

UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF MASSACHUSETTS

In re
BRIAN W. COUGHLIN,
Debtor

IN PROCEEDINGS UNDER
CHAPTER 13
CASE NO. 19-14142-FJB

**MEMORANDUM OF LAW IN SUPPORT OF OBJECTION TO MOTION OF THE LAC
DE FLAMBEAU BAND OF LAKE SUPERIOR CHIPPEWA INDIANS, THE
“RESPONDENTS”) MOTION TO DISMISS THE MOTION OF DEBTOR TO
ENFORCE THE AUTOMATIC STAY**

NOW COMES the Debtor, Brian W. Coughlin, and hereby submits the following
Memorandum of Law in Support of the Objection of Debtor to Motion of the Lac de Flambeau
Band of Lake Superior Chippewa Indians (the “Respondents”) Motion to Dismiss.

STATEMENT OF FACTS

Debtor, Brian W. Coughlin, filed voluntary Chapter 13 proceedings on December 4,
2019, listing Niiwin, LLC (“Lendgreen”) as an unsecured creditor. Lendgreen was listed on
Debtor’s mailing matrix, and Debtor’s Counsel served the Chapter 13 Plan upon Lendgreen, at
its mailing address of P.O. Box 221, Lac du Flambeau, WI 54538. Despite these notifications
from both the Court and Debtor’s Counsel, the Respondents, through Lendgreen, continued their
debt-collection activities against the Debtor through December of 2019 and January, February
and March of 2020.

Notwithstanding the Debtor’s Chapter 13 Bankruptcy filing and despite being notified by
the Court and by Debtor’s Counsel through the mails, including the submission of Chapter 13
Plans proposing to pay unsecured creditors 100% in full over the life of the Debtor’s Chapter 13
Plan term, up to and throughout February of 2020, the Respondents, through LendGreen,

continued to contact the Debtor, issuing emails, text messages and leaving numerous voicemails for him, saying that it had a “very important message” and prompting the Debtor to call Lendgreen.

On February 6, 2020, as a result of the constant harassment of the Respondents, through LendGreen, the Debtor suffered such extreme emotional distress that the Debtor began suffering from suicidal ideation, and , as a consequence, attempted to take his own life. The Debtor then spent two (2) weeks at Massachusetts General Hospital recovering, and thereby suffered damages in the form of expending vacation and sick leave with his employer and medical bills for his care.

After repeated telephone calls from Respondents, through Lendgreen, to Debtor, the Debtor called Respondents, through Lendgreen, on February 26, 2020 and spoke with its collection specialist, informing her that he had filed Chapter 13 bankruptcy back in December of 2019 and that Lendgreen had been previously notified. The representative of Lendgreen sent an email to Debtor acknowledging the conversation, stating, “as earlier discussed, the email address to send the power of attorney documents for your bankruptcy case is administration@lendgreen.com.”

On March 18, 2020, the Respondents, through Lendgreen, again called the Debtor’s telephone number and left a voicemail for him to contact them about a “very important matter”. On March 19, 2020, Respondents, through Lendgreen, yet again called Debtor’s telephone number and told him to return the call about a “very important matter”.

ARGUMENTS

1. THE RESPONDENTS DO NOT ENJOY TRIBAL SOVEREIGN IMMUNITY BY OPERATION OF 11 U.S.C. § 106(a) BASED UPON SEMINAL CASE LAW ARISING FROM THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT.

The seminal appellate case regarding the issue of whether the provisions of 11 U.S.C. § 106(a) effectively abrogate the sovereign immunity of Indian Tribes can be found in **Krystal Energy Co. v. Navajo Nation**^{1/}. In **Krystal Energy**, the tribe moved to dismiss an adversary proceeding against the Navajo Nation, based upon the claim by the Tribe that it enjoyed “sovereign immunity” from suit and contending that the provisions of 11 U.S.C. § 106(a) did not effect an abrogation of the Tribe’s immunity from suit because, it posited, that while sovereign immunity of “governmental units, might have been abrogated, the definition of “governmental unit” under 11 U.S.C. § 101(27) did not explicitly include the term “Indian Tribes” within that definition.^{2/}

In denying the Tribe’s Motion to Dismiss, the Ninth Circuit in **Krystal Energy** acknowledged the common-law doctrine of sovereign immunity of Indian Tribes “by the courts of this country as integral to the sovereignty and self-governance of Indian tribes.”^{3/} However, sovereign immunity is not absolute and can be abrogated by Congress if such an intent

^{1/} 357 F.3d 1055 (9th Cir., 2004).

^{2/} *Id.* at 1057.

^{3/} *Id.* at 1056

is “unequivocally expressed” in the text of federal legislation.⁴ The salient issue then became whether the language of 11 U.S.C. § 106(a) and 11 U.S.C. § 101(27) was sufficiently “unequivocally expressed” to abrogate Indian Tribes’ sovereign immunity in matters of federal Bankruptcy Law.

The Ninth Circuit approached the matter in a straight-forward fashion:

It is clear from the face of §§ 106(a) and 101(27) that Congress did intend to abrogate the sovereign immunity of *all* "foreign and domestic governments." Section 106(a) explicitly abrogates the sovereign immunity of all "governmental units." The definition of "governmental unit" first lists a sub-set of all governmental bodies, but then adds a catch-all phrase, "or other foreign or domestic governments." 11 U.S.C. § 101(27). Thus, *all* foreign and domestic governments, including but not limited to those particularly enumerated in the first part of the definition, are considered "governmental units" for the purpose of the Bankruptcy Code, and, under § 106(a), are subject to suit.

...

The Supreme Court has recognized that Indian tribes are "domestic dependent nations" that exercise inherent sovereign authority over their members and territories." *Potawatomie*, 498 U.S. at 509, 111 S.Ct. 905 (citing **Cherokee Nation v. Georgia**, 5 Pet. 1, 17, 8 L.Ed. 25 (1831)); *see also*, **Blatchford v. Native Village of Noatak**, 501 U.S. 775, 782, 111 S.Ct. 2578, 115 L.Ed.2d 686 (comparing Indian tribes to states and foreign sovereigns, and concluding that both states and Indian tribes are "domestic" sovereigns). So the category "Indian tribes" is simply a specific member of the group of domestic governments, the immunity of which Congress intended to abrogate.

Had Congress simply stated, "sovereign immunity is abrogated as to all parties who otherwise could claim sovereign immunity," there can be no doubt that Indian tribes, as parties who could otherwise claim sovereign immunity, would no longer be able to do so. Similarly here, Congress explicitly abrogated the immunity of any "foreign or domestic government." Indian tribes are domestic

^{4/} **Kiowa Tribe of Okla. v. Mfg. Techs., Inc.**, 523 U.S. 751, 759, 118 S.Ct. 1700, 140 L.Ed.2d 981 (1998).

governments. Therefore, Congress expressly abrogated the immunity of Indian tribes.⁵

The decision in **Krystal Energy** is not the “final word” on this topic as the Respondents in this case are more than eager to point out. Those courts that have taken issue with the holding in **Krystal Energy**⁶ have done so based upon the belief that the *only* way in which Congress could express its “unequivocal intent” to abrogate sovereign immunity would be to have included the term “Indian Tribe” as part of the *enumerated* list of political entities set forth in 11 U.S.C. § 101(27), effectively ignoring the last clause of the definition as not being explicit enough for the tastes of those courts. The U.S. Court of Appeals for the First Circuit simply has *not* issued any decision regarding whether the provisions of 11 U.S.C. § 106(a) and 11 U.S.C. § 101(27) are sufficiently “unequivocal” to abrogate the purported sovereign immunity of the Tribe. However, the approach offered by those courts and the Respondents in this case runs not only contrary to common sense, but also contrary to rules of statutory construction.

⁵/ *Id.* at 1057-1058

⁶/ See **Meyers v. Oneida Tribe of Indians of Wisconsin**, 836 F.3d 818 (7th Cir. 2016); **In re Greektown Holdings, LLC**, 917 F.3d 451 (6th Cir. 2019); **In re Whitaker**, 474 B.R. 687 (B.A.P. 8th Cir. 2012).

2. THE RESPONDENTS' INTERPRETATIONS OF 11 U.S.C. §§ 101(27) AND 106(a) ARE ERRONEOUS BECAUSE THEY VIOLATE BASIC RULES OF STATUTORY CONSTRUCTION AND LOGIC.

The argument put forward by the Respondents in claiming that 11 U.S.C. § 101(27) does *not* encompass the Tribe and its business entities as a “governmental unit” and therefore is not subject to the immunity abrogation provisions of 11 U.S.C. § 106(a) is erroneous because it violates basic rules of statutory construction. The Respondents contend that because Congress did not use the words “Indian Tribe” in the Bankruptcy Code explicitly, it would only be *by implication*^{7/} that they would be included within the statutory definition of a “governmental unit”.

^{7/} Although the Respondents may argue otherwise, the reality is that the determination that Indian tribes are encompassed within 11 U.S.C. §§ 101(27) and 106(a) is not done by “implication” or by inference at all, but rather by **logical deduction**. The difference is aptly expressed with respect to the statutes in question by the court in the case of **In re Russell**,:

Implication and inference are the rhetorical versions of induction, drawing conclusions from examples. For example, if the last phrase were eliminated from § 106(a), one might draw the inference that because sovereign immunity is expressly abrogated as to the United States, the States, the Commonwealths, the Districts, and foreign governments, Congress must have intended to abrogate it as to all governments. That would be reasoning by implication or inference. While that might be equally as sound, and in fact how all new knowledge is achieved, it nevertheless retains the possibility for error. . . .

But because the statute expressly abrogates sovereign immunity as to all domestic governments, the statute applies to Indian tribes by deduction rather than by implication, so the conclusion is not proscribed by the Court's limitations. In other words, the proscription against abrogation by implication does not require the listing or naming of each government as to which it applies so long as they are unequivocally identified by the statute.

Infra Note 14, at 40-41

The most basic of these rules is that a statute should be read so that no one part of it is read as being superfluous, a nullity or as mere surplusage to other language within that statute.^{8/} The structure of 11 U.S.C. § 101(27) is extremely broad: it covers every conceivable type of political subdivision, from the United States, to individual states, to districts, territories and instrumentalities of all of the above, municipalities or even a foreign state. At the very last, to make sure that there is no other type of polity that may be “left out” of the definition, the statute goes on in the disjunctive to include “or other foreign or domestic government”.

The Tribe in this case is decidedly *not* one of the several States that compose the United States as a whole, nor can it be said that it is a Commonwealth or a District or a Territory or a Municipality. Supreme Court case law is legion in its description of Indian tribes as a “domestic dependent nation” of the Federal Government.^{9/} Therefore, it stands to reason that the Indian Tribe represented by its government namely, its “Tribal Council”, is encompassed within this last “wrap-around” provision, as an “other . . . domestic government”. Congress need not use any talismanic “magical words” in order to accomplish its goal of including the Tribe as a

^{8/} See Maine Pooled Disability Trust v. Hamilton, 927 F.3d 52, 58 (1st Cir. 2019), *citing* Lawless v. Steward Health Care Sys., LLC, 894 F.3d 9, 23 (1st Cir. 2018).

^{9/} “Indian tribes are ‘domestic dependent nations’ that exercise inherent sovereign authority over their members and territories.” Potawatomi, 498 U.S. at 509, 111 S.Ct. 905, *quoting* Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17, 8 L.Ed. 25 (1831). “Indian tribes are ‘distinct, independent political communities, retaining their original natural rights’ in matters of local self-government.” *Martinez*, 436 U.S. at 55, 98 S.Ct. 1670, *quoting* Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 559, 8 L.Ed. 483 (1832). They are “separate sovereigns pre-existing the Constitution.” Martinez, 436 U.S. at 56, 98 S.Ct. 1670.

“governmental unit” within the meaning of the statute in question.¹⁰ Moreover, if the Tribe does not fall within the wide expanse created by the last clause of 11 U.S.C. § 101(27), it *necessarily* follows, given the inclusion of every other kind of political and territorial subdivision within the statute, that the last clause *must* then be read as redundant and thereby rendered as a nullity or surplusage in the statute. As noted by Judge McFeeley in the case of **In re Mayes**¹¹:

So a domestic government would be a group within the lands of the United States that operates through some form of ruling principles. The main body of § 101(27) embraces virtually every form of domestic government including, municipalities, States and their instrumentalities, and the federal government. After examining the statute, the question remains: To what does the phrase following the semicolon "other . . . domestic government" refer?

An important statutory maxim of interpretation requires a court to give operative effect to every word Congress used. *Because in § 101(27) all other forms of domestic government prior to the semicolon are enumerated, if the phrase following the semicolon is not read as referring to Indian tribes and other indigenous peoples, the phrase becomes meaningless. There are no other forms of domestic government that have not already been specified.*

Reading "other . . . domestic government" as referring to Indian tribes is not without precedent. Historically, Indian tribes have also been called "domestic dependent nations" by both the judiciary and the executive branch. The Supreme Court has characterized Indian tribes as "domestic dependent nations." And a recent Executive Order interpreting the Indian Self Determination and Education Assistance Act, 25 U.S.C. § 450 *et seq.*, characterized Indian tribes as "domestic dependent nations." The fact that Indian tribes have been referred to as "domestic dependent nations" incorporates them into § 106(a). If an Indian tribe is a "domestic dependent nation" then it is also an "other . . . domestic government."¹²

^{10/} See **Krystal Energy v. Navajo Nations**, 357 F.3d at 1061 (9th Cir., 2004).

^{11/} 294 B.R. 145 (10th Cir. BAP, 2003)

^{12/} *Id.* at 159-160. Emphasis supplied.

By comparison, the interpretation offered up by the Respondents and the decisions taking issue with **Krystal Energy**,^{\13} bear this glaring infirmity in statutory construction encompassed as a simple question: If the last clause of 11 U.S.C. § 101(27) does *not* encompass the polity represented by the Indian Tribe as the kind of “other . . . domestic government” contemplated by the statute, then to what type of political subdivision did Congress conceive when it enacted the statute that might have been encompassed in that clause that would not render that clause redundant and thereby superfluous? This is of course a rhetorical question, with all that that implies. *No other kinds of political subdivisions exist, other than an Indian Tribe*. As the Court in **In re Russell**,^{\14} put it:

Indeed, since the meaning of "or other foreign or domestic government" cannot include the United States, or a State, Commonwealth, Territory or District, or a municipality, or a foreign state, or an agency, department or instrumentality of any of them, because they are all expressly mentioned, it is difficult if not impossible to come up with any possible meaning for "other domestic government" except Indian tribes. Without another reasonable plausible alternative meaning, the abrogation of sovereign immunity as to all domestic governments is not equivocal. It could hardly be more absolute.^{\15}

^{13/} **Krystal Energy**, *supra* Note 1 at 1057.

^{14/} 291 B.R. 34 (Bankr. D. Ariz., 2003)

^{15/} *Id.* at 41.

3. **THE FIRST CIRCUIT'S RECENT DECISIONS REGARDING THE STATUS OF INDIAN TRIBES INDICATE THAT IT WILL ADOPT THE REASONING OF THE NINTH CIRCUIT COURT OF APPEALS IN *KRYSTAL ENERGY COMPANY V. NAVAJO NATION*.**

In the case of **Narragansett Indian Tribe v. Rhode Island**^{16/}, the First Circuit dealt with the question of whether a claim of tribal sovereign immunity could operate to bar the State of Rhode Island from enforcing a valid search warrant on tribal settlement lands to arrest tribal members for violating the state's cigarette tax laws. Among the arguments made by the Narragansett Indian Tribe was that tribal sovereign immunity was a characteristic of the tribe's "inherent sovereignty". In rejecting this approach, which had been adopted by the dissent, the First Circuit found:

At the threshold, we pause to confront a point made by our dissenting brethren. They suggest that our approach to this question disregards the "subtle but important" distinction between tribal sovereignty and tribal sovereign immunity announced in a decision of a panel of this court. **Post** at 32 (Lipez, J., with whom Torruella, J., joins, dissenting) (quoting **Aroostook Band of Micmacs v. Ryan**, 404 F.3d 48, 68 (1st Cir.2005)). This criticism rests on shaky ground. The **Aroostook** panel—with scant citation to authority— saw a distinction that is not apparent to us; it framed the distinction as being that the doctrine of tribal sovereignty contemplates that, in certain circumstances, a tribe "is not subject to state laws ... *at all*," whereas tribal sovereign immunity "means that [a tribe] is not amenable to *state judicial or quasi-judicial proceedings* to enforce those laws." **Aroostook**, 404 F.3d at 68 (emphasis in original). In our view, both the **Aroostook** panel's sculpting of the distinction and its ensuing discussion of the scope of tribal sovereign immunity misread the applicable Supreme Court precedents and, thus, are incorrect. As we already have explained, "the trend has been away from the idea of inherent Indian sovereignty as a bar to state jurisdiction and toward reliance on federal pre-emption," **McClanahan**, 411 U.S. at 172, 93 S.Ct. 1257; *see* **Hicks**, 533 U.S. at 362, 121 S.Ct. 2304, treating sovereignty instead as the source of "tribal power ... to protect tribal self-government or to control internal relations" through tribal regulation of activities on tribal lands, **Montana v. United States**, 450 U.S. 544, 564, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981); *see* **Hicks**, 533 U.S. at 358-60,

^{16/} 449 F.3d 16 (1st Cir. 2000).

121 S.Ct. 2304. Consistent with this trend, tribal sovereign immunity is most accurately considered an incidence or subset of tribal sovereignty. *See, e.g., Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 509, 111 S.Ct. 905, 112 L.Ed.2d 1112 (1991) (indicating that tribal sovereign immunity is an incidence of tribal sovereignty). Consequently, we expressly overrule Aroostook with respect to the distinction in question and proceed with our bifurcated inquiry.¹⁷

That same year, the First Circuit, in the case of Ninegret Development v. Narragansetts Indian Wetuomuck Housing Authority,¹⁸ examined the issue of whether the assertion of tribal sovereign immunity effectuated a deprivation of federal subject matter jurisdiction, similar to the argument being posited by the Tribe in this case:

Two fundamental premises dictate our order of progression. First, although tribal sovereign immunity is jurisdictional in nature, consideration of that issue always must await resolution of the antecedent issue of federal subject-matter jurisdiction. *See In re Prairie Island Dakota Sioux*, 21 F.3d 302, 304-05 (8th Cir. 1994). This sequencing follows inexorably from Oklahoma Tax Commission v. Graham, 489 U.S. 838, 841 (1989), in which the Court held that the mere presence of a tribal sovereign immunity defense did not, in and of itself, "convert a suit otherwise arising under state law into one which, in the statutory sense, arises under federal law." Logically, this reasoning compels a conclusion that a federal court can address such a defense only after it confirms independently that subject-matter jurisdiction exists.

The second premise that affects our sequencing determination concerns the relationship between tribal sovereign immunity and the tribal exhaustion doctrine. The question here (which, as we have said, arises only after the inquiry into subject-matter jurisdiction has been answered affirmatively) relates to whether the federal court or the tribal court should pass upon the sovereign immunity defense, at least initially. On this question, the authorities are in some disarray.

The Eighth Circuit has held that a district court should begin this phase of its inquiry by addressing exhaustion and, if it determines that tribal remedies must be exhausted, give the tribal court the first crack at considering the bona fides of the sovereign immunity defense. *See Davis v. Mille Lacs Band of Chippewa Indians*,

^{17/} 449 F.3d at 24.

^{18/} 207 F.3d 21 (1st Cir., 2000).

193 F.3d 990, 992 (8th Cir. 1999). That view appears to be based on a misreading of **National Farmers**, and it has mustered scant support elsewhere. We respectfully decline to adopt it and hold instead that, as long as federal subject-matter jurisdiction exists, a defense predicated on tribal sovereign immunity is susceptible to direct adjudication in the federal courts, without reference to the tribal exhaustion doctrine.⁴ See **TTEA v. Ysleta Del Sur Pueblo**, 181 F.3d 676, 680-81, 683-84 (5th Cir. 1999); **Alzheimer & Gray v. Sioux Mfg. Corp.**, 983 F.2d 803, 812-15 (7th Cir. 1993). We believe that this conclusion flows naturally from the reality that the sovereignty of Indian tribes is subject to congressional control, with the result that tribal sovereign immunity is necessarily a matter of federal law. See **Kiowa Tribe v. Manufacturing Techs.**, 523 U.S. 751, 759 (1998); **Osage Tribal Council v. United States Dep't of Labor**, 187 F.3d 1174, 1180 (10th Cir. 1999).¹⁹

It therefore follows based upon the foregoing case law, contrary to the positions taken by the Respondents in this matter, that the First Circuit will not view the question of tribal “sovereign immunity” as one related to or otherwise impairing a Federal Court’s subject-matter jurisdiction. Further, the First Circuit has clearly indicated that it will necessarily eschew allegedly “‘subtle but important’ distinctions’ in interpreting federal statutes relating to tribal sovereign immunity, such as would be required in attempting to interpret 11 U.S.C. §§ 106(a) and 101(27) as *not* encompassing an Indian Tribe with the Bankruptcy Code’s broad abrogation of sovereign immunity in bankruptcy matters.

Furthermore, the ersatz reading offered by the Respondents and cases that have not adopted the holding in **Krystal Energy** leads to another violation of basic rules of statutory construction: the creation of absurd results. Case law both within this Circuit and outside it

^{19/} *Id.* at 28-29.

makes it abundantly clear that no statute should be read so as to lead to absurd results.²⁰ Yet, if Indian Tribes are not included within the ambit of 11 U.S.C. § 106(a), Indian Tribes activities relating to such matters as (a) taxation of its own tribal members who seek Federal bankruptcy protection, (b) holding defaulted mortgage debt on non-tribal residential properties, or (c) as even where its instrumentalities are Pay-Day Lenders seeking monetary recovery in Tribal Courts, would not be subject to the Automatic Stay, *at all*, under 11 U.S.C. § 362(a). Given the Respondents' narrow "construction" of 11 U.S.C. §§ 106(a) and 101(27), a tribal court, tribal governmental entities and tribal instrumentalities, such as the Respondents here, would enjoy unprecedented rights and privileges in bankruptcy not even granted to States, Municipalities, the Federal governments or the instrumentalities of any of them when a debtor files for bankruptcy protection, be it a large publicly-traded corporation or, like here, a lone individual.

4. THE TRIBE IS LEGALLY INDISTINGUISHABLE FROM ITS SUBSIDIARIES SUCH THAT KNOWLEDGE BY LENDGREEN OF THE DEBTOR'S BANKRUPTCY CASE IS IMPUTED TO ALL "ARMS" OR INSTRUMENTALITIES OF THE TRIBE.

Because the Tribe maintains pervasive control and oversight over both BDC and LendGreen, the indisputable knowledge of LendGreen of the Debtor's Chapter 13 filing, necessarily imputes such knowledge "up the line" to the Tribe, making the Tribe and the other

^{20/} See **Chung Fook v. White**, 264 U.S. 443 (1924). See also **Pritzker v. Yari**, 42 F.3d 53, 67-68 (1st Cir., 1994) ("As a fundamental principle of statutory construction, we will not depart from, or otherwise embellish, the language of a statute absent either undeniable textual ambiguity . . . or some other extraordinary consideration, such as the prospect of yielding a patently absurd result") (internal citations omitted).

Respondents vicariously liable for the wrongs committed by Lendgreen.^{\21} Furthermore, in the unusual circumstances of this case, the Respondents admit that LendGreen is “an arm of the Tribe” and therefore claim that it and its affiliates are protected by the Tribe’s claim of sovereign immunity. However, this assertion “cuts both ways”. The First Circuit has held that as an “arm” of an Indian tribe, an entity is legally indistinguishable from the tribe itself.^{\22} Therefore, since the Respondents assert that they are all “arms” of the Lac de Flambeau Band of Lake Superior Chippewa Indians, the knowledge held by one “arm” of that Tribe is necessarily knowledge held by all “arms” of the Tribe and the Tribe itself.. The Respondents cannot claim that they are effectively all one entity for the purpose of claiming tribal sovereign immunity on the one hand, while simultaneously claiming corporate “separateness” on the other hand. Respondents cannot “have their cake and eat it too”; by asserting that all of them are “arms” of a single tribe for the purposes of tribal sovereign immunity, they necessarily *must* forego any simultaneous contention of corporate separateness. This is particularly the case given the circumstances of the manner in which the Respondents were originally created and operated by the Tribe in this case.

^{21/} See e.g. **Ramirez v. Toops**, _____ B.R. _____, Adv. Pro. No. 13-03067 (Bankr. S.D. Texas, 2014) (Principal corporate entity vicariously held liable for violating the automatic stay under 11 U.S.C. § 362(k) where it failed to turnover truck and caused damage thereto after receiving notice of the Debtor’s Chapter 13 bankruptcy filing.)

^{22/} “The Authority, as an arm of the Tribe, enjoys the full extent of the Tribe's sovereign immunity. Therefore, we shall not distinguish between the Tribe and the Authority in discussing concepts such as tribal immunity and tribal exhaustion.” **Ninegret Development v. Narragansetts Indian Wetuomuck Housing Authority**, 207 F.3d at 29 (1st Cir., 2000).

5. THE TRIBE “MANUFACTURES” A CORPORATE STRUCTURE FOR LENDGREEN FOR THE PURPOSE OF ATTEMPTING TO INSULATE ITSELF AND ITS “ARMS” FOR THE PURPOSE OF “EXPORTING” THE TRIBE’S CLAIMS OF “SOVEREIGN IMMUNITY” WHILE PREVENTING ANY MEANINGFUL RECOVERY AGAINST THE SAME.

The salient facts relating to LendGreen’s creation and its interrelationship with the Tribe are beyond cavil and this Court may, in evaluating the Respondents’ Motions to Dismiss under Rule 12(b)(6), take judicial notice of records of other courts^{23/} in which Lendgreen and its affiliates have appeared. As it turns out, there is much documentation from the Respondents themselves related to the formation of the Respondents and their interrelationships with each other provided in the case of **Walker v. Lendgreen, et al.**, C.A. 8:16-cv-00862-JDW-AAS (U.S. Dist. Ct., M.D. Fla., 2016). To this end, the documents referenced below are derived from the Exhibits attached to the Declaration of Lendgreen’s Officer, Brent McFarland, in their Motion to Dismiss in that District Court action.

The Respondents’ “pay-day” lender “arm” is Niiwin, LLC, doing business as “Lendgreen”. Lendgreen is, upon information and belief, is a wholly owned subsidiary of LDF

^{23/} **Barnstable Cnty. v. 3M Co.**, ____ F.Supp. ____, C.A. No. 17-40002 (D. Mass. 2017). (In evaluating a Motion to Dismiss under Rule 12(b)(6), the Court may consider matters of which judicial notice may be taken. It is "well-accepted that federal courts may take judicial notice of proceedings in other courts if those proceedings have relevance to the matters at hand." **Kowalski v. Gagne**, 914 F.2d 299, 305 (1st Cir. 1990).); **Bostwick v. 44 Chestnut St.** ____ F. Supp. ____, C.A. No. 17-CV-12409-ADB (D. Mass. 2019) (The Court may take judicial notice of proceedings in other courts, including state courts. See **Maher**, 272 F.3d at 86 n.3 ("It is well-accepted that federal courts may take judicial notice of proceedings in other courts if those proceedings have relevance to the matters at hand." (quoting **Kowalski v. Gagne**, 914 F.2d 299, 305 (1st Cir. 1990))); See also **Veg-Mix, Inc. v. U.S. Dep't of Agric.**, 832 F.2d 601, 607 (D.C.Cir.1987) ("Courts may take judicial notice of official court records, including bankruptcy pleadings.") **In re 201 Forest Street, LLC**, 404 B.R. 6, 16 (Bankr. Mass. 2009).

Holdings, LLC, which, in turn, is a wholly owned subsidiary of the Lac du Flambeau Business Development Corporation, which, in turn, is a wholly owned and operated economic arm and instrumentality of the Lac du Flambeau Band of Lake Superior Chippewa Indians (“Tribe”), a federally recognized Indian tribe.

More specifically, the Tribe incorporated the Lac du Flambeau Business Development Corporation (“BDC”) on or about August 27, 2012, by means of Resolution No. 370 (12).²⁴ According to the Articles of Organization for BDC under Section 6.01 thereof, “The Lac du Flambeau Band of Lake Chippewa Indian Tribe is the sole owner of the corporation (the “Owner”).” Furthermore, the business and affairs of the [BDC] Corporation shall be managed at the direction of the Board of Directors . . . [who] shall be appointed by the Lac du Flambeau Tribal Council for two-year staggered terms.” *See* Section 7.01 of the Articles of Organization for BDC. Moreover, The Board of Directors shall report to the Owner [The Lac du Flambeau Band of Lake Chippewa Indian Tribe] the activities of the Corporation, as directed by the Owner . . . “ *See* Section 7.02 of the Articles of Organization for BDC.

It was the Tribe that, on December 17, 2012, created Niiwin, LLC, along with the creation of LDF Holdings, LLC, Bezhig, LLC, Niswi, LLC and Naanan, LLC to “be-wholly-owned by [BDC] for the purposes of operating one or more Tribal lending business{es} and any

^{24/} A true and accurate copy of Resolution No. 370 (12) and the Articles of Organization of the Lac du Flambeau Business Development Corporation are attached hereto as Exhibit “A”.

activity directly related to such purpose” as part of Resolution No. 550(12).²⁵ Subsequently on January 9, 2013, Articles of Organization were adopted by the Tribe, but the “sole member” of Niiwin, LLC was made to be BDC, at the direction of the Tribe.²⁶ Subsequently to that event, on July 17, 2013, an Operating Agreement was entered into between LDF Holdings, LLC (one of the other limited liability companies that was created simultaneously by the Tribe by operation of Resolution No. 550(12), (that is *also* wholly-owned and operated by BDC at the direction of the Tribe) and Niiwin, LLC.²⁷ Under the terms of the Article I, Section 1.2 of the Operating Agreement, the intent of the Tribe and the referenced affiliated entities is quite clear:

It is the intent of the Member [LDF Holdings, LLC] that the Company [Niiwin, LLC] shall be a manager-managed limited liability company. It shall always be operated in a manner consistent with its treatment as *a tribal entity* for federal and state law purposes. It is also the intent of the Member that the Company *shall be treated as a 100% tribally owned and operated company, for federal and state law purposes, including all tax purposes, under the exclusive ownership, control, and jurisdiction of the Lac du Flambeau band of Lake Superior Chippewa Indians*. No Member or Manager shall take any action inconsistent with the expressed intent of the parties hereto. (Emphasis supplied).

Furthermore, under Article VI, Sections 6,1 and 6.2, “all profits and losses of the Company will be allocated to the Member” and “[w]henever, the cash account balance [of Niiwin, LLC’s] exceeds said amount [\$500] there shall be an immediate Distribution declared and paid unless the liabilities of the Company are in excess of its assets.” Therefore, pursuant to

^{25/} A true and accurate copy of Resolution No. 550 (12) is attached hereto as Exhibit “B”.

^{26/} A true and accurate copy of the “Articles of Organization” of Niiwin, LLC is attached hereto as Exhibit “C”.

^{27/} A true and accurate copy of the Operating Agreement of Niiwin, LLC is attached hereto as Exhibit “D”.

these provisions, all profits effectively in excess of \$500 must at all times be “upstreamed” to the BDC and from there to the Tribe.

Therefore, the Tribe has created *all* of these corporate entities in order to develop the Pay-Day lending business of the *Tribe* and for the express exclusive purpose of serving the *Tribe’s* needs. To this end, at any given point in time, Niiwin, LLC, *by the terms of its Operating Agreement, cannot hold in its cash accounts more than \$500.00*, as *all* sums in excess of \$500 *must* be *immediately* declared as a dividend and upstreamed to the Tribe’s controlled business “arm”. Therefore, given the total operational and economic control by the Tribe of LendGreen, LendGreen can be fairly said to be wholly dominated by the Tribe, thereby making the Respondents, each of them, jointly and severally liable for the wrongful acts of Lendgreen.

To further cement the irreducible connection between the Tribe and the rest of the Respondents, the actual language of the form of Loan Agreement that Lendgreen utilizes in forming its contracts with borrowers like the Debtor make it clear that Lendgreen is so identified with the Tribe that they are indistinguishable from one another.²⁸

^{28/} See pp. 4 of Loan Agreement Form of Lendgreen, attached as Exhibit “E” hereto, under **SOVEREIGN IMMUNITY**: “This Loan Agreement and all related documents are being submitted by you to us as an economic arm, instrumentality, and limited liability company of the Tribe. The Tribe is a federally-recognized American Indian Tribe and enjoys governmental sovereign immunity. Because we and the Tribe are entitled to sovereign immunity, you will be limited as to what claims, if any, you may be able to assert against the Tribe and us. To encourage resolution of consumer complaints, any complaint may be submitted by you or on your behalf to the Tribe for review as described below.” and **PRESERVATION OF SOVEREIGN IMMUNITY**: “It is the express intention of the Tribe and us operating as an

6. **THE RESPONDENTS MOTION TO DISMISS SHOULD BE DENIED BASED UPON BASIC FEDERAL LAW PRINCIPLES.**

This Honorable Court should deny the Tribe's Motion to Dismiss because Mr. Coughlin has properly pled a claim for which relief may be sought. A Rule 12(b)(6) motion to dismiss shall fail if a plaintiff pleads allegations grounded in sufficient facts that, if such facts were to be true, plaintiff has "state[d] a claim to relief that is plausible on its face."²⁹ "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged...asking for more than a sheer possibility that a defendant has acted unlawfully..."³⁰ "A plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action."³¹

The Tribe states that Mr. Coughlin's action should be dismissed because it fails to provide evidence the Tribe's conduct violated the automatic stay, that the Tribe lacked actual

economic arm of the Tribe, to fully preserve, and not waive either in whole or in part, exclusive jurisdiction, sovereign governmental immunity, and any other rights, titles, privileges, and immunities, to which we and the Tribe are entitled. To protect and preserve the rights of the parties, no person may assume a waiver of sovereign immunity. No waiver is or can be made except by express written declaration of the Tribe's Tribal Council specifically authorizing a waiver for the matter in question. No such waiver has been made with respect to either your Loan Agreement or your Payment Choice Authorization."

²⁹ **Bell Atl. Corp. v. Twombly**, 550 U.S. 544, 570 (2007).

³⁰ **Ashcroft v. Iqbal**, 556 U.S. 662, ____ (2009).

³¹ **In re Luciani**, 584 B.R. 449, 454 (Bankr. Mass. 2018) (Feeney, J.) (*citing* **Bell Atl. Corp.**, 550 U.S. at 555) (quotation marks omitted).

knowledge of Mr. Coughlin's bankruptcy, and that imputation of such knowledge via the tiered corporate structure linking Lendgreen to the Tribe is improper.³² Such a contention is deeply ironic in the face of the language used by the Tribe and its other affiliated Respondents in which they claim that they are all one entity so as to take advantage of the Tribe's claim of tribal sovereign immunity and choice of law. The Tribe's efforts to distance itself from the other Respondents fail: the Tribe allows itself to be bound "hand and foot" with the rest of the Respondents under the terms of the very form of contract that Lendgreen uses in establishing its commercial lending relationships with off-reservation borrowers like Mr. Coughlin.³³

Mr. Coughlin's claims against the Tribe should not be dismissed because its relationship with Lendgreen is inextricable, as a matter of law. The Tribe wholly owns Holdings; Holdings wholly owns BDC; and BDC wholly owns Lendgreen. All of the profits, less \$500, are upstreamed to the Tribe. Mr. Coughlin alleges that the Tribe and the affiliated Respondents are structured in such a way that the subsidiaries are mere instrumentalities of the parent Tribe; and thereby, corporate separateness fails. Lendgreen, BDC, Holdings, and the Tribe are jointly and severally liable. By naming the Tribe as a party in his claim in the manner he did, Mr. Coughlin properly stated his claim for which relief can be sought, consistent with **Twombly** and **Iqbal**. This Court, therefore, should deny the Tribe's Motion to Dismiss.

³² Motion to Dismiss, p. 2-6

³³ See *supra* Footnote 28.

CONCLUSIONS

“...As a matter of national policy, the United States has waived its immunity from tort liability and from liability arising out of its commercial activities. Congress has also decided in the Foreign Sovereign Immunities Act of 1976 that foreign states may be sued in the federal and state courts for claims based upon commercial activities carried on in the United States, or such activities elsewhere that have a "direct effect in the United States." And a State may be sued in the courts of another State. ***The fact that the States surrendered aspects of their sovereignty when they joined the Union does not even arguably present a legitimate basis for concluding that the Indian tribes retained-or, indeed, ever had-any sovereign immunity for off-reservation commercial conduct.***”

-Justice John Paul Stevens³⁴

This case represents a very unique series of events whereby multiple interrelated entities operating as a unified whole to engage in payday consumer lending have embarked upon a defense that confounds logic as well as common sense. The Respondent avers not only that it is both entitled to sovereign immunity because of the fact that it is a tribe, notwithstanding the provisions of 11 U.S.C. § 106(a), that abrogate that immunity, ***but also*** that the subsidiary entities, created utilizing the law of the tribe itself, that they should be entitled to the benefits of corporate separateness, even though they allege at the same time that they are also “arms” of their parent tribe.

The logic is byzantine at best and circular at worst. Leaving aside questions of judicial estoppel, the Respondent simply cannot “have its cake and eat it too”. It cannot claim the benefit of sovereign immunity while at the same time claiming the benefits of corporate separateness;

^{34/} **Kiowa v. Oklahoma v. Manufacturing Technologies, Inc.**, 523 U.S. 751, 761 (Justice Stevens dissenting) (Emphasis supplied. Internal citations omitted.)

the two contentions are necessarily inimical to each other, because the extension of sovereign immunity beyond the tribe itself, necessarily undercuts and nullifies any good faith argument that they are legally separate entities entitled to the benefits of separate corporate existence. Indeed, the First Circuit holds that “arms” of Indian tribes are mere instrumentalities of those tribes and, as such, any action taken by any of those said “arms” is, for all intents and purposes, an action taken by the tribe itself.³⁵ For all of these reasons, the Respondents’ Motion to Dismiss should be denied.

RESPECTFULLY SUBMITTED,

BRIAN W. COUGHLIN, Debtor
By his attorney,

Date: 8/21/2020

/s/ Richard N. Gottlieb, Esq.
Richard N. Gottlieb, Esq. BBO # 547970
Law Offices of Richard N. Gottlieb
Ten Tremont Street
Suite 11, 3rd Floor
Boston, MA 02108
(617) 742-4491
rnglaw@verizon.net

^{35/} **Ninigret Dev. V. Narragansett Indian Wetuomuck Housing Auth.**, 207 F.3d 21, 27 (1st Cir. 2000).

Exhibit “A”

ARTICLES OF INCORPORATION

OF

L.D.F. BUSINESS DEVELOPMENT CORPORATION

The purpose of forming the L.D.F. Business Development Corporation is to stimulate economic development for the Lac du Flambeau Tribe within the Reservation boundaries and beyond. The goal is to increase revenue and employment for the Tribal membership. The Mission of the L.D.F. Business Development Corporation is to always serve in the best interest of the Tribal Membership.

These Articles of Incorporation are designed to cultivate stability for the Corporation, and confidence for our business partners, by limiting political influences and allow the Board of Directors to manage the Corporation as an independent economic development arm of the Lac du Flambeau Tribe. These Articles provide for oversight by the Tribal Council, as Owner, over a Board of Directors as is necessary to ensure accountability of the Corporation.

The Lac du Flambeau Band of Lake Chippewa Indian Tribal Council, as the Governing Body under Article III, Section 1 of the Lac du Flambeau Tribal Constitution, hereby adopts the following Articles of Incorporation for the purpose of chartering a Corporation.

ARTICLE 1: AUTHORITY OF INCORPORATION

SECTION 1.01: The incorporator is the Lac du Flambeau Band of Lake Superior Chippewa Indian Tribe, by the powers vested in the Tribal Council in Article VI, Section 1(o) of the Tribal Constitution.

SECTION 1.02: The registered agent of the Corporation shall be the President of the Board of Directors, located at 418 Little Pines Road, PO Box 67, Lac du Flambeau WI S4538.

ARTICLE 2: CORPORATION NAME

SECTION 2.01: The Name of the Corporation is L.D.F. Business Development Corporation, hereafter referred to as the Corporation.

ARTICLE 3: LOCATION

SECTION 3.01: The Corporation is registered and the principal office is located at 418 Little Pines Road, Lac du Flambeau, Wisconsin with the mailing address of Post Office Box 67, Lac du Flambeau, WI S4538.

ARTICLE 4: PERPETUAL

SECTION 4.01: The Corporation shall be perpetual.

ARTICLE 5: PURPOSE

SECTION 5.01: The purpose of the Corporation is to promote the economic development of the Lac du Flambeau Band of Lake Superior Chippewa Indians through investment in and development of business

opportunities, and to engage in any lawful act or activity which may be necessary or appropriate for carrying out and accomplishing the foregoing objectives and purpose.

SECTION 5.02: The Corporation shall serve as a business development arm of the Lac du Flambeau Band of Lake Superior Chippewa Indians created solely for the purpose of developing tribal businesses and promoting economic growth and achieving greater employment for the Tribal membership.

ARTICLE 6: CORPORATE OWNERSHIP AND POWERS

SECTION 6.01: The Lac du Flambeau Band of Lake Superior Chippewa Indian Tribe is the sole owner of the corporation (the "Owner").

SECTION 6.02: The Corporation shall have authority to enter into contracts or agreements of every kind and nature with any person, association, corporation, municipality, country, nation, Indian tribe, state or body politic.

SECTION 6.03: The Corporation shall have no power to pledge the credit, encumber property or real estate, nor enter into any agreement, expressly or by implication, on behalf of the Lac du Flambeau Band of Lake Superior Chippewa Indians

SECTION 6.04: The Corporation has the power to incur debts and raise, borrow and secure the payment of any money in any lawful manner.

SECTION 6.05: The Corporation has power to sue and be sued in its corporate name in courts of competent jurisdiction within the United States for disputes arising out of contracts entered into by the Corporation, and has the power to waive the Corporation's immunity from suit. Provided, however, that any such waiver of the sovereign immunity of the Corporation be accompanied by a unanimous vote of all the Directors at a duly called meeting of the Board of Directors where all Directors were present.

ARTICLE 7: BOARD OF DIRECTORS

SECTION 7.01: The business and affairs of the Corporation shall be managed at the direction of the Board of Directors, who shall possess substantial business skills and experience. The Board of Directors shall be appointed by the Lac du Flambeau Tribal Council for two-year staggered terms.

SECTION 7.02: The Board of Directors shall report to the Owner, the activities of the Corporation, as directed by the Owner or as otherwise provided for in the By-Laws.

ARTICLE 8: ADOPT BYLAWS

SECTION 8.01: The Board of Directors of the Corporation shall have the power to adopt bylaws for the regulation of the internal affairs of the Corporation consistent with these Articles, subject to the approval of the Owner.

ARTICLE 9: BOARD OF DIRECTOR LIABILITY

SECTION 9.01: The members of the Board of Directors shall perform their role in good faith and in a manner the Director serves the best interests of the Owner and with such care as an ordinary prudent person would use under similar circumstances in a like position. A Director while acting in the scope of their fiduciary duties shall have no liability for actions taken while serving as a Director in connection with the business of the Corporation.

ARTICLE 10: LIMITATIONS

SECTION 10.01: Nothing contained within these Articles of Incorporation shall serve to waive the sovereign immunity of the Lac du Flambeau Band of Lake Superior Chippewa Indian Tribe.

SECTION 10.02: The Corporation shall have no authority to pledge, dispose, or otherwise encumber real or personal property of the Lac du Flambeau Band of Lake Superior Chippewa Indians.

Executed on the 27th of August, 2012 on behalf of the Lac du Flambeau Band of Lake Superior Chippewa Tribal Council.

A handwritten signature in black ink, appearing to read 'Thomas Maulson', is written over a horizontal line.

Thomas Maulson, Chairman

Lac du Flambeau Tribe

RESOLUTION NO. 370(12)

WHEREAS, the Lac du Flambeau Band of Lake Superior Chippewa Indians (hereinafter, "Tribe") is a federally recognized Tribe organized under a Constitution pursuant to the Indian Reorganization Act of 1934, 48 Stat. 984 25 U.S.C. § 476, et. Seq. as amended; and

WHEREAS, pursuant to Article III, Section 1, of the Tribal Constitution, the governing body of the Tribe is the Tribal Council; and

WHEREAS, the Tribe is a federally recognized Tribe with all inherent rights of Tribal Sovereignty possessing inherent powers of Tribal self-government and self-determination; and

WHEREAS, pursuant to Article VI, Section 1(o) of the Tribal Constitution, the Tribal Council has right and ability to create business corporations to stimulate economic growth and jobs for Tribal Members; and

WHEREAS, the Tribal Council deems it necessary to create the L.D.F. Business Development Corporation for the purpose of expanding business development, generating additional jobs and revenue for the tribe; now, therefore be it

RESOLVED, by this Council, in Regular Session assembled, hereby declares that:

1. The tribal Council hereby accepts the Articles of Incorporation for L.D.F. Business Development Corporation as filed with the Tribal Secretary.
2. The Tribal President and Secretary are hereby directed and authorized to issue a Certificate of Incorporation for the L.D.F Business Development Corporation and to affix thereto the Tribal Seal.
3. The Tribal Secretary shall retain an executed original of the Articles of Incorporation of the L.D.F. Business Development Corporation in the tribal records.

CERTIFICATION

I, the undersigned, as Secretary of the Lac du Flambeau Band of Lake Superior Chippewa Indians, a tribal government operating under a Constitution adopted pursuant to Section 16 of the Indian Reorganization Act, 25 U.S.C., s. 476, do hereby certify that the Tribal Council of the Band is composed of twelve members, of whom twelve constituting a quorum, were present at a Regular Meeting, duly called, noticed, convened, and held on the 27th Day of August, 2012, and that the foregoing resolution was duly adopted at said meeting by an affirmative vote of eleven members, none against, none abstaining, and that the said resolution has not been rescinded or amended in any way.



Elizabeth Diver, Secretary
Lac du Flambeau Band of Lake
Superior Chippewa Indians

Exhibit “B”

RESOLUTION NO. 550(12)

- WHEREAS,** the Lac du Flambeau Band of Lake Superior Chippewa Indians (hereinafter, "Tribe") is a federally recognized Tribe organized under a Constitution pursuant to the Indian Reorganization Act of 1934, 48 Stat. 984 25 U.S.C. § 476, *et seq.* as amended; and
- WHEREAS,** pursuant to Article III, Section 1, of the Tribal Constitution, the governing body of the Tribe is the Tribal Council; and
- WHEREAS,** the Tribe is a federally recognized Tribe with all inherent rights of Tribal sovereignty possessing inherent powers of Tribal self-governance and self-determination; and
- WHEREAS,** pursuant to Article VI, Section 1(o) of the Tribal Constitution, the Tribal Council has the right and ability to create business corporations to stimulate economic growth and jobs for Tribal Members; and
- WHEREAS,** Tribal Council Resolution No. 370(12) approved the formation and organization of the L.D.F. Business Development Corporation (the "Corporation") and accepted the L.D.F. Business Development Corporation Articles of Incorporation for filing with the Tribal Secretary pursuant to Tribal law; and
- WHEREAS,** pursuant to Section 44a.201 of the Tribally Owned Business Organization Ordinance, the Tribal Council is empowered to create subordinate business entities cloaked with sovereign immunity as an arm of the Tribe; now, therefore be it
- RESOLVED,** by this Council, in Rescheduled Regular Session assembled, hereby approves the creation of LDF Holdings, LLC, Bezbig, LLC, Niizh LLC, Niswi LLC, Niiwin LLC, and Naanan LLC; business entities to be wholly owned by the Corporation for purposes of operating one or more Tribal lending business(es) and any activity directly related to such purpose.

CERTIFICATION

I, the undersigned, as Secretary of the Lac du Flambeau Band of Lake Superior Chippewa Indians, a tribal government operating under a Constitution adopted pursuant to Section 16 of the Indian Reorganization Act, 25 U.S.C., s. 476, do hereby certify that the Tribal Council of the Band is composed of twelve members, of whom eleven constituting a quorum, were present at a Rescheduled Regular Meeting, duly called, noticed, convened, and held on the 17th Day of December, 2012, and that the foregoing resolution was duly adopted at said meeting by an affirmative vote of ten members, none against, none abstaining, and that the said resolution has not been rescinded or amended in any way.

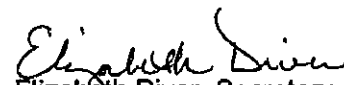

Elizabeth Diver, Secretary
Lac du Flambeau Band of
Lake Superior Chippewa Indians

Exhibit “C”

**ARTICLES OF ORGANIZATION
OF THE
Niiwin, LLC**

ARTICLE 7- NAME AND ADDRESS OF EACH MANAGER AND MEMBER

The name and address of each person who is a Manager and Member of the Company is:

Manager:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Member:

Lac du Flambeau Business Development Corporation established pursuant to Tribal Council Resolution 370(12) whose offices are located at located at 418 Little Pines Road, PO Box 67, Lac du Flambeau WI 54538.

Dated: 1-9-13

Lac du Flambeau Band of Lake
Superior Chippewa Indians

By: 

Tom Maulson, President

Approved pursuant to Tribal Council Resolution SSO.

Exhibit “D”

OPERATING AGREEMENT

of
Niiwin, LLC

THIS OPERATING AGREEMENT (this "Agreement") made this 17th day of July, 2013, by and between LDF Holdings, LLC, a wholly owned and operated subsidiary of the Lac du Flambeau Business Development Corporation, a wholly owned and operated instrumentality of the Lac du Flambeau Band of Lake Superior Chippewa Indians, a federally recognized Indian tribe (hereinafter "Member"), and Niiwin, LLC, a limited liability company (hereinafter "Company") each of which were formed pursuant to Tribal Council resolution and under the jurisdiction and laws of the Lac du Flambeau Band of Lake Superior Chippewa Indians.

Article I

Formation, Name Purpose, Definitions

1.1 Formation. Pursuant to Resolution No. 550 (12) of the Tribal Council of the Lac du Flambeau Band of Lake Superior Chippewa Indians ("Resolution"), the parties have formed a tribal limited liability company effective upon the filing of the Articles of Organization of this Company with the Secretary of the Tribal Council. The parties shall immediately and from time to time hereafter, as may be required by law, execute all amendments of the Articles of Organization, and do all filing, recording and other actions as may be appropriate to comply with the operation of the Company under the Resolution.

1.2 Intent. It is the intent of the Member that the Company shall be a manager-managed limited liability company. It shall always be operated in a manner consistent with its treatment as a tribal entity for federal and state law purposes. It is also the intent of the Member that the company shall be treated as a 100% tribally owned and operated company, for federal and state law purposes, including all tax purposes, under the exclusive ownership, control, and jurisdiction of the Lac du Flambeau Band of Lake Superior Chippewa Indians. No Member or Manager shall take any action inconsistent with the express intent of the parties hereto.

1.3 Name. The name of this Company shall be:

Niiwin, LLC

1.4 Registered Office. The initial registered office of the Company shall be 418 Little Pines, PO Box 221, Lac du Flambeau, WI 54538, within the geographical and jurisdictional boundaries of the Lac du Flambeau Band of Lake Superior Chippewa Indians reservation.

Approved by Tribal Council Resolution: 550(12)

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1.5 Purpose. The Company has been formed to engage in the business of operating one or more Tribal Lending business(es), and in any activities that are directly related to the accomplishment of such purpose which are lawful and consistent with the Articles of Organization.

1.6 Term. This Company shall commence upon the filing of its Articles of Organization and shall continue until such time as it shall be terminated under the provisions of Article IX hereof.

1.7 Members. The names and addresses of each of the sole Member of the Company are:

LDF Holdings LLC
418 Little Pines Road
PO Box 231
Lac du Flambeau WI 54538.

1.8 Agent for Service of Process. The name and business address of the agent for service of process for the Company is William R. Beson, Chief Executive Officer- LDF Business Development Corporation, or such other person as the Company shall appoint from time to time.

1.9 Definitions. Whenever used in this Agreement, the following terms shall have the following meanings:

(a) "Agreement" shall mean this written Operating Agreement. No other document or oral agreement shall be treated as part of or superseding this Agreement, unless it is reduced to writing and it has been signed by the Member(s).

(b) "Articles" shall mean the Articles of Organization filed for the Company pursuant to Tribal Council Resolution 550(12), as such Articles of Organization may be amended from time to time.

(c) "Business Affairs" shall mean the obligations and responsibilities of the Company pursuant to any and all transaction documents as executed between the Company, Manager, and any relevant third party.

(d) "Code" shall mean the Lac du Flambeau Band of Lake Superior Chippewa Indians Tribal Consumer Financial Services Regulatory Code, as may be amended from time to time.

(e) "Company" shall mean the limited liability company formed pursuant to the Articles and governed by this Agreement.

Approved by Tribal Council Resolution: 550(12)

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(f) "Controller" shall mean the bonded officer of the Company who is responsible for generally supervising the financial affairs and establishing and maintaining the Company accounting system. The Company may hire a third party to conduct this activity.

(g) "Distributable Cash" shall mean all cash, revenues and funds received from the Company operations, less the sum of the following to the extent paid or set aside by the Member(s):

- (1) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders;
- (2) all cash expenditures incurred incident to the normal operation of the Company's business; and
- (3) such cash Reserves as the Manager deems reasonably necessary to the proper operation of the Company's business.

(h) "Fiscal Year" shall mean the Company's fiscal year. Which shall be the calendar year.

(i) "Losses" shall mean, for each Fiscal Year, the losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year plus any expenditures described in the Internal Revenue Code of 1986, as amended.

(j) "Manager" shall mean [REDACTED] or any persons or person that the Member may otherwise appoint or engage to manage the Company pursuant to the Articles: The Manager shall conduct the business of the Company to the best of the Manager's ability and subject only to those restrictions set forth in the Resolution or this Agreement, shall have full and complete authority, power and discretion to make any and all decisions and to do any and all things which the Manager deems appropriate to accomplish the purpose of the Company. The Manager may also contract with a company or companies to manage the Company, if it so desires.

(k) "Member" shall mean the Lac du Flambeau Business Development Corporation.

(1) "Profits" shall mean, for each Fiscal year the income and gains of the Company determined in accordance with accounting principles consistently applied from year to year under the cash basis method of accounting and as reported, separately or in the aggregate, as appropriate, on the Company's information tax return filed for federal income tax purposes plus any income described in the Internal Revenue Code of 1986, as amended.

Approved by Tribal Council Resolution: 550(12)

{00071440.DOC / 2 }

(m) "Person" shall mean any individual and any legal entity and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

(n) "Resolution" shall mean the Resolution No. 550(12), of the Tribal Council of the Lac du Flambeau Band of Lake Superior Chippewa Indians.

Article II

Capitalization of the Company

2.1 Capital Contributions. The Member has made contribution of funds of ONE HUNDRED US DOLLARS (\$100.00) on behalf of or to the Company. These contributions shall be considered as equity contributions to the Company in exchange for the Member's 100% ownership of the Company.

2.2 Additional Capital Contributions.

(a) The Member, in its sole discretion, may provide additional Capital Contributions to the capital of the Company based on the Company's obligations as provided in its other transaction documents.

(b) Prior to the adoption of this Operating Agreement the Member has expended certain funds which may have been expended on behalf of the Company. This may include, but is not exclusive to attorney fees, consultant fees and other regular expenses of the Company. The Member shall review past funding of the Member to determine whether these amounts shall also be attributable to the Company as Company expenses. To the extent they are Company expenses they shall also treated as Capital of the Company.

2.3 Use of Capital Contributions. All Capital Contributions shall be expended only in furtherance of the business purpose and intent of the Company as set Forth in Sections 1.2 and 1.5.

2.4 Unauthorized Withdrawals of Capital Contributions. No Manager shall have the right to withdraw or distribute Capital Contributions except as specifically provided in this Agreement.

2.5 Third Party Rights. Nothing contained in this Agreement is intended or will be deemed to benefit any creditor of the Company, nor will any creditor of the Company be entitled to require the Manager to solicit or demand Capital Contributions from the Member. The Company shall not assign the Member's obligation to make Capital Contributions to the Company, if any, to creditors of the Company without the consent of the applicable Member.

Approved by Tribal Council Resolution: 550(12)

{00071440.DOC / 2 }

Article III Management

3.1 Management.

(a) Once hired or appointed by the Company, the Manager may have the power and authority to do and perform all actions as may be necessary or appropriate to the conduct of the Company's business. Management of the Company's Business Affairs and objectives shall be vested solely in the Manager, except as limited specifically within this Agreement and in Section 3.2. The power and the authority of the Manager shall be further limited to the Business Affairs.

(b) Any change in Management shall be immediately reported to the Member.

(c) Any successor Manager shall be appointed by the Member acting as sole member of the Company.

(d) The Manager may be removed as Manager, by majority vote of the Member if it is found that the Manager has committed an act constituting willful misconduct, fraud, or gross negligence.

(e) The Manager shall have strict fiduciary relationship to the Company and Member and shall at all times carry out business of the Company in this capacity.

(f) The Manager will abide by all requirements of the Code, including reporting requirements.

3.2 Certain Restrictions on Business Powers. While Manager has general and broad authority under Section 3.1 (a), the Manager shall require express written consent from the Member, and in some instances its parent corporation the LDF Business Development Corporation, to do the following:

(a) to borrow pledge, assign, convey, encumber, grant security interest in, guaranty, or otherwise restrict assets of the Company;

(b) to sell or otherwise dispose of all or substantially all of the assets of the Company;

(c) waive the sovereign immunity of the Company which may only be waived in accordance with written consent of the LDF Business Development Corporation ("BDC"), the parent corporation, in accordance with Section 6.05 of the BDC's Article of Incorporation as approved by Tribal Council Resolutions 370(12), 80(13) and 134(13).

Approved by Tribal Council Resolution: 550(12)

3.3 Indemnity of Manager, Officers, Employees and Other Agents

(a) The Company shall indemnify the Manager and make advances for expenses to the maximum extent permitted under the Code and the Management Agreement. The Company shall indemnify its officers and employees and make advances for expenses to the maximum extent permitted under the Code.

(b) (i) Notwithstanding any other provision of this Agreement, neither the Manager, nor any officer, or employee of the Manager shall be liable to any Member or to the Company with respect to any act performed or neglected to be performed in good faith and in a manner which such Person believed to be necessary or appropriate in connection with the ordinary and proper conduct of the Business or the preservation of its property, and consistent with the provisions of this Agreement.

(ii) The Company shall indemnify the Manager and its officers, or employees for and hold them harmless from any liability, whether civil or criminal, and any loss, damage, or expense, including reasonable attorneys' fees, incurred in connection with the ordinary and proper conduct of the Business and the preservation of the Business and the Company's property, or by reason of the fact that such Person is or was a Manager, officer, or employee; and that with respect to any criminal action or proceeding, the Person to be indemnified had no reasonable cause to believe the conduct was unlawful. The foregoing indemnification of the Manager and its officers and employees shall extend not only to the activities of the Manager as the manager of the Company, but also to the activities of the Manager and its officers and employees as the manager of any entities owned, directly or indirectly, by the Company.

(iii) The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not of itself create a presumption that indemnification is not available hereunder. The Company's obligation to indemnify the Manager, officer, employee, or agent hereunder shall be satisfied out of the assets of the Company and any subsidiary entities of the Company and if the Company's assets are insufficient to satisfy its obligation to indemnify the Manager, such Person shall not be entitled to contribution from any Member or, for the avoidance of doubt, the Lac du Flambeau Band of Lake Superior Chippewa Indians.

(c) No amendment of this provision for indemnification or advancement of expenses shall have the effect of limiting the rights of any person previously serving as a Manager, officer, employee or agent of the Company to indemnification or advancement of expenses pursuant to this section or in accordance with the Code.

(d) All expenses, fees and other costs incurred in connection with the provisions of this Section shall constitute operating expenses of the Company.

Approved by Tribal Council Resolution: 550(12)

3.4 Financial Accounts.

(a) Opening and closing of financial institution accounts and disbursement of all Company funds shall require joint approval of the Manager and Controller.

(b) A financial institution shall be able to rely upon a resolution duly adopted and approved by the Member specifically authorizing the opening, closing, or transacting of business for that specific account or activity.

3.5 Books and Records. The Manager, at the expense of the Company shall keep or cause to be kept adequate books and records for the Company, which shall contain an accurate account of all business transactions arising out of and in connection with the conduct of the Company. The financial books and records of the Company shall be kept in the method of accounting determined by the Manager, which shall be the method of accounting followed by the Company. Additionally, at the expense of the Company, the Manager shall maintain or cause to be maintained, for a period of not less than three (3) years, the following records at the Company's known place of business:

- (a) Revenues, expenses, assets, liabilities and equity;
 - (b) Daily transactions;
 - (c) Contracts, correspondence and other transaction documents relating to all vendors of the Company;
 - (d) Customer complaints and their disposition;
1. Enforcement activities pertaining to the Company by the Tribal Lending Regulatory Authority.
 2. All audits prepared by or on behalf of the Company.
- (e) A list of the full name and last known business, residence or mailing address of each Member and Manager of the Company, both past and present;
 - (f) A copy of the organizational documents for the Company and all amendments thereto;
 - (g) Copies of the Company's currently effective Agreement and all amendments thereto, copies of any prior Agreements no longer in effect, and copies of any writings permitted or required with respect to a Member's obligation to contribute cash, property, or services to the Company;

Approved by Tribal Council Resolution: 550(12)

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- (h) Minutes of every meeting of the Members; and,
- (i) Any written consents or approvals obtained from Members for actions taken by the Manager.

3.6 Confidentiality. The Company's information and records are confidential and may not be disclosed to any Person except the Member as sole member of the Company, and in accordance with the regulations that may be established by Tribal Consumer Financial Services Regulatory Authority, and/or any other Person authorized by applicable Tribal or federal law or contract to have access to such information and records.

3.7 Record Inspection. The Manager(s) shall be responsible to ensure that the premises, books and records of the Company are available for inspection during normal business hours by the Tribal Lending Regulatory Authority.

3.8 Salaries. The salaries and other compensation of the Manager and other employees of the Company shall be fixed from time-to-time by the Member.

Article IV Rights and Obligations of Members

4.1 Limitation of Liability. The debts, obligations, and liabilities of the Company, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the Company, and the Member shall not be obligated for any such debt obligation, or liability of the Company solely by reason of being a Member. Nothing herein shall be construed as a waiver of the Company or Member's Sovereign Immunity.

4.2 Approval of Sale of All Assets. The Members shall have the right, by the affirmative vote of the Tribal Council, to approve the sale, exchange or other disposition of all or substantially all of the Company's assets which is to occur as part of a single transaction or plan.

4.3 Right to Inspect Company Documents. The Member shall have the right and the Manager shall permit, the Member to inspect and copy, at the Member's expense, any and all Company documents, including those required to be maintained pursuant to Section 3.1.

4.4 All other Rights. The Member shall have and reserve all other rights not specifically limited within this Agreement.

Approved by Tribal Council Resolution: 550(12)

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Article V
Meetings of Member

5.1 Annual Meeting of Member. The Member shall hold an annual meeting as required under Tribal law.

Article VI
Profits, Losses; Distributions

6.1 Allocation of Profits and Losses. All profits and losses of the Company will be allocated to the Member.

6.2 Mandatory Distributions. There shall at all times remain \$500 in the Company's cash accounts. Whenever the cash account balance exceeds said amount there shall be an immediate Distribution declared and paid unless the liabilities of the Company are in excess of the assets.

6.3 Loans to Company. Nothing in this Operating Agreement shall prevent the Member from making secured or unsecured loans to the Company by agreement with the Company.

6.4 Accounting Period. The Company's accounting period shall be the calendar year.

Article VII
Restrictions on Transferability

7.1 Restrictions on Transferability. The Company at all times shall be owned exclusively by the Lac du Flambeau Business Development Corporation. No transfer of interest in the Company shall be permitted without the express written consent of the Member.

For purposes of this Article VII "transfer" shall include:

- (a) Transfers by sale;
- (b) Transfers by gift;
- (c) Involuntary transfers, including transfers by operation of law,
- (d) Any other form of transfer.

Transfers and pledges in breach of the terms of this Article VII shall be void and of no effect.

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Article VIII
Additional Members

8.1 No additional Members shall be permitted.

Article IX
Dissolution and Termination

9.1 Dissolution. The Company shall be dissolved upon the occurrence of any of the following events:

- (a) by the unanimous written agreement of the Member;
- (b) upon the entry of any decree of dissolution of the Tribe; or
- (c) upon the issuance of an order of dissolution by a court of competent jurisdiction or by the Lac du Flambeau Band of Lake Superior Chippewa Indians Tribal Court.

9.2 Effect of Dissolution. Upon the dissolution of the Company, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until Articles of Termination have been filed with the Secretary of the Tribe or until a decree dissolving the Company has been entered by a court of competent jurisdiction.

9.3 Winding Up and Dissolution of Assets.

(a) Upon the dissolution, an accounting shall be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Member shall immediately proceed to wind up the affairs of the Company.

(b) If the Company is dissolved and its affairs are to be wound up, the Member shall (1) sell or otherwise liquidate all of the Company's assets as promptly as practicable, unless the Member determines to distribute assets in kind, (2) allocate: any profits or loss resulting from such sales to the Member's Capital Accounts, (3) discharge all liabilities of the Company, other than to Member, including all costs relating to the dissolution, 4) establish such reserves as may be reasonably necessary to provide for contingent liabilities of the Company (for purposes of determining the Capital Accounts of the Member, the amounts of such reserves shall be deemed to be an expense of the Company), (5) discharge any liabilities of the Company to the Member other than on account of their interests in Company capital or profits, and (6) distribute the remaining assets in the following order:

Approved by Tribal Council Resolution: 550(12)

(1) If any assets are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by appraisal or by agreement of the Member. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value.

(2) The positive balance of the Member's Capital Account as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs, shall be distributed to the Member, either in cash or in kind, with any assets distributed in kind being valued for this purpose at their fair market value.

(c) Notwithstanding anything to the contrary in this Agreement, upon a liquidation, if any Member has a negative deficit Capital Account balance, such Member shall have no obligation to make any contribution to the capital of the Company, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other person for any purpose whatsoever.

Article X

Licensing

10.1 License. The Company shall obtain a duly authorized Consumer Financial Services License, or other licenses as may be required under the Tribal Consumer Financial Services Regulatory Code, before engaging in any Lending activities.

Article XI

Miscellaneous Provisions

11.1 Application of Law. This Operating Agreement and its application and interpretation shall be governed exclusively by its terms and by the laws of the Lac du Flambeau Band of Lake Superior Chippewa Indians, where applicable.

11.2 Amendments. This Agreement may not be amended except by a resolution duly adopted by the Member and express approval of the Tribe.

11.3 Execution. The Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any law, rules or regulations.

11.4 Severability. If any provision of this Operating Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

Approved by Tribal Council Resolution: 550(12)

11.5 Non-waiver of Sovereign Immunity. Nothing in this Operating Agreement shall be construed to be a waiver of the Company, the Member's, or the Tribe's Sovereign Immunity to suit.

11.6 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

LDF HOLDINGS, LLC, Member

By: 

Name: William R. Beson

Title: CEO, LDF Business Development Corp.







Approved by Tribal Council Resolution: 550(12)

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Exhibit “E”

Loan # 007792727-00

Agreement Date: 2/12/2015	Loan #: 007792727-00
NIIWIN, LLC d/b/a Lendgreen P.O.Box 221 Lac du Flambeau, WI 54538	Name: May Walker Address: [REDACTED] City: [REDACTED] State: FL, Zip: 33770 Phone: (727)776-0045 Email Address: [REDACTED]l@gmail.com

In this Loan Agreement (this "Loan Agreement") the words "you" and "your" mean the borrower who has electronically signed it. The words "we", "us" and "our" mean NIIWIN, LLC d/b/a [Lendgreen](#). We are an economic development arm of, instrumentality of, and a limited liability company wholly-owned and controlled by, the Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (the "Tribe").

We cannot commit to make a loan to you unless your completed application is approved by our underwriting department, located on the Tribe's Reservation.

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
838.85%	\$4,290.00	\$500.00	\$4,790.00

Your Payment Schedule will be:

Number of Payments	Amount of Payment	When Payment is Due
1	\$150.00	2/27/2015
1	\$150.00	3/13/2015
1	\$150.00	3/27/2015
1	\$150.00	4/10/2015
1	\$160.00	4/24/2015
1	\$157.00	5/8/2015
1	\$154.00	5/22/2015
1	\$151.00	6/5/2015
1	\$148.00	6/19/2015
1	\$145.00	7/6/2015
1	\$142.00	7/17/2015
1	\$139.00	7/31/2015
1	\$136.00	8/14/2015
1	\$133.00	8/28/2015
1	\$130.00	9/11/2015
1	\$127.00	9/25/2015

1	\$124.00	10/9/2015
1	\$121.00	10/23/2015
1	\$118.00	11/6/2015
1	\$115.00	11/20/2015
1	\$112.00	12/4/2015
1	\$109.00	12/18/2015
1	\$106.00	1/4/2016
1	\$103.00	1/15/2016
1	\$100.00	1/29/2016
1	\$97.00	2/12/2016
1	\$94.00	2/26/2016
1	\$91.00	3/11/2016
1	\$88.00	3/25/2016
1	\$85.00	4/8/2016
1	\$82.00	4/22/2016
1	\$79.00	5/6/2016
1	\$76.00	5/20/2016
1	\$73.00	6/3/2016
1	\$70.00	6/17/2016
1	\$67.00	7/1/2016
1	\$64.00	7/15/2016
1	\$61.00	7/29/2016
1	\$58.00	8/12/2016
1	\$55.00	8/26/2016
1	\$52.00	9/9/2016
1	\$49.00	9/23/2016
1	\$46.00	10/7/2016
1	\$43.00	10/21/2016
1	\$130.00	11/4/2016

Late Charge: If a payment is 5 days or more late, you will be charged \$30.

Prepayment: If you pay off early, you may be entitled to a refund of part of the finance charge.

See the terms of the Loan Agreement below for any additional information about nonpayment, default, and prepayment refunds.

ITEMIZATION OF AMOUNT FINANCED: Amount Financed/Amount given to you directly \$500.00

SPECIAL NOTICES:

- * **YOUR LOAN IS AN EXPENSIVE FORM OF BORROWING.**
- * **YOU CAN SAVE FINANCE CHARGES BY PAYING OFF YOUR LOAN EARLY EITHER IN PART OR IN FULL.**
- * **YOUR LOAN IS DESIGNED TO ASSIST YOU IN MEETING YOUR SHORT-TERM CASH NEEDS. IT IS NOT A SOLUTION FOR LONGER TERM FINANCIAL PROBLEMS.**
- * **NON-PROFIT CREDIT COUNSELING SERVICES ARE AVAILABLE IN YOUR COMMUNITY FOR CONSUMERS EXPERIENCING FINANCIAL PROBLEMS.**

YOUR PROMISE TO PAY: You promise to pay the amount of finance charges according to the payment schedule in the Truth in Lending Disclosures plus all other amounts owed to us under this Loan Agreement. You agree that your finance charges will be calculated at the Annual Percentage Rate in the Truth in Lending Disclosures. You will pay us as you choose in your Payment Choice Authorization. All payments will be applied first to finance charges and fees due and then to principal. If you prepay all or part of the principal amount due on your loan, your finance charges on the amount prepaid will be calculated as of the date the payment is made.

DISBURSEMENT: If your Loan is approved, we will process disbursement of your loan proceeds within 1 business days of the day your loan is approved. A business day is a regular work day and does not include Saturday, Sunday or holidays. You authorize us to use commercially reasonable efforts to initiate a credit entry by depositing the proceeds of your loan into Your Bank Account described in your Disbursement and Payment Choice Authorization. The date that your loan proceeds are deposited to Your Bank Account is the "Disbursement Date". Unavoidable delays as a result of bank holidays, the processing schedule of your individual bank, inadvertent processing errors, acts of god", or "acts of terror" may extend the time for the deposit.

CANCELLATION: You may cancel your payment obligations under this Loan Agreement, without cost or finance charges, no later than 3:00 p.m. Mountain time of the next business day immediately following the Disbursement Date ("Cancellation Deadline"). Your right to cancel your loan only applies if your loan either hasn't funded or, if it has, the funds are returned to us as explained below. To cancel your payment obligations on this loan, you must inform us **in writing**, by or before the Cancellation Deadline, either by email to customercare@lendgreen.com or by fax at 1-888-875-8801 that you want to cancel the future payment obligations on this loan. If we timely receive your written notice of cancellation on or before the Cancellation Deadline but **before** the loan proceeds have been deposited into Your Bank Account, then we will not debit Your Bank Account and both your and our obligations under this Loan Agreement will be rescinded. However, if we timely receive your written notice of cancellation on or before the Cancellation Deadline but **after** the loan proceeds have been deposited into Your Bank Account, then you authorize us to effect a debit to Your Bank Account or your debit card as you chose in your Payment Choice Authorization for the principal amount of this Loan Agreement. If we receive payment of the principal amount via the debit, then both your and our obligations under this Loan Agreement will be rescinded. If we do not receive payment of the principal amount by debit to Your Bank Account or your debit card, then this Loan Agreement will remain in full force and effect.

ASSIGNMENT: This Loan Agreement may not be assigned by you. We may assign or transfer this Loan Agreement and our related rights and obligations without notice to you and your consent is not required if we make such an assignment or transfer.

DEFAULT: You will be in default under this Agreement if you do not pay us a scheduled payment or any other amounts you owe us when due or your chosen payment method is stopped, denied or otherwise dishonored by your bank or other third party. If you default on your loan, we can choose to declare all principal, finance charges and other amounts that you owe us to be immediately due and payable in full. If you are in default and you authorized debits from either Your Bank Account or your debit card in your Payment Choice Authorization, you agree that we can debit Your Bank Account or debit card, as applicable, for the full amount that you owe us. Additionally, if you do not cooperate with us on repaying your debt to us we may submit your name to a collection agency and we may also report the incident to a consumer reporting agency database. This may negatively impact your ability to write checks or to receive loans or advances from other companies.

LATE CHARGE: You agree to pay a late charge of \$30 if a payment is 5 days or more late. If you authorized debits from either Your Bank Account or debit card in your Payment Choice Authorization, you agree that we may debit your Bank Account or debit card, as applicable, for any accrued late charges.

REFUSED INSTRUMENT CHARGE: If your payment method is stopped, denied or otherwise dishonored, by your bank or other third party, then you agree to pay us a fee of \$30. If you authorized debits from either Your Bank Account or debit card in your Payment Choice Authorization, you agree that we may debit your Bank Account or debit card, as applicable, for any refused instrument charges. Your refused instrument may also cause your payment to be late which could result in your having to also pay a late charge.

CONSUMER REPORTS: You authorize us to obtain consumer reports about you now or in the future as long as you owe us money under this Loan Agreement.

GOVERNING LAW: The laws of the Tribe will govern this Loan Agreement, without regard to the laws of any state or other jurisdiction, including the conflict of laws rules of any state. You agree to be bound by Tribal law, and in the event of a bona fide dispute between you and us, Tribal law shall exclusively apply to such dispute.

SOVEREIGN IMMUNITY: This Loan Agreement and all related documents are being submitted by you to us as an economic arm of the Tribe, to fully preserve, and not waive either in whole or in part, exclusive jurisdiction, sovereign governmental immunity, and any other rights, titles, privileges, and immunities, to which we and the Tribe are entitled. To protect and preserve the rights of the parties, no person may assume a waiver of sovereign immunity. No waiver is or can be made except by express written declaration of the Tribe's Tribal Council specifically authorizing a waiver for the matter in question. No such waiver has been made with respect to either your Loan Agreement or your Payment Choice Authorization.

PRESERVATION OF SOVEREIGN IMMUNITY: It is the express intention of the Tribe and us operating as an economic arm of the Tribe, to fully preserve, and not waive either in whole or in part, exclusive jurisdiction, sovereign governmental immunity, and any other rights, titles, privileges, and immunities, to which we and the Tribe are entitled. To protect and preserve the rights of the parties, no person may assume a waiver of sovereign immunity. No waiver is or can be made except by express written declaration of the Tribe's Tribal Council specifically authorizing a waiver for the matter in question. No such waiver has been made with respect to either your Loan Agreement or your Payment Choice Authorization.

TRIBAL HOTLINE: If you have already contacted Customer Service in an attempt to resolve an issue or concern and still need additional assistance, please contact the Lac du Flambeau Tribal Hotline at 1-844-388-0500 between the hours of 9am and 5pm Central time or email any time at customerservice@ldfcallcenter.com.

TRIBAL DISPUTE RESOLUTION PROCEDURE PROVISION

As an accommodation to consumers and pursuant to Tribal law, the Tribe has established the following Tribal Dispute Resolution Procedure to receive, review, and consider any and all types of complaints made by or on behalf of our consumers. A consumer who, in the course of his or her otherwise lawful and proper use of our business, has concerns about the operation of any part of us or who otherwise believes himself or herself to be aggrieved by some aspect of any part of our operation shall direct his or her concerns in the first instance to our management, in writing at customercare@lendgreen.com or by fax at 1-888-875-8801. A person's complaint to us shall be considered similar in nature to a petition for redress submitted to a sovereign government, without waiver of sovereign immunity and exclusive jurisdiction, and does not create any binding procedural or substantive rights. In the event that the consumer is dissatisfied with our initial determination, then he or she may request review of our initial determination by submitting such request in writing to the Lac du Flambeau band of Lake Superior Chippewa Indians Tribal Consumer Financial Services Regulatory Authority, re: Tribal Financial Services Dispute Resolution, P.O. Box 155, Lac du Flambeau, WI 54538 no later than ten (10) days after receiving our initial determination, which shall be delivered in writing. Any determination by the Tribe by its designated officials, whether procedural or substantive, shall be made by the Tribe in its sovereign discretion. A complainant may appeal a Tribal Consumer Financial Services Regulatory Authority opinion by filing a written appeal to the Tribal Court within twenty (20) days of receiving the Tribal Consumer Financial Services Regulatory Authority's final written decision in accordance with current rules of court and procedure of the Lac du Flambeau Tribal Court.

THIS DISPUTE RESOLUTION OPPORTUNITY WITH THE TRIBAL CONSUMER FINANCIAL SERVICES REGULATORY AUTHORITY AND TRIBAL COURT CHARGED WITH OVERSEEING OUR CONDUCT IS INTENDED AS THE SOLE DISPUTE RESOLUTION MECHANISM FOR DISPUTES AND CLAIMS ARISING UNDER THIS LOAN AGREEMENT. THIS MEANS THAT YOU ARE EFFECTIVELY WAIVING YOUR RIGHT TO A JURY TRIAL.

The words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to this Tribal Dispute Resolution Provision, (this Provision), the validity and scope of this Provision and any claim or attempt to set aside this Provision; (b) all U.S. state law claims, disputes or controversies, arising from or relating directly or indirectly to this Loan Agreement, the information you gave us before entering into this Loan Agreement, including the customer information application, and/or any past Loan Agreement or Agreements between you and us; (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against the Tribe, us and/or any of our employees, agents, directors, officers, governors, managers, members, parent company or affiliated entities (collectively, "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties ("Representative Claims"); and/or (j) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

All disputes including any Representative Claims against shall be resolved by the Tribal Dispute Resolution Procedure in this Provision only on an individual basis with you. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested of their dispute and setting forth the subject of the dispute along with the relief requested.

This Provision is binding upon and benefits you, your respective heirs, successors and assigns. This Provision is binding

THIS TRIBAL DISPUTE RESOLUTION PROCEDURE PROVISION MEANS THAT:

- * YOUR RIGHT TO FILE SUIT AGAINST US FOR ANY CLAIM OR DISPUTE REGARDING THIS LOAN AGREEMENT IS LIMITED BY THIS PROVISION AND SOVEREIGN IMMUNITY.**
- * YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES.**
- * YOU ARE GIVING UP YOUR RIGHT TO HAVE A COURT OTHER THAN THE TRIBAL COURT IN ACCORDANCE WITH THE DISPUTE RESOLUTION PROCEDURE, TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; AND**
- * YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT OR ARBITRATION FILED AGAINST US AND/OR RELATED THIRD PARTIES.**

CONSENT TO ELECTRONIC COMMUNICATIONS

* The following terms and conditions govern electronic communications in connection with this Loan Agreement and the transaction evidenced hereby (this Consent). By electronically signing this Loan Agreement by clicking the "I AGREE" button and entering your name below, you are confirming that you have agreed to the terms and conditions of this Consent and that you have the ability to download or print a copy of this Consent for your records. You agree that:

* Any disclosure, notice, record or other type of information that is provided to you in connection with your transaction with us, including but not limited to, this Loan Agreement, this Consent, disclosures, change-in-term notices, fee and transaction information, statements, delayed disbursement letters, notices of adverse action, and transaction information (collectively, Communications), may be sent to you electronically by sending it to you by e-mail or by posting the information at our web site, www.lendgreen.com.

* We will not be obligated to provide any Communication to you in paper form unless you specifically request us to do so.

* You may obtain a copy of any Communication by contacting us at www.lendgreen.com writing to us at customercare@lendgreen.com, or by calling us at 1-855-832-7227. You also can withdraw your consent to ongoing electronic communications in the same manner, and ask that they be sent to you in paper or non-electronic form. If you choose to receive Communications in paper or non-electronic form, we may elect to terminate this Loan Agreement and demand payment of the amount then due by the date of your withdrawal of consent; or by the expiration of any minimum term mandated by law, whichever is later.

* You agree to provide us with your current e-mail address for notices at the address or phone number indicated above. If your e-mail address changes, you must send us a notice of the new address by writing to us or sending us an e-mail, using secure messaging, at least 5 days before the change.

* In order to receive electronic communications in connection with this transaction, you will need a working connection to the Internet. Your browser must support the Secure Sockets Layer (SSL) protocol. SSL provides a secure channel to send and receive data over the Internet. Microsoft Internet Explorer 6 or equivalent browser and above supports this feature. You will also need either a printer connected to your computer to print disclosures/notices or sufficient hard drive space available to save the information (e.g., 1 megabyte or more). You must have your own Internet service provider. We may amend (add to, delete or change) the terms of this Consent to electronic communication by providing you with advance notice.

CONSENT TO RECEIVE TEXT MESSAGES

* As used in this text consent, "Text Message" means any text messaging communication from us to you pertaining to your loan, including but not limited to payment information, account information, due dates, delinquent accounts, and program updates relating to your loan, but excluding advertising or telemarketing Text Messages. All Text Messages from us in electronic format to you will be considered "in writing."

* How To Unsubscribe: You may withdraw your consent to receive Text Messages by calling us at 1-855-832-7227 or emailing us at customercare@lendgreen.com. At our option, we may treat your provision of an invalid mobile phone number, or the subsequent malfunction of a previously valid mobile phone number, as a withdrawal of your consent to receive Text Messages. We will not impose any fee upon you to process the withdrawal of your consent to receive Text

* In order to access, view, and retain Text Messages that we make available to you, you must have: (1) a Text Message-capable mobile phone, (2) an active mobile phone account with a communication service provider; and (3) sufficient storage capacity on your mobile phone.

* To request additional information, contact us by telephone at 1-855-832-7227.

* The services are available from most of the carriers that offer Text Messaging. Consult your mobile service carrier to confirm that they offer Text Messaging.

* There is no service fee for Text Messages but you are responsible for all charges imposed by your communications service provider, such as fees associated with Text Messaging. Consult your mobile service carrier's pricing plan to determine the charges for sending and receiving Text Messages. These charges will appear on your phone bill. Message frequency depends on account settings.

* You agree that we may send any Text Messages related to your loan through your communication service provider in order to deliver them to you and that your communication service provider is acting as your agent in this capacity. You agree to indemnify, defend and hold us harmless from and against all claims, losses, liability, cost and expenses (including reasonable attorneys' fees) arising from your provision of a mobile phone number that is not your own or your violation of applicable federal, state or local law, regulation or ordinance relating to Text Messages. Your obligation under this paragraph shall survive termination of this Loan Agreement. You agree that Text Messages are provided for your convenience only.

* Receipt of each Text Message may be delayed or impacted by factors pertaining to your communications service provider. We will not be liable for losses or damages arising from any disclosure of account information to third parties, non-delivery, delayed delivery, misdirected delivery or mishandling of, or inaccurate content in, the Text Messages sent by us.

* We may modify or terminate our Text Messaging services from time to time, for any reason, with or without notice, and without liability to you, any other user or third party.

CONSENT TO RECEIVE ADVERTISING OR TELEMARKETING TEXT MESSAGES AND TELEPHONE CALLS

By signing this section, you consent to our sending you advertising and telemarketing Text Messages to the mobile phone number you have provided below. You also consent to our making advertising or telemarketing calls to you at your mobile phone number using automatic telephone dialing system or an artificial or prerecorded voice.

Signing this section will be deemed to be your signature acknowledging your consent to receive advertising and telemarketing Text Messages and telephone calls as described above to your mobile phone at (727)776-0045.

You are not required to consent to advertising or telemarketing Text Messages or calls to obtain credit or other services from us. At any time, you may withdraw your consent to receive advertising or marketing Text Messages or marketing calls to the mobile number provided by calling us at 1-855-832-7227 or emailing us at customercare@lendgreen.com.

You understand that: any Text Messages we send you may be accessed by anyone with access to your Text Messages; and your mobile phone service provider may charge you fees for Text Messages that we send you, and you agree that we shall have no liability for the cost of any Text Messages.

SIGNATURE AND ACCEPTANCE OF ALL TERMS AND CONDITIONS

BY ENTERING YOUR NAME AND CLICKING THE "I AGREE" BUTTON BELOW, YOU ARE ELECTRONICALLY SIGNING THIS LOAN AGREEMENT AND AGREEING TO ALL THE TERMS OF THIS LOAN AGREEMENT INCLUDING:

- *THE TRIBAL DISPUTE RESOLUTION PROCEDURES PROVISION**
- *THE CONSENT TO ELECTRONIC COMMUNICATIONS**
- *THE CONSENT TO RECEIVE TEXT MESSAGES**

YOU ALSO ACKNOWLEDGE YOUR ABILITY TO DOWNLOAD OR PRINT A FULLY COMPLETED COPY OF THIS LOAN AGREEMENT FOR YOUR RECORDS.

[I AGREE]
DATE: 2/12/2015
May Walker

DISBURSEMENT AND PAYMENT CHOICE AUTHORIZATION for NIIWIN, LLC d/b/a/ Lendgreen Loan #: 007792727-00
REVIEW VERY CAREFULLY BEFORE EXECUTING THE LOAN AGREEMENT

DISBURSEMENT AND PAYMENT CHOICE AUTHORIZATION

Case 1:14-cv-00062-JDW-BJS Document 1-1 Filed 08/20/15 Page 1 of 1
By electronically signing this Disbursement and Payment Choice Authorization below, you voluntarily authorize us to initiate disbursements to your bank account. This authorization is a part of and relates to the Loan Agreement dated 2/12/2015 (the "Loan Agreement"). The words "you" and "your" mean the borrower who has electronically signed this Disbursement and Payment Choice Authorization. The words "we", "us" and "our" mean NIIWIN, LLC d/b/a/ [Lendgreen](#) and our successors and assigns.

Disbursements to Your Bank Account. Unless otherwise agreed, disbursement credits of your loan proceeds will be made to the following bank account ("Your Bank Account")

Bank Name:	
Transit ABA Number:	
Deposit Account Number:	

We will make these disbursement credits by using any commercially available method we choose, such as (but not limited to) Automated Clearing House (ACH) entries, wire transfers, or transactions through your debit card accessing Your Bank Account. As a data security measure, you will separately provide us with your debit card information.

Your Payment Choice (check applicable box):

- ☒ Automatic Payment from your Bank Account ☐ Payments you will make directly by Cashier's Check or Money Order

<p>You authorize us to process payment debit entries out of Your Bank Account by using any commercially available methods we choose, such as (but not limited to) ACH entries, "remote checks" or transactions through your debit card accessing Your Bank Account. You specifically authorize us to use any of these methods to process debit entries from Your Bank Account for your scheduled payments in your payment schedule below plus any late charges and returned payment fees.</p> <p>If you are in default, you authorize us to process one or more debit entries to pay all principal, finance charges and other amounts due to us as provided in the Loan Agreement. You authorize us to re-process debit entries for the same amounts if any attempted payment transaction is dishonored. We will provide you with 10 days notice prior to processing a debit entry that is larger than the scheduled payment detailed above.</p>	<p>You agree to make your scheduled payments in your payment schedule below by cashier's check or money order, that we receive no later than your payment due date to:</p> <p>NIIWIN, LLC d/b/a Lendgreen P.O.Box 221 Lac du Flambeau, WI 54538</p>
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Number of Payments	Amount of Payment	When Payment is Due
1	\$150.00	2/27/2015
1	\$150.00	3/13/2015
1	\$150.00	3/27/2015
1	\$150.00	4/10/2015
1	\$160.00	4/24/2015
1	\$157.00	5/8/2015
1	\$154.00	5/22/2015
1	\$151.00	6/5/2015

1	\$148.00	6/19/2015
1	\$145.00	7/7/2015
1	\$142.00	7/17/2015
1	\$139.00	7/31/2015
1	\$136.00	8/14/2015
1	\$133.00	8/28/2015
1	\$130.00	9/11/2015
1	\$127.00	9/25/2015
1	\$124.00	10/9/2015
1	\$121.00	10/23/2015
1	\$118.00	11/6/2015
1	\$115.00	11/20/2015
1	\$112.00	12/4/2015
1	\$109.00	12/18/2015
1	\$106.00	1/4/2016
1	\$103.00	1/15/2016
1	\$100.00	1/29/2016
1	\$97.00	2/12/2016
1	\$94.00	2/26/2016
1	\$91.00	3/11/2016
1	\$88.00	3/25/2016
1	\$85.00	4/8/2016
1	\$82.00	4/22/2016
1	\$79.00	5/6/2016
1	\$76.00	5/20/2016
1	\$73.00	6/3/2016
1	\$70.00	6/17/2016
1	\$67.00	7/1/2016
1	\$64.00	7/15/2016
1	\$61.00	7/29/2016
1	\$58.00	8/12/2016
1	\$55.00	8/26/2016
1	\$52.00	9/9/2016
1	\$49.00	9/23/2016
1	\$46.00	10/7/2016
1	\$43.00	10/21/2016
1	\$130.00	11/4/2016

You agree that this Disbursement and Payment Choice Authorization will remain in effect until your loan, including principal, finance charges and other charges, is paid in full. However, if you chose automatic payments, you may revoke your authorization at any time by contacting us directly at 1-855-832-7227 or customercare@lendgreen.com. If you revoke your authorization, then you agree to make payments directly to us as explained above.

BY TYPING YOUR NAME AND CLICKING THE "I AGREE" BUTTON BELOW, YOU ARE ELECTRONICALLY SIGNING THIS DISBURSEMENT AND PAYMENT CHOICE AUTHORIZATION AND AGREEING TO ALL THE TERMS OF THIS AUTHORIZATION.

YOU ALSO ACKNOWLEDGE YOUR ABILITY TO DOWNLOAD OR PRINT A FULLY COMPLETED COPY OF THIS DISBURSEMENT AND PAYMENT CHOICE AUTHORIZATION FOR YOUR RECORDS.

May Walker

PRIVACY POLICY

Rev. November 2012

FACTS WHAT DOES NIIWIN, LLC DO WITH YOUR PERSONAL INFORMATION?

Why?	Financial companies choose how they share your personal information. Consumers have the right to limit some but not all sharing. This notice tells you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: * Social Security number and checking account information * Payment history and income * Employment information and wire transfer instructions
How?	All financial companies need to share customers personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers personal information; the reason NIIWIN, LLC chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Lendgreen share?	Can you limit this sharing?
For our everyday business purposes - such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus.	YES	NO
For our marketing purposes to offer our products and services to you	YES	NO
For joint marketing with other financial companies	NO	WE DO NOT SHARE
For our affiliates' everyday business purposes information about your transactions and experiences	YES	NO
For our affiliates' everyday business purposes information about your creditworthiness	YES	YES
For our affiliates to market to you	YES	YES
For nonaffiliates to market to you	YES	YES

To limit our sharing	* Call 855-832-7227 our menu will prompt you through your choices or * Visit us on the web at www.Lendgreen.com * Contact us via email at customercare@lendgreen.com Please note: If you are a new customer, we can begin sharing your information 30 days from the date we sent this notice. When you are no longer our customer, we can share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call 1-855-832-7227 or go to www.Lendgreen.com

Who we are:	
Who is providing this notice?	NIIWIN, LLC d/b/a/, a business entity of the Lac du Flambeau Band of Lake Superior Chippewa Indians, is providing this privacy policy.

What we do:	
How does Lendgreen protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures. These measures include computer safeguards and secured files and buildings.
How does Lendgreen collect my personal information?	We collect your personal information, for example, when you * Apply for a loan * Give us your income information * Tell us where to send the money * Provide account information * Provide employment information We also collect your personal information from others, such as credit bureaus, affiliates or other companies.
Why can't I limit all sharing?	You have the right to limit only * sharing for affiliates' everyday business purposes - information about your creditworthiness * affiliates from using your information to market to you * sharing for nonaffiliates to market to you
What happens when I limit sharing for an account I hold jointly with someone else?	Your choices will apply to everyone on your account.

Definitions:	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. * Our affiliates include other business entities of the Lac du Flambeau Band of Lake Superior Chippewa Indians.