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Draft Ordinance of _____ (the "Tribe")

I. Mortgaging of Trust or Restricted Land

1. Purpose.

The purpose of this Ordinance is to assist certain Native American borrowers in obtaining mortgage financing for the purchase of one- to four-family residences on certain Trust Land or Restricted Land within the jurisdiction of the Tribe, by prescribing procedures relating to recordation, foreclosure and evictions in connection with Mortgages given to secure loans made by Mortgagees.

2. Definitions.

- (a) "Lease" shall mean the residential ground lease or other agreement for use of Trust Land or Restricted Land on which a Mortgage has or will be given.
- (b) "Leasehold Estate" shall mean a leasehold estate established pursuant to a Lease between the Tribe, as Lessor, and a member of the Tribe, as Tenant.
- (c) "Lessor" shall mean 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 Lessor shall include the successor(s) or assign(s) of such Lessor.
- (d) "Mortgage" shall mean the first-lien mortgage of a beneficial real property interest in Trust Land or Restricted Land given to secure a mortgage loan made by a Mortgagee.
- (e) "Mortgage Foreclosure Proceeding" shall mean a proceeding in the Tribal Court (i) to foreclose the interest of the Mortgagor(s), and each person or entity claiming through the Mortgagor(s), in Trust Land or Restricted Land on which a Mortgage has been made by a Mortgagee; and/or (ii) to assign such interest of the Mortgagor to the Mortgagee or the Mortgagee's successors or assigns.
- (f) "Mortgagor" shall mean any eligible Native American borrower who has executed a Mortgage on its beneficial interest in Trust Land or Restricted Land, including any heir(s), successor(s), executor(s), administrator(s) or assign(s) of such borrower.
- (g) "Mortgagee" shall mean any mortgage lender or any successors or assigns of any such lender, including Fannie Mae. 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.

- (h) "Native American" shall mean any person recognized as being Indian or Alaska Native by the Tribe, the federal government or the state in which the Mortgaged property is located.
- (i) "Nuisance" shall mean 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" shall mean 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 Lienholder" shall mean the holder of any lien, including a mortgage, perfected subsequent to the recording of a Mortgage under this Ordinance; provided, however, such definition shall not include the Tribe with respect to a claim for a Tribal tax on the Mortgaged property, where applicable.
- (l) "Tenant" shall mean any person who occupies Trust Land or Restricted Land, as lessee, under a Leasehold Estate with the Lessor.
- (m) "Tribal Court" shall mean (i) the tribal court authorized by the Secretary of the Interior (a Court of Indian Offenses), (ii) the tribal court established by the laws of the Tribe, or (iii) such body as may now or hereafter be authorized by the laws of the Tribe to exercise the powers and functions of a court of law (which may be a state court).

[Note: The following definition shall be operative if the Tribe maintains a Tribal recorder's office as provided in Section 4 below.]

[(n)] "Tribal Recording Clerk" shall mean the person designated by the Tribe to perform the recording functions required by this document or any deputy or designee of such person.]

[(n)][(o)] "Tribe" shall refer to the tribe as defined in the constitution of the tribe.

[(o)][(p)] "Trust Land" shall mean land within the jurisdiction of the Tribe, title to which is held by the United States or any state for the benefit of the Tribe or an individual Native American.

[Note: The following definition shall be operative if the Mortgages will be sold by Mortgagees to the Federal National Mortgage Association ("Fannie Mae").]

[(p)][(q)][(r)] "Memorandum of Understanding" shall mean that certain agreement by and among Fannie Mae, the Mortgagee and the Tribe, and approved by the Secretary of the Interior where applicable, evidencing Fannie Mae's Native American conventional lending initiative.

[(q)][(r)] "Unlawful Detainer Action" shall be a suit brought before the Tribal Court to terminate a Mortgagor's
[(s)] or Tenant's interest in Trust Land or Restricted Land and/or to evict any person from occupancy of such property.

[(r)][(s)] "Waste" shall mean spoil or destruction of land, buildings, gardens, trees or other improvements
[(t)] on the Mortgaged property which result in substantial injury to such property.

[(s)][(t)] "Writ of Restitution" is an order of the Tribal Court:

[(u)]

- (1) Restoring an owner, Lessor, Mortgagee (or other successor in interest) to possession of Trust Land or Restricted Land subject to a Mortgage; and
- (2) Evicting a Tenant or other occupant from such property.

3. Priority. A Mortgage recorded in accordance with the recording procedures set forth in this Ordinance shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim (except a lien or claim arising from a Tribal tax assessed against property subject to the Mortgage).

4. Recording.

[(a)] The Tribe recognizes that the appropriate office for recording Mortgages and Leases on Trust Land or Restricted Land is the Bureau of Indian Affairs Area Land Titles and Records Office; provided, however, where the Trust Land is held by a state for the benefit of the Tribe or an individual Native American, the laws of the state may require alternative recording offices. The Tribe agrees that a Mortgagee may also require that the Leases and Mortgages on Trust Land or Restricted Land shall be recorded in the county recorder's office in the state in which the Mortgaged properties are located.

[Note: The following additional provisions shall be required if the Tribe maintains a Tribal recorder's office.]

[(b)] The Tribal Recording Clerk shall maintain in the Tribal Court, or other designated office, a system for the recording of Mortgages and such other documents as the Tribe may designate by law or resolution including, without limitation, any Lease.

[(c)] The Tribal Recording Clerk shall endorse upon any Lease and/or Mortgage or other document received for recording the following:

- (1) The date and time of receipt of the Lease and/or Mortgage or other document;
- (2) The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each Lease and/or Mortgage or other document received; and
- (3) The name of the Tribal Recording Clerk receiving the Lease and/or Mortgage or other document.

Upon completion of the above endorsements, the Tribal Recording Clerk shall make true and correct copies of the Lease and/or Mortgage or other security instrument and shall certify each copy as follows:

_____ TRIBE) ss.

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this _____ day of _____.

(SEAL)

Signature

Title

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

- (d) The Tribal Recording Clerk shall also maintain a log of each Lease and/or 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 named in any other documents including any Lease;
 - (4) The date and time of receipt;
 - (5) The filing numbers assigned by the Tribal Recording Clerk; and
 - (6) The name of the Tribal Recording Clerk receiving any Lease, Mortgage or other document.
- (e) The certified copies of any Leases, Mortgages and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying.]

5. Mortgage Foreclosure Proceedings. Upon the default of the Mortgagor(s), and upon expiration of any applicable cure periods under a Mortgage, the Mortgagee or its successors and assigns, including Fannie Mae, may commence a Mortgage foreclosure proceeding in the Tribal Court as follows:

- (a) By filing a verified complaint:
 - (1) Citing 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 (except the Tribe with respect to a claim for a Tribal tax on the Mortgaged property, as a defendant);
 - (3) Describing the property subject to the Mortgage;
 - (4) Stating the facts concerning (i) the execution of any Lease and/or the 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) Having appended as exhibits true and correct copies of each promissory note, Lease, if any, Mortgage, and, if applicable, assignment thereof relating to such Mortgaged property;

- (6) Including an allegation that all relevant requirements and conditions prescribed in the Mortgage and the Lease, if any, have been complied with by the Mortgagee or its successors or assigns; and
 - (7) Otherwise satisfying the requirements of the Tribal Court.
- (b) By obtaining a summons, issued as in other cases, requiring the Mortgagor(s) and each other person or entity claiming through the Mortgagor, as defendants to appear for a trial upon the complaint on a date and time specified in the summons, and filing a copy of such summons with the Tribal Court.

6. Service of Process and Procedures. 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 Ordinance.

7. Cure of Default By Subordinate Lienholder. Prior to the entry of a judgment of foreclosure of a Mortgage pursuant to this Ordinance, any Mortgagor or any Subordinate Lienholder 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.

8. Power of the Tribal Court. If the alleged default(s) have not been cured, and if the Tribal Court should find for the Mortgagee or its successors or assigns, the Tribal Court shall enter judgment:

- (a) Foreclosing the Mortgagor's interest in the Mortgaged property, and each other defendant named in the complaint upon whom proper and timely service has been made, including each Subordinate Lienholder; and
- (b) Assigning such Mortgaged property to the Mortgagee or the Mortgagee's successor or assignee.

II. Mortgage Eviction Procedures

1. Jurisdiction. The provisions of this Article II shall apply to all persons and property subject to the governing authority or jurisdiction of the Tribe as established by the constitution and bylaws of the Tribe.

2. Unlawful Detainer. A Tenant or other occupier of a beneficial interest in Trust Land or Restricted Land 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 Lessor:
 - (1) After the expiration of the term of any Lease;
 - (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 a Lease or title to such property;
 - (3) After the Lessor has terminated such person's tenancy pursuant to procedures providing such person a hearing before such Lessor involved; or
 - (4) After a Mortgagor's interest in Trust Land or Restricted Land has been foreclosed in a Mortgage Foreclosure Proceeding in the 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 ground 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 such notice;
- (2) When such person shall continue to fail to keep or perform any condition or covenant of any Lease 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.

3. Procedures for Service of Notice. Notices 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:

- (a) Delivering a copy personally to the Tenant or occupier or to any adult members 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 sending an additional copy to the Tenant or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.

Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of either of these two methods of service.

4. Complaint and Summons. The Lessor or the Mortgagee (including its successors or 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 Lessor, the Mortgagee (or its successors or assigns), or an agent or attorney on their behalf including the following:
 - (1) Citing 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 (except the Tribe with respect to a claim for a Tribal tax on the property subject to the Mortgage), as a defendant;
 - (3) Describing the property subject to the Mortgage;
 - (4) Stating the facts concerning (i) the execution of any Lease and the 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 persons 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 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.

5. Service of Summons and Complaint. A copy of the summons and complaint shall be served upon the defendants in the manner provided by the 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 methods provided in Article II Section 3 above.

6. Power of the Tribal Court. The Tribal Court shall enter a Writ of Restitution if:

- (a) Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided herein; and
- (b) The Tribal Court shall find that the occupier of the property subject to the Mortgage is guilty of an act of unlawful detainer.

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 Lessor under any lease or occupancy agreement; (2) any and all amounts secured by the Mortgage that are due the Mortgagee (or its successors or assigns); and (3) damages caused by the defendants to the property other than ordinary wear and tear. The Tribal Court shall have the authority to award costs and reasonable attorney's fees in bringing suit to the prevailing party.

7. 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 property 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 after the date of service of the summons and complaint, subject to Section 8 below.

8. Continuances in Cases Involving the Mortgagee. Except by agreement of all parties, there shall be no continuances in cases involving the Mortgagee (or its successors or assigns) which will interfere with the requirement that the Writ of Restitution be enforced not later than 60 days from the date of service of the summons and complaint.

9. Alternative Remedies. In those cases in which the persons or property are subject to the jurisdiction of the courts of the State of _____ or the United States, the remedies and procedures provided by this Ordinance are in the alternative to the remedies and procedures provided by the laws of the State of _____ or the United States.