



## LITTLE RIVER HOLDINGS, LLC OPERATING

### AGREEMENT

#### [Tribal Holding Company]

**MISSION:** Provide a legal structure built under sovereign tribal laws to house the economic development entities, other than the Manistee Casino, whose purpose is to create monetary profits and tribal community benefits.

**VISION:** Little River Holdings, LLC will seek to become the parent economic development entity of the Nation, acting as the direct link between related entities and the will of the Tribal Council and Ogema, wherein profit and/or tribal community oriented businesses will be housed that are integral to the operations, financial, health, economic self-sufficiency, and continued existence of the Nation.

#### ARTICLE I Definitions

**1.1 Definitions.** The terms used in this Operating Agreement will have the following meanings (unless otherwise expressly provided herein or within the Tribal Code, Chapter 800, Title 02):

- a. *Adjusted Capital Account* means the Member's Capital Account as adjusted by the items described in Sections 1.704-2 and 1.704-1 (b) (2) (ii) (d) (4), (5), and (6) of the U.S. Treasury Department regulations and other relevant and consistent accounting guidance.
- b. *Affiliate* means, with respect to any specified person, any person that directly or through one or more intermediaries controls or is controlled by or is under common control with the specified person. As used in this definition, the term *control* means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through Membership of voting securities, by contract, or otherwise. Membership of more than fifty percent (50%) of the beneficial interests of an entity will be considered conclusive evidence that control exists.

- c. *Board* means the board of directors of the Company as established pursuant to the Little River Band of Ottawa Indians Limited Liability Ordinance and this Operating Agreement.
- d. *Capital Account* as of any given date means the Capital Contributions to the Company by the Member as adjusted up to the date in question pursuant to Article 9.
- e. *Code* means the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.
- f. *Company* means the Little River Holdings, LLC, a limited liability company, as established pursuant to the Little River Band of Ottawa Indians Limited Liability Ordinance# 14-800-02, having the Little River Band of Ottawa Indians as its sole Member.
- g. *Department* means the Little River Band of Ottawa Indians Department of Commerce.
- h. *Distributable Cash* means for any Fiscal Year shall mean, after the issuance of the annual consolidated audit report, the amount by which net revenue and cash on hand exceed the sum of current liabilities for the subsequent fiscal year and necessary reserves as established by the Board in the budget as approved at the Annual Meeting of the Company.
- i. *Effective Date* means the date the Articles of Organization for Little River Holdings, LLC were filed and formally accepted by the Department of Commerce and/or the most recent modification of same.
- j. *Entity* means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, or unincorporated tribal business venture owned by the Tribe.
- k. *Fiscal Year* means the Company's Fiscal year, which shall be the calendar year or as determined otherwise.

- l. *Initial Capital Contribution* means the initial monetary contribution pursuant to this Operating Agreement.
- m. *Interest* means the proportion that the Member's Units bears to the aggregate outstanding Units of the Company.
- n. *Manager(s)* means the individual(s) directly managing any tribally-owned LLC and/or the Board of Directors of same where appropriate.
- o. *Member* means the Little River Band of Ottawa Indians Nation, as represented through its Tribal Council.
- p. *Net Losses* means, for each Fiscal Year, the losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year under the accrual method of accounting and as reported, separately or in the aggregate on the Company's tax return filed for federal income tax purposes, plus any expenditures not deductible in computing its taxable income and not properly chargeable to the Capital Account under the Code.
- q. *Net Profits* means, for each Fiscal Year, the income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the accrual method of accounting and as reported, separately or in the aggregate, on the Company's tax return filed for federal income tax purposes, plus any income exempt from federal income tax under the Code.
- r. *Ogema* shall mean the individual duly elected/appointed to that position within the Little River Band of Ottawa Indians sovereign nation.
- s. *Operating Agreement* means this Operating Agreement as originally executed and as amended from time to time.
- t. *Organizational Expenses* means those expenses incurred in connection with the formation of the Company.
- u. *Person* means any individual or Entity, and the heirs, executors, legal representatives, successors and assigns of such Person where the context so admits.
- v. *Regulatory Allocations* means the allocations pursuant to Article 10 of this agreement relating to regulatory bodies.

- w. *Reserves* means, with respect to any fiscal year, funds allocated and maintained in amounts deemed sufficient for working capital and to pay taxes, insurance, debt service, and other current costs and expenses necessary for the operation of the Company's business.
- x. *Treasury Regulations* means the regulations promulgated under the Internal Revenue Code of 1986 currently in force and as amended from time to time.
- y. *Tribal Council* means the duly elected governing body of the Tribe.
- z. *Tribal Court* means that forum under the control of the judicial branch of the Little River Band of Ottawa Indians.
- aa. *Tribal Limited Liability Company Ordinance* means that ordinance that provides for the existence and creation of a Limited Liability company under the Tribal Code Chapter 800, Title 02, or as amended.
- bb. *Tribe* means the Little River Band of Ottawa Indians.
- cc. *Units* means the capital units issues by the Company to the Member, in exchange for contributions which represent the Member's interest in the Company.
- dd. *Reservation* means all lands under the jurisdiction of the Tribe, including all lands within the boundaries of the Tribe's Reservation, individual tribal member allotments, whether located on or off the Reservation, and all lands held in trust by the United States of America for the benefit of the Tribe.
- ee. *Subsidiary* means the subsidiary of any limited liability company which has the Company as its sole member.

**ARTICLE II**  
**Formation**  
**[Tribal Holding Company]**

**2.1 Formation.** As of the date of the filing of the Articles of Organization with the Department of Commerce, the Company will be deemed to have been formed pursuant to the Tribal Limited Liability Company Ordinance 14-800-02. Pursuant to Little River Band of Ottawa Indians Tribal Code Chapter 800, Title 02, the Tribal Ogema, pursuant to authority granted by a duly enacted resolution of the Tribal Council, shall be the organizer of any Tribally-owned LLC.

**2.2 Name.** The name of the Company is Little River Holdings, LLC.

**2.3 Principal Office.** The Company will be a resident of and maintain its corporate headquarters on the Tribe's Reservation, but may conduct its business activities any place in or outside the United States. The Company may have such other offices, either within or without the Tribe's Reservation as the business of the Company may require from time to time.

**2.4 Registered Office and Registered Agent.** The Company's registered office shall be 2608 Government Center Drive, Manistee, MI 49660. Its Registered Agent shall be the individual named in the Articles of Organization and any subsequent appointees.

**2.5 Term.** The existence of the Company will be perpetual from the date of the filing and formal acceptance of the Articles of Organization, unless the Company is dissolved in accordance with either the provisions of this Operating Agreement or the Tribal Limited Liability Ordinance.

**2.6 Purpose.** The purpose of the Company shall be to engage in any lawful business or businesses and to engage in all other necessary activities necessary, customary, convenient, or incident thereto for which companies may be organized under the Tribal Limited Liability Code. The Company's foundation is based upon a finding that a tribally-owned limited liability company and the services/opportunities/income that it may provide are integral to the operations, financial health, economic self-sufficiency, and continued existence of the tribe. Several purposes of the Company shall be:

- a.** To generate profits and/or significant tribal community benefit to promote the growth and continuity of the Company and to enable it to distribute appropriate portions of those profits to the Tribal Government.
- b.** To create and stimulate the economy of the Tribe while creating employment opportunities for tribal members.
- c.** To generate tax and other revenue for use by the tribal government in providing services to members of the Tribe.

- d.** To increase financial literacy and the economic well-being of the members of the Tribe in accordance with the economic development policies and plans of the Tribe as adopted by the Tribal leadership.

**ARTICLE III**  
**Member**  
**[Tribal Holding Company]**

The Company is wholly owned by its sole member the Little River Band of Ottawa Indians, a federally recognized Indian Nation.

**ARTICLE IV**  
**Privileges and Immunities**  
**[Tribal Holding Company]**

Pursuant to Chapter 800, Title 02 of the Tribal Code of the Little River Band of Ottawa Indians, and Articles 5, 6, and 7 of the Articles of Organization for the Company, and the LLC Ordinance, the Tribe hereby confers on the Company all of the rights, privileges, and immunities enjoyed by the Tribe, including but not limited to immunities from federal, state, and local taxes, regulation, and jurisdiction, to the same extent that the Tribe would have such rights, privileges, and immunities, if it engaged in the activities undertaken by the Company.

The LLC established by operation of this document shall be considered to be an integral instrumentality of the Tribe, and its agents and officers considered agents and officers of the Tribe, created for the purpose of carrying out authorities and responsibilities of Tribal leadership essential to economic development of the Tribe and the advancement of its Tribal members. This LLC, subsidiary LLCs and/or enterprises, its organizer, agents, directors, officers, managers and employees shall therefore be entitled to all of the privileges and immunities enjoyed by the Tribe, including but not limited to extant immunities from suit in federal, state and Tribal courts and from federal, state, and local taxation or regulation, as appropriate.



**ARTICLE V**  
**Sovereign Immunity**  
**[Tribal Holding Company]**

**5.1 Sovereign Immunity Reserved to Tribe.** Unless otherwise specifically noted and accomplished through operation of this Operating Agreement and consistent with Chapter 800, Title 02 of the Tribal Code of the Little River Band of Ottawa Indians and the Tribal LLC ordinance, nothing herein shall be construed as a waiver of the sovereign immunity of the Little River Band of Ottawa Indians. In no event shall the Tribe, whether as a member or otherwise, be liable for the debts, obligations or liabilities of any kind or description (including any pre-filing activities) of an LLC operating under this Operating Agreement provided, however that an LLC may waive its sovereign immunity in limited fashion as defined within this Article.

**5.2 Waiver of Sovereign Immunity by this LLC.** This Limited Liability Company, or any organized under it as subsidiaries, may only waive its privileges and immunities in the following manner:

- a.** This particular LLC may specifically and in an explicit writing, grant limited waivers of its immunity from\_ suit and consent to be sued in Tribal court or another court of competent jurisdiction, or consent to binding arbitration pursuant to the procedures and authorities set forth in the LLC's Operating Agreement, provided that:
  - i.** Any such waiver or consent to suit granted pursuant to this LLC's Operating Agreement shall in no way extend to any action against the Tribe, nor shall it in any way be deemed a waiver of any of the rights, privileges and immunities of the Tribe, and
  - ii.** Any such waiver or consent to suit granted pursuant to any other subsidiary LLC's Operating Agreement(s) shall in no way extend to any action against this LLC, or the Tribe, nor shall said waiver in any way be deemed a waiver of any of the rights, privileges and immunities of the Tribe or this LLC, and
  - iii.** Any recovery against this LLC shall be limited to the assets of the LLC (or such portion of the LLC's assets as further limited by the waiver or consent). The Tribe shall not be liable for the payment or performance of any of the obligations of the LLC, and no recourse shall be had against any assets or revenues of the Tribe in order to satisfy the obligations of this LLC, including assets of the Tribe leased, loaned, or assigned to the LLC for its use, and
  - iv.** Any waiver of this LLC's immunities granted pursuant to the LLC's Operating Agreement shall be further limited or conditioned by the specific terms of such waiver, and
  - v.** Any waiver may be granted only by resolution granted only by the board of the LLC for the specific purpose of granting the waiver, with explicit language specifically tied to a written contract or commercial document to which the LLC is a party and which

demonstrates that the waiver is granted only to secure a substantial advantage or benefit to the Company.

- b. The sovereign immunity of this LLC shall not extend to actions against the LLC by the Tribe acting as Member, or, in the case of a subsidiary Limited Liability Company operating under this LLC, by the parent Limited Liability Company acting as Member of any subsidiary.
- c. The LLC must follow the methods relating to sovereign immunity waivers mandated by this ordinance.

**ARTICLE VI**  
**The Board of Directors**  
**[Tribal Holding Company]**

**6.1 Performance and Management.** The business and affairs of the Company will be managed under the direction of its Board of Directors. Each Board member will participate in the direction, management, and control of the business of the Company to the best of their ability. Each Board member will be responsible for discharging his or her duties in good faith, in a manner the Board believes to be in the best interest of the Company, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in accordance with the highest regard to preventing any appearance of a conflict of interest in their deliberations. To prevent any potential for undue influence of either Council or Ogema, neither shall be able to take a position as an employee within this Holding Company or subsidiary entity until the expiration of six (6) months from the date of their last official day as an elected tribal leader. A separate period of twelve (12) months is also expressly established prohibiting former elected officials or any entity they are affiliated with from entering into contracts with the Holding Company and/or affiliates. A *Hold-Over* period for Board members who are seated elected officials that don't win re-election is specifically contemplated by this Operating Agreement to allow for preservation of institutional knowledge until a new Board member is appointed and seated for a period not to exceed sixty (60) days. The Board will in all cases act as a group, with a majority vote or consent of the Board required to take action. The Board may adopt such rules and regulations for the conduct of their meetings and the management of the Company as is not inconsistent with this Operating Agreement and the Tribal Limited Liability Company Ordinance.

**6.2 Board Number, Appointment, Qualifications, and Tenure.**

- a. Appointment.** The Tribal Council shall retain the power to appoint, and/or ratify as appropriate within the structure of this Agreement, the Board of Directors for Limited Liability Companies wholly-owned by the Tribe. For all such Limited Liability Companies, including subsidiary Limited Liability Companies that may have a Board of Directors, the Board of Directors shall be comprised of:
- i.** Two (2) Tribal Council members in a voting capacity as approved by Tribal Council;
  - ii.** The Ogema (or an alternate designated by the Ogema, as approved by Tribal Council) in a voting capacity;
  - iii.** One (1) Tribal member who is appointed by the Ogema and approved by Tribal Council who is well-experienced in business and Tribal government matters; and
  - iv.** Three (3) individuals who have substantial experience in business, tribal government, finance or accounting, government contracting or procurement and/or human resources, appointed by the Ogema and ratified by Tribal Council.

- b. Qualifications.** In addition to any requirements set forth in the LLC's Operating Agreement, Board Members of a Tribally-owned Limited Liability Company, including the executive officer managing the Tribally-owned LLC, and excepting members of the Tribal Council and the Tribal Ogema, but not excluding any person designated in lieu of the Ogema, shall meet the following requirements:
- i.** Be at least twenty-five (25) years old and,
  - ii.** Possess a Bachelor's Degree; or possess a high school diploma (or a General Equivalency Diploma) and at least five (5) years of significant business, financial, legal, government contracting, or industry experience and,
  - iii.** Have no felony convictions and,
  - iv.** Have no misdemeanor convictions within the last ten (10) years: and
  - v.** Submit to a background investigation which yields no results showing convictions involving tax evasion, tax fraud, embezzlement or moral turpitude. Said background investigation shall be conducted by an independent body and use the requirements of this operating agreement to produce a recommendation to either approve or disapprove this background investigation requirement. Details of this recommendation shall not be released unless upon order of a court of competent jurisdiction.
- c. Terms/Roles.** Upon the selection of the initial Board members, the Board will choose, by lot, two (2) appointees who will serve an initial term of one (1) year, two (2) appointees who will serve an initial term of two (2) years, and three (3) appointees who will serve an initial term of three (3) years. Any Tribal Council member serving on the Board of Directors will serve terms commensurate with their elected positions. After the initial appointment of the Board, the term of each appointee will be for three (3) years and each Board member shall hold office until their successor will have been qualified and appointed, provided that Board terms for Tribal Council members will be strictly commensurate with their respective terms on Tribal Council. Upon failure to get re-elected to their position on Tribal Council, Council shall submit a replacement name to the Ogema for recommendation and a formal resolution on same appointing that individual to the board. Any successful removal of an elected official from their office with Tribal government shall immediately subject them to automatic removal from this Holding Company Board as well and/or any subsidiary boards. A Chairperson of the Board should be elected by the Board. He or she will, when present, preside at all meetings of the Board and will perform such duties as prescribed by the Board. The Board shall also appoint one of its members to serve in the positions of Vice-Chair and Secretary.
- d. Quorum/Attendance.** Four (4) Board members shall constitute a quorum for any properly noticed meeting of the Board. Any Board member missing more than three (3) regularly scheduled meeting of the Board shall be deemed, after the third absence within twelve (12) months, to have been removed from the Board. Upon a removal for absence, the Ogema shall immediately begin the appointment process and ensure that the Board is fully staffed as soon as practical.

- e. **Vacancies.** Any vacancy occurring for any reason in the number of Board Members may be filled by appointment by the Tribal Council, acting as Member, upon a recommendation of an appropriately qualified individual from the Ogema. A Board member appointed to fill a vacancy will hold office until the expiration of such term and until their successor will qualify and be appointed or until their death, resignation, or removal.
- f. **Resignation.** Any member of the Board may resign at any time by giving written notice to the Chairperson/Speaker of the Tribal Council. If existing, any advisory board member may resign at any time by giving written notice to the Chairperson of the Board of the Company. The resignation of any Board or advisory board member will take effect upon receipt of notice thereof or at such later time as will be specified in such notice and, unless otherwise specified therein, the acceptance of such notice will not be necessary to make it effective.
- g. **Removal.** Any Director of a Tribally-owned LLC may be removed with cause by the Tribal Council or as specified in this *ILC*'s Operating Agreement. Removal by Tribal Council shall follow the procedures provided in the Removal Rules and Procedures Ordinance, Ordinance #01-150-02, as it is and may hereafter be amended, subject to any modifications in this Section.
  - a. "Cause" shall mean any the following:
    - i. A breach of a fiduciary duty.
    - ii. Conviction of a felony.
    - iii. Conviction of a misdemeanor that, in the sole determination of the Tribal Council, adversely affects the Company or such Director's ability to perform his or her duties.
    - iv. Adjudication as incompetent by a Court of competent jurisdiction.
    - v. Misappropriation of corporate funds or other acts of dishonesty with respect to the Company.
    - vi. Gross negligence, fraud, deceit or intentional misconduct that could clearly have a material adverse effect on the Company.
  - h. **Loans to Directors.** An LLC wholly-owned, directly or indirectly, by the Tribe shall not lend money to or guarantee the personal obligation of a Director, officer, or employee of the LLC under any circumstances.

**6.3 Certain Powers of the Board.** Without limiting the generality of Article VI, Paragraph 6.1 of this Operating Agreement, the Board will have the power and authority, as a group, on behalf of the Company:

- a.** To acquire property from any Person or Entity as the Board may determine. The fact that the Member is directly or indirectly affiliated or connected with any such Person or Entity will not prohibit the Board from dealing with that Person or Entity, however any and all such transactions shall meet the highest of ethical standards.
- b.** To cause the Company to serve as a Member or sole Member of each Subsidiary and to take any and all actions required or permitted to be taken by the Company in accordance with the terms of this Operating Agreement and each Subsidiary's Operating Agreement including, without limitation, the designation, removal, and/or replacement of the President/CEO or otherwise designated Manager of the Holding Company, or Manager(s) of each Subsidiary of this entity, provided that the foregoing shall be subject to the provisions in the Operating Agreement and/or the Tribe's Limited Liability Company Ordinance that governs the removal and/or replacement of a Manager.
- c.** To incur indebtedness for borrowed money or lease obligations on behalf of the Company and/or any Subsidiary.
- d.** To make all expenditures permitted by this Operating Agreement.
- e.** To protect and preserve the title and interest of the Company and each Subsidiary in such assets as the Company or any subsidiary may own from time to time.
- f.** To collect all amounts due to the Company and or its Subsidiaries and otherwise to enforce all rights of the Company, and to employ counsel and institute such suits or proceedings as may be necessary in the name and on behalf of the Company.
- g.** To establish and maintain one or more bank accounts for the Company in such banks as the Board may, from time to time, designate as depositories of the funds of the Company.
- h.** To the extent that funds of the Company are available, to pay all debts and obligations of the Company.
- i.** To employ accountants, legal counsel, managing agents or other experts to perform services for the Company and to compensate them from Company funds.
- j.** To enter into any and all other contracts or agreements on behalf of the Company to carry out the purposes of the Company, with any other Person or Entity for any purpose, in such form as the Board may approve.

- k.** To the extent that there is available Net Cash Flow, to make appropriate distributions of Net Cash Flow periodically to the Member in accordance with the provisions of this agreement, the LLC ordinance, and the direction of the Board.
- l.** To establish and maintain the books and records of the Company in accordance with this Operating Agreement.
- m.** To perform all normal business functions, otherwise operate, and manage the business and affairs of the Company in accordance with and as limited by the Operating Agreement.
- n.** To take such other actions as may be reasonably necessary, convenient, or incidental to the accomplishment of the purposes of the Company, including causing the Subsidiaries to take such action as may be reasonably necessary, convenient, or incidental to the accomplishment of the purposes of the Subsidiaries, and the exercise of rights and powers described above, but only to the extent that any limited liability company may take any such action under the laws of the Little River Band of Ottawa Indians.
- o.** To consent to waive the sovereign immunity of the Company provided that it is done within the reasons and procedures described within the Articles of Organization, this Operating Agreement, and the Tribal Limited Liability Company Ordinance. Unless specifically authorized to do so by this Operating Agreement, no individual Board member, Advisory Board member, agent, or employee of the Company will have any power or authority to bind the Company in any way, to pledge its credit, to waive its sovereign immunity, or to render it liable for any purpose.
- p.** To hire/appoint a president/manager/chief executive officer to supervise and oversee all day-to-day activities of the Company and also to relieve that executive officer of their duties if warranted consistent with the terms of that executive's contract.

**6.4 Fees.** The Board is authorized to cause any Subsidiary to pay commercially reasonable development, management, and leasing fees, and/or commissions to the Company, as permitted under the budget for each Subsidiary. Such fees are to be determined by the Board and paid directly to the Company by the Subsidiary.

**6.5 Company expenses.** All costs and expenses incurred by the Company or any Subsidiary with respect to its operations and management shall be borne by the Company or such Subsidiary, as applicable and reasonable within the terms of this Operating Agreement, or that of the Subsidiary, and the Tribal Limited Liability Company Ordinance, including but not limited to:

- a. Organizational expenses.
- b. Expenses of the Company and/or any Subsidiary for audit and/or tax return preparation and any other advisory and consulting fees.
- c. All other fees and expenses of the Company and any Subsidiary directly related to the operation and administration of the Company or any Subsidiary including, expenses of outside counsel and accountants, travel and other reasonable out-of-pocket expenses, any insurance or litigation expenses, and any taxes, fees, or other governmental charges properly levied against the Company or such Subsidiary.

**6.6 Board Liability for Certain Acts.** Each Board member, including advisory board members, will exercise their business judgment in participating in the management of the business, operations, and affairs of the Company. The Board does not however, in any way, guarantee the return of the Member's Capital Contributions or a profit for the Member from the operations of the Company.

**6.7 Board Members have no Exclusive Duty to Company.** Board members and Advisory Board members will not be required to manage the Company as their sole and exclusive function and they may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor the Member will have any right, by virtue of this Operating Agreement, to share or participate in such other legal investments or activities of the Board member or to the income or proceeds derived therefrom.

**6.8 Indemnity of the Board.** The Board and Advisory Board members will be indemnified by the Company to the extent provided for in the Tribal Limited Liability Company Ordinance or as provided for by the company for actions/inactions that are not in conflict with that ordinance.

**6.9 Compensation.** The compensation of the Board will be fixed from time to time by the Board, subject to the approval of the Member. All Board members, excluding the Tribal Council members serving on the Board and the Ogema if serving, will be entitled to compensation if reasonable and supported by the Board. All Board members shall be entitled to reimbursement of reasonable, pre-approved expenses incurred in the course of performing Board duties in accordance with reasonable Company expectations.

**6.10 Officers.** The Board shall appoint a president/manager/chief executive officer of the Company and delegate day-to-day management duties to this officer and other such officers as the Board may determine necessary from time to time. Such officers shall have the authority to contract for, negotiate on behalf of, and otherwise represent the interests of the Company as so authorized by the Board. Excepting elected Tribal Council individuals, nothing herein shall preclude a Board member from serving in the capacity of president/manager/chief executive as prudence shall dictate.



**6.11 Reports.** The Board, in conjunction with its designated officer(s), shall present to the Member regular quarterly and annual reports and plans including the following:

- a.** An annual operation plan, including budgets with variances to actual, and annual funding requests/member distribution proposals, and a proposed annual plan for the following year and future years as appropriate.
- b.** Annual audited financial statements within 120 days after the close of the fiscal year.
- c.** Quarterly income (profit/loss/expense) statements and balance sheet statements reflecting Company progress to plan.
- d.** Such other reports as can be reasonably expected to be requested by the Member.
- e.** In addition to any owner inspection rights provided in the Operating Agreement of a Tribally-owned LLC, the Tribal Council may at any time, in the manner provided in the Operating Agreement, require that any LLC wholly owned by the Tribe, whether directly or indirectly, or an LLC in which the Tribe owns the majority interest, be audited by an auditor hired or assigned by the Tribe who shall have the absolute right to require access to all of the LLC's records and documents necessary for such an audit.
- f.** In addition to any reports to the owner required by the Operating Agreement, the board of directors of each Tribally-owned LLC whether owned directly or indirectly, shall, if requested, submit (if requested) to the Tribal Council, copies of any periodic financial statements (including monthly or quarterly balance sheets, profit and loss statements, and cash flow statements) as may be prepared in the ordinary course of business, promptly after such statements are furnished to the LLC's board of directors.

**ARTICLE VII**  
**Rights and Obligations of the Member**  
**[Tribal Holding Company]**

**7.1 Limitation of Liability.** Under no circumstances shall the Member be liable for ANY debts or losses of the Company beyond its respective Capital Contribution, as extant within the Company.

**7.2 Company Books.** The Board will direct its staff to maintain and preserve at the principal office of the Company, relevant Company documents including, but not limited to: A current list of the full name and last known business address of the Member and Board members, and; a copy of the Articles of Organization and all Articles of Amendment thereto, and; copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years. Upon reasonable request, the Member will have the right, during ordinary business hours, to inspect and copy such Company documents as necessary and needed, at the Member's expense.

**7.3 Investment and Return of Capital.** The Tribe, as the sole Member of the Company, will allocate such funds as to allow the Company to fulfil the long term goals of the Tribe and the Company. The Company will be allowed to reinvest all profits for the first five (5) years or as otherwise agreed to between the Company and Member. After five (5) years or other term as mutually agreed to between the Company and Member, the Net Profits shall be distributed in accordance with this Operating Agreement and/or a Dividend Policy approved by the Tribe, as sole Member.

**7.4 Withdrawal of the Member.** The Member does not have the sole power or right to withdrawal from the Company.

**7.5 Action requiring Member Approval.** The Company will not take any of the actions described below without the affirmative vote of the Member:

- a. Sell, exchange, or dispose (other than the mortgage, pledge, or other grant as security interest as approved by Board action) of all or substantially all of the assets of the Company;
- b. Cause a Subsidiary to complete a sale or other disposition of all or substantially all of its assets;
- c. Form any Subsidiary;
- d. Merge the Company with another entity;
- e. Voluntarily dissolve the Company; and/or
- f. Amend the Articles of Organization or this Operating Agreement without being also in accordance with Article 14 of this Agreement.

In addition, the Member will vote to elect the Board as provided in this Operating Agreement, approve compensation to the Board as provided by Article 6 hereof and as otherwise required by law or by this Operating Agreement.

**ARTICLE VIII**  
**Meetings of the Member**

**8.1 Meetings.**

- a. An annual meeting of the Member will be held at the Company's principal office, or at such other place designated by the Member, on the first Monday of May each year, or such earlier date as shall allow the Company to present finally prepared and audited financial/operating statements, for the purposes of approving the annual plan, receiving financial reports, election of the Board, and for the transaction of such other business as may properly come before the meeting.
- b. Special meetings of the Member, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Board or by the Tribal Council, acting as Member.

**8.2 Place of Meetings.** The Member may designate any place, within the Tribe's reservation or as allowed under 8.4 herein, as the place of meeting for any meeting of the Member.

**8.3 Notice of Meetings.** Except as provided in this Article, written notice stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called will be delivered not less than seven (7) nor more than forty-five (45) days before the date of the meeting, either personally or by mail, by or at the direction of the Board or person calling the meeting, to each member of the Tribal Council, acting as Member Representative entitled to vote at such meeting. If mailed, such notice will be deemed to be delivered as provided in Article 14.

**8.4 Consent to Meeting of Member.** If a majority of the members of the Tribal Council, acting as Member Representatives, will meet at any time and place, either within or outside of the Tribe's reservation, and consent to the holding of a meeting at such a time and place, and such meeting of Tribal Council is within the Tribal rules governing meetings of Tribal Council, and such meeting is mutually agreed upon by the Company, such a meeting will be valid without a call or notice, and at such meeting lawful action may be taken.

**8.5 Record Date.** For the purposes of determining Tribal Council members, acting as Member Representatives entitled to notice or to vote at any meeting of the Member or any adjournment thereof, or in order to make a determination of Member Representatives for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, will be the record date for such determination of Member Representatives. When a determination of representatives entitled to vote at any meeting of the Member has been made as provided in this paragraph, such determination will apply to any adjournment thereof.

- 8.6 Quorum.** A majority of the Tribal Council members, acting as Member Representatives will constitute a quorum at any meeting of the Member. In the absence of a quorum at any such meeting, a majority of those present may adjourn the meeting from time to time, for a period not to exceed thirty (30) days without further notice. However, if the adjournment is continued for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting will be given to each Tribal Council member acting as Member Representative of record entitled to vote at the meeting. At such adjourned meeting at which a quorum will be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Tribal Council members acting as Member Representatives present at a duly organized meeting may continue to transact business until adjournment.
- 8.7 Manner of acting.** Subject to the requirement of this Article, if a quorum is present, the affirmative vote of a majority of the Tribal Council members acting as Member Representatives and entitled to vote on the subject matter will be the act of the Member, unless the vote of a greater or lesser proportion or number is otherwise required by the Tribal Limited Liability Ordinance, the Articles or Organization, or this Operating Agreement.
- 8.8 Member voting.** Pursuant to the Tribal Limited Liability Company Ordinance, The Tribe's voting interest as Member will be voted in accordance with the Tribal Council's procedures for voting and passing tribal resolutions.
- 8.9 Proxies.** At all meetings of the Member, Tribal Council members entitled to vote the Company's interests must vote in person. No proxy voting will be allowed.
- 8.10 Action by the Member without a Meeting and Telephonic Meetings.** Action required or permitted to be taken at a meeting of the Member may be taken without a meeting only if established procedures of the Member permit such action without a meeting. Tribal Council members, acting as Member, may participate in and hold a meeting through conference call or similar audio or video communications by means of which all Persons participating in the meeting can clearly hear each other, and participation in such meeting will constitute attendance and presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.
- 8.11 Waiver of Notice.** When any notice is required to be given to any Member Representative, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, will be the equivalent to the giving of such notice.

**ARTICLE IX**  
**Contributions to the Company; Capital Units; Capital Accounts**

**9.1 Capital Contributions.** The Member shall initially contribute such amounts as is set forth in the Schedule A attached hereto as its Capital Contribution. No subsequent Capital Contributions shall be required of the Member unless otherwise provided by Tribal Ordinance or as set forth below.

**9.2 Additional Capital Contributions.** If, as determined by the Board, and approved by Tribal Council, the Company requires Additional Capital Contributions to provide funds to a Subsidiary in order for the Subsidiary to comply with its obligations or for a new or existing Subsidiary to pursue opportunities, then, at such time and in such amounts as determined by the Board and approved by the Tribal Council, the Member will make an Additional Capital Contribution to the Company.

**9.3 Capital Units.** The Member's Interest in the capital of the Company will be represented by Units of membership interests. The initial number of Units authorized is ten (10). Such Units are hereby issued to the Member and will be voted by the members of the Tribal Council as representatives of the Member.

**9.4 Capital Accounts.**

- a.** A separate Capital Account will be maintained for the Member.
  - i.** The Member's Capital Account will be increased by the amount of money contributed by the Member to the Company, and/or the fair market value of property contributed by the Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take) and subject to Section 752 or the Code or other applicable provisions, and/or the amount of Net Profits allocated to such Member.
  - ii.** The Member's Capital Account will be decreased by the amount of money distributed to such Member by the Company, and/or the fair market value of property contributed by the Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take) and subject to Section 752 or the Code or other applicable provisions, and/or the amount of Net Losses allocated to the Member.
- b.** In the event of a permitted sale or exchange of an Interest in the Company, the Capital Account of the transferor will become the Capital Account of the transferee to the extent it relates to the transferred interest.
- c.** The manner in which Capital Accounts are to be maintained pursuant to this Article is intended, and will be construed so as, to comply with the requirements of Code Section 704 (b) and the Treasury Regulations promulgated thereunder, or in the event there exists an inconsistency, the Code and Treasury Regulations will control.
- d.** Upon liquidation of the Company (or the Member's Interest), liquidating distributions will be

made in accordance with the positive Capital Account balance of the Member, as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs or as is provided for by governing accounting guidance. Liquidation proceeds will be paid within sixty (60) days of the end of the taxable year (or, if later, within ninety (90) days after the date of the liquidation).

**9.5 No Demand of Member Capital.** The Member will not be entitled to demand or receive from the Company the liquidation of its interest in the Company until the Company is dissolved in accordance with the provisions hereof or other applicable provisions of the Tribal Limited Liability Ordinance, or other applicable Tribal ordinance.

## **ARTICLE X**

### **Allocations**

**10.1 Allocations of Profits and Losses from Operations.** Allocations of Profits and Losses from operations shall be determined as set forth below and in accordance with certain sections of the Code and as described in Treasury Regulations. However, nothing contained herein shall be construed to subject the Company or Member to any federal, state, and/or local taxation, regulation, and/or jurisdiction in conflict with the rights, privileges, and immunities enjoyed by the Tribe.

- a.** Except as may be required by Section 704 (c) of the Code, the Net Profits and Net Losses of the Company for each Fiscal Year shall be allocated to the Member in proportion to its future interests in the Company as prudent and with respect to Company/Subsidiary cash needs and business plan as established by the Board, consistent with Article I Section 1.1 h. Any credit available for income tax purposes shall be allocated to the Member in like fashion.
- b.** Notwithstanding the preceding paragraph, no loss shall be allocated to the Member if such allocation would cause the Member's Adjusted Capital Account to become negative or to increase the negative balance thereof.
- c.** In the event the Member unexpectedly receives any adjustment, allocations or distributions described in Section 1.704-1 (b) (2) (d) (4), (5), or (6) of the Treasury Regulations, items of the Company income and gain shall be specially allocated to the Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit balance of the Adjusted Capital Account of the Member as possible, provided that an allocation pursuant to the paragraph shall only be made if and to the extent such Member would have a deficit balance in its Adjusted Capital Account after all other allocations provided for in the Article have been made as if this paragraph were not in the Operating Agreement.
- d.** In the event the Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of the amount the Member is obligated to restore pursuant to any provision in this Operating Agreement, if any, and the amount the Member would be deemed to be obligated to restore pursuant to Treasury Regulations Section 1.704-2, the Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to the paragraph shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum and after all other allocations provided for in this Article have been made as if preceding paragraphs c and d hereof were not in the Operating Agreement.
- e.** To the extent an adjustment to the adjusted tax basis of any Company asset purchase to Code Section 734 (b), or Code Section 1.704-1 (b) (2) (iv) (m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increased the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the

Member in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Treasury Regulations. Notwithstanding any other provision of this Operating Agreement, the Regulatory Allocations shall be taken into account in allocating items of income, gain, loss, and deduction to the Member so that, to the extent possible, the net amounts of such allocations of other items and allocated to the Member if Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence, allocations pursuant to this paragraph shall only be made with respect to allocations pursuant to the preceding paragraph to the extent the Board reasonably determines that such allocations will otherwise be inconsistent with the economic agreement among the parties to this Operating Agreement.

- f. The Board shall have reasonable discretion, with respect to each Fiscal Year, to apply the provisions of the preceding paragraph in whatever order is likely to minimize the economic distortions that might otherwise result from the Regulatory Allocations and divide all allocations pursuant to the preceding paragraph to the Member in a manner that is likely to minimize such economic distortions.

**10.2 Distributions.** All distributions of cash or other property will be made to the Tribe, as the sole Member, at such times as determined by the Board, in accordance with the Dividend Plan approved by the Tribe.

**10.3 Limitation upon Distributions.** No distributions will be declared and paid out if, after the distribution is made, would make the Company unable to pay its debts as they become due in the ordinary course of business, or if it would cause the company's assets to be less than the sum of its total liabilities, or if the distribution would be in violation of its Dividend Plan pursuant to this Operating Agreement, or violate 1.1 and/or 10.1 a.

**10.4 Accounting Principles.** The profits and losses of the Company will be determined in accordance with those accounting principles applied on a consistent basis by the Company's accountants and in accordance with accepted accounting principles.

**10.5 Interest on and Return of Capital Contributions.** The Member will not be entitled to interest on its Capital Contributions or to return of its Capital Contribution, except as otherwise specifically provided herein.

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

**10.7 Returns and Other Elections.** The Board will cause the preparation and timely filing of all tax returns



required to be filed by the Company pursuant to the Internal Revenue Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns or pertinent information therefrom, will be furnished to the Member within a reasonable time after the end of the Company's Fiscal Year.

**10.8 Tax Matters Member.** The Tribe is hereby designated the Tax Matters Member of the Company for purposes of the Code and the Treasury Regulation thereunder.

**10.9 Tax Elections.** All elections permitted to be made by the Company under federal and/or state laws will be made by the Board in their discretion.

**ARTICLE XI**  
**Transferability**

**11.1 Assignment of Interest.** No membership interest in the Company may be assigned, in whole or in part, without the express written approval as set forth in a duly adopted resolution of Tribal Council. An assignment does not entitle the assignee- to participate in the management and affairs of the Company or to become or to exercise any rights of a Member. Such an assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Additionally, the pledge of, or granting of a security interest, lien, or other encumbrance in or against any or all of the Interest of the Tribe, will not cause the Tribe to cease to be the Member and not deprive the Tribe of the power to exercise any rights or powers as Member.

**11.2 Right of Assignee to Become a Member.** An assignee of an Interest may not become a Member of the Company.

**ARTICLE XII**  
**Additional and Substitute Members**

**12.1 Admission of New Members.** This Company will not allow any additional new Members.

**ARTICLE XIII**  
**Dissolution and Termination**

**13.1 Dissolution.** The Company will be dissolved upon the occurrence of any of the following events:

- a. When the period, if any, fixed for the duration of the Company will expire;
- b. Upon affirmative vote of the Member;
- c. Upon the withdrawal, expulsion, bankruptcy, or dissolution of the Member or occurrence of any other event, except assignment of membership interest voluntarily or by operation of law, that terminates the continued membership of the Member in the Company.

**13.2 Distribution of Assets upon Dissolution.** In settling accounts after dissolution, the liabilities of the Company will be entitled to payment in the following order:

- a. To those creditors, in the order of priority as provided by law, except to the Member of the Company on account of its Capital Contribution, and
- b. To the Member with respect to its Capital Account in accordance with provisions of this Operating Agreement.

**13.3 Articles of Dissolution.** When all debts, liabilities, and other obligations have been paid and discharged, or adequate provisions have been made therefor, and all of the remaining property and assets have been distributed to the Member, articles of dissolution will be executed and filed with the Department. Thereafter, the existence of the Company will cease, except for the purposes of suits, other proceedings, and appropriate action as provided for in the Tribal Limited Liability Company Ordinance. The Board will thereafter be trustee of the Member and as such will have authority to distribute any Company property discovered after dissolution, convey real estate, and take such other action as may be necessary on behalf of and in the name of the Company.

**13.4 Winding Up.** Except as provided by law, upon dissolution, the Member will look solely to the assets of the Company for the return of its Capital Contribution. The winding up of the affairs of the Company and the distribution of its assets will be conducted exclusively by the Board, who are hereby authorized to take all actions necessary to accomplish such distribution, including without limitation, selling any Company assets the Board deems necessary or appropriate to sell.

**ARTICLE XIV**  
**Miscellaneous Provisions**

**14.1 Notices.** Any notice, demand, or communication required or permitted to be given by any provision of this Operating Agreement will be deemed to have been sufficiently given or served for all purposes if delivered personally to the party or an executive officer of the party to whom the same is directed, or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member, Member Representatives, and/or Company's address as it appears in the Company's and/or Department's records, as appropriate. Except as otherwise provided herein, any such notice will be deemed to be given three business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent aforesaid.

**14.2 Books of Account and Records.** Proper and complete records and books of account will be kept or will be caused to be kept by the Board in which will be entered fully and accurately all transactions and other matters relating to the Company's business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. Such books and records will be maintained in accordance with generally accepted accounting principles. The books and records will at all times be maintained at the principal executive office of the Company and will be open to the reasonable inspection and examination of the Member or its duly authorized representatives during reasonable business hours. The Board will also provide, or cause to be provided:

- a. Copies of any periodic financial statements (including monthly or quarterly balance sheets, profit and loss statement, and cash flow statements) as may be prepared in the ordinary course of business, promptly after such statements are furnished to the Company management;
- b. A full report of the business activities of the Company within one hundred twenty (120) days after the close of each Fiscal Year; and
- c. A proposed annual operating plan for the following Tribal Fiscal Year, including any proposed funding from the Tribe or anticipated distributions to the Tribe.

**14.3 Application of Tribal Law.** This Operating Agreement and the application and interpretation hereof will be governed exclusively by its terms and by the laws of the Tribe, and specifically the Tribal Limited Liability Company Ordinance, or any subsequent amendment.

**14.4 Amendments.** Any amendments to the Operating Agreement may be proposed to the member by a majority of the Board or any member of the Tribal Council. A vote on an amendment to the Operating Agreement will be taken within thirty (30) days after notice thereof has been given to the Member unless such a period is otherwise extended by applicable laws, regulations, or agreement of the Member. A proposed amendment will become effective at such time as it has been approved by the Member.

**14.5 Execution of Additional Instruments.** The Member hereby agrees to execute such other and further statements of interest and holding, designations, powers of attorney, and other instruments necessary to comply with any applicable laws, rules, or regulations.

**14.6 Construction.** Whenever the singular number is used in this Agreement and when required by the context, the same number will include the plural, and the masculine gender will include the feminine and neuter genders, and vice versa.

**14.7 Headings.** The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Operating Agreement or any provision hereof.

**14.8 Waivers.** The failure of any party to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this Operating Agreement, will not prevent a subsequent act, which would have originally constituted a violation, from having the effect of any original violation.

**14.9 Rights and Remedies Cumulative.** The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party will not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

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

**14.11 Successors and Assigns.** Each and all of the covenants, terms, provisions, and agreement herein contained will be binding upon and inure to the benefit of the Tribe and, to the extent permitted by this Operating Agreement, its successors and assigns.

**14.12 Creditors.** None of the provisions of this Operating Agreement will be for the benefit of or enforceable by any creditors of the Company.

**[Signature Page to Follow]**

**CERTIFICATE**

The undersigned hereby agree, acknowledge and certify that the foregoing Operating Agreement constitutes the Operating Agreement of Little River Holdings, LLC adopted by Resolution No. \_\_\_\_\_ of the Little River Band of Ottawa Indians as of \_\_\_\_\_, 2017.

Organizer

By:

\_\_\_\_\_  
Tribal Ogema, Larry Romanelli

**Schedule A**  
**[Little River], LLC**  
**Capital Contribution and Capital Units**

Member Name & Address	<u>Initial Capital Contribution</u>	<u>Percentage Interest</u>	<u>Capital Units</u>
Little River Band of Ottawa Indians 2608 Government Center Drive Manistee, Mi 49660		100%	10