

Little River Holdings Dividend Policy

Statement of Intent/Purpose

Little River Holdings, LLC's ("LRH") Dividend Policy ("Policy") is a required document ~~for under~~ the LRH Operating Agreement. ~~Distributing profits to the Tribe as the sole member of LRH is in keeping with the Tribe's purpose in forming LRH as stated in Paragraph 2.6a of the LRH Operating Agreement.~~ This LRH Dividend Policy sets forth the parameters for a dividend payout of profits from the operations of LRH back to the Little River Band of Ottawa Indians ("LRBOI"), as the sole member of ~~ownership interest in~~ the company. Dividend payouts will be ~~subtracted from the retained earnings of LRH and affect the cash available for internal financing of current and future investments. The authorization of each dividend payment should consider the cash flow requirements of LRH, current liquidity, ability to raise financing from other sources, and existing covenants or restrictions on capital retention.~~ made based from the distributable cash as that term is defined in Paragraph 1.1h of the LRH Operating Agreement.

Objectives

The objective of this Policy is to set forth clear and transparent criteria for the determination of dividend payouts. The Policy supports a long-term horizon for the development of LRH, in order to provide indefinite and increasing financial contributions to LRBOI. The Policy reinforces LRHs independent governance while respecting and upholding its ~~fiduciary~~ responsibility to LRBOI.

LRH Operating Agreement Considerations

Section 6.3.k of the LRH Operating Agreement, Certain Powers of the Board, states, "To the extent that there is available Net Cash Flow, [the Board has the power and authority] 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."

Section 7.3, Investments and Return of Capital, states, "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."

Section 10.2, Distributions, states, "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."

Section 10.3, Limitation upon Distributions, states, "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 sum of its total liabilities, or if the distribution would be in violation of its Dividend Plan pursuant to this Operating Agreement."

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

Commented [RJF1]: C. Crampton expresses concern with this section.

Commented [CAF2]: This section is inapplicable to the current discussion since one of the purposes of Little River Holdings is to distribute a portion of the profits to the Tribe as its sole Member. This section is boilerplate language which is always included in LLC operating agreements to make clear that members are not entitled to interest on their contributions nor to withdraw their contributions at any time they choose.

Definitions

Board – 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, Board of Directors of the Company appointed to oversee the LRH in accordance with the LRH Operating Agreement.~~

Commented [CAF3]: Per the LRH Operating Agreement.

Dividend – A sum of money paid by the LRH to LRBOI out of ~~its capital based on its audited annual Net Income~~ the distributable cash as defined in the LRH Operating Agreement and in accordance with this Policy.

Management – The ~~individual(s) directly managing any tribally-owned LLC and/or the Board of Directors of same where appropriate, CEO and her or his direct reports which typically includes the COO and CFO and the top level manager of each portfolio or subsidiary company (e.g., president, managing director, etc.).~~

Member – The Little River Band of Ottawa Indians Nation as represented through its Tribal Council.

Distributable Cash - ~~Distributable Cash 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. Net Income – LRH's income minus cost of goods sold, expenses, depreciation and amortization, interest, and taxes for an accounting period.~~

Commented [CAF4]: The LRH Operating Agreement uses the term Distributable Cash and the Dividend Policy should conform to the Operating Agreement.

Implementation

The Board and Management shall recommend a Dividend Policy for approval from the Member. Following approval of this Policy, the following procedure shall be followed annually regarding the assessment and approval, if any, of an annual Dividend.

1. Upon the issuance of the annual consolidated audit report, Management shall conduct a Dividend assessment to assess the ~~Net Income Distributable Cash, operating capital obligations and liabilities, and capital required to implement the Long-Term Investment Plan of the Enterprise.~~
2. Upon completion of the Dividend assessment, the Management shall submit a recommendation to the Board on whether to issue an annual dividend and, if so, the amount, including the basis for its recommendation.
3. The Board shall review Management's recommendation and either authorize the issuance of a Dividend payment to the Member, ~~forgo the issuance of an annual dividend payment to the Member, or request additional information from Management as it further deliberates the issuance of the annual dividend.~~

Commented [CAF5]: This term is not defined and is also not found in the Operating Agreement and not defined herein.

Commented [RJF6]: Strengthen this section so that there is some metric that has to be met in order for the Board to forgo the distribution.

Dividends

LRH issues dividends in fulfillment of its purpose under the LRH Operating Agreement and in accordance with its long-term strategy to sustain and grow the company and its investments on behalf of the Member. LRH issues Dividends in the form of cash distributions to the Member under the following guidelines:

1. The first year of Dividend payments shall be ~~targeted at~~ a payout ratio of 5% ~~of the Net Income Distributable Cash~~ of LRH.
2. Each successive year the payout ratio shall be targeted to increase by 1% per year, up to a maximum payout ratio of 25%.
3. Dividend payments will be made once annually in accordance with the Implementation plan laid out in this Policy.

Commented [RJF7]: Hould this be set higher? C. Wolfe, C. Crampton, and tribal members would like to see this set at a higher percentage.

Commented [RJF8R7]: Several Council Members would like to see the financials. C. Metzger would like to see 7.5%.

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Audit

An annual audit of the Enterprise's consolidated financial statements shall be conducted to verify the current financial position of the company. The ~~Net Income Distributable Cash, as defined in the LRH Operating Agreement reported in the annual audit~~ shall be the initial basis for analyzing whether to issue dividends ~~and in~~ the amounts ~~in accordance with~~ established by this policy. ~~At all times the Board and the Member shall consider the limitation on issuing distributions imposed by Section 10.3 of the Operating Agreement.~~

Authority

The Board shall be responsible for applying this policy in the best interest ~~of long term impact of LRH to~~ and the Member. ~~The Board and Management retain the sole right to recommend amendments to this policy to the Member for approval. Where the Policy is silent or subject to interpretation, the Board shall interpret in accordance with the objectives and intent of this Policy and the As stated in section 7.3 of the LRH Operating Agreement, this policy is governed by the the LRH Operating Agreement and subject to approval by the Member.~~