

## POKAGON BAND OF POTAWATOMI INDIANS

### SECURED TRANSACTIONS CODE

#### **Section I: Title and Purpose.**

- A. Title. This Ordinance shall be known as the “Secured Transactions Code.”
- B. Purpose. The purpose of this Ordinance is to recognize that under the law of the Pokagon Band of Potawatomi Indians (the “Band”), a federally recognized Indian tribe, except as otherwise provided in this Ordinance, secured parties shall have the same rights with respect to collateral subject to the sovereign authority of Band as would exist if all aspects of the security interest (including but not limited to its creation, attachment, perfection and priority) had been governed by the Michigan UCC, without regard to the choice of law principles set forth therein.

#### **Section II: Definitions.**

In this Ordinance, the terms listed below have the following meanings:

- A. “Michigan UCC” means Articles 1, 8 and 9 of the Uniform Commercial Code as enacted in Chapter 440 of the Michigan Compiled Laws, as amended from time to time in accordance with the laws of Michigan.
- B. “Pledged Revenues” means all of a Tribal Party’s money, earnings, income and revenues, (and any proceeds thereof), and all of the Tribal Party’s rights to and interest with respect to receiving the foregoing before actual possession thereof, whether in the form of money, deposit accounts, investments, accounts, instruments or other assets, and the proceeds thereof, in which such Tribal Party has granted a security interest to a secured party in a writing signed by the Tribal Party.
- C. “Tribal Lands” means all lands within the Band’s reservation and all lands held by the United States in trust for the benefit of the Band or individual members of the Band over which the Band exercises jurisdiction.
- D. “Tribal Party” means any of the Band and any division, subdivision, branch, department, board, committee, commission, agency, enterprise, instrumentality, or entity wholly-owned or wholly-controlled, directly or indirectly, by the Band, along with the successors and assigns of each.

Any undefined terms that are defined in the Michigan UCC are used in this Ordinance with the meanings that apply in the Michigan UCC.

#### **Section III: Scope.**

- A. This Ordinance shall apply to all security interests and collateral subject to the sovereign authority of Band to the same extent provided in Section 440.9109 of the Michigan UCC, except that provisions of Sections 440.9109(3) and 440.9109(4)(m) of the Michigan UCC shall be ineffective to limit the application of the Michigan UCC in accordance with this Ordinance.
- B. This Ordinance is intended to be a law, within the meaning of Section 440.9307(3) of the Michigan UCC, which generally requires information concerning the existence of a non-possessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

**Section IV: Laws Applicable to Security Interests.**

- A. With respect to any security interest to which this Ordinance applies, except as provided elsewhere in this Section IV, the rights and obligations of any person shall be governed by the Michigan UCC, including those rights and obligations related to enforcement of a security interest or arising after a default.
- B. Except as provided elsewhere in this Section IV, the perfection, effect of perfection or nonperfection and priority of any security interest to which this Ordinance applies shall be determined in accordance with the Michigan UCC as if each debtor were (for purposes of Sections 440.9301 through 440.9307 of the Michigan UCC) located in the State of Michigan and as if the Tribal Lands were located in the State of Michigan.
- C. Notwithstanding any provision of the Michigan UCC or this Ordinance to the contrary, a security interest granted by a Tribal Party in Pledged Revenues shall be created and attach upon the giving of value and the granting of such security interest in a writing executed by that Tribal Party. Such security interest may be perfected only by the filing of an initial financing statement in the same manner and in the same location as if all of such Pledged Revenues were accounts.
- D. For the avoidance of doubt, no UCC financing statement shall be required to be filed with the Band or the District of Columbia, nor shall any filing, if filed, be effective.

**Section V: Amendment.**

Once applicable to any security interest, this Ordinance shall remain in effect with respect to that security interest until all obligations secured thereby have been fully and finally discharged or otherwise fully satisfied, except that this Ordinance may be amended, with prior notice to each secured party, only to the extent such amendment is not adverse in any way to any secured party with respect to any security interest.

**Section VI: Effective Date and Repealer.**

- A. The Band’s “Secured Transactions Code” adopted by the Tribal Council as Res. 05-02-24-05 on February 24, 2005, is hereby repealed in its entirety, *provided, however*, that any security interest created thereunder shall continue to be effective in accordance with its terms as a security interest under this Ordinance.
- B. To the extent any provision of any law, ordinance, resolution, motion or any other action of any Tribal Party heretofore taken is in conflict with any provision of this Ordinance, the provision of this Ordinance shall supercede and the conflicting provision shall be and hereby is repealed.
- C. This Ordinance is effective upon the date of its enactment.

**Section VII: No Waiver of Immunity.**

Nothing in this Ordinance shall waive or impair the Band’s sovereign immunity or the sovereign immunity of any other Tribal Party.

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**LEGISLATIVE HISTORY**

The “Secured Transactions Code” was enacted on February 24, 2005 by adoption of Tribal Council Resolution No. 05-02-24-04. On June 1, 2006, the Tribal Council repealed the Secured Transactions Code of 2005 and enacted a completely rewritten Secured Transactions Code by adoption of Resolution No. 06-06-01-01.