WAGANAKISING ODAWAK STATUTE 2000-03

FORECLOSURE CODE OF THE LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS TRIBE

SECTION I. JURISDICTION/LIMITED WAIVER OF SOVEREIGN IMMUNITY/LIMITATIONS

A. Jurisdiction

The Tribal Court of The Little Traverse Bay Bands of Odawa Indians (LTBB or Tribe) shall have exclusive jurisdiction over all foreclosure actions arising on all lands located within the exterior boundaries of the LTBB Reservation on trust lands, lands owned in fee by the Tribe, and any other property within the Reservation containing housing owned or financed by LTBB.

B. Limited Waiver of Sovereign Immunity

The LTBB Tribe hereby authorizes a limited waiver of immunity from suit, with respect to specific controversies or claims derived in this section that may arise out of the LTBB Tribe under a mortgage assumption pursuant to Sections II (F)(2) or Section II(L) of this Code. In connection with such limited waiver, the LTBB Tribe consents solely to the jurisdiction of the LTBB Tribal Courts with respect to (a) actions in equity brought by any party to such mortgage or lease seeking specific performance of any of the LTBB Tribe's express obligations thereunder and (b) actions at law for actual damages which shall consist exclusively for remaining sums secured by a mortgage. This waiver of immunity is not intended, or shall it be construed (a) to extend to any claim for punitive or compensatory damages, (b) to waive the LTBB Tribe's immunity from suit for any other purpose or with respect to any controversy, claim, or other matter not specifically mentioned in this section, or (c) to extend to the benefit of any person other than the parties to the Documents or their successors or assigns. This limited waiver of immunity from suit shall not be construed as an admission of liability of the LTBB Tribe to any claim for damages or as an agreement or willingness to pay any amount as damages absent a judicial determination of liability, and the LTBB Tribe shall have the right to defend any of such

claim fully on the merits.

SECTION II. MORTGAGING OF TRUST OR RESTRICTED LAND

A. Purpose

The purpose of this Code is to assist Tribal members in obtaining mortgage financing for the purchase of residences and businesses on Trust Lands or Restricted Lands within the jurisdiction of the LTBB Tribe, by prescribing procedures relating to recordation and foreclosure in connection with Mortgages given to secure loans made by Mortgagees.

B. Definitions

1. **"Lease"** shall mean a ground lease or other agreement for use of Trust Land or Restricted Land on which a Mortgage has or will be given.

2. **"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.

3. **"Lessor"** shall mean the Tribe or a Tribal member who leases an interest in property within the Reservation to a lessee. 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.

4. **"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.

5. **"Mortgagee"** shall mean 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.

6. **"Mortgage Foreclosure Proceeding"** shall mean a proceeding in the LTBB Tribal Court: (i) to foreclose the interest of the Mortgagor(s) and each person or entity claiming through the Mortgagors 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.

7. **"Mortgagor"** shall mean the Tribe or any eligible tribal member or entity borrower who has executed a mortgage on its beneficial interest in Trust Land or Restricted Land, including any heir(s), successor(s), executor(s) or assign(s) of such borrower.

8. **"LTBB" or "Tribe"** shall mean the Little Traverse Bay Bands of Odawa Indians, a Federally recognized Indian tribe as reaffirmed under Public Law 103-324, 25 U.S.C. § 1300k.

9. **"Restricted Land"** shall mean land within the jurisdiction of the LTBB Tribe that is subject to restrictions against alienation imposed by Federal Treaty, Statute, Executive Order, or to the LTBB Tribe.

10. **"Reservation"** shall mean all lands within the boundaries of the reservations for Little Traverse as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491, in the event that the 1836 reservation is determined to include lands which are not included within the 1855 reservation, plus any lands outside of those

boundaries which are now or in the future declared to be Little Traverse reservation by the Department of the Interior.

11. **"Subordinate Lienholder"** shall mean the holder of any lien, including a mortgage perfected subsequent to the recording of a Mortgage under this Code; provided however, such definition shall not include the LTBB Tribe with respect to a claim for a Tribal tax on the Mortgaged property, where applicable.

12. **"Tenant"** shall mean any person who occupies Trust land or Restricted Land, as lessee, under a Leasehold Estate with the Lessor.

13. **"Tribal Court"** shall mean: (i) the LTBB Tribal Court; or (ii) such body as may now or hereafter be authorized by the laws of the LTBB Tribe to exercise the powers and functions of a court of law.

14. **"Tribal Member"** shall mean any person recognized as being an LTBB member by the LTBB Tribal Council.

15. **"Tribal Realty Officer"** shall mean the person designated by the LTBB Tribe to perform the recording functions required by this document or any deputy or designee of such person.

16. **"Tribe"** refers to the Little Traverse Bay Bands of Odawa Indians Tribe.

17. **"Trust Land"** shall mean land within the jurisdiction of the LTBB Tribe, title to which is held by the United States for the benefit of the Tribe or an individual member of the LTBB Tribe.

C. Mortgage of Leasehold Estate

Any Tribal member who is a tenant as defined in this Code may, with approval of the Lessor, mortgage the leasehold estate for the purpose of obtaining home or business financing on said land.

D. Priority

A Mortgage recorded in accordance with the recording procedures set forth in this Code 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).

E. Recording

1. The recording of Mortgages and Leases on Trust land or Restricted land shall be at the Bureau of Indian Affairs Area land Titles and Records Office.

2. Where a Mortgagee requires that a Lease or Mortgage on Trust land or Restricted Land also be recorded in the county recorder's office in the state in which the Mortgaged properties are located, the lease or mortgage shall also be recorded at such county recorder's office.

3. The Tribal Realty Officer shall maintain in the Tribal Court, or other designated office, a system for the recording of Mortgages and such other documents as the LTBB Tribe may designate by law or resolution including, without limitation, any Lease.

4. The Tribal Realty Officer shall endorse upon any Lease and/or Mortgage or other document received for recording the following:

a. The name(s) of the Mortgagor(s) of each Mortgage, identified as such;

b. The name(s) of the Mortgagee(s) of each Mortgage, identified as such;

c. The name(s) of the grantor(s), grantee(s) or other designation of each party named in any other documents including any Lease;

d. The date and time of receipt;

e. The filing numbers assigned by the Tribal Realty Officer; and

f. The name of the Tribal Realty Officer receiving any Lease, Mortgage or other document.

8. The certified copies of any Leases, Mortgages and other documents and the log maintained by the Tribal Realty Officer shall be made available for public inspection and copying.

F. Pre-Foreclosure Notice

1. Upon the default of the Mortgagor(s) and at least ten (10) days prior to instituting foreclosure proceedings, the Mortgagee shall notify the LTBB's Designated Housing Department or Entity in writing of its intention to pursue foreclosure. Such notice must be hand-delivered or sent by certified mail to the Executive Director of the LTBB's Designated Housing Department or Entity.

2. Upon such notice, and upon the expiration of an applicable cure period provided Lessee under a mortgage or security instrument, the Lessor or its Designated Housing Department or Entity shall have the right of first refusal to acquire the Leasehold Estate (subject to all valid liens and encumbrances) prior to the commencement of foreclosure proceedings.

3. The right of first refusal shall be exercised within twenty (20) days from receipt of the Lender's written notice.

a. The date and time or receipt of the Lease and/or Mortgage or other document:

b. The filing number, to be assigned by the Tribal Realty Officer, which shall be a unique number for each Lease and/or Mortgage or other document received: and

c. The name of the Tribal Realty Officer receiving the Lease and/or Mortgage or other document.

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

LTBB 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

6. The Tribal Realty Officer 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.

7. The Tribal Realty Officer shall also maintain a log of each Lease and/or Mortgage or other document recorded in which there shall be entered the following:

G. Mortgage Foreclosure Proceedings

1. Upon the default of the Mortgagor(s), and upon expiration of any applicable cure periods under a Mortgage and expiration of the Lessor's first right of refusal in the preceding section, the Mortgagee, or its successors and assigns, may commence a Mortgage foreclosure proceeding in the Tribal Court as follows:

a. By filing a verified complaint:

i. Citing authority for jurisdiction of the Tribal Court;

ii. 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 LTBB tribe with respect to a claim for a Tribal tax on the Mortgaged property), as a defendant;

iii. Describing the property subject to the Mortgage;

iv. Stating the facts concerning: (1) the execution of any Lease and/or the Mortgage; (2) the recording of the Mortgage; and (3) the alleged default(s) of the Mortgagor(s) and any other facts as may be necessary to constitute a cause of action;

v. 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; and

vi. 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.

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.

H. Service of Process and Procedures

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

I. Dismissal of Foreclosure upon Payment by Mortgagor

1. The foreclosure proceeding shall be dismissed if the borrower, before judgment, tenders to the Mortgagee, or its successors or assigns, payment of the total amount required to be tendered, including costs of the filing of a civil action.

2. Notice of Tender. To invoke this section, the Mortgagor must tender payment to the Mortgagee or its successors or assigns and file with the Court a notice of tender, indicating that the Mortgagor is tendering the amount described below.

3. Amount required to be tendered. The amount tendered shall consist of the following:

a. Arrearage. The arrearage amount shall be the sum of the monthly payments missed up to and including the date of the tender.

b. Costs and fees. Reasonable costs and fees, including attorneys fees, determined by the Court, but in no event shall they exceed costs actually incurred.

c. Acceleration clauses prohibited. Under no circumstances may the amount required to be tendered include any amounts due pursuant to an acceleration clause. This shall not prohibit the Mortgagee from charging late fees.

4. Disputes regarding cost. Where the Mortgagor and Mortgagee or its successors and assigns are unable to agree on reasonable costs and fees, the Mortgagor shall nonetheless file its notice of tender and tender payment of costs and fees to the Court, indicating that the amount is disputed. The Mortgagee shall file a fee petition with the Court within five (5) business days of the filing of the notice of tender. The Court shall stay the proceedings for no longer than twenty (20) days pending resolution of the dispute.

5. Dismissal of stay. Where the court's determination of reasonable costs and fees exceeds the amount tendered, the stay shall be lifted if the Mortgagor fails to file a revised notice of tender.

J. 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.

K. Power of the Tribal Court

If the alleged default(s) have not been cured, judgement shall be entered:

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

Assigning such Mortgaged property to the Mortgagee or the Mortgagee's successor or assignee and order sale of the residential property, or of a subset of

the property that will suffice to satisfy the judgement. The Mortgagee must ensure that the price for which the property is sold is commercially reasonable. If the sales price is greater than the amount of the judgement, then the Mortgagee shall provide the difference to the Mortgagor within ten (10) days of the Mortgagee's receipt of the money.

L. Right of First Refusal During Foreclosure

1. The LTBB Tribe or its Designated Housing Department or Entity shall have the right of first refusal regarding all property to be sold pursuant to these foreclosure proceedings.

2. Notice to the LTBB Tribe. Upon commencement of judicial foreclosure proceedings, the Mortgagee or its successors or assigns shall give written notice by certified mail, or these proceedings to the LTBB Tribe.

3. Right to Conduct an appraisal. The LTBB Tribe may conduct an appraisal of the property during or immediately after the foreclosure process. If the property in question is occupied the LTBB Tribe will make all reasonable efforts to respect the privacy of the homeowner, but the homeowner may not unreasonably interfere with the LTBB Tribe's right to conduct the appraisal.

4. Exercising the right to purchase after foreclosure. Upon entry of an order of foreclosure, a copy of the court order shall be served on the Office of the Chairperson or Housing Department or Entity, or on another agent designated by the LTBB Tribal Council to receive such notice. Within twenty (20) working days of the service of the order, the LTBB Tribe may provide written notice to the Mortgagee or its successors or assigns that the LTBB Tribe elects to purchase the residential property for the amount of the judgement, or for some other amount agreed upon by the LTBB Tribe and the

Mortgagee. At the same time the LTBB Tribe provides such notice to the Mortgagee, or at some other time agreed upon by the LTBB Tribe and the Mortgagee, the LTBB Tribe must tender payment. If the amount paid is less than the commercially reasonable price of the house, the LTBB Tribe will pay the difference to the Mortgagor. If the LTBB Tribe does not exercise its right to purchase the property within twenty (20) days of the date of service of the court order, the LTBB Tribe will be deemed to have waived its right of first refusal.

Certification

As Tribal Chairman and Tribal Secretary, the undersigned certify that this Statute was duly enacted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on April 16, 2000, at which a quorum was present, by a vote of 7 in favor, 0 opposed, and 0 abstentions as recorded by this roll call.

	In Favor	Opposed	Abstained	Absent
George Anthony	✓			
Gerald Chingwa	✓			
Dorothy Gasco	✓			
Janet Shomin	✓			
Rita Shananaquet	✓			
Susan Wysocki	✓			
Alice Yellowbank	✓			

Date: 4-03-01

Gerald Chingwa, Tribal Chairman

Susan Wysocki, Tribal Secretary