member borrower who has executed a Mortgage on its beneficial interest in fee simple land within an Indian Area under the Section 184 Program; and any eligible enrolled member who does not qualify to obtain a loan under the Section 184 Program, but intends to purchase a home in an Indian Area.

(c) “Section 184 Program” means the Section 184 Indian Housing Loan (“Section 184”) Program created by Section 184 of the Housing and Community Development Act of 1992 to provide federal loan guarantees to private sector lenders who make mortgage loans to eligible borrowers for the construction, acquisition or rehabilitation of single-family homes located within an Indian Area.

**CHAPTER 2. ADMINISTRATIVE PROVISIONS****Sec. 16-3201. Authority of Tribal Council.**

(a) The Mortgage Assistance Program shall provide mortgage and down payment assistance to qualified enrolled members of the Tribe who participate in the Section 184 Program and to other enrolled members who do not qualify for the Section 184 Program but who qualify for mortgage assistance.

(b) Upon reaching age 55, any enrolled female member of the Tribe who has participated in the Section 184 Program for a period of ten (10) years, and who otherwise meets the requirements for a land assignment set forth in the Constitution and in Tribal law, will be eligible to receive a land assignment under Article XI of the Constitution for residential purposes only, but shall bear all financial responsibility for any and all improvements necessary to occupy such land.

(c) Any enrolled male member of the Tribe who has participated in the Mortgage Assistance Program for a period of ten (10) years will be eligible to receive a land assignment under Article XI of the Constitution for residential purposes only, but shall bear all financial responsibility for any and all improvements necessary to occupy such land.

(d) Unless expressly provided otherwise, the Tribal Council may select and appoint special boards of community members or departments who may be designated by the Tribal Council to perform any duty or exercise any power under this Article so long as the special board or department remains subject to the overriding authority of the Tribal Council.

**Sec. 16-3202. Mortgage and Down Payment Assistance.**

(a) Mortgagors shall be eligible to receive mortgage assistance in the form of a deferred loan in the amount of \$50,000 to be disbursed in a stream of payments over a period of ten (10) years. There shall be no interest charged on this deferred loan.

(b) Mortgagors shall receive an amount of the deferred loan not to exceed 20% of the value of the house in a lump sum payment to be used towards down payment and closing costs on their purchase of a home under the Section 184 Program, and the remainder of the deferred loan will be disbursed in monthly payments over a period of ten (10) years to assist with mortgage payments beginning on the first date the mortgage is due.

(c) The deferred loan will be secured by a lien against the property. The condition of the lien is that the Mortgagor maintains residence in the home for the ten year period. If the Mortgagor fulfills the occupancy requirement, the deferred loan is forgiven and released at the end of the ten years.

(d) If the Mortgagor does not or cannot maintain occupancy for the full ten years, the deferred loan must be paid back to the Tribe. If the Mortgagor sells the home the deferred loan shall be paid back from the proceeds of the sale, unless the proceeds of the sale are used to purchase another home (the "Replacement Home") in which the Tribe maintains a lien for the full amount of the outstanding balance

of the deferred loan. If the Mortgagor moves out, but does not sell the home, the deferred loan will be immediately due and payable.

(e) After the first year of residence, the deferred loan amount will be reduced by one tenth 1/10th at the end of the second year and the end of each succeeding year there after, provided the Mortgagor is maintaining residence. There is no reduction if the Mortgagor does not maintain residence in the home or the Replacement Home for the ten year period.

(f) The Tribe will subordinate the deferred loan to all loans guaranteed under the Section 184 Program.

**Sec. 16-3203. Application Process.**

Application for assistance under the Mortgage Payment Program shall be made in writing to the Housing Director of the Tribe or other designee of the Tribal Council. The application shall be made on a form prescribed by the Housing Director or other designee of the Tribal Council and contain the following information:

- (1) The name of the mortgagor;
  - (2) The eligibility of the mortgagor;
  - (3) Identification of the need for assistance;
  - (4) Identification of the tract of land in an Indian Area desired for the proposed home;
- and,
- (5) Any other relevant or necessary information.

**Sec. 16-3204. Eligibility for Assistance - Section 184 Program.**

The following requirements shall determine eligibility for participation in the Section 184 program:

(a) Mortgagors who are participating in the Section 184 Program must be first time homebuyers who intend to purchase a home in an Indian Area. A first time home buyer is an individual who has not owned a home as a primary residence for the last five (5) years.

(b) Mortgagor must reside within an Indian Area for six (6) months prior to participation in the Mortgage Assistance Program.

(c) Mortgagors must qualify to obtain a loan guarantee under the Section 184 Program.

(d) The purchase price of the home is limited only by the Mortgagor's ability to qualify for financing under the terms of the Section 184 Program.

(e) Mortgagors must use the home purchased under the Section 184 Program as her primary residence.

(f) Subject to the subsections (a) through (e) of this Section, every enrolled female member of the Tribe who has reached the age of eighteen (18) or is married shall be considered eligible to participate in the Mortgage Assistance Program at the discretion of the Tribal Council.

**Sec. 16-3205. Eligibility for Assistance – Non-Section 184 Mortgage Assistance Program.**

The following requirements shall determine eligibility for participation in the Section 184 program:

(a) Mortgagors who are not participating in the Section 184 Program need not be first time homebuyers, but must purchase a home in an Indian Area.

(b) Mortgagor must reside within an Indian Area for six (6) months prior to participation in the Mortgage Assistance Program.

(c) Mortgagors must not qualify to obtain a loan guarantee under the Section 184 Program. If Mortgagors qualify for the Section 184 Program, then they must participate in that program.

(d) The purchase price of the home is limited only by the Mortgagor's ability to qualify for financing under the terms of the loan program of the institution to which Mortgagor is applying for a loan.

(e) Mortgagors shall use the home purchased under this Section 16-3205 as their primary residence.

(f) Subject to the subsections (a) through (e) of this Section, every enrolled member of the Tribe who has reached the age of twenty-five (25) or is married shall be considered eligible to participate in the Mortgage Assistance Program at the discretion of the Tribal Council.

(g) If two persons, both of whom are enrolled Tribal members will be purchasing a single home through the mortgage assistance program, they will each qualify for individual mortgage assistance in the amount of \$50,000.

**Sec. 16-3206. Termination of Mortgage Assistance.**

(a) The deferred loan provided under this Article shall terminate automatically and become immediately due and payable, if the Mortgagor no longer occupies the property as their principal residence or upon the death of Mortgagor, unless Mortgagor's spouse is an enrolled Tribal member.

(b) If a Mortgagor dies and leaves a non-member surviving spouse and minor children who are members of the Tribe, the Tribal Council may continue to provide mortgage assistance under this Article to the non-member surviving spouse in the amount of the original mortgage assistance for a term of one year, subject to the following:

- (1) The Tribal Council may grant mortgage assistance to the surviving spouse in subsequent one year intervals for the remainder of the ten year loan period in accordance with this subsection; and,
- (2) Mortgage assistance granted to a surviving spouse under this subsection shall automatically terminate and no further payments shall be made to the surviving spouse when:
  - (i) All surviving minor children reach majority;
  - (ii) The surviving spouse remarries or otherwise begins cohabiting with another;
  - (iii) The surviving spouse and minor children move from the home; or
  - (iv) The minor children remove from the premises.

(c) During such time that a surviving spouse is receiving mortgage assistance pursuant to this subsection, no other person may reside in the home other than the surviving spouse and the minor children. Violation of this paragraph shall result in automatic termination of mortgage assistance pursuant to the provisions of this Article or other applicable law.

Mortgage assistance will not be terminated for failure to occupy the home under this Article, if the Mortgagor has been prevented from residing in the home due to a natural disaster or other event beyond the control of the Mortgagor.

If a Mortgagor dies and leaves a surviving Tribal member spouse and minor children who are members of the Tribe, the Tribal Council may continue to provide mortgage assistance under this Article for the Tribal member's mortgage assistance to the member surviving spouse in the amount of the original mortgage assistance provided to the deceased Tribal member for a term of one year, subject to the following:

- (3) The Tribal Council may grant mortgage assistance to the surviving Tribal member spouse for the deceased Tribal member's mortgage assistance in subsequent one year intervals for the remainder of the ten year loan period in accordance with this subsection. The surviving member's mortgage assistance shall continue to receive their individual mortgage assistance; and,
- (4) Mortgage assistance granted to a surviving Tribal member spouse under this subsection shall automatically terminate and no further payments shall be made to the surviving Tribal member spouse for the deceased spouse's grant when:
  - All surviving minor children reach majority;
  - The surviving spouse remarries or otherwise begins cohabiting with another;

The surviving spouse and minor children move from the home; or

The minor children remove from the premises.

(d) During such time that a surviving Tribal member spouse is receiving mortgage assistance pursuant to this subsection, no person may reside in the home other than the surviving spouse and the minor children. Violation of this paragraph shall result in automatic termination of mortgage assistance pursuant to the provisions of this Article or other applicable law.

(e) Mortgage assistance will not be terminated for failure to occupy the home under this Article, if the Mortgagor has been prevented from residing in the home due to a natural disaster or other event beyond the control of the Mortgagor.

#### **Sec. 16-3207. Recording of Mortgages**

All mortgages obtained under the Section 184 Program shall be recorded in accordance with the procedures set forth in this Article X, Chapter 2, of this Ordinance, and shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim.

#### **Sec. 16-3208. Foreclosure Procedures**

Foreclosures shall be handled according to the general foreclosure procedures set forth in Article X, Chapter 3, of this Ordinance.

#### **Sec. 16-3209. Foreclosure Evictions.**

Foreclosure evictions shall be handled according to the general eviction procedures set forth in Article X, Chapter 4, of this Ordinance.

### **CHAPTER 3. CONDITIONS OF PARTICIPATION IN PROGRAM**

#### **Sec. 16-3301. Terms and Conditions of Deferred Loans.**

(a) A Mortgagor receiving mortgage assistance pursuant to this Article shall enter into a Deferred Payment Loan Agreement (DPLA) with the Tribe. The term of the DPLA shall not exceed ten (10) years.

(b) The DPLA shall contain the following terms and conditions:

(1) The eligible household shall execute a Promissory Note containing the terms set forth in subdivisions (b)(2), (b)(3), and (b)(4) of this subsection and a Deed of Trust. The Deed of Trust shall be sufficient for recordation and sufficient to secure the obligations of the Promissory Note. The DPLA shall provide for the order of recordation of the Deed of Trust and for its priority with respect to other liens and encumbrances recorded against the home.

(2) The DPLA shall include a provision that the agreement will terminate and the eligible household will be required to repay the outstanding deferred loan amount if the Mortgagor ceases to occupy the home as her principal residence, other than as the result of a sale, transfer, or conveyance.

(3) Repayment of the deferred loan shall be deferred until sale or conveyance of the home.

(4) The loan principal shall be forgiven one tenth 1/10th at the end of the second year and the end of each succeeding year there after, provided that the Mortgagor remains in compliance with the DPLA.

**Sec. 16-3302. Obligations of Mortgagor.**

Mortgagors shall have the following duties, obligations, and responsibilities:

- (a) To comply with the applicable provisions of this Article III and all other applicable Tribal laws;
- (b) To comply with all applicable terms and conditions of the Section 184 Program;
- (c) To pay any and all mortgage payment, taxes and other fees in full in a timely manner;
- (d) To maintain the home and all improvements thereon in good condition and repair, excepting normal changes resulting from the authorized use of the land;
- (e) To not permit the land and improvements thereon to deteriorate; and,
- (f) Notify the Housing Director prior to the sale, transfer or conveyance of the home or any interest therein.

**TITLE 16. PROPERTY****ARTICLE IV****LEASING GENERALLY**

[NOTE: Except as otherwise noted, the provisions of Article IV, Title 16 were enacted on November 2, 2005 by Res. No. 40-2005.]

**CHAPTER 1. IN GENERAL****Sec. 16-4101. Applicability.**

This Article shall apply to all leases and subleases of real property within the jurisdiction of the Tribe, regardless of the identity of the lessor or the lessee, and any and all leases where the Tribe is the lessor, regardless of whether the real property is located within the Settlement.

**Sec. 16-4102. Authority of the Realty Department and the Tribal Council.**

(a) The Realty Department shall negotiate all leases for both assigned and unassigned Tribal land in accordance with this Article and based upon the merits of each application or request for a lease.

(b) The Tribal Council, or the Realty Department to the extent specifically delegated that authority by statute or Tribal Council resolution, shall have the authority to approve, grant and execute leases on behalf of the Tribe.

(c) The negotiation, approval, granting, and executing of any lease shall be in the sole discretion of the Tribe and nothing in this Article shall be deemed to create or establish a right or interest in favor of an applicant, lessee, or any other person in obtaining a lease.

(d) Other than the authority delegated to the Realty Department, nothing in this Article shall be construed as authorizing any person to negotiate, approve, grant, or execute any lease, assignment, sublease, permit, license, or other interest, right, or privilege in any Tribal land *provided* that the Tribal Council shall maintain the authority to grant leases to persons which expressly permit the lessee to grant subleases in accordance with the terms of the lease.

**Sec. 16-4103. Definitions.**

Unless the context requires otherwise, as used in this Title:

(a) "Assignee" means a person who has been assigned all of the interest in a lease by a lessor in accordance with the provisions of this Article and the terms of the lease.

(b) "Lease" means all tenancies and agreements, written, oral, or implied by law, including valid rules and regulations, embodying the terms and conditions concerning the use and occupancy of Tribal land and its buildings, structures, and fixtures thereon, any portion thereof, or any other real property, including mineral and oil leases.

(c) “Leased premises” means land, real property, and/or any structures or parts thereof, existing facilities and appurtenances, including, but not limited to, furniture and utilities where applicable, grounds, areas, and existing facilities which are leased pursuant to a lease.

(d) “Lessee” means any person or entity, including a sublessee or assignee, who occupies Tribal land or other real property under a lease.

(e) “Lessor” means any person or entity, including a sublessor, who has a legal, beneficial, or equitable interest in land or other real property which for a limited time has been leased or rented to another.

(f) “Rent” means payments to be made to the lessor in full consideration for the lease, rental, or use of the leased premises.

(g) “Sublessee” means a person who leases all or part of leased premises from a lessee for a term less than that held by the lessee as well as a person who leases part of leased premises from a lessee for a term equal to that remaining on the term held by the lessee.

## CHAPTER 2. TERMINATION OF LEASES

### Sec. 16-4201. Termination of Leases.

(a) A lease from year to year terminates at the end of each year unless written permission is given to remain for a longer period. The permission shall specify the time the lessee may remain, and upon termination of such time, the lease expires.

(b) A lease from month to month may be terminated by either the lessor or the lessee by giving at least thirty days notice thereof.

(c) When a lease is for a certain period, and the time expires, the lessee shall surrender possession. Notice to quit or demand of possession is not then necessary unless otherwise provided by the terms of the lease.

### Sec. 16-4202. Effect of Lessee Holding Over.

(a) When a lessee holds over and retains possession of leased premises after the expiration of the term of the lease without express contract with the owner or lessor, the holding over shall not operate to renew the lease for the term of the formal lease or give the lessee any rights under the formal lease or in the leased premises.

(b) Subject to the terms of the lease, any holding over after the expiration of the term of a lease shall be deemed a trespass *provided* that nothing herein shall excuse the liability of a holdover lessee for any damages or any reasonable amounts associated with the use and possession of the leased premises during such holdover period.

### Sec. 16-4203. Abandonment of Leased Premises.

(a) If, prior to the expiration or other termination of a lease, a lessee abandons the leased premises, the lessor shall have the right to recover use and possession of the leased premises as follows:

- (1) The lessor shall send the lessee written notice of abandonment by certified mail, return receipt requested, to any alternate address of the lessee known by the lessor;
  - (2) The lessor shall post such written notice of abandonment conspicuously at the leased premises; and,
  - (3) Unless the lessee responds to the notice of abandonment, the lessor may retake the leased premises ten days after the mailing and posting of the written notice of abandonment;
- (b) Unless the terms of the lease provide otherwise, abandonment of leased premises shall not relieve any lessee of his obligations under the terms of the lease or the laws of the Tribe.
- (c) Unless the terms of the lease provide otherwise, as used in this Section, “abandonment” means:
- (1) In the case of a lease for residential purposes, the absence of the lessee without notice to the lessor and with rent outstanding:
    - (i) For a period of fourteen days or more and no reasonable evidence of occupancy other than the lessee’s personal property; or
    - (ii) For a period of seven days or more and none of the lessee’s personal property remaining on the leased premises;
  - (2) In the case of a lease for public, educational, recreational, or business purposes, failure to open for business or otherwise conduct activities on the leased premises for which they are leased for a period of thirty days or more, with rent outstanding if rental is based on a flat fee or regardless of whether rent is outstanding if rental is based primarily on a percentage of income produced by the land or the lease;
  - (3) In the case of a lease for farming purposes, failure to clear and plant for one growing season or more without notice to the lessor, with rent outstanding if rental is based on a flat fee or regardless of whether rent is outstanding if rental is based primarily on a percentage of income produced by the land or the lease; and
  - (4) In the case of a lease for grazing purposes, the absence of livestock for a period of ninety days or more during any grazing season without notice to the lessor, with rent outstanding if rental is based on a flat fee or regardless of whether rent is outstanding if rental is based primarily on a percentage of income produced by the land or the lease.

### **CHAPTER 3. CONDITIONS OF LEASE**

#### **Sec. 16-4301. Duration of Leases.**

- (a) Except where the laws of the Tribe expressly provide otherwise, leases for public, educational or business purposes shall not exceed a term of twenty-five years, except if the capital investment warrants a longer term, the lease term shall not exceed fifty years.

(b) Except where the laws of the Tribe expressly provide otherwise, leases for recreational or residential purposes shall not exceed a term of twenty-five years.

(c) Except where the laws of the Tribe expressly provide otherwise, leases for farming or grazing shall not exceed a term of five years.

(d) Subject to the maximum terms set forth in this Section, leases granted by the Tribe shall be limited to the minimum duration necessary to accomplish the purpose of the lease.

**Sec. 16-4302. Adjustment of Rent.**

Except where rental is based primarily upon a percentage of income produced by the land or the lease, the amount of rent provided in a lease shall be adjusted every five years or such shorter periodic term as the terms of the lease provide to account for changes in the market value, but in no event shall the rental rate be reduced. Such adjustments shall not account for improvements placed on the leased premises by the lessee nor the contribution value of such improvements placed on the leased premises by the lessee.

**Sec. 16-4303. Options to Renew.**

No lease shall contain any provisions for renewal nor shall any lease grant the lessee a preference right to future leases, except that leases for public, educational, recreational, residential, or business purposes may contain a provision authorizing renewal for one additional term that does not exceed the maximum term authorized by the laws of the Tribe.

**Sec. 16-4304. Lease Rental Bonds.**

(a) Leases for public, educational, recreational, business, farming, or grazing purposes shall be secured by a satisfactory surety bond in an amount acceptable to the lessor that will reasonably assure performance of the contractual obligations under the lease. Any assignee or sublessee of an approved assignment or sublease of a lease shall also post a satisfactory surety bond in an amount that will reasonably assure performance of the contractual obligations under the assigned lease or sublease.

(b) In lieu of a surety bond, the lessor may accept a cash deposit, negotiable United States Treasury Bonds or other negotiable Treasury obligations, a time deposit, or a savings and loan association passbook, or other form of guarantee satisfactory to the lessor.

(c) The amount of any surety bond or other form of guarantee required by this Section or the terms of a lease shall be subject to adjustment during the term of the lease.

(d) The Tribe shall not postpone, suspend, or waive any surety bond or other form of guarantee required pursuant to this Section or other applicable law.

(e) Upon termination of a lease, the lessor may apply a surety bond or other form of guarantee to the payment of all unpaid rent and charges specified in the lease agreement and any damages to the leased premises and return any remaining amounts to the lessee. No surety bond or other form of guarantee or portion thereof shall be released until the lease is terminated and all rents and damages are paid in full.

(f) Nothing in this Section shall preclude a lessor from recovering other damages to which the lessor may be entitled under the laws of the Tribe.

**Sec. 16-4305. Insurance.**

A lessor may require a lessee to provide insurance in an amount adequate to protect any improvements on the leased premises as well as appropriate liability insurance and such other insurance as may be necessary to protect the lessor's interest. A lessor may require that a lessee's insurance name the lessor as a named insured and provide a copy of such insurance to the lessor.

**Sec. 16-4306. Sublease and Assignment.**

(a) Unless the terms of a lease expressly provide otherwise, no conveyance, assignment, sublease, mortgage, pledge, license, concession, or encumbrance of a lease, in whole or in part, shall be valid without the express consent of the lessor and the Tribe.

(b) For purposes of this Section, conveyance, assignment, sublease, mortgage, pledge, license, concession, and encumbrance include, but are not limited to:

- (1) Assignment or subletting by operation of law;
- (2) Assignment or subletting to a co-lessee;
- (3) Any devise by will or inheritance by intestate succession;
- (4) Assignment for the benefit of creditors;
- (5) Voluntary or involuntary bankruptcy or reorganization;
- (6) Any transfer of a lease or any right to or interest in a lease;
- (7) Any transfer of the improvements on the leased premises;
- (8) Any transfer of the ownership or controlling interest of a lessee; and,
- (9) The creation of any partnership, corporation, joint venture or any other arrangement under which any person other than the lessee is entitled to share in profits derived directly or indirectly from the leased premises.

(c) Except as expressly agreed in writing by the lessor, an assignment or sublease shall not operate to excuse the performance, obligations, duties, or responsibilities of the lessor assigning or subleasing the lease and the lessee and assignee or sublessee shall be jointly and severally liable for any breach of the lease or violation of this Article or other law related to the use and occupancy of land.

**Sec. 16-4307. Ownership of Improvements.**

(a) Unless the terms of the lease expressly provide otherwise, improvements placed on the leased premises shall become the property of the lessor. Any improvements which are not intended to become the property of the lessor shall be specifically enumerated and described in the lease.

(b) If a lease provides for the removal of improvements, the lease shall specify the maximum time allowed for removal of any improvements and any improvements not removed within such time shall be deemed abandoned and become the property of the lessor.

(c) When a lessee removes improvements which are permitted to be removed pursuant to a lease, the lessee shall restore the land to its original condition so far as is reasonably possible.

#### **CHAPTER 4. OBLIGATIONS AND LIABILITIES OF LESSEES**

##### **Sec. 16-4401. Persons in Possession Liable for Rent.**

(a) Every person in use or possession of land without a lease, right-of-way, license, permit, or other lawful authority granted, consented to, approved, or executed by the Tribe is liable for the amount or proportion of rent due from the lands in his use or possession or, if no amount of rent is set or defined, the fair market value of the use or possession of the land.

(b) The liability for rent provided in this Section shall not be deemed to create a lease or grant any estate, right, or privilege in lands to any person, without lawful authority, in possession of land or a portion thereof.

##### **Sec. 16-4402. Access.**

(a) The lessee shall not unreasonably withhold consent to the lessor to enter onto the leased premises in order to inspect the leased premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the leased premises to prospective or actual purchasers, mortgagees, lessees, workmen or contractors.

(b) The lessor may enter any area of leased premises which are generally open to the public without the consent of the lessee.

(c) The lessor may enter the leased premises without consent of the lessee in case of emergency.

(d) Nothing in this Section shall be construed to limit the authority of any law enforcement officer or other official of the Tribe from entering leased premises to perform official duties.

##### **Sec. 16-4403. Denial of Lessor's Title Prohibited.**

When a person enters into use or possession of real property under a lease, he may not, while in possession of such real property or any portion thereof, deny or challenge the title of his lessor in an action brought by the lessor upon the lease.

##### **Sec. 16-4404. Maintenance of Leased Premises.**

A lessee shall exercise due diligence to maintain the leased premises in as good condition as when he took possession, ordinary wear and tear excepted.

**Sec. 16-4405. Damages to Leased Premises.**

The lessee shall be liable to the lessor for any removal or intentional and material alteration or damage of any part of the land, a building, the furnishings thereof, or any permanent fixture, by or at the instance of the lessee, other occupants, or persons on the leased property with lessee's consent, without prior permission of the lessor.

**CHAPTER 5. REMEDIES FOR BREACH****Sec. 16-4501. Lessor's Lien for Rent.**

(a) A lessor shall have a lien for rent and for the faithful performance of the terms of the lease upon all property of his lessee placed upon or used on the leased premises as well as crops grown or growing on the leased premises, and such lien shall continue for a period of six months after expiration of the term of the lease.

(b) A lessor may seize for rent or material breach of the terms of the lease any personal property of his lessee found on the leased premises. If the lessee fails or refuses to allow the lessor to take possession of such property, the lessor may obtain possession of the property by bringing an action in the appropriate tribunal of the Tribe.

**Sec. 16-4502. Remedies of Lessor.**

In addition to any other remedies provided by applicable law, when a lessee neglects or refuses to pay rent when due and is in arrears for five or more days, or when the lessee violates any provision of the lease, the lessor or his agent may re-enter and take possession or commence an action in the appropriate tribunal of the Tribe for recovery of possession.

**TITLE 16. PROPERTY****ARTICLE V****RIGHTS-OF-WAY**

[NOTE: Except as otherwise noted, the provisions of Article V, Title 16 were enacted on November 2, 2005 by Res. No. 40-2005.]

**CHAPTER 1. IN GENERAL****Sec. 16-5101. Applicability.**

This Article shall apply to the granting, consent to granting, maintenance, and termination of all easements and rights-of-way across Tribal lands for whatever purpose or duration.

**Sec. 16-5102. Provisions of Law Included in Grant.**

The provisions of this Article shall be deemed to be conditions of any grant of an easement or right-of-way as though stated within the conveyance instrument granting the right-of-way.

**Sec. 16-5103. Definitions.**

Unless the context requires otherwise, as used in this Article:

- (a) "Applicant" means a person who is applying for or otherwise seeking to obtain a right-of-way or renewal thereof.
- (b) "Conveyance instrument" means the instrument or document which grants a right-of-way to a grantee and includes any collateral agreement to the granting of the right-of-way.
- (c) "Grantee" means a person who has been granted a right-of-way pursuant to this Article or other applicable law.
- (d) "Right-of-way" includes easements but does not include leases, licenses, or permits.

**CHAPTER 2. GRANTING OF RIGHTS-OF-WAY****Sec. 16-5201. Authority of Realty Department and Tribal Council.**

- (a) The Realty Department shall negotiate on behalf of the Tribe all rights-of-way and renewals thereof for both assigned and unassigned Tribal land in accordance with this Article and based upon the merits of each application or request for a right-of-way.
- (b) The Tribal Council, or the Realty Department to the extent specifically delegated that authority by statute or Tribal Council resolution, shall have the authority to approve, grant and execute agreements for rights-of-way and renewals thereof.

(c) The negotiation, consenting to, approval, granting, and executing of any right-of-way or renewal thereof shall be in the sole discretion of the Tribe and nothing in this Article shall be deemed to create or establish a right or interest in favor of an applicant, grantee, or any other person in obtaining a right-of-way or renewal thereof.

(d) Other than the authority delegated to the Realty Department, nothing in this Article shall be construed as authorizing any person, including the United States, to negotiate, consent to, approve, grant, or execute any right-of-way, easement, permit, license, or other interest, right, or privilege in any Tribal land.

**Sec. 16-5202. Application for Right-of-way.**

(a) A person desiring a right-of-way across Tribal land shall make application to the Realty Department in writing. The application shall contain all of the following:

- (1) Name, address, and phone number of applicant;
- (2) If the applicant is a business, the nature of the applicant's business;
- (3) Copies of any articles of incorporation, bylaws, or other organizational documents of the applicant;
- (4) Copies of any resolution or other documents authorizing the obtaining of the right-of-way, if necessary;
- (5) Identification of the specific use proposed for the right-of-way;
- (6) Identification of need for the right-of-way;
- (7) Proposed width and length of right-of-way;
- (8) Proposed location of right-of-way;
- (9) Proposed duration of right-of-way; and,
- (10) Evidence of financial responsibility.

(b) All applications for a right-of-way shall include a duly executed stipulation expressly agreeing to the following:

- (1) To comply with and be subject to the laws of the Tribe and the jurisdiction of the Tribe;
- (2) To consent to the jurisdiction of the Tribe and its courts and other tribunals for all disputes involving the right-of-way or the occurrence of events on or related to the right-of-way;
- (3) That the Tribe retains all jurisdiction and authority over, within, and involving the right-of-way;

(4) To comply with the provisions of this Article and any other applicable law related to the construction, maintenance, use, restoration, revocation and termination of rights-of-way;

(5) To pay promptly all damages and compensation due for the entry, survey, granting, construction and maintenance of the right-of-way;

(6) To defend, indemnify and hold harmless the Tribe, all of the Tribes' departments, agencies, officers, agents, and/or employees, and any authorized users or occupiers of the Tribal land where the right-of-way is proposed to cross against and from all claims, losses, suits, damages, liabilities and expenses of whatever kind or nature, including reasonable attorneys' fees, arising out of or resulting in any way from the entry, surveying, construction, maintenance, occupancy or use of the right-of-way by the applicant, any person employed by the applicant, any contractors or subcontractors of the applicant and their employees, or anyone for whose acts the applicant is legally liable;

(7) That the provisions of this Article, including this subsection, shall be deemed a part of and conditions of the grant of any right-of-way regardless of whether such provisions are contained in or inconsistent with any written right-of-way agreement or conveyance instrument; and,

(8) To at all times keep the Tribe informed of its address and, in the case of a business, the names and addresses of its owners or principal officers.

(c) No right-of-way shall be granted, consented to, approved, or executed without a signed stipulation required by this Section, except that the Tribal Council may waive the requirement to agree to a matter enumerated in subsection (b) if and only if:

(1) The applicant demonstrates and supports good cause why the matter cannot be agreed to;

(2) The Tribal Council finds that the benefit of the right-of-way to the Tribe or its members outweighs the benefit of having the applicant agree to the matter; and

(3) There are no other alternatives to accomplish the purpose of the right-of-way, including the use of a license, permit, lease, or other grant, except through the granting of a right-of-way.

#### **Sec. 16-5203. Consideration and Other Damages for Rights-of-Way.**

(a) Except as otherwise expressly provided herein, no right-of-way or renewal thereof shall be granted, consented to, approved, or executed for an amount less than, but not limited to, fair market value plus any severance damages required to be paid.

(b) In lieu of or in addition to the payment of fair market value for a right-of-way or renewal thereof, the Tribe may agree to grant, consent to, approve, or execute a right-of-way or renewal thereof upon an agreement to pay to the Tribe a percentage of all gross revenues received by the grantee as a result of possessing or using the right-of-way. The payment of such a percentage of gross revenues shall not be deemed a tax and shall be in addition to any taxes imposed on rights-of-ways or property located or activities conducted thereon.

(c) In addition to the consideration for granting, consenting to, approving, or executing a right-of-way or renewal thereof, an applicant shall pay all damages incident to any survey of the right-of-way as well as construction and maintenance of the right-of-way.

**Sec. 16-5204. Survey.**

With the approval of the Tribe and the granting of a permit or license pursuant to this Title, an applicant may be permitted to enter upon Tribal lands for the purpose of conducting a survey of a proposed right-of-way either before or after the filing of an application.

**Sec. 16-5205. Purpose of Right-of-way.**

Every conveyance instrument shall contain with specificity the purpose and use of the right-of-way granted, consented to, approved, or executed. No other purpose or use of the right-of-way other than that specified in the conveyance instrument shall be permitted except upon application for a change in the right-of-way in accordance with this Article.

**Sec. 16-5206. Conveyance of Right-of-way.**

Upon approval and payment of any required compensation, a right-of-way shall be granted by the issuance of a conveyance instrument in a form approved by the Tribal Council and signed by the applicant.

**CHAPTER 3. RENEWAL AND CHANGE OF RIGHTS-OF-WAY**

**Sec. 16-5301. Duration of Rights-of-way.**

(a) All rights-of-way granted, consented to, approved, or executed pursuant to this Article shall be for the period stated in the conveyance instrument.

(b) No right-of-way shall be granted, consented to, approved, or executed for a period of greater than fifty years.

**Sec. 16-5302. Changes in Right-of-way.**

(a) If a grantee desires a change in the location, width, length, or purpose of a right-of-way, the grantee shall make application in accordance with the provisions of this Article for the granting of an original right-of-way, including the payment of damages and compensation.

(b) A change in the location, width, length, or purpose of a right-of-way shall be accomplished by executing a new conveyance instrument after the execution of any necessary instruments or documents deemed necessary to extinguish the original right-of-way.

**Sec. 16-5303. Renewal of Right-of-way.**

(a) On or before the expiration of a right-of-way granted, consented to, approved, or executed, the grantee may submit an application for renewal.

(b) If the renewal of a right-of-way involves absolutely no change in the right-of-way, the applicant may submit a renewal application containing the following:

(1) A certificate under oath stating that the renewal involves no change in the right-of-way; and

(2) A duly executed stipulation agreeing to all the terms and conditions of the prior right-of-way.

(c) If the renewal of a right-of-way involves any change in the right-of-way, the applicant shall proceed in accordance with the provisions of this Article for obtaining an original right-of-way.

(d) A renewal of a right-of-way shall not be granted without the payment of proper compensation in accordance with the provisions of this Article.

(e) Nothing in this Section shall be construed as preventing the Tribal Council or its designee from negotiating new or additional terms or placing new or additional conditions upon a right-of-way in consideration for the renewal.

#### **CHAPTER 4. CONSTRUCTION, USE, AND RESTORATION OF RIGHTS-OF-WAY**

##### **Sec. 16-5401. Construction and Maintenance of Rights-of-way.**

In constructing and maintaining a right-of-way, a grantee shall:

(a) Construct and maintain the right-of-way in a workmanlike manner;

(b) Comply with all applicable building, electrical, mechanical and other such codes;

(c) Restore the Tribal lands as nearly as possible to their original condition upon completion of construction to the extent compatible with the purpose for which the right-of-way was granted;

(d) Clear and keep clear the Tribal lands within the right-of-way to the extent compatible with the purpose of the right-of-way;

(e) Dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the right-of-way;

(f) Take soil and resource conservation and protection measures, including weed and pest control on the Tribal land covered by the right-of-way;

(g) Do everything reasonably within its power to prevent and suppress fires on or near the Tribal lands covered by the right-of-way;

(h) Build and repair any roads, fences, trails, or other property that may be damaged or destroyed or injured by construction and maintenance of the right-of-way; and,

(i) Build and maintain necessary and suitable crossings for all roads and trails that intersect the right-of-way.

**Sec. 16-5402. Use of Right-of-way.**

A grantee shall not:

- (a) Use a right-of-way for any purpose other than the purpose for which the right-of-way was granted, consented to, approved, or executed; or
- (b) Interfere with the use of Tribal lands by the Tribe or any authorized users or possessors of Tribal lands for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.

**Sec. 16-5403. Restoration of Rights-of-way.**

Unless otherwise authorized by the Tribe in writing, upon the termination, expiration, or revocation of a right-of-way, a grantee shall remove any and all pipelines, wires, conduit, or other improvements whether on the surface or subsurface and restore the Tribal land to its original condition as much as is reasonably possible.

**Sec. 16-5404. Violation of Chapter.**

If a grantee fails to comply with any provision of this Chapter or other applicable law governing the construction, maintenance, use, or restoration of a right-of-way, the Tribe may:

- (a) Obtain injunctive or declaratory relief against the grantee to cease conduct in violation of this Chapter;
- (b) Obtain an order in any court of competent jurisdiction against the grantee to take any action necessary to remedy a violation of this Chapter;
- (c) Take any action necessary to correct the violation and recoup its actual costs from the grantee in any manner permitted by law;
- (d) Terminate the right-of-way in accordance with the provisions of this Article; or
- (e) Take any other action authorized by law to correct or remedy the violation.

**CHAPTER 5. TERMINATION OF RIGHTS-OF-WAY****Sec. 16-5501. Expiration of Rights-of-way.**

- (a) Unless renewed in accordance with the provisions of this Article, a right-of-way shall expire upon the end of the term of the right-of-way without any action required by the Tribe.
- (b) Any grantee who fails or refuses to vacate or abandon a right-of-way and restore the Tribal land in accordance with the provisions of this Article upon the expiration of a right-of-way shall be liable for the fair market value of the use of the Tribal land covered by the right-of-way until vacated or abandoned and the Tribal land restored in accordance with the terms of this Article.

**Sec. 16-5502. Termination of Rights-of-way.**

(a) A right-of-way granted, consented to, approved, or executed may be terminated upon thirty days written notice to the grantee at the last address furnished to the Tribe for any of the following reasons:

- (1) Failure or refusal to pay any compensation or severance damages for the right-of-way;
- (2) Failure to comply with any provision of this Article or any term or condition of the grant, consent to, approval, or execution of the right-of-way;
- (3) Failure to use the right-of-way for the purpose granted for a consecutive period of two years;
- (4) Use of the right-of-way in any manner other than the purpose for which it was granted; or
- (5) Abandonment of the right-of-way.

(b) If a grantee fails or refuses to correct the basis for termination within the thirty day notice period, the Realty Department shall take any and all appropriate action to terminate the right-of-way or have the right-of-way terminated, provided that the Realty Department must obtain Tribal Council approval prior to bringing Court suit, and such suit can only be brought in the name of the Tribe.

**TITLE 16. PROPERTY**

**ARTICLE VI**

**LICENSES AND PERMITS**

[NOTE: Except as otherwise noted, the provisions of Article VI, Title 16 were enacted on November 2, 2005 by Res. No. 40-2005.]

**CHAPTER 1. IN GENERAL**

**Sec. 16-6101. Applicability.**

This Article shall apply to the granting, consent to granting, execution and termination of all licenses and permits to use, occupy, or conduct activities on Tribal lands for whatever purpose or duration.

**Sec. 16-6102. Provisions of Law Included in License.**

The provisions of this Article shall be deemed to be conditions of the grant of a license or permit as though stated within the instrument or document granting the license or permit.

**Sec. 16-6103. Definitions.**

Unless the context requires otherwise, as used in this Article:

- (a) "License" means a personal privilege or permission which gives a person permission to use, occupy, conduct activities upon, or do something upon Tribal lands which otherwise could not be legally done and includes a permit which accomplishes the purpose of a license.
- (b) "Licensee" means a person who has been granted a license.
- (c) "Licensor" means a person, including the Tribe, who grants a license.

**CHAPTER 2. GRANTING OF LICENSES**

**Sec. 16-6201. Authority of Tribal Council.**

- (a) The Realty Department shall negotiate on behalf of the Tribe all licenses for both assigned and unassigned Tribal land in accordance with this Article and based upon the merits of each application or request for a license.
- (b) The Tribal Council, or the Realty Department to the extent specifically delegated that authority by statute or Tribal Council resolution, shall have the authority to approve, grant and execute licenses for the use of Tribal land and renewals thereof.
- (c) The negotiation, consenting to, approval, granting, and executing of any license shall be in the sole discretion of the Tribe and nothing in this Article shall be deemed to create or establish a right or interest in favor of an applicant, grantee, or any other person in obtaining a license.

(d) Other than the authority delegated to the Realty Department, nothing in this Article shall be construed as authorizing any person, including the United States, to negotiate, consent to, approve, grant, or execute any permit, license, or other interest, right, or privilege in any Tribal land without the express written authority of the Tribal Council.

**Sec. 16-6202. Nature of License.**

(a) A license shall be a mere personal privilege which attaches to the licensee only and not to the Tribal land and may not be sold, devised, inherited, assigned, or otherwise transferred. A license does not grant a person any right, estate, or interest in Tribal land.

(b) Without affecting the nature of the license, a license may be exclusive or nonexclusive and may be revocable without cause at the will of the licensor or revocable only for cause.

**Sec. 16-6203. Conditions of License.**

All licensees, as a condition of receiving a license, shall be deemed to agree to the following by obtaining the license:

- (a) To comply with and be subject to the laws of the Tribe and the jurisdiction of the Tribe;
- (b) To consent to the jurisdiction of the Tribe and its courts and other tribunals for all disputes involving the license or the occurrence of events related to the license or the use, occupancy, or activity authorized by the license;
- (c) That the Tribe retains all jurisdiction and authority over, within, and involving the Tribal land to which the license applies and the use, occupancy, or activity authorized by the license;
- (d) To comply with the provisions of this Article and any other applicable law related to licenses; and
- (e) To defend, indemnify and hold harmless the Tribe, all of the Tribes' departments, agencies, officers, agents, and/or employees, and any authorized users or occupiers of the Tribal land subject to the license against and from all claims, losses, suits, damages, liabilities and expenses of whatever kind or nature, including reasonable attorneys' fees, arising out of or resulting in any way from the license or the use, occupancy, or activity authorized by the license.

**Sec. 16-6204. Purposes of License.**

(a) A license may authorize the licensee to use or occupy Tribal land, to cross Tribal land, to conduct an activity on Tribal land, to graze livestock on Tribal land, to place improvements upon Tribal land and subsequently use such improvements, or for any other purpose, including uses and activities for which leases or rights-of-way are traditionally granted.

(b) Every instrument, agreement, or other document granting a license shall contain with specificity the purpose or use for which the license is granted. No other purpose or use other than that specified in the instrument, agreement, or other document shall be permitted.

**Sec. 16-6205. Use of License.**

A licensee shall not interfere with the use of Tribal lands by the Tribe or any authorized users or possessors of Tribal lands for any purpose not inconsistent with the purpose for which the license is granted.

[NOTE: Except as otherwise noted, the provisions of Article VI, Title 16, Chapter 3 were enacted on April 20, 2011, by Res. No. 6-2011]

**Chapter 3. BUILDING CODE.****Sec. 16-6301. Adoption of International Code Council Standards.**

The Sac & Fox Tribe of the Mississippi in Iowa hereby incorporates by reference and adopts as a Tribal ordinance the substantive provisions of the following codes and laws as amended in the future:

1. The provisions of the International Building Code, 2009 edition.
2. The provisions of the International Residential Code, 2009 edition.

**Sec. 16-6302. Applicability; Administration**

(a) The provisions of the Codes in Section 16-6301 shall apply to all commercial construction of any size, cost, type or purpose, regardless of whether it is in new construction, addition, or renovation, and regardless of whether humans will occupy it; and, for residential structures, the construction, alteration, repair, use, occupancy, prefabrication, or maintenance of, or any addition to, detached one and two family dwellings and one family townhouses not more than three stories in height, and their accessory structures, provided those accessory structures have any dimension greater than 12 feet.;

(b) that specific exceptions, to which the Codes in Section 16-6301 shall not apply, are the following construction activities conducted for residential structures:

- (1) Fences;
- (2) Structures, such as barns, garages, tool sheds, pre-fabricated buildings, ceremonial buildings, cook shacks and summer houses;
- (3) Additions or renovations that cost under \$10,000, whether or not habitable by humans;
- (4) Additions, repairs, or maintenance that do not impact on load-bearing walls;
- (5) Repairs to roofs.

(c) The Tribe's Realty Department or a contracted Inspector shall administer these standards and determine that appropriate requirements are followed for all activities upon Tribal lands, and may promulgate regulations consistent with this Code.

(d) The Realty Director or such office as may be designated by the Tribal Council shall have the authority to approve, grant and execute any necessary licenses upon a showing that the appropriate requirements have been satisfied.

(e) Upon recommendation of the Realty Department or an office designated by the Tribal Council to administer the provisions of this code, and for good cause shown, the Tribal Council may approve a waiver of any standard, law or regulation which might otherwise be applicable.

**Sec. 16-6303. Permit Required.**

Any Person who undertakes activity on Tribal Land that would require a permit under any of the codes or laws incorporated into this Article must obtain a permit from the Tribe under this Article.

**Sec. 16-6304. Applications for Permits; Contents**

Applications for permits shall be filed with the Realty Director or such office as may be designated by the Tribal Council, and shall contain the following information:

- (a) The name and address of the applicant;
- (b) The location of the proposed activity;
- (c) The specific code or law under section 16-6301 of this Article for which a permit is required;
- (d) A concise and factual description of the proposed activity for which the permit is requested, including:
  - (1) any proposed physical construction;
  - (2) any use of natural resources; and
  - (3) any potential impacts of the environment.
- (e) The Realty Director or designee shall:
  - (1) Review the application to determine if it is complete;
  - (2) Determine what, if any, additional information is needed to ensure compliance with this Article, including detailed plans and specifications as appropriate;
  - (3) Inform the applicant, within ten (10) business days of the receipt of the permit application, whether the application is complete or what additional information is needed to ensure compliance with this Article;
  - (4) Within twenty (20) business days of receipt of such additional information:

- (i) Issue written findings stating that the proposed activity complies with this Article, and issue a permit for the proposed activity;
- (ii) Issue written findings stating that the proposed activity would, on compliance with certain conditions, comply with this Article, and issue a permit for the proposed activity subject to such conditions; or
- (iii) Any applicant aggrieved by a decision of the Realty Director or designee may appeal to the Tribal Council by a written notice filed with the Chairperson of the Tribal Council, with a copy to the Realty Director or designee, stating the specific factual and legal basis for the appeal. The appeal must be filed within thirty (30) days after the action of the Realty Director or designee from which the appeal is taken.
- (iv) The Tribal Council shall hear the appeal in accordance with Title 1, Chapter 2 of the SAC & FOX TR. OF MISS CODE.

**Sec. 16-6305. Enforcement.**

The Realty Officer or designee shall have the authority to direct any Person in violation of this Article to immediately cease and desist from any activity violating this Article. If such Person does not correct such violation within five (5) business days, the Tribal Council shall have the authority to impose civil penalties for violation of this Article, as may be recommended by the Realty Office or designee. Any Person subject to a cease and desist order shall be entitled to a prompt hearing before the Tribal Council, no later than thirty (30) days after the respondent's written request for such a hearing. The Tribal Council shall conduct the hearing in accordance with Title 1, Chapter 2 of the SAC & FOX TR. OF MISS CODE.

**Sec. 16-6306. Non-waiver of Immunity.**

Nothing in this Article shall be construed to constitute a waiver of the sovereign immunity of the Sac and Fox Tribe, or any of its officers, employees, or agents administering or enforcing this Article.

**Sec. 16-6307. Inclusion of Language from Other Laws.**

The inclusion of language, definitions, procedures, or other statutory or administrative provisions from any other source shall not be deemed as adoption of that law by the Tribe and shall not be deemed an action deferring to state or federal jurisdiction within the Sac and Fox Tribe Settlement where such state or federal jurisdiction may be concurrent or does not otherwise exist.

**TITLE 16. PROPERTY**  
**ARTICLE VII**  
**ZONING AND LAND USE**

[RESERVED]

**TITLE 16. PROPERTY****ARTICLE VIII****EMINENT DOMAIN**

[NOTE: Except as otherwise noted, the provisions of Article VIII, Title 16 were enacted on November 2, 2005 by Res. No. 40-2005.]

**CHAPTER 1. GENERAL PROVISIONS****Sec. 16-8101. Definitions.**

Unless the context requires otherwise, as used in this Article:

- (a) “Condemnation” means the process and actual taking of property or interest therein, temporarily or permanently, for public or quasi-public use through the power of eminent domain.
- (b) “Condemnee” means the owner, assignee, lessee, tenant, authorized occupant, or other holder of property or interest therein taken or proposed to be taken by condemnation.
- (c) “Eminent domain” means the power of the Tribe to condemn property for public or quasi-public use.
- (d) “Property” means all lands, including improvements and fixtures thereon; lands under water; surface and subsurface rights; every estate, interest, and right, legal or equitable, in lands, water, or the subsurface; all rights, interests, privileges, easements, and encumbrances relating thereto, including tenancies and liens of judgment, mortgage, or otherwise; and any portion of these. The designation of something related to land or property as property in this Article or the inclusion of such in this definition shall not alone create or establish a compensable interest, estate, or right pursuant to this Article or other applicable law.

**CHAPTER 2. POWER OF EMINENT DOMAIN****Sec. 16-8201. Purposes for Which Eminent Domain May Be Exercised.**

Subject to the provisions of this Article and any other applicable law, the right of eminent domain may be exercised by the Tribe for the following uses and purposes:

- (a) Buildings and grounds for any public or quasi-public purpose or use of the Tribe including, but not limited to, economic enterprises of the Tribe;
- (b) Reservoirs, canals, aqueducts, flumes, ditches or pipes, whether public, quasi-public or private, for conducting water for the use of the Tribe or the inhabitants or visitors of the Settlement or for drainage of any area within the Settlement;
- (c) Raising the banks of streams or rivers, removing obstructions therefrom, or widening, deepening, or straightening their channels;

- (d) Highways, toll roads, byroads leading from highways to residences and farms and other byroads, plank and turnpike roads, streets, alleys, and any other roads or ways for the use or benefit of the Tribe or the inhabitants or visitors of the Settlement;
- (e) Telegraph and telephone lines and conduits for public communication;
- (f) Electric light and power transmission lines, pipe lines used for supplying gas or waste disposal, and all transportation, transmission and intercommunication facilities;
- (g) Aviation fields; and
- (h) All other public and quasi-public uses and purposes.

**Sec. 16-8202. Property Subject to Condemnation.**

- (a) Property which may be taken includes, but is not limited to:
  - (1) All property belonging to, assigned to, leased, or occupied by any person or entity;
  - (2) Property appropriated to public or quasi-public use;
  - (3) All easements and rights-of-way;
  - (4) All rights and privileges of use, entry upon, and occupation of property;
  - (5) The right to remove or take earth, gravel, stone, trees, and timber from property;
  - (6) A use in the water of a stream, river, or spring; and,
  - (7) All types of and interests, estates, and rights in property, private or otherwise, not enumerated.
- (b) The listing of anything in subsection (a) of this Section shall not by itself mean that it is compensable pursuant to this Article or other applicable law.

**Sec. 16-8203. Right of Tribe to Enter and Survey.**

- (a) Where property is required for public or quasi-public use or purpose, the Realty Department may survey and locate property most appropriate for such use or purpose.
- (b) Upon at least ten days notice, the property may be entered upon to make examinations, surveys, and maps thereof, and the entry constitutes no cause of action in favor of the condemnees of the property.

**CHAPTER 3. PROCEDURES OF CONDEMNATION.****Sec. 16-8301. Prerequisites to Taking Property by Condemnation.**

Before property may be condemned, it shall appear that:

- (a) The use to which the property is to be applied or purpose for which it is to be taken is a use or purpose authorized by the laws of the Tribe.
- (b) The taking is necessary to such use or purpose, *provided* the term “necessary” as used in this subsection shall not be interpreted to mean the only possible option or alternative, but shall mean a viable solution to a problem or opportunity; and
- (c) If the property is already appropriated to some public or quasi-public use or purpose, the public or quasi-public use or purpose to which it is to be applied is a more necessary public or quasi-public use or purpose.

**Sec. 16-8302. Procedures for Condemnation.**

- (a) All condemnations shall be authorized by resolution of the Tribal Council approved by a majority vote of the council members present *provided* such present council members constitute a quorum as required by the Constitution.
- (b) The Tribe, before taking any action in condemning any property or interest therein, shall post notice thirty days before the proposed action is to be taken at the Tribal Office and on the property itself so that interested persons will have an opportunity to appear before the Tribal Council to support or oppose the proposed action.
- (c) Before condemning any property or interest therein, the Tribal Council shall make specific findings that:
  - (1) The purpose for which the property is to be taken is authorized by this Article;
  - (2) The prerequisites to taking property by condemnation under this Article have been met; and
  - (3) The property is subject to condemnation under this Article.
- (d) The final resolution of the Tribal Council condemning the property shall include at least:
  - (1) A description of the property to be condemned;
  - (2) The specifics of the findings required by subsection (c) of this Section; and,
  - (3) If applicable, a specific amount of fair and just compensation to be paid any condemnees of the property.

**Sec. 16-8303. Enforcement.**

Upon issuance of a valid resolution condemning property or any interest therein by the Tribal Council, law enforcement officers of the Tribe shall enforce such resolution, as necessary, by removing the condemnees and their personal property, if any, from the condemned property.

**Sec. 16-8304. Review by Tribunals.**

The decision of the Tribal Council to condemn property shall not be subject to review in any court or other tribunal except that an action may be brought in the appropriate tribunal of the Tribe under the Indian Civil Rights Act for the limited purpose of:

- (a) Ensuring the amount of compensation provided by the Tribal Council is just; or
- (b) Challenging a determination of the Tribal Council that property is not compensable.

**TITLE 16. PROPERTY****ARTICLE IX****REPOSSESSION OF PERSONAL PROPERTY**

[NOTE: Except as otherwise noted, the provisions of Article IX, Title 16 were enacted on November 2, 2005 by Res. No. 40-2005.]

**CHAPTER 1. IN GENERAL****Sec. 16-9101. Applicability.**

This Article shall apply to the repossession of personal property only and shall not apply in any manner to land or other real property or interests therein.

**Sec. 16-9102. Definitions.**

Unless the context requires otherwise, as used in this Article:

(a) "Credit" means the right granted by a creditor to a purchaser or debtor to defer payment of debt or to incur debt and defer its payment.

(b) "Creditor" means the person or entity who extends to another credit secured by personal property or the successor in interest of any such person or entity.

(c) "Debtor" means the person or entity who owes payment or other performance of an obligation secured by personal property, whether or not the purchaser owns or has rights in the personal property or the heirs, successors, executors, administrators, or assigns of such person or entity.

(d) "Personal property" means all things which are movable at the time credit is given and secured by such things and which in fact serve as security for credit granted or otherwise for the payment or performance of an obligation, but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights, and other things in action. Such term shall include the unborn young of animals and growing crops.

**CHAPTER 2. PROCEDURE FOR REPOSSESSION****Sec. 16-9201. Choice of Action.**

(a) A creditor may elect between bringing an action on the debt or repossession of personal property. If separate actions are brought on the debt and to repossess the personal property, the creditor shall elect between which to pursue and the other shall be dismissed.

(b) A valid judgment entered by the appropriate tribunal of the Tribe in an action on the debt shall bar a subsequent repossession proceeding involving the same debt on the same personal property to the extent the original action on the debt would bar a subsequent action on the debt and shall remove any lien or encumbrance on the personal property subject to the debt to the extent of the amount of the judgment entered.

(c) A valid judgment entered by the appropriate tribunal of the Tribe in a repossession proceeding shall bar a subsequent action on the debt involving the same debt on the same personal property.

**Sec. 16-9202. Procedures Applicable to Actions.**

The laws of the Tribe governing service of process and all other matters relating to the conduct of proceedings in the tribunals of the Tribe shall apply to any repossession proceeding under this Article.

**Sec. 16-9203. Repossession of Personal Property.**

A creditor shall not remove personal property within the Settlement or other jurisdiction of the Tribe except in strict compliance with the following:

(a) When a valid written consent to remove the personal property from the Settlement or other jurisdiction of the Tribe has been secured from the debtor at the time repossession is sought. Any language contained in a purchase agreement or other such agreement used to secure personal property purporting to authorize the removal of the personal property from the Settlement or other jurisdiction of the Tribe shall be null and void and unenforceable. Such written consent shall be retained by the creditor and exhibited to a law enforcement officer of the Tribe or other official of the Tribe upon proper demand.

(b) When the debtor refuses to sign a written consent to permit removal of the personal property from the territory of the Tribe, the property shall be removed only by a valid repossession order obtained in a repossession proceeding brought in the appropriate tribunal of the Tribe and such order shall be exhibited to a law enforcement officer of the Tribe or other official of the Tribe upon proper demand.

**Sec. 16-9204. Cure of Default.**

Prior to the entry of judgment and issuance of a repossession order, any debtor or other person or entity may cure the default of such debtor. If a person or entity other than the debtor cures the default, such person or entity, upon request, shall thereafter have a lien on the personal property for the amount of all payments made by such person or entity to cure the default plus interest on such amounts at the rate stated in the note or other agreement between the creditor and debtor, if any are so stated.

**Sec. 16-9205. Entry of Judgment.**

After commencement of a repossession proceeding pursuant to this Article, if the alleged default has not been cured and if the appropriate tribunal of the Tribe should find for the creditor, the tribunal shall enter judgment and issue a repossession order:

- (a) Terminating the interest in the personal property of the debtor and each other defendant named in the complaint upon whom proper and timely service has been made;
- (b) Conveying such personal property to the creditor; and
- (c) Permitting the creditor, if requested, to remove the personal property from the Settlement or other jurisdiction of the Tribe.

**Sec. 16-9206. No Deficiency Judgment.**

No deficiency judgment shall be entered in any repossession proceeding.

**Sec. 16-9207. Remedies Exclusive.**

The remedies provided under this Article are the exclusive remedies for the repossession of personal property and its removal from the Settlement or other jurisdiction of the Tribe.

**CHAPTER 3. VIOLATIONS AND PENALTIES**

**Sec. 16-9301. Penalty for Violation.**

- (a) Any nonmember of the Tribe who willfully violates this Article may be excluded from the Settlement in accordance with the laws of the Tribe.
- (b) Any business whose employees willfully violate this Article may be denied the privilege of doing business on the Settlement and with the Tribe itself.

**Sec. 16-9302. Civil Liability.**

- (a) Any person who knowingly violates any provision of this Article and any business whose employee violates any provision of this Article is deemed to have breached the peace of the Tribe and shall be civilly liable to the debtor for any loss caused by the failure to comply with this Article. A debtor shall be entitled to actual damages and the statutory penalty as provided in subsection (b) of this Section.
- (b) Any person who knowingly violates any provision of this Article shall be fined not less than five hundred dollars and not more than five thousand dollars for each violation.
- (c) In this Section, “knowingly” means, with respect to a result or to a circumstance described, that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

**TITLE 16. PROPERTY****ARTICLE X****MORTGAGING OF TRUST LAND, RESTRICTED LAND,  
OR FEE SIMPLE LAND WITHIN AN INDIAN AREA**

[NOTE: Except as otherwise noted, the provisions of Article X, Title 16 were enacted on November 2, 2005 by Res. No. 40-2005.]

**CHAPTER 1. IN GENERAL****Sec. 16-10101. Purpose.**

The purpose of this Article is to assist Tribal member borrowers in obtaining mortgage financing for the acquisition and/or rehabilitation of existing housing, construction of new housing, or the refinancing of existing mortgages on certain Trust Land or Restricted Land within the jurisdiction of the Tribe, or on fee simple land within an Indian Area, by proscribing procedures relating to recordation, foreclosure and evictions in connection with mortgages given to secure loans made by mortgagees.

**Sec. 16-10102. Definitions.**

Unless the context requires otherwise, as used in this Article:

(a) "Agreement of Land Assignment" means the written document between the Tribe as Assignor and the Tribal member as Assignee for the use of Trust Land or Restricted Land on which a Mortgage has or will be given.

(b) "Land Assignment" means an assignment of land to a member of the Tribe as set forth in Article II of this Ordinance.

(c) "Leasehold Estate" means a leasehold estate established pursuant to an Agreement of Land Assignment between the Tribe, as Assignor, and a member of the Tribe, as Assignee or Tenant.

(d) "Assignor" means the Tribe. The Tribe shall be the beneficial or equitable owner of certain Trust Land or Restricted Land underlying a Leasehold Estate on which a Mortgage has been given. The Assignor shall include the successor(s) or assign(s) of such Assignor.

(e) "Mortgage" means the first-lien mortgage of a beneficial real property interest in Trust Land or Restricted Land, or fee simple land within an Indian Area, given to secure a mortgage loan made by a Mortgagee.

(f) "Mortgage Foreclosure Proceeding" means a proceeding in the Tribal Court, or other court of competent jurisdiction:

(1) to foreclose the interest of the Mortgagor(s), and each person or entity claiming through the Mortgagor(s); and/or

(2) to assign such interest of the Mortgagor to the Mortgagee or the Mortgagee's successors or assigns.

(g) "Mortgagor" means any eligible Tribal member borrower who has executed a Mortgage on its beneficial interest in Trust Land or Restricted Land or fee simple land within an Indian Area, including any heir(s), successor(s), executor(s), administrator(s) or assign(s) of such borrower.

(h) "Mortgagee" means any mortgage lender or any successors or assigns of any such lender. This definition also includes any subsequent holder, whether by assignment, succession or otherwise, of the original Mortgagee's right, title or interest in and to the Mortgage and/or the Mortgaged property, together with the improvements.

(i) "Nuisance" means maintenance on the Mortgaged property of a condition which:

(1) unreasonably threatens the health or safety of the public or neighboring land users; or

(2) unreasonably and substantially interferes with the ability of neighboring real property users to enjoy the reasonable use and occupancy of their property.

(j) "Restricted Land" means land within the jurisdiction of the Tribe that is subject to restrictions against alienation imposed by federal treaty, statute, Executive Order, or the Tribe.

(k) "Subordinate Lien Holder" means the holder of any lien, including a mortgage, perfected subsequent to the recording of the mortgage under this Ordinance.

(l) "Tenant" means any person who occupies Trust Land or Restricted Land, as Assignee, under a Leasehold Estate with the Assignor.

(m) "Tribal Court" means the tribal court established by the laws of the Tribe.

(n) "Tribal Recording Clerk" means the Clerk of Tribal Court or any deputy or designee of such person.

(o) "Trust Land" means land within the jurisdiction of the Tribe, title to which is held by the United States for the benefit of the Tribe or individual Tribal member.

(p) "Unlawful Detainer Action" means a suit brought before the Tribal Court to terminate a Mortgagor's or Tenant's interest in Trust Land or Restricted Land, or fee simple land within an Indian Area, and/or to evict any person from occupancy of such property.

(q) "Waste" means spoil or destruction of land, buildings, gardens, trees or other improvements on the Mortgaged property which result in substantial injury to such property.



Signature

\_\_\_\_\_  
Title

(d) The Tribal Recording Clerk shall maintain such copies in the records of the recording system and shall return the original mortgage or other document to the person or entity that presented the same for recording.

(e) The Tribal Recording Clerk shall also maintain a log of each mortgage or other document recorded in which there shall be entered the following:

- (1) the name(s) of the Mortgagor(s) of each Mortgage, identified as such;
- (2) the name(s) of the Mortgagee(s) of each Mortgage, identified as such;
- (3) the name(s) of the grantor(s), grantee(s), or other designation of each party names in any other document including any Agreement of Land Assignment;
- (4) the date and time of receipt;
- (5) the filing number(s) assigned by the Tribal Recording Clerk; and,
- (6) the name of the Tribal Recording Clerk or designee receiving any such Mortgage or other document.

(f) The certified copies of the mortgage and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying. Rules for such inspection and copying shall be established and disseminated by the Tribal Recording Clerk.

(g) In addition to the above Tribal recording provisions, any mortgage required to be recorded with the Bureau of Indian Affairs shall also be so recorded.

**CHAPTER 3. MORTGAGE FORECLOSURE**

**Sec. 16-10301. Foreclosure Procedures.**

Upon default of the Mortgagor(s), and upon expiration of any applicable cure periods under the Mortgage, the Mortgagee or it's successors and assigns, may commence a foreclosure proceeding in Tribal Court as follows:

- (a) The verified complaint in a mortgage foreclosure proceeding shall contain the following:
  - (1) Citing this Article as authority for jurisdiction of the Tribal Court;

(2) Naming the Mortgagor(s) and each record owner claiming through the Mortgagor(s) subsequent to the recording of the Mortgage, including each Subordinate Lienholder as a Defendant;

(3) Describing the property subject to the Mortgage;

(4) Stating the facts concerning:

(I) the execution of any Agreement of Land Assignment and/or Mortgage;

(ii) the recording of the Mortgage; and,

(iii) the alleged default(s) of the Mortgagor(s) (and any other facts as may be necessary to constitute a cause of action);

(5) True and correct copies of each promissory note, mortgage, deed of trust or other recorded real property security instrument and any other documents relating to the property, to include a copy of any Agreement of Land Assignment; and,

(6) An allegation that all relevant requirements and conditions prescribed in applicable federal statutes, tribal laws, and the Mortgage and Agreement of Land Assignment, if any, have been complied with by the Mortgagee or its successors or assigns.

(b) The complaint shall be verified by the Tribal Court Clerk along with a summons specifying a date and time of appearance for the Defendants.

**Sec. 16-10302. Service of Process.**

The laws of the Tribe governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any Mortgage Foreclosure Proceeding pursuant to this Article.

**Sec. 16-10303. Cure of Default.**

Prior to the entry of a judgment of foreclosure of a Mortgage pursuant to this Article, any Mortgagor or Subordinate Lien Holder may cure the default(s) under the Mortgage. Any Subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure such default(s), plus interest on such amounts at the rate stated in the promissory note evidencing the subordinate lien.

**Sec. 16-10304. Right of Redemption.**

[Reserved]

**Sec. 16-10305. Judgment and Remedy.**

The foreclosure matter shall be heard and decided by the Tribal Court in a prompt and reasonable time period, not to exceed sixty (60) days from the date of service of the Complaint on the Mortgagor. If the alleged default has not been cured at the time of trial and the Tribal Court rules in favor of the Mortgagee, the Tribal Court shall enter judgment:

- (a) foreclosing the interest of the Mortgagor and each other Defendant, including Subordinate Lienholder, in the mortgaged property; and
- (b) assigning such mortgaged property to the Mortgagee or the Mortgagee's successor or assignee.

**CHAPTER 4. FORECLOSURE EVICTION PROCEDURES****Sec. 16-10401. Jurisdiction.**

The provisions of this Chapter 4 shall apply to all persons and property subject to the governing authority or jurisdiction of the Tribe as established by Tribal law, or the provisions of applicable federal law.

**Sec. 16-10402. Unlawful Detainer.**

A tenant or other occupier of a beneficial interest in Trust Land or Restricted Land, or fee simple land within an Indian Area, subject to a Mortgage shall be guilty of unlawful detainer if such person shall continue in occupancy of such property under any of the following situations:

- (a) Without the requirement of any notice by the Tribe or Assignor:
  - (1) After the expiration of the term of any Agreement of Land Assignment;
  - (2) If such person has entered onto or remains on the real property of another without the permission of the owner and without having any substantial claim under an Agreement of Land Assignment or title to such property;
  - (3) After the Assignor has terminated such person's tenancy pursuant to the procedures set forth in this Ordinance; or
  - (4) After a Mortgagor's interest in Trust Land or Restricted Land, or fee simple land within an Indian Area, has been foreclosed in a Mortgage Foreclosure Proceeding in Tribal Court.
- (b) After having received 30 days' notice, the Tenant or occupier shall remain in possession of such property contrary to the terms of the notice as follows:
  - (1) When such person has received notice: (I) that he or she is in default in the payment of any required rent; and (ii) requiring him or her to either pay such rent or surrender

possession of the occupied property and such person has not either surrendered possession of such property or paid the rent within the 30-day period provided in the notice;

(2) When such person shall continue to fail to keep or perform any condition or covenant of any Agreement of Land Assignment or other use agreement under which the property is held after he or she has been given notice to comply with such condition or covenant or else to surrender the property; or

(3) When such person continues to commit or to permit Waste upon or maintain a Nuisance upon the occupied property after having been given notice to either cease such waste or maintenance of Nuisance or to surrender the property.

#### **Sec. 16-10403. Procedures for Service of Notice.**

Notice required or authorized in the immediately preceding section shall be given in accordance with established Tribal Court rules and procedures. In the absence of such rules and procedures, notices shall be given in writing by either of the two methods discussed below. Proof of service by either of the following methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of either of the two methods:

(a) Delivering a copy personally to the Tenant or occupier or to any adult member of his or her family residing on the Mortgaged property; or

(b) Posting said notice in a conspicuous place near the entrance to said property, and by also sending an additional copy to the Tenant or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.

#### **Sec. 16-10404. Complaint and Summons.**

The Assignor or the Mortgagee (including its successors and assigns) shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

(a) A complaint, signed by the Assignor, the Mortgagee (including its successors and assigns), or an agent or attorney on their behalf including the following:

(1) Citing this Article as authority for jurisdiction of the Tribal Court;

(2) Naming the Mortgagor(s) and each record owner claiming through the Mortgagor(s) subsequent to the recording of the Mortgage, including each Subordinate Lienholder as a Defendant;

(3) Describing the property subject to the Mortgage;

(4) Stating the facts concerning:

(I) the execution of any Agreement of Land Assignment and/or Mortgage;

- (ii) the recording of the Mortgage; and,
  - (iii) the facts upon which he or she seeks to recover.
- (5) Stating any claim for damages or compensation due from the person(s) to be evicted; and,
- (6) Otherwise satisfying the requirements of the Tribal Court.

(b) A copy of the summons, issued in accordance with established Tribal Court rules and procedures. In the absence of such rules and procedures for the issuance of a summons, the summons shall require defendants to appear for trial upon the complaint on a date and time specified in the summons. The trial date specified in the summons shall be no less than 30 days nor more than 45 days from the date of service of the summons and complaint. The summons must notify the Defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file with the Court an answer and appear for trial at the time, date and place specified in the summons.

(c) A copy of the summons and complaint shall be served upon the Defendants in the manner provided in Tribal Court rules for service of process in civil matters. In the absence of such Tribal Court rules, the summons and complaint shall be served by one of the two service methods provided in Sec. 16-10403 above.

**Sec. 16-10405. Judgment and Remedy.**

- (a) The Tribal Court shall enter a Writ of Restitution if:
- (1) Notice of the suit and trial is given by service of summons and complaint in accordance with the procedures provided herein; and,
  - (2) The Tribal Court shall find that the occupier of the property subject to the Mortgage is guilty of an act of unlawful detainer.
- (b) Upon issuance of a Writ of Restitution, the Tribal Court shall have the authority to enter against the Defendants a judgment for the following:
- (1) back rent, unpaid utilities, and any charges due the Tribe or Assignor under any Agreement of Land Assignment or occupancy agreement;
  - (2) any and all amounts secured by the Mortgage that are due the Mortgagee (or its successors or assigns);
  - (3) damages caused by the Defendants to the property other than ordinary wear and tear; and,
  - (4) costs and reasonable attorney's fees in bringing suit to the prevailing party.

**Sec. 16-10406. Enforcement.**

Upon issuance of a Writ of Restitution by the Tribal Court, Tribal law enforcement officers shall enforce the Writ of Restitution by evicting the Defendants and their property from the premises which is unlawfully occupied. In all cases involving the Mortgagee (or its successors or assigns), the Writ of Restitution shall be enforced no later than 60 days form the date of service of the summons and complaint.

**Sec. 16-10407. Appeals.**

Appeals under this Article shall be handled in accordance with the general Tribal Court appellate provisions.