LIMITED LIABILITY COMPANY ORDINANCE
Ordinance #14-800-02

Article 1. General Provisions.

1.01. *Purpose.* The purposes of this Ordinance are:

a. To permit, pursuant to the law of the Little River Band of Ottawa Indians, the formation of limited liability companies in order to expand the private business sector on or off of Tribal Lands;

b. To encourage economic self-sufficiency and employment to Tribal Members who may form LLCs under this Ordinance;

c. To regulate such companies so as to promote economic development, job creation, growth and a strong Tribal economy;

d. To authorize the formation of wholly-owned Tribal business entities for managing the Tribe's integral economic activities separate from the general affairs of its government, thereby creating the ability to enter into legally-binding contracts and commercial relationship without the need for formal government action;

e. To establish wholly-owned Tribal LLCs and subsidiary LLCs to provide employment to Tribal Members and to generate profits to the Tribal government for the use and benefit of the Tribal Membership; and

f. To further the exercise of sovereignty over the lands within the jurisdiction of the Little River Band of Ottawa Indian.

1.02. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to:

a. Exercise the inherent powers of the Little River Band by establishing laws through the enactment of Ordinances and adoption of resolutions not inconsistent with the Constitution;

b. To govern the conduct of members of the Little River Band and other persons within its jurisdiction;

c. To promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]" *Article IV, Section 7(a)*; and thereby creating a business structure(s) focused on generating profits which are integral to the operations, financial health, economic self-sufficiency, and continued existence of the Nation.

d. "to create by Ordinance regulatory commissions or subordinate organizations and to delegate to such organizations the power to manage the affairs and enterprises of the Little River Band, provided that no such commission or subordinate organization shall exercise

powers of the Tribal Council unless they are expressly delegated by the Tribal Council." *Article IV, Section 7(f).*

Article 2. Adoption, Amendment, Repeal, Severability.

2.01. *Adoption.* This Ordinance is adopted by Tribal Council Resolution #16-0727-215.

2.02. *Amendment.* This Ordinance may be amended in accordance with the procedures set forth in the Administrative Procedures Ordinance, Ordinance #04-100-07, as amended.

2.03. *Repeal.* This Ordinance may be repealed in accordance with the procedures set forth in the Administrative Procedures Ordinance, Ordinance #04-100-07, as amended.

2.04. *Severability.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Article 3. Definitions.

3.01. *General.* For purposes of this Ordinance, certain terms are defined in this Article. The word "shall" is always mandatory and not merely advisory. Words used in the singular may be taken to include the plural and use of any gendered pronouns may be taken to include both genders.

3.02. *Articles of Organization* means the original Articles of Organization filed under § 5.10 and all amendments or alterations thereto and any restatements.

3.03. *Authorized Designee* means an officer or entity authorized by resolution of the Tribal Council to take specified actions on behalf of the Tribe pursuant to this Ordinance.

3.04. *Business* means every trade, occupation or profession of every variety or type.

3.05. *Business Entity* includes an individual, a general partnership, limited partnership, an LLC, a trust, an estate, a corporation or any other legal or commercial entity.

3.06. *Commission* means the Commerce Commission as created by Little River Band of Ottawa Indians Commerce Commission Ordinance, Ordinance #05-150-05. Should this Commission cease to exist at any point in the future, its duties, if any, assigned by operation of this Ordinance shall be executed by the Commerce Department, Ogema, and/or Tribal Council as then appropriate.

3.07. *Department* means the Department of Commerce of the Little River Band of Ottawa Indians.

3.08. *Director* means the Director of the Department of Commerce.

3.09. *Distribution* means a direct or indirect transfer by an LLC of money or other property to or for the benefit of its members in respect of their interests.

3.10. *Foreign Limited Liability Company* means an LLC organized under the laws of any other Tribe, State or foreign country, with a locus of business on Tribal lands.

3.11. *Limited Liability Company (LLC)* or *Domestic Limited Liability Company (Domestic LLC)* means an LLC organized under this Ordinance.

3.12. *Limited Liability Company Interest* or *Interest in the LLC* or *Member's Interest* means a member's rights in the LLC, including rights to distributions, profits and losses, and to participate in management, as specified in the Operating Agreement.

3.13. *Majority-in-interest* means a member or members holding more than fifty percent (50%) of the total voting interests in the LLC excluding any interest which is not to be counted as voting on a matter as descried elsewhere in this Ordinance.

3.14. *Majority of Members* means more than fifty percent (50%) of the members, irrespective of how many interests each member holds.

3.15. *Manager* or *Managers* means a person or entity designated to manage the LLC pursuant to the Articles of Organization and Operating Agreement.

3.16. *Member* means a person or entity that has been admitted to membership in an LLC or has an ownership interest in an LLC. Solely being a tribal member does not qualify an individual to be included under this provision. The term does not include a person that has withdrawn or dissociated as a Member under § 10.02.

3.17. *Operating Agreement* means any written agreement relating to the conduct of the business and affairs of an LLC and its relationship with its members, which is signed by and binding upon all of its members.

3.18. *Ordinance* means this Limited Liability Ordinance, Ordinance #14-800-02.

3.19. *Organizational Documents* means records that create a Business Entity's organization and determines its internal governance and relations among persons that own it, have an interest in it, or are Members of it, and it includes, but is not limited to, Articles of Organization, Operating Agreements, Articles of Incorporation, bylaws, partnership agreements, agreements of trust, and declarations of trust.

3.20. *Organizer(s)* means the person(s) or entity (entities) which sign(s) and delivers the Articles of Organization for filing to the Department.

3.21. *Person* means any natural person, corporation, LLC, other business entity and any government and its political subdivisions.

3.22. *Reservation* means all those lands encompassed by the exterior boundaries of the Manistee Reserve, reserved in Article Second of the Treaty of March 28, 1836 (7 Stat. 491) and Townships 17 and 18 North, Range 16 West, as reserved in Article First, paragraph Six of the Treaty of Detroit of July 31, 1855, and all lands now or in the future held in trust by the United States for the benefit of the Tribe.

3.23. *Section 17* means Section 17 of the Indian Reorganization Act, 25 USC §477, as it is now and may be amended.

3.24. *State* includes a state, territory or possession of the United States, and the District of Columbia.

3.25. *Successor Limited Liability Company* means the surviving or resulting LLC existing pursuant to a merger or consolidation of two or more LLCs or other business entities.

3.26. *Tribal Constitution* means the Constitution of the Little River Band of Ottawa Indians.

3.27. *Tribal Corporation* means a Corporation wholly owned by the Tribe and duly formed pursuant to a Section 17 Charter, a Tribal Resolution, a Business Corporation Code adopted by the Tribe, or other law.

3.28. *Tribal Council* means the Tribal Council of the Little River Band of Ottawa Indians.

3.29. *Tribal Court* means the Commercial Division of the Tribal Court of the Little River Band of Ottawa Indians.

3.30. *Tribal Entity* includes a general partnership, limited partnership, a trust, an estate, an association, a corporation, a program, a department, an administrative agency or any other legal, commercial or governmental entity of the Tribe.

3.31. *Tribal Lands* means all lands under the jurisdiction of the Tribe, and such other lands as may hereafter be added thereto under any law of the United States of America, except as otherwise provided by law.

3.32. *Tribally-owned Limited Liability Company* means an LLC wholly owned by the Tribe with the Tribe as its sole Member.

3.33. *Tribally-owned second-tiered subsidiary Limited Liability Company* means an LLC wholly owned by a Tribally-owned subsidiary LLC.

3.34. *Tribally-owned subsidiary Limited Liability Company* means an LLC wholly owned by a Tribally-owned LLC.

3.35. *Tribe* means the Little River Band of Ottawa Indians.

3.36. *Trust Land* means land held in trust by the United States for the benefit of the Tribe or its members.

Article 4. General.

4.01. *Applicable Law*. The companies organized and created under this Ordinance shall be subject to this Ordinance, and all other laws of the Tribe. By organizing and creating an LLC under this Ordinance, the LLC and its members shall be considered to have entered into a consensual relationship with the Tribe and agree to be subject to the full extent of the Tribe's legislative, regulatory, and adjudicatory jurisdiction. Unless displaced by particular provisions of this Ordinance or other Tribal law, the principles of law and equity supplement this Ordinance.

4.02. *Citation.* This Ordinance shall be known as the "LLC Ordinance" and cited as the "LLC Ordinance."

4.03. *Implementation and Administration.* The Department of Commerce shall administer the provisions of this Ordinance, utilizing the Commerce Commission, as needed, as a forum relating to regulatory drafting and/or administrative hearing body.

4.04. *Rules.* The Commission shall adopt regulations consistent with this Ordinance pertaining to the filing of documents under this Ordinance. Such regulations shall be approved and adopted by the Tribal Council consistent with Tribal law.

4.05. *Delegation.* Any powers reserved for the Tribe under this Ordinance relating to the creation, dissolution, and/or management of an LLC formed under this ordinance, apart from the power to waive sovereign immunity, may be delegated to an authorized designee by the Tribal Council.

4.06. *Reservation of Power.* The Tribal Council has the power to amend, repeal or modify this Ordinance and any implementing regulations. Such amendments, repeals or modifications shall be of prospective application only and shall not apply retroactively to any LLC previously organized pursuant to this Ordinance or any implementing regulations.

4.07. *Scope*. This Ordinance shall apply to all LLCs organized under its provisions or that elect to accept the provisions of the Ordinance.

4.08. *Sovereign Immunity Reserved to Tribe.* 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 LLCs organized under this Ordinance; provided, however that the Tribe may waive its sovereign immunity for actions taken as a member pursuant to the extent and on such terms as are contained in an express written resolution of the Tribal Council, as provided for in this Ordinance

4.09. *Sovereign Immunity Not Extended to Private Individuals.* The sovereign immunity of the Little River Band of Ottawa Indians shall not extend to LLCs formed under this Ordinance by individual Tribal Members or non-Members electing to form under its provisions.

Article 5.Formation, Registered Agent, Powers and Certain Organizational Matters.

5.01. *Formation*

a. One or more persons may form an LLC under this Ordinance by delivering to the Department a certified copy of the authorization and Articles of Organization for the LLC that comply with the requirements of §5.10 and are executed as required by §5.11.

b. An LLC shall at its formation and at all times have at least one member. The person(s) forming the LLC need not be a member at the time of formation or at any time thereafter.

c. Failure to maintain at least one member shall be an event of dissolution, in accordance with this Ordinance.

5.02. *Registered Agent.*

a. Each LLC organized under this Ordinance shall continuously have and maintain a registered agent on the Reservation for service of process, notice, or demand required or permitted to be served on the LLC under the laws of the Tribe and a registered office on the Reservation.

b. The registered agent shall be a person residing on the Reservation and the registered office may, but need not, be the same as the LLC's place of business.

c. The registered agent may be the person then serving in a designated office of the Tribe, rather than a specified person, if the Tribe is an owner of the LLC of which the Tribe's officer is the appointed agent. Under this subsection, the requirement of physical residency under subsection (b) above is waived.

d. Failure to maintain a registered agent or registered office in compliance with this Article shall be grounds for involuntary dissolution of the LLC by the Department. It shall be the responsibility of the LLC to maintain up-to-date records regarding registered agents and registered offices.

5.03. *Nature of Business Permitted; Powers.*

a. An LLC may be organized for any lawful purpose. If the purpose for which an LLC is formed subjects the LLC to other provisions of applicable law, the LLC shall comply with such provisions.

b. Unless otherwise provided in its Operating Agreement, an LLC organized and existing under this Ordinance has the same powers as an individual to do all things necessary and convenient to carry out its business, including but not limited to, all of the following:

1. Consent to be sued, complain and defend in its name; provided, however, that if an LLC is Tribally-owned, or wholly-owned by another entity which itself is wholly-owned by the Tribe, it shall be entitled to and shall enjoy the Tribe's sovereign immunity from suit unless the Operating Agreement otherwise provides, consistent with the relevant provisions of this ordinance;

2. Purchase, take, receive, lease, or otherwise acquire, own and hold, improve, use, and otherwise deal in or with real or personal property or any legal or equitable interest in real or personal property, wherever situated; provided that an LLC shall be without authority to sell, mortgage, or assign personal or real property that is owned by the Tribe; further provided that an LLC shall have authority to lease real

property from the Tribe and sublease such property to the Tribe or other parties, in accordance with the provisions of 25 U.S.C. 477, as amended;

3. Sell, convey, mortgage, pledge, create a security interest in, lease, exchange or transfer, or otherwise dispose of all or any part of its property or assets; provided that an LLC shall be without authority to sell, mortgage, or assign personal or real property that is owned by the Tribe;

4. Purchase, take, receive, subscribe for, invest in, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, otherwise dispose of, or otherwise use or deal in or with:

   A. Shares or other interests in or obligations of other LLCs, domestic or foreign corporations, associations, general or limited partnerships, or individuals; or

   B. Direct or indirect obligations of the United States government, any other Indian tribe, state, territory, governmental district, or municipality or of any instrumentality of them or any other government;

5. Make contracts or guarantees or incur liabilities, borrow money at such rates of interest as the LLC may determine, issue its notes, bonds, or other obligations, or secure any of its obligations by mortgage or pledge of all or any part of its property, franchises, and income, provided that an LLC shall be without authority to mortgage or pledge any personal or real property that is owned by the Tribe;

6. Lend money, invest or reinvest its funds, and receive and hold real or personal property as security for repayment;

7. Conduct its business and maintain offices and exercise the powers granted by this Ordinance within or outside the Reservation;

8. Elect, appoint or employ managers, agents or employees of the LLC, define their duties, and fix their compensation;

9. Indemnify a member, manager, employee, officer or agent or any other person;

10. Pay pensions and establish pension plans, pension trusts, profit-sharing plans, and benefit or incentive plans for any or all of its current members, managers and employees;

11. Be a promoter, incorporator, general partner, limited partner, member, associate, or manager of any corporation, partnership, limited partnership, LLC joint venture, trust, or other enterprise;

12. Make donations to and otherwise devote its resources for the public welfare or for charitable, scientific, educational, humanitarian, philanthropic, or religious purposes;

13. Make payments or donations, or do any other act not prohibited by law, that furthers the business of the LLC, except that LLCs of which the Tribe is an owner,

in whole or in part, shall not make donations for political support to any Tribal office or to any candidate for any political office; and

14. Transact any lawful business that the members or managers find to be appropriate to promote and further the business and affairs of the LLC.

5.04. *Legal Status of LLCs.* All LLCs organized under this Ordinance, whether owned by Tribal members or non-members, shall be distinct legal personalities existing under Tribal law.

5.05. *Taxation of Limited Liability Companies.* For purposes of taxation by the Tribe, an LLC transacting business on the reservation shall be classified in the same manner as it is classified for federal income tax purposes, and subject to dutifully enacted taxes enacted by the Tribe, if any.

5.06. *Reservation of a Name.*

a. Subject to the terms of §5.08, the exclusive right to the use of a name may be reserved by:

1. A person intending to organize an LLC under this Ordinance and to adopt that name; or

2. An LLC organized under this Ordinance intending to utilize the name as an assumed name or intending to change its name.

b. The reservation of a name is made by filing with the Department an application, executed by the applicant, specifying the name to be reserved and the name and address of the applicant.

c. If the Department finds that the name is available for use by an LLC, the Department shall reserve the name for the exclusive use of the applicant for a period of 120 days.

d. Once having reserved a name, the same applicant may reserve the same for two successive 120 day periods.

e. The right to the exclusive use of a reserved name may be transferred to another person by filing with the Department a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name to be transferred and the address of the transferee.

f. The reservation of a specified name may be canceled by filing with the Department a notice of cancellation, executed by the applicant or transferee, specifying the name reservation to be canceled and the name and address of the applicant or transferee.

5.07. *Assumed Name.*

a. As used in this section, "assumed name" includes a trade name or a name other than the true name of an LLC.

b. Upon complying with this section, but subject to the terms of § 5.08, an LLC organized under this Ordinance may transact its business under one or more assumed names.

c. Before transacting business on the reservation under an assumed name, the LLC shall execute and deliver for filing a statement setting forth:

1. The name of the LLC and the address of its registered office;

2. That it intends to transact business under the assumed name;

3. The assumed name that it proposes to use; and

4. Whether the assumed name will be used at fewer than all of the LLC's places of business, and if so, where it will be used.

d. A separate statement must be executed and delivered for filing for each assumed name that the LLC proposes to use.

e. An LLC may terminate an assumed name by executing and delivering for filing a statement setting forth:

1. The name of the LLC and the address of its registered office;

2. That it no longer intends to transact business under the assumed name; and

3. The assumed name that it intends to terminate.

f. Notwithstanding compliance with the requirements of this section, the use of an assumed name may be enjoined by the Department or by a person adversely affected by such use if the assumed name is deceptively similar to a name in which a person has prior rights to that name.

g. For purposes of determining priority of rights, the mere filing of a statement pursuant to subsection (c) does not constitute actual use of the assumed name set out in the statement.

5.08. *Requirements for Names.*

a. The name of each LLC as set forth in the Articles of Organization and any assumed name:

1. Shall not contain the words "Little River Band of Ottawa Indians", "Little River", "LRBOI", "Tribe" or "Tribal" nor in any way imply that it is associated with the Tribe, its government or that it is an entity of the Tribe, or words or any abbreviation with a similar meaning in any other language, unless the Tribe authorizes the use of such name in its authorization or formation pursuant to Article 15;

2. Shall contain the words "Limited Liability Company," or the abbreviation "L.L.C." or "LLC"; and

3. Shall not contain the words "association," "corporation," "incorporated," "limited partnership," "limited," "L.P.", "Ltd.", or language or words or any abbreviation with a similar meaning in any other language except as part of the phrase "Limited Liability Company."

b. The name of an LLC must be distinguishable within the records of the Department from:

1. The name of any other LLC formed under this Ordinance or authorized to transact business on the Reservation; and

2. Any LLC or corporation previously organized under the laws of the Tribe.

c. The name of an LLC may be the same or substantially similar if the registered owner or holder of the mark or name is the same person or entity as the LLC seeking to use the same or similar name and files proof of ownership with the Department.

d. The Director shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed upon the Department by this § 5.08, including determining whether a name or assumed name is deceptively similar to another name or assumed name. The Department shall make a decision regarding the availability of any name for filing. Without limiting the foregoing, the Department in its discretion may refuse to file a name or assumed name that:

1. Consists of or comprises language that is obscene, contemptuous, profane or prejudicial;

2. Inappropriately promotes abusive or unlawful activity; or

3. Falsely suggests an association with the Tribe or public institutions, unless authorized by the Tribe in accordance with the terms of this Ordinance.

5.09. *LLC Name - Limited Rights.* The authorization to file Articles of Organization under or to reserve or register an LLC name as granted by the Department does not:

a. Abrogate or limit the law governing unfair competition or unfair trade practices;

b. Derogate from the common law, the principles of equity, or the laws of the Tribe or of the United States with respect to the right to acquire and protect names and trademarks; or

c. Create an exclusive right in geographic or generic terms contained within a name.

5.10. *Articles of Organization.*

a. One or more persons may organize an LLC by signing and delivering the Articles of Organization to the Department for filing. The organizer(s) need not be members of the LLC at the time of organization or thereafter.

b. An LLC may have one or more members.

c. In order to form an LLC under this Ordinance, Articles of Organization must be filed with the Department. The Articles of Organization shall contain all of and only the following information:

1. A statement that the LLC is organized under this Ordinance;

2. A name for the LLC that satisfies the provisions of this Ordinance;

3. If the LLC is to have a period of existence other than perpetual, enter the desired period of duration (if no entry is made, duration is assumed to be perpetual);

4. The street address of the registered office and the name of the registered agent at that office;

5. If the LLC is to be managed by manager:

   A. A statement to that effect;

   B. The number of managers permitted; and

   C. If the initial manager or managers have been selected, the name and business, residence or mailing address of each manager.

6. The name and address of each person organizing the LLC;

7. Whether the LLC is Tribally-owned; and

8. If Tribally-owned, whether the LLC is to enjoy Tribal sovereign immunity and the scope of any waiver of that immunity with a copy of the Tribal Council Resolution establishing that waiver attached.

5.11. *Filing of Articles.*

a. The Articles of Organization shall be filed with the Department. The documents to be filed shall be executed as provided in §5.16, or be true copies made by photographic, xerographic, electronic, or other process that provides similar copy accuracy of a document that has been properly executed.

b. Unless it finds that the Articles of Organization or certificate of amendment do not conform to law as to form, the Department, upon receipt of all required filing fees, shall:

   1. Place a stamp or seal on the filing, indicating the time, day, month and year of the filing, the name of the Department, the signature of the Director, and the Department's seal, or facsimiles of them;

   2. File one copy in its office; and

   3. Return a copy to the person who filed it or as directed by the person who filed it.

5.12. *Amendment to Articles.*

a. The Articles of Organization of an LLC are amended by filing Articles of Amendment with the Department. The Articles of Amendment must set forth:

   1. The name of the LLC; and

   2. The amendment or amendments to the articles.

b. A manager or, if there is no manager, a member who becomes aware that a statement in the Articles of Organization or any amendments have become inaccurate in any material respect as a result of subsequent events shall promptly amend the articles within 90 days of becoming aware of the inaccuracy.

c. No later than 90 days after the following event or events occur, an amendment to the Articles of Organization reflecting the event or events must be filed by a manager or, if there is no manager, by a member:

1. A change in the name of the LLC;

2. A change in the address of the registered office or a change in the name, identity or address of the registered agent of the LLC;

3. A change in whether the management of the LLC is vested in managers or members; or

d. Except as otherwise provided in the Articles of Organization, Articles of Organization may be amended at any time for any other purpose by a majority of the members unless the Operating Agreement otherwise provides. Each LLC shall file with the Department a copy of any amendment to the articles within 60 days after adoption.

e. If, after the dissolution of an LLC but before the filing of articles of dissolution as provided in §12.04, a person other than an individual shown on the Articles of Organization as a manager is winding up the LLC's affairs, then the Articles of Organization must be amended to set forth the name and the business, and residence or mailing address of each person winding up the LLC's affairs. Each person winding up the affairs shall execute and file Articles of Amendment. That person is not subject to liability by reason of such an amendment. A manager who is not winding up an LLC's affairs need not execute Articles of Amendment under this subsection.

f. An LLC may at any time file a restatement of its Articles of Organization that integrates into a single document the provisions of its Articles of Organization giving effect to all amendments previously adopted and, if authorized, further amendments. The restated Articles of Organization, either in the heading or in an introductory paragraph must set forth:

1. That it is a restatement;

2. The LLC's present name;

3. If the name has been changed, the name under which it was originally filed; and

4. The date of filing of the initial Articles of Organization.

g. The restated Articles of Organization must be executed and filed in the manner provided for any other amendment to the Articles of Organization. Upon filing of the restated Articles of Organization by the Department, the restatement, including further amendments made as a result of the restatement, constitutes the Articles of Organization of the LLC pursuant to §5.10.

5.13. *Certificate of Correction.* A manager or, if there is no manager, a member who becomes aware that any statement in the Articles of Organization of an LLC, or a certificate filed under this Ordinance was inaccurate when made, shall file a Certificate of Correction with the Department on an approved form provided by the Department. The Certificate of Correction must specify the inaccuracy or defect to be corrected and must set forth the portion of the instrument in corrected form. The corrected instrument is effective as of the date the original instrument was filed, except for those persons who are substantially and adversely affected by the correction. For those persons, the corrected instrument is effective from the filing date.

5.14. *Effect of Filing and Pre-filing Activities.*

a. Upon the placement of a stamp or seal, as provided in §5.11(b), on the Articles of Organization, the LLC shall be considered organized, as a separate legal entity whose existence as such continues until cancellation of the LLC's Articles of Organization.

b. Except as against the Department in a proceeding to cancel or revoke the Articles of Organization or in a proceeding for involuntary dissolution of the LLC, the filed articles shall be conclusive evidence that all conditions precedent required to be performed by the members have been complied with and that the LLC has been legally organized under this Ordinance.

c. An LLC may not transact business or incur indebtedness, except that which is incidental to its organization or to obtaining subscriptions for or payment of contributions, until the Articles of Organization have been filled with the Department. Persons engaged in pre-filing activities other than those authorized by this section shall be jointly and severally liable for any debts or liabilities incurred in the course of those activities. Nevertheless, this section may not be interpreted to invalidate any debts, contracts, or liabilities of the LLC incurred on behalf of the LLC prior to the filing of its Articles of Organization with the Department.

5.15. *Records.*

a. Each LLC shall keep at its principal place of business the following:

1. A current list in alphabetical order of the full name and last known business street address of each Member;

2. A copy of the stamped Articles of Organization and all amendments to them, collectively referred to as the "Articles of Organization," together with executed copies of any powers of attorney pursuant to which any certificate of amendment has been executed;

3. Copies of the LLC's federal, state and Tribal income tax returns and reports, if any, for the three most recent years;

4. Copies of any financial statements of the LLC, if any, for the three most recent years;

5. A copy of the LLC's Operating Agreement, if any; and

6. Unless otherwise set forth in the Articles of Organization or the Operating Agreement, a written statement setting forth:

A. The amount of cash and a description and statement of the agreed value of the other property or services contributed and agreed to be contributed by each member;

B. The times at which, or events on the happening of which, any additional contributions agreed to be made by each member are to be made;

C. Any right of a member to receive distributions which include a return of all or any of the member's contributions; and

D. Any event upon the happening of which the LLC is to be dissolved and its affairs wound up.

b. Records kept under this section are subject to inspection and copying during ordinary business hours by members for a proper purpose and subject to such reasonable confidentiality and limitation of use requirements as the LLC may require, all at the expense of the requesting member. The purpose must be stated with reasonable particularity and the records must be directly related to the purpose. The Tribal Court, in a valid action brought under this Ordinance, may subpoena any of these records if an LLC improperly denies any member access to the records.

5.16. *Execution of Documents.*

a. Unless otherwise specified in this Ordinance, each certificate or report required by this Ordinance to be filed with the Department shall be executed in the following manner:

1. In the case of the initial Articles of Organization, by the person or persons forming the LLC as authorized by this Ordinance;

2. A certificate of amendment shall be signed by at least one manager, or at least one member if the LLC is managed by its members; subject to any restriction or requirement in the Operating Agreement or articles or organization; and

3. Articles of Dissolution or any other document filed after the dissolution of the LLC shall be signed by all of the managers or, if the members are winding up the LLC's affairs, then by a majority-in-interest of the members; and if neither the manager or the members are winding up the affairs of the LLC, then by all of the liquidating trustees, subject to any restriction or requirement in the Operating Agreement or Articles of Organization;

b. The execution of any certificate or articles shall contain an oath or affirmation by the person executing the document under the penalties of perjury that the facts stated in the articles or certificate are true and that any power of attorney used in connection with the execution of the articles or certificate is proper in form and substance.

5.17. *Execution by Judicial Act.* If a person required by subsection (a) to execute articles or a certificate fails or refuses to do so, then a person who is adversely affected by the failure or refusal of any person to execute and file any articles or other document required to be filed under this Ordinance

may petition the Tribal Court solely for the purpose of requesting an order that directs the execution and filing of the articles or other document. Review by the Tribal Court shall be limited to a determination of whether the articles or document comply with the requirements for the articles and document set forth in this Ordinance. Nothing in this Ordinance, however, serves to waive any aspect of the Tribe's sovereign immunity, and any waiver thereof must be provided explicitly in the LLC's Articles of Organization and/or Operating Agreement. Nothing in this Ordinance authorizes lawsuits against the Department for damages or any relief other than the order described in this section. On an action under this Section, if the Tribal Court finds that the certificate or articles should be executed and that the person or persons designated to execute the certificate or articles have failed or refused to do so, the Tribal Court shall order the Department to record the appropriate certificate or articles. Exclusive venue for an action under this section lies in the Tribal Court.

5.18. *Penalty for False Execution.*

a. If any articles or certificate contain a materially inaccurate statement, a person who suffers loss by reasonable reliance on the statement may recover damages for the loss from:

1. A manager or member who executed the certificate or articles and knew or should have known the statement was inaccurate in a material respect at the time the certificate or articles were executed; and

2. A manager or, if none, any member who thereafter knows that an arrangement or other fact described in the certificate or articles is inaccurate in any material respect or has changed, making the statement inaccurate in any material respect, if that manager or member had sufficient time to amend or cancel the certificate or articles or to file a petition for the amendment or cancellation before the statement was reasonably relied upon.

b. Notwithstanding subsection (a), a manager or member has no liability for failing to cause the amendment or cancellation of a certificate or articles to be filed or failing to file a petition for amendment or cancellation pursuant to subsection (a) if the articles or amendment, articles of dissolution or petition is filed within 90 days of the date that manager or member knew or should have known the certificate or articles were inaccurate in any material respect.

5.19. *Certificate of Status.* Any person may obtain from the Department, upon request, a certificate of status for either a Domestic or a Foreign LLC.

5.20. *Interstate Application and Application in Other Foreign Jurisdictions.* An LLC may conduct its business, carry on its operations and have and exercise the powers granted by this Ordinance in any foreign jurisdiction, including but not limited to, any jurisdiction of an Indian tribe, any foreign nation, and any state, territory, district or possession of the United States.

5.21. *Tribe as Owner.*

a. The Tribe shall form or become a member of a Tribally-owned LLC formed under this Ordinance only by resolution of the Tribal Council, upon a finding that the tribally-owned business 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.

b. If the Tribe or a Tribal entity is a member of an LLC formed under this Ordinance, any action which the Tribe is required or permitted to take with respect to any vote, approval, consent, appointment, direction, or other matter shall be taken as specified in §16.03 of this Ordinance or, as to actions related to the managers of a manager-managed LLC, as stated in the LLC's Operating Agreement approved by the Tribal Council.

c. If the Tribe is the sole member of an LLC formed under this Ordinance, such Tribally-owned LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit except to the extent otherwise provided in its Operating Agreement approved by the Tribal Council.

d. If a Tribally-owned LLC, of which the Tribe or a Tribal entity is the sole member, forms a Tribally-owned subsidiary LLC of which the Tribally-owned LLC is the sole member, such Tribally-owned subsidiary LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit except to the extent otherwise provided in its Operating Agreement.

e. If a subsidiary Tribally-owned LLC of which a Tribally-owned LLC is the sole member, forms a Tribally-owned second-tier subsidiary LLC, such Tribally-owned second-tier subsidiary LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit except to the extent otherwise provided in its Operating Agreement.

f. If the Tribe or a Tribal entity is a member with a majority interest in an LLC formed under this Ordinance, the LLC may possess the privileges and immunities of the Tribe, including sovereign immunity from suit, to the extent allowed by federal law, this Ordinance or by its Operating Agreement approved by Tribal Council.

g. In no event shall any manager, who is not a member of an LLC in which the Tribe is a Member, bind the Tribe in any manner; provided that the Tribe's interest as a member may be bound only by manager or member actions consistent with this Ordinance and the Operating Agreement of the LLC.

h. Nothing contained in this Ordinance shall be construed as creating any liability or waiving of sovereign immunity of the Tribe in any manner; provided that the assets of the LLC in which the Tribe holds an interest may be subject to liabilities and claims unless otherwise provided herein. In no event shall any action taken by the Tribe as a member concerning the exercise of any right or privilege or discharge of any duty with respect to an interest in an LLC be construed as a waiver of immunity or creation of a liability on the part of the Tribe separate and apart from its interests as a member of the LLC.

i. For all Tribally-owned LLCs and Tribally-owned subsidiary LLCs, the additional provisions of Articles 15, 16 and 17 of this Ordinance shall apply.

Article 6. Relations of Members and Managers to Persons Dealing with an LLC.

6.01. *Agency Power of Members and Managers.*

a. Except as provided in subsection (b):

1. Each member is an agent of an LLC for the purpose of its business or affairs, and the acts of a Member, including, but not limited to, the execution in the name of an LLC of an instrument for carrying on the business or affairs of that LLC of which that person is a member binds an LLC, unless the acting Member has no authority to act for the LLC in a particular matter, and the person with whom that member is dealing has knowledge of the fact that the member has no such authority.

2. If the Tribe is a member, the Tribe's authority shall be exercised pursuant to Article 16.

b. If the Articles of Organization provide that management of an LLC is vested in a manager or managers:

1. A member, acting solely in the capacity as a member, is not an agent of an LLC; and

2. Each manager is an agent of an LLC for the purpose of its business or affairs, and the act of a manager, including, but not limited to, the execution in the name of that LLC of an instrument, for carrying on in the usual way the business or affairs of that LLC of which that person is the manager, binds that LLC, unless the acting manager has no authority to act for the LLC in a particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

c. An act of a manager or a member that is not apparently for carrying on in the usual way the business or affairs of an LLC does not bind that LLC unless authorized in accordance with an Operating Agreement or Articles of Organization at the time of the transaction or at any other time.

d. An act of a manager or member in contravention of a restriction on authority does not bind an LLC to persons having knowledge of the restriction.

6.02. *Admissions of Members and Managers.*

a. Except as provided in subsection (b), an admission or representation made by a member concerning the business or affairs of an LLC within the scope of a member's authority as provided for by this Ordinance may be used as evidence against that LLC in any legal proceeding.

b. If the Articles of Organization provide that management of an LLC is vested in a manager or managers:

1. An admission or representation made by a manager concerning the business or affairs of an LLC within the scope of the manager's authority as provided for by this Ordinance may be used as evidence against that LLC in any legal proceedings; and

2. An admission or representation of a member, acting solely in that member's capacity as a member, does not constitute evidence against an LLC in any legal proceeding.

6.03. *Limited Liability Company Charged with Knowledge of or Notice to Member or Manager.*

a. Except as provided in subsection (b), notice to a member of a matter relating to the business or affairs of an LLC, and the knowledge of the member acting in the particular matter, acquired while a member or known by the person at the time of becoming a member, and the knowledge of any other member who reasonably could and should have communicated the knowledge to the acting member, operate as notice to or knowledge of the LLC, except in the case of a fraud on the LLC committed by or with the consent of that member.

b. If the Articles of Organization provide that management of an LLC is vested in a manager or managers:

1. Notice to a manager of a matter relating to the business or affairs of the LLC, and the knowledge of the manager acting in the particular matter, acquired while a manger or known by the person at the time of becoming a Manager, and the knowledge of any other manager who reasonably could and should have communicated it to the acting manager, operate as notice to or knowledge of the LLC, except in the case of a fraud on the LLC committed by or with the consent of that manager; and

2. Notice to or knowledge of a member of an LLC, while that member is acting solely in that member's capacity as a member is not notice to or knowledge of an LLC.

6.04. *Limited Liability Company Liable for Member's or Manager's Actionable Conduct; Misapplication.*

a. Except as otherwise provided for in this ordinance, an LLC is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a member or manager acting in the ordinary course of business of the LLC or with the authority of the LLC, subject to all other provisions of this ordinance.

b. Except as otherwise provided for in this ordinance, if, in the course of its business, an LLC receives money or property of a person not a member that is misapplied by a member or a manager while it is in the custody of the LLC, the LLC is liable for the loss, subject to all other provisions of this ordinance.

6.05. *Liability to Third Parties.*

a. Except as otherwise provided in this Ordinance, the debts, obligations and liabilities of an LLC, whether arising in contract, tort or otherwise, are solely the debts, obligations and liabilities of the LLC. A member or manager of an LLC is not obligated personally for any such debt, obligation or liability of the LLC solely by reason of being a member or acting as a manager of an LLC.

b. Except as provided in subsection (c), the failure of an LLC to observe the usual LLC formalities or requirements relating to the exercise of LLC powers or management of its

business and affairs is not a ground for imposing personal liability on the members or managers for liabilities of the LLC.

c. Except as otherwise provide in this ordinance, all or specified members of an LLC may be liable in their capacity as members for all or specified debts, obligations or liabilities of the LLC only if:

1. A statement to that effect is contained in the Articles of Organization; and
2. Any member so liable has either voted for the adoption of the provision or has consented in writing to be bound by the provision.

d. A member of an LLC may act as guarantor or surety, may provide collateral or may otherwise assume responsibility for the debts, obligations or liabilities of the LLC whether or not a statement under paragraph (c) (1) exists or a vote or consent under paragraph (c) (2) has occurred.

6.06. *Parties to Actions.* A member of an LLC is not a proper party to a proceeding by or against that LLC, solely by reason of being a member of that LLC, except:

a. If the object of the proceeding is to enforce a member's right against or liability to that LLC; or

b. The action is brought under § 6.07.

6.07. *Authority to Sue.* Unless otherwise provided in the Operating Agreement, an action on behalf of an LLC may be brought in the name of the LLC by:

a. One or more members of the LLC, if authorized by a majority of the members, excluding the vote of any member who has an interest in the outcome of the action that is adverse to the interest of the LLC.

b. One or more managers of an LLC if the management of the LLC is vested in one or more managers, or if the managers are authorized to sue by a majority of members.

Nothing contained herein shall be construed as authorizing actions of any kind whatsoever against the Tribe as a member or owner unless otherwise provided in the Operating Agreement.

Article 7. Rights and Duties of Members and Managers.

7.01. *Management; Voting; Classes.*

a. Unless the Articles of Organization provide that management of an LLC vests in a manager or managers, management of the business or affairs of that LLC is vested in the members. Subject to provisions in the Operating Agreement or this Ordinance restricting or enlarging the management rights and duties of a person or group or class of persons, the members have the right and authority to manage the affairs of an LLC and to make all decisions with respect to that LLC.

b. In a member-managed Limited Liability Company, the following rules shall apply, subject to the provisions of the Operating Agreement or this Ordinance:

1. A difference arising among members as to a matter in the ordinary course of the activities of the LLC may be decided by a majority of the members.

2. An act outside the ordinary course of activities of an LLC may be undertaken only with the consent of all members.

c. An Operating Agreement or the Articles of Organization –

1. May provide for classes or groups of members having such relative rights, powers and duties as the Operating Agreement or the Articles of Organization may provide, and may make provision for the future creation in the manner provided in the Operating Agreement or the Articles of Organization of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members. An Operating Agreement or Articles of Organization may provide for the taking of an action, including the amendment of the Operating Agreement or Articles of Organization, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the Operating Agreement or Articles of Organization a class or group of LLC interests that was not previously outstanding.

2. May grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers on any matter or to provide that any member or group of members shall have no voting rights.

3. May grant a right to vote as set forth in provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of this notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any right to vote.

d. If the Articles of Organization provide that management of an LLC vests in one or more managers, then these persons have the power to manage the business and affairs of that LLC as is provided in the Operating Agreement or the Articles of Organization. Unless otherwise provided in an Operating Agreement or the Articles of Organization, these persons:

1. Must be designated, appointed, elected, removed or replaced by a vote, approval or consent of a majority of members on a per capita basis;

2. Need not be members of that LLC nor individuals; and

3. Unless they have been earlier removed or have earlier resigned, shall hold office until their successors have been elected and qualified.

e. An Operating Agreement or the Articles of Organization may provide for classes or groups of managers having such relative rights, powers and duties as the Operating Agreement or the Articles of Organization may provide, and may make provision for the future creation in the manner provided in the Operating Agreement or the Articles of Organization of additional classes or groups of managers having such relative rights, powers and duties as

may from time to time be established, including rights, powers and duties senior to existing classes and groups of managers. An Operating Agreement or the Articles of Organization may provide for the taking of an action, including the amendment of the Operating Agreement or the Articles of Organization, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the Operating Agreement or the Articles of Organization a class or group of LLC interests that was not previously outstanding.

f. An Operating Agreement or the Articles of Organization may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matters. Unless otherwise provided in the Operating Agreement or the Articles of Organization, voting by managers is on a per capita basis.

g. An Operating Agreement or Articles of Organization that grants a right to vote may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class of group of managers, waiver of the notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any right to vote by the managers.

7.02. *Duties of Managers and Members.*

a. All members and mangers shall have and owe fiduciary duties to the LLC and the members.

b. No member or manager shall act in a manner that constitutes any of the following:

1. A willful failure to deal fairly with the LLC or its members in connection with a matter in which the member or manager has a material conflict of interest;

2. A violation of criminal law involving moral turpitude;

3. A transaction from which the member or manager derived an improper personal profit; or

4. Willful misconduct.

c. Every member and manager shall account to the LLC and hold as trustee for it any improper personal profit derived by that member or manager without the consent of a majority of the disinterested members or managers, or other persons participating in the management of the LLC, from any of the following:

1. A transaction connected with the organization, conduct, or winding up of the LLC.

2. A use by a member or manager of the property of an LLC, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as member or manager.

d. The managers and members of an LLC shall exercise their powers and discharge their duties in good faith and in an a manner that such manager or member reasonably believes to be in the best interests of the LLC and shall discharge their duties with the care that an

ordinarily prudent person in a like position would exercise under similar circumstances. In discharging their duties, managers and members who do not have knowledge that makes reliance unwarranted may rely upon financial statements of the LLC that were either certified in writing by an independent or certified public accountant or firm of such accountants fairly to reflect the LLC's financial condition, or reported to such manager or member to be correct by the manager, member or officer having charge of the books of accounts of the LLC. Managers and members are also entitled to rely on:

1. One or more officers or employees of the LLC whom the managers and members reasonably believe to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;

2. Legal counsel, public accountants, or other persons retained by the LLC as to matters involving skills or expertise the managers and members reasonably believe are matters;

   A. Within the particular personal professional or expert competence or

   B. As to which the particular person merits confidence; or

3. A committee of the LLC of which the managers and members are not a member if the managers and members reasonably believe the committee merits confidence.

e. A manager or member may not be held personally liable for monetary damages for failure to discharge any duty as a manager or member unless the manager or member is found not to have:

1. Acted honestly;

2. Acted in the reasonable belief that the action was in or not opposed to the best interests of the LLC or its members; or

3. Discharged his duties with the care that an ordinarily prudent person in a like position would exercise under similar circumstances.

f. Notwithstanding anything to the contrary in this Ordinance, in no event shall the Tribe be liable under this Ordinance, whether as a member or manager, and whether for violation of any duties imposed by this Ordinance or otherwise for any amount beyond its investment and the related interest it has in the LLC.

g. Every member and manager must account to the LLC and hold as trustee for it any improper personal profit derived by that member or manager from any transaction connected with the organization, conduct or winding up of the LLC; use by a member or manager of property of the LLC, including confidential or proprietary information; or other matters entrusted to the person as a result of that person's status as manager or member, unless that person has obtained the consent of:

1. If a manager, more than one half by number of the disinterested managers or more than one half by number of the disinterested members; or

2. If a member, more than one half by number of the disinterested members.

h. The provisions of this section may not be modified or waived in an Operating Agreement, the Articles of Organization or otherwise; provided, that the Operating Agreement may impose duties on its members and managers that are in addition to, but not in abrogation of, those provided in this section.

7.03. *Voting.*

a. Except as provided in the Operating Agreement, the Articles of Organization or this Ordinance and subject to subsection (b), the affirmative vote, approval or consent of more than half by number of the members on a per capita basis, if management of an LLC is vested in the members, or of more than one-half of the managers or other persons vested with management authority of that LLC, if the management of that LLC is vested in such managers or persons, is required to decide any matter connected with that LLC's business.

b. Except as provided in the Operating Agreement or the Articles of Organization, the affirmative vote, approval or consent of all members is required to:

1. Adopt, amend or revoke an Operating Agreement;

2. Issue an interest in an LLC to any person;

3. Allow an LLC to accept any additional contribution from an Owner;

4. Allow a partial redemption of an interest in an LLC under §8.03; or

5. Value of contributions of members under §8.01(b).

6. Authorize a manager, member or other person to act on behalf of the LLC in a manner that contravenes an Operating Agreement.

c. Unless otherwise provided in the Operating Agreement, if any member is precluded from voting with respect to a given matter, the value of the contribution represented by the interest in the LLC with respect to which the member would otherwise have been entitled to vote shall be excluded from the total contributions made to the LLC for purposes of determining the fifty percent (50%) threshold under §3.14 for that matter.

d. Unless otherwise provided in the Operating Agreement or this section, if all or part of an interest in the LLC is assigned under §10.05, the assigning member shall be considered the owner of the assigned interest for purposes of determining the 50% threshold under §3.14 until the assignee of the interest in the LLC becomes a member under §10.07.

7.04. *Indemnification of Managers, Members, Employees and Agents; Insurance.*

a. An LLC may indemnify or, if provided in the Articles of Organization or an Operating Agreement, shall in all cases indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, because that person is or was a manager, member, employee or agent of that LLC or is or was serving at the request of that LLC as a director, officer, trustee, partner, fiduciary, employee or agent of another corporation,

partnership, joint venture, trust, pension or other employee benefit plan or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by that person in connection with such an action, suit or proceeding; provided that no indemnification may be provided for a person with respect to a matter for which that person is finally adjudicated:

1. Not to have acted honestly or in the reasonable belief that that person's action was in or not opposed to the best interests of an LLC or its members or not to have performed his duties with the care that an ordinarily prudent person in a like position would exercise under similar circumstances or, in the case of a person serving as a fiduciary of an employee benefit plan or trust, in or not opposed to the best interests of that plan or trust or its participants or beneficiaries; or

2. With respect to a criminal action or proceeding, to have had reasonable cause to believe that that person's conduct was unlawful. The termination of an action, suit or proceeding by judgment, order or conviction adverse to that person, or by settlement or plea of nolo contendere or its equivalent, does not of itself create a presumption that that person did not act honestly or in the reasonable belief that that person's action was in or not opposed to the best interests of an LLC or its members or, in the case of a person serving as a fiduciary of an employee benefit plan or trust, in or not opposed to the best interests of that plan or trust or its participants or beneficiaries and, with respect to a criminal action or proceeding, had reasonable cause to believe that that person's conduct was unlawful.

b. Notwithstanding any provision of subsection (a), an LLC does not have the power to indemnify a person with respect to a claim, issue or matter asserted by or in the right of that LLC for which that person is finally adjudicated to be liable to that LLC unless the Tribal Court determines that, in view of all the circumstances of the case, that person is fairly and reasonably entitled to indemnity for such amounts as the Tribal Court determines reasonable.

c. Notwithstanding the provision of subsections (a), (b) or (d) to the contrary, to the extent that a manager, member, employee or agent of an LLC has been successful on the merits or otherwise in defense of an action, suit or proceeding referred to in subsection (a) or (b), or in defense of a claim, issue or matter referred to in subsection (a) or (b), that LLC shall indemnify that manager, member, employee or agent against expenses, including attorney's fees, actually and reasonably incurred by that manager, member, employee or agent in connection with the action, suit or proceeding. The right to indemnification granted by this subsection may be enforced by a separate action against that LLC if an order for indemnification is not entered by a court in the action, suit or proceeding in which that manager, member, employee or agent was successful on the merits or otherwise.

d. Any indemnification under subsection (a), unless ordered by the Tribal Court or required by the Articles of Organization or Operating Agreement, may be made by the LLC only as authorized in the specific case upon a determination that indemnification of the manager, member, employee or agent is proper in the circumstances and in the best interests of the LLC or otherwise required under the Operating Agreement. If the Articles of Organization vest management in a manager, that determination must be made by the manager or by a majority vote of a quorum consisting of managers who were not parties to that action, suit or proceeding, or if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested managers so directs, by independent legal counsel in a written opinion or by

a majority-in-interest of the members who are not parties to the action. If the Articles of Organization do not vest management in a manager, the members shall make that determination by majority vote of a quorum consisting of members who were not parties to that action, suit or proceeding. Such a determination once made may not be revoked and upon the making of that determination the manager, member, employee or agent may enforce that indemnification against the LLC by a separate action notwithstanding any attempted or actual subsequent action by the manager(s) or member(s).

e. Expenses incurred in defending a civil, criminal, administrative or investigative action, suit or proceeding may be authorized and paid by an LLC in advance of the final disposition of that action, suit or proceeding upon a determination made in accordance with the procedure established in subsection (d) that, based solely on the facts then known to those making the determination and without further investigation, the person seeking indemnification satisfied the standard of conduct prescribed by subsection (a), or if so provided in the Articles of Organization or an Operating Agreement, these expenses must in all cases be authorized and paid by that LLC in advance of the final disposition of that action, suit or proceeding upon receipt by that LLC of:

1. A written undertaking by or on behalf of the manager, member, employee or agent to repay that amount if that person is finally adjudicated:

   A. Not to have acted honestly or in the reasonable belief that that person's action was in or not opposed to the best interests of an LLC or its members or not to have discharged his or their duties with the care that an ordinarily prudent person in a like position would exercise under similar circumstances or, in the case of a person serving as a fiduciary of an employee benefit a plan or trust, in or not opposed to the best interests of such a plan or trust or its participants or beneficiaries;

   B. With respect to a criminal action or proceeding, to have had reasonable cause to believe that the person's conduct was unlawful; or

   C. With respect to a claim, issue or matter asserted in an action, suit or proceeding brought by or in the right of an LLC, to be liable to that LLC, unless the court in which that action, suit or proceeding was brought permits indemnification in accordance with subsection (c); and

2. A written affirmation by the manager, member, employee or agent that the person has met the standard of conduct necessary for indemnification by an LLC as authorized in this section. The undertaking required by paragraph (1) must be the unlimited general obligation of the person seeking the advance but need not be secured and may be accepted without reference to financial ability to make the repayment.

f. The indemnification and entitlement to advances of expenses provided by this section is not exclusive of other rights to which those indemnified may be entitled under an Operating Agreement, other agreement, vote of members or otherwise, both as to action in that person's official capacity and as to action in another capacity while holding such an office, and continues for a person who has ceased to be a manager, member, employee, agent, trustee, partner or fiduciary and inures to the benefit of the heirs, executors and administrators of that person. A right to indemnification required by the Articles of

Organization or an Operating Agreement may be enforced by a separate action against an LLC if an order for indemnification has not been entered by a court in an action, suit or proceeding for which indemnification is sought.

g. An LLC may purchase and maintain insurance on behalf of a person who is or was a manager, member, employee or agent of that LLC, or is or was serving at the request of that LLC as a director, officer, trustee, partner, fiduciary, employee or agent of a corporation, partnership, joint venture, trust, pension or other employee benefit plan or other enterprise against any liability asserted against that person and incurred by that person in such a capacity, or arising out of that person's status as such, whether or not that LLC would have the power to indemnify that person against such a liability under this section.

h. For purposes of this section, references to a "Limited Liability Company" or "LLC" include, in addition to a surviving LLC or new LLC, a participating LLC in a consolidation or merger.

7.05. *Remedies for Breach of Operating Agreement by Manager.* An Operating Agreement may provide that:

a. A manager or member who fails to perform in accordance with, or to comply with the terms and conditions of, the Operating Agreement is subject to specified penalties or specified consequences; and

b. At the time or upon the happening of certain events specified in the Operating Agreement, a manager or member is subject to specified penalties and specified consequences.

Article 8. Finance.

8.01. *Capital Contributions.*

a. A member's contributions to the capital of an LLC may consist of cash, property, services rendered, or promissory notes or other written obligations to contribute cash or property or to perform services.

b. The value of a member's contribution shall be determined in the manner provided in the Operating Agreement. If the Operating Agreement does not fix a value to a contribution, the value of a contribution shall be approved, prior to that member's contribution, by a majority-in-interest of the members, shall be properly reflected in the records and information kept by the LLC under § 5.15. The value of contributions so determined shall be binding and conclusive on the LLC and its members.

8.02 *Liability for Contribution.*

a. An obligation of a member to provide cash or property or to perform services as a contribution to an LLC is not enforceable unless specified in a writing signed by the member.

b. Unless otherwise provided in the Operating Agreement, a member is obligated to an LLC to perform any enforceable promise to provide cash or property or to perform services, even if the member is unable to perform because of death, disability, or any other reason. If a member does not provide cash, property, or services as promised, the member is

obligated at the option of the LLC to provide cash equal to that portion of the value of the stated contribution that has not been fulfilled.

c. Unless otherwise provided in the Operating Agreement, a member's obligation to provide cash or property or to perform services as a contribution to the LLC may be compromised only by the written consent of all of the members.

8.03. *Allocation of Profits and Losses and Distributions.* The profits and losses of an LLC shall be allocated among the members in the manner provided in the Operating Agreement. If the Operating Agreement does not otherwise provide, profits and losses shall be allocated on the basis of the value of contributions made by each member to the extent they have been received by the LLC and have not been returned. The value of the contributions made shall be determined as stated in the Articles of Organization, the Operating Agreement or the records of the LLC.

Article 9. Ownership and Disposition of Property.

9.01. *Ownership of Limited Liability Company Property.*

a. Real or personal property owned or purchased by an LLC may be held and owned, and conveyance shall be made, in the name of the LLC. A member has no specific interest in the property of an LLC.

b. Subject to subsection (d), property is presumed owned by an LLC if it is acquired in the name of that LLC.

c. Subject to subsection (d), property is presumed owned by an LLC if it is purchased with funds of that LLC even if it is acquired in the name of a member or other person.

d. Property is presumed separate property of one or more members or other persons if it is acquired in the name or names of the member(s) or person(s) without use of funds of an LLC even though the property is used for purposes of the business of that LLC.

9.02. *Transfers of Property.*

a. Except as provided in subsection (e), title to property of an LLC that is held in the name of the LLC may be transferred by an instrument of transfer executed by a member in the name of that LLC.

b. Title to property of an LLC that is held in the name of one or more members or managers with an indication in the instrument transferring title to the property to them in their capacity as members or managers of that LLC or of the existence of an LLC, even if the name of that LLC is not indicated, may be transferred by an instrument of transfer executed by the person in whose name title is held.

c. Property transferred under subsections (a) and (b) may be recovered by an LLC if it proves that the act of the person executing the instrument of transfer did not bind the LLC under this Ordinance, unless the property has been transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind that LLC.

d. Title to property of an LLC that is held in the name of one or more persons other than that LLC without an indication in the instrument transferring title to the property to them in their capacity as members or managers of that LLC or of the existence of an LLC may be transferred free of claims of that LLC or the members by the person in whose name title is held to a transferee who gives value without having notice that it is property of that LLC.

e. If the Articles of Organization provide that management of an LLC is vested in a manager or managers:

1. Title to property of the LLC that is held in the name of that LLC may be transferred by an instrument of transfer executed by a manager in the name of that LLC; and

2. A member, acting solely in the capacity as a member, does not have authority to transfer title to property of an LLC that is held in the name of an LLC.

9.03. *Conditions for Non-Liquidating Distributions.*

a. From time to time, the LLC may distribute its property to the members of the LLC upon the basis stipulated in the Operating Agreement if, after distribution is made, the fair value of the assets of the LLC is in excess of all liabilities of the LLC except liabilities to members on account of their contributions.

1. Except as provided in this Section, a member is entitled to receive distributions from an LLC before the member's dissociation from the LLC and before its dissolution and winding up to the extent and at times or upon the events specified in the Operating Agreement.

2. Except as provided in this Section, upon the distribution in partial liquidation of a member's interest, the redeeming member is entitled to receive the amount to which the member is entitled under the Operating Agreement and, if not otherwise provided in the Operating Agreement, the fair value of the redeemed interest based on the member's right to share in distributions from the LLC.

3. Except as otherwise provided in this Section, upon an event of dissociation under §10.02 that does not cause dissolution of the LLC, a dissociating member is entitled to receive any distribution to which member is entitled under the Operating Agreement and, if not otherwise provided in the Operating Agreement, the fair market value of the member's interest in the LLC based on the member's rights to share in distributions from the LLC.

b. Except as provided in the Operating Agreement or Articles of Organization:

1. A member, regardless of the nature of that member's contribution, has no right to demand and receive a distribution from an LLC in any form other than cash; and

2. A member may not be compelled to accept from an LLC a distribution of an asset in kind to the extent that the percentage of that asset distributed to the member exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from that LLC.

c. At the time a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of an LLC with respect to the distribution.

d. A distribution may not be made if after giving effect to the distribution:

1. The LLC is not able to pay its debts as they become due; and

2. All liabilities of the LLC, other than liabilities to members on account of their LLC interests and liability for which the recourse of creditors is limited to specified property of the LLC, exceed the fair value of the assets of the LLC, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited is included in the assets of the LLC only to the extent that the fair value of that property exceeds that liability.

e. An LLC may base a determination that a distribution is not prohibited under subsection (d) on either:

1. Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or

2. A fair valuation or other method that is reasonable under the circumstances.

f. The effect of a distribution under subsection (a) is measured as of:

1. The date the distribution is authorized if payment occurs within 120 days after the date of authorization; or

2. The date payment is made if it occurs more than 120 days after the date of authorization.

g. An LLC's indebtedness to a member incurred by reason of a distribution made in accordance with this section is parity with that LLC's indebtedness to its general unsecured creditors, except to the extent subordinated by agreement.

h. If terms of the indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section, indebtedness of an LLC, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subsection (d).

i. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

j. Distributions of cash or other assets of an LLC must be shared among the members and among classes of members in the manner provided in an Operating Agreement or the Articles of Organization. If the Operating Agreement or Articles of Organization do not so provide, each member or other person entitled to the interest of a member shall share in any distribution in proportion to their membership interests. A member is entitled to receive distributions described in this section from an LLC to the extent and at the times

or upon the happening of the events specified in an Operating Agreement or Articles of Organization or at the times determined by the members or managers.

k. Upon a withdrawal of a member that does not cause dissolution, a withdrawing member is entitled to receive any distribution to which the member is entitled under the Operating Agreement. If not otherwise provided in the Operating Agreement, the member is not entitled to receive any distribution.

9.04. *Liability upon Wrongful Distribution.*

a. Except as otherwise provided in this Ordinance a member or manager who votes for or assents to a distribution in violation of the Operating Agreement, Articles of Organization or §9.03 is personally liable to an LLC for the amount of the distribution that exceeds what could have been distributed without violation of §9.03, the Articles of Organization or the Operating Agreement if it is established that the member or manager did not act in compliance with §9.03.

b. Each member or manager held liable under subsection (a) for the unlawful distribution is entitled to contribution:

1. From each other member or manager who could be held liable under subsection (a) for the unlawful distribution; and

2. From each member for the amount that member received knowing that the distribution was made in violation of §9.03, the Articles of Organization or the Operating Agreement.

c. An action to recover under this Section may be brought in the Tribal Court; however, a proceeding under this section is barred unless it is commenced within 2 years after the date on which the effect of the distribution is measured under §9.03.

d. Nothing in this Ordinance serves to waive any aspect of the Tribe's sovereign immunity, and any waiver thereof must be provided explicitly in the LLC's Operating Agreement approved by Tribal Council.

Article 10. Admission of Member; Membership Interests.

10.01. *Admission of Member.*

a. Subject to subsection (b), a person may become a member in an LLC:

1. When the person acquires an LLC interest directly from an LLC, upon compliance with the Operating Agreement or Articles of Organization or, if neither the Operating Agreement nor the Articles of Organization so provide, upon the written consent of all members; and

2. When the person is an assignee of another person's LLC interest, pursuant to §10.05.

b. A person becomes a member in an LLC organized under this Ordinance on the later of:

1. The date an LLC is formed in accordance with the terms hereof; or

2. The time provided in the Operating Agreement or Articles of Organization or, if no such time is provided in the Operating Agreement or Articles of Organization, when the member's admission is recorded in the records of an LLC.

10.02. *Withdrawal or Dissociation of Member.*

a. A person qualified to be a member under this Ordinance ceases to be a member of an LLC upon the occurrence of any of the following events:

1. The member withdraws by voluntary act from an LLC.

2. The member is removed as a member in accordance with the Operating Agreement or this Ordinance.

3. The member ceases to be a member pursuant to provisions of an Operating Agreement or Articles of Organization.

4. Subject to a contrary provision in the Operating Agreement or Articles of Organization or written consent of a majority-in-interest of all members at the time when, the member:

A. Makes an assignment for the benefit of creditors:

B. Files a voluntary petition in bankruptcy;

C. Becomes the subject of an order for relief under federal bankruptcy laws or state or Tribal insolvency laws.

5. Subject to a contrary provision in the Operating Agreement or Articles of Organization, or written consent of a majority-in-interest of all members of the time, 120 days after the commencement of a proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without the member's consent or acquiescence of a trustee, receiver or liquidator over the member of all or a substantial part of the member's properties, the appointment is not vacated or stayed, or if within 90 days after the expiration of a stay, the appointment is not vacated.

6. Subject to a contrary provision in the Operating Agreement or Articles of Organization, or written consent of a majority-in-interest of all members at the time, when a member who is an individual:

A. Dies; or

B. Is adjudicated incompetent to manage the member's person or estate by a court of competent jurisdiction.

7. Subject to a contrary provision in the Operating Agreement or Articles of Organization or written consent of a majority-in-interest of all members at the time, when a member is a trust or is acting as a member because that member is a trustee or a trust, the termination of the trust, but not solely the substitution of a new trustee.

8. Subject to a contrary provision in the Operating Agreement or Articles of Organization or written consent of a majority-in-interest of all members at the time, when a member is a separate LLC, the dissolution and commencement of winding up of the separate LLC.

9. Subject to a contrary provision in the Operating Agreement or Articles of Organization or written consent of a majority-in-interest of all members at the time, when a member is a corporation, the filing of a certificate of its dissolution or the equivalent for the corporation or the suspension of its charter and the expiration of 90 days after the date of notice to the corporation of suspension without a reinstatement of its charter.

10. Subject to a contrary provision in the Operating Agreement or Articles of Organization or written consent of a majority-in-interest of all members at the time, when a member is an estate, the distribution by the fiduciary of the estate's entire interest in an LLC.

b. The members may provide in the Operating Agreement or Articles of Organization for other events the occurrence of which result in a person ceasing to be a member of an LLC.

c. Unless the Operating Agreement or Articles of Organization provide that a member has no power to withdraw by voluntary act from an LLC, the member may do so at any time by giving a 30-day written notice to the other members or such other notice as provided in the Operating Agreement or Articles of Organization. If the member has the power to withdraw but the withdrawal is a breach of an Operating Agreement or the Articles of Organization, or the withdrawal occurs as a result of otherwise wrongful conduct of the member, an LLC may recover from the withdrawing member the reasonable costs of obtaining replacement of the services the withdrawn member was obligated to perform and may offset the damages against the amount otherwise distributable to that member, in addition to pursuing any remedies provided for in an Operating Agreement or otherwise available under applicable law.

10.03. *Statement of Withdrawal.* A member who has withdrawn may, or the LLC may, file a statement of withdrawal stating the name of the LLC and that the member has withdrawn from the LLC.

10.04. *Nature of Membership Interest.* A membership interest in an LLC is personal property.

a. Except as provided in an LLC's organizational documents and, for a Tribally-owned LLC, subject to the prior approval of the Tribal Council:

1. A membership interest is assignable in whole or in part;

2. An assignment entitles the assignee to share in profits and losses, to receive the distribution or distributions and to receive the allocation of income, gain, loss,

deduction or credit or similar item to which the assignor was entitled to the extent assigned;

3. An assignment of a membership interest does not of itself dissolve an LLC or entitle the assignee to participate in the management and affairs of an LLC or to become or exercise any rights of a member;

4. Until the assignee of an LLC interest becomes a member, the assignor continues to be a member and to have the power to exercise any rights of a member;

5. Until an assignee of a membership interest becomes a Member, the assignee has no liability as a member solely as a result of the assignment; and

6. The assignor of a membership interest is not released from liability as a member solely as a result of the assignment.

b. An Operating Agreement or an LLC's Articles of Organization may provide that a member's interest in an LLC may be evidenced by a certificate of membership interest issued by an LLC and may also provide for the assignment or transfer of a membership interest represented by such a certificate and make other provisions with respect to the certificates.

c. Unless otherwise provided in an Operating Agreement, the pledge of or granting of a security interest, lien or other encumbrance in or against any or all of the membership interest of a member is not an assignment and does not cause the member to cease to be a member or to cease to have the power to exercise the rights or powers of a member.

10.06. *Rights of Judgment Creditor.* On application to the Tribal Court by a judgment creditor of a member, the Tribal Court may charge the membership interest of the member (other than the Tribe) with payment of the unsatisfied amount of judgment. To the extent so charged, the judgment creditor has only the rights of an assignee of the member's interest in distribution made by the LLC to members and other assigned interest holders in the usual course of business. This section does not deprive any member of the benefit of any exemption laws applicable to that member's membership interest. In no event shall the Tribe's interest be attachable in abrogation of its sovereign immunity from suit.

10.07. *Right of Assignee to Become a Member.*

a. An assignee of a membership interest may become a member if:

1. The Operating Agreement or Articles of Organization so provide; or

2. All other Members unanimously consent.

3. The Tribe, if a member of the LLC, consents, whether in the authorization regarding formation or otherwise.

b. An assignee who becomes a member has to the extent assigned the rights and powers and is subject to the restrictions and liabilities of a member under the Articles of Organization, any Operating Agreement and this Ordinance. An assignee who becomes a member also is liable for any obligations of the assignor to make contributions and to return distributions

required hereunder. The assignee is not obligated for liabilities of which the assignee had no knowledge of at the time the assignee became a member and that could not be ascertained from an Operating Agreement or the Articles of Organization.

c. Except as otherwise provided in the Operating Agreement or Articles of Organization, a member who assigns that member's entire interest in an LLC ceases to be a member or to have the power to exercise any rights of a member when an assignee of that member's interest becomes a member with respect to the assigned interest.

10.08. *Powers of Estate of a Deceased or Incompetent Individual Member.* If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the member's executor, administrator, guardian, conservator or other legal representative has all of the rights of an assignee of the member's interest.

10.09. *Powers of a Dissolved Business Entity Member.* If a member is a corporation, trust, partnership, LLC or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor.

Article 11. Mergers and Conversions.

11.01. *Merger or Consolidation; General.*

a. For purposes of this Article, "other business entity" means any association or legal entity other than an LLC, organized to conduct business, including a corporation, limited partnership, general partnership, limited liability partnership, joint venture, joint stock company and business trust authorized by applicable statutes to merge or consolidate with an LLC.

1. *Domestic business entity* means a Corporation, incorporated under the laws of the Little River Band of Ottawa Indians; a Domestic LLC, organized under this Ordinance; a Tribally-charted entity of the Tribe, an unincorporated cooperative of the Tribe; a Section 17 Corporation owned by the Tribe; or other Tribally-formed entity, that is party to the merger.

2. *Foreign business entity* means a Foreign LLC; a Foreign Limited Partnership, or a Foreign Corporation.

3. Unless the context requires otherwise, in this Article "LLC" includes a Domestic LLC and a Foreign LLC.

b. Pursuant to a plan of merger or consolidation that complies with and is approved in accordance with this Article, any one or more LLCs may merge or consolidate with or into one or more LLCs or other business entities, with the LLC or other business entity as the agreement provides being the surviving or resulting LLC or other business entity.

c. Rights or securities of or interests in an LLC or other business entity that is a party to the merger or consolidation may be exchanged for or converted into cash, property, obligations, rights or securities of or interests in the surviving LLC or other business entity.

d. Unless otherwise provided in its Operating Agreement, one or more LLCs may merge with or into one or more other Business Entities if the action of merger is a process permitted under the applicable laws of the jurisdiction that governs each such other Business Entity and each such Business Entity approves the plan of merger in accordance with its Organizational Documents.

e. Interests or shares in an LLC that is a party to a merger may be exchanged for or converted into cash, property, obligations, or interest in the surviving Business Entity.

11.02. *Approval of Merger or Consolidation.*

a. Pursuant to an agreement of merger or consolidation, one or more domestic LLCs may merge or consolidate with or into one or more domestic LLCs or one or more other business entities with or into one or more LLCs or one or more other business entities formed or organized under the laws of the Tribe or foreign jurisdiction with such domestic LLCs or other business entity as the agreement shall provide being the surviving or resulting domestic LLCs or other business entity. Unless otherwise provided in writing in the Operating Agreement or in the Articles of Organization, an LLC that is a party to a proposed merger or consolidation must approve the merger or consolidation agreement by the consent of a majority-in-interest of the members or, if there is more than one class or group of members, by consent of a majority-in-interest of the members of each class or group. If, as a result of the merger or consolidation, one or more members of an LLC would become subject to personal liability for the obligations or liabilities of any other person or entity, approval of the plan of merger or consolidation must require the execution by each such member of a separate written consent to become subject to such personal liability.

b. Each LLC or other business entity that is a party to a proposed merger or consolidation pursuant to this Article shall approve the merger or consolidation in the manner and by the vote required by the laws applicable to such a business entity and, to the extent allowed under such laws, its governing documents.

c. Each LLC or other business entity that is a party to the merger or consolidation shall have any rights to abandon the merger or consolidation provided for in the merger or consolidation agreement or the laws applicable to the business entity or in accordance with the governing documents.

d. Upon approval of a merger, the LLC shall notify its members of the approval and of the effective date of the merger.

e. After a merger is authorized, and at any time before the certificate of merger or consolidation is filed with the Department, pursuant to §11.04, the planned merger may be abandoned, subject to any contractual rights, without further action on the part of the shareholders or other members, in accordance with the procedures set forth in the plan of merger or, if none is set forth, in the manner determined by the governing body of any business entity that is a party to the merger.

11.03. *Plan of Merger or Consolidation.*

a. Each constituent LLC or other business entity that is a party to the merger or consolidation shall enter into a written plan of merger or consolidation that must be approved by a majority of the members unless the Operating Agreement otherwise provides.

b. The plan of merger or consolidation must set forth:

1. The name and current jurisdiction of each LLC or other business entity that is a party to the merger or consolidation and the name and jurisdiction of the surviving or resulting LLC or other business entity into which each LLC or other business entity merges or consolidates;

2. The terms and conditions of the proposed merger or consolidation and the mode of carrying the merger or consolidation into effect;

3. The manner and basis of converting the interests in each LLC into interests of the surviving or resulting LLC or other business entity that is a party to the merger or consolidation into interests, shares, or other securities or obligations, as the case may be, of the surviving or resulting LLC or other business entity or, in whole or in part, into cash or other property;

4. In the case of a merger, a statement of any changes in or a restatement of the organizing documents of the surviving LLC or other business entity or a statement that the organizing documents of the surviving LLC or other business entity remain unchanged; or, in the case of a consolidation, with respect to the resulting LLC or other business entity, all of the statements required to be set forth in the organizing documents for that type of business entity; and

5. Other provisions relating to the proposed merger or consolidation determined necessary or desirable by the Department and/or Commission, if appropriate.

c. The LLC or other business entity surviving or resulting from the merger or consolidation shall deliver to the Department a certificate of merger or consolidation executed by each constituent LLC setting forth:

1. The name and current jurisdiction of each LLC or other business entity that is to merge or consolidate;

2. That an agreement of merger or consolidation has been approved and executed by each LLC or other business entity that is a party to the merger or consolidation;

3. The name of the surviving or resulting LLC or other business entity;

4. If the surviving or resulting LLC is not organized under the laws of the Tribe, a statement that the surviving or resulting LLC or other business entity:

A. Agrees to accept service of process by certified mail in a proceeding for enforcement of an obligation of a party to the merger or consolidation that was organized under the laws of the Ordinance, as well as for enforcement of an obligation of the surviving or resulting LLC or other business entity arising from the merger or consolidation; and

B. Appoints a registered agent for service of process in any such proceeding.

5. If shareholder approval of any corporation party to the merger or consolidation was not required, a statement to that effect;

6. If approval of the shareholders of one or more corporations party to the merger or consolidation was required:

   A. The designation, number of outstanding shares and number of shares entitled to vote on the written agreement or plan of merger or consolidation as to each corporation; the number of shares voted for and against the agreement or plan; and a statement that the number of votes cast for the agreement or plan was sufficient for approval by the shareholders; and

   B. If the shares of any class were entitled to vote as a class, the designation and number of outstanding shares of each such class, the number of shares of each such class voted for and against the written agreement or plan and a statement that the number of votes cast for the agreement or plan by each class was sufficient for approval by that class;

7. In the case of a merger, a statement of any changes in or a restatement of the organizing documents of the surviving LLC or other business entity or a statement that the organizing documents of the surviving LLC or other business entity remain unchanged; or, in the case of a consolidation, with respect to the resulting LLC or other business entity, all of the statements required to be set forth in the organizing documents for that type of business entity;

8. That the executed agreement or plan of merger or consolidation is on file at a place of business of the surviving or resulting LLC or other business entity and stating the address of such place of business and that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting LLC or other business entity, on request and without cost, to a person holding an interest in an LLC or other business entity that is to merge or consolidate;

9. The date when the merger or consolidation is to take effect, not to exceed 60 days subsequent to the filing date of the certificate of merger or consolidation;

10. A statement to the effect that the merger or consolidation was effected in compliance with the laws applicable to mergers or consolidations of all parties to the merger or consolidation; and

11. An agreement that the surviving or resulting LLC or other business entity shall continue to comply with all provisions of all laws applicable to mergers or consolidations of all parties to the merger or consolidation, including, without limitation, provisions on payment of amounts to which dissenting shareholders are entitled, if available.

d. A merger or consolidation takes effect upon the later of the effective date of the filing of the certificate of merger or consolidation or the date set forth in the certificate of merger or consolidation.

e. The certificate of merger or consolidation must be executed by an LLC that is a party to the merger or consolidation in the manner provided for in this Ordinance and must be filed with the Department in the manner provided for herein.

f. The certificate of merger or consolidation acts as articles of dissolution for an LLC that is not the surviving or resulting business entity in the merger or consolidation.

g. A written agreement of merger or consolidation approved in accordance with the terms hereof may effect an amendment to the Operating Agreement or effect the adoption of a new Operating Agreement for an LLC if it is the surviving or resulting LLC in the merger or consolidation. An approved written plan of merger or consolidation may also provide that the Operating Agreement of any constituent LLC to the merger or consolidation, including an LLC formed for the purpose of consummating a merger or consolidation, must be the Operating Agreement of the surviving LLC. An amendment to an Operating Agreement or adoption of a new Operating Agreement made pursuant to this subsection is effective at the effective time and date of the merger or consolidation. This subsection may not be construed to limit the accomplishment of a merger or consolidation or of any of the matters referred to in this subsection, by any other means, including that the Operating Agreement of a constituent LLC formed for the purpose of consummating a merger or consolidation, must be the Operating Agreement of the surviving or resulting LLC.

11.04. *Effects of Merger or Consolidation.* A merger or consolidation has the following effects:

a. The LLCs or other business entities that are parties to the merger or consolidation agreement become a single entity, which in the case of a merger is the LLC or other business entity designated in the plan of merger as the survivor, and in the case of a consolidation is the resulting LLC or other business entity provided for in the plan of consolidation.

b. The separate existence of each party to the merger or consolidation agreement, except for the surviving or resulting LLC or other business entity, ceases.

c. The surviving or resulting LLC or other business entity possesses all the rights, privileges, immunities, powers and franchises of each constituent LLC or other business entity and is subject to all the restrictions, disabilities and duties of each of the parties to the extent that those rights, privileges, immunities, powers, franchises, restrictions, disabilities and duties are applicable.

d. All property, real, personal and mixed and all debts due, including promises to make capital contributions and subscriptions for shares or interests, and all other choices in action and all other interests of or belonging to or due to each of the constituent entities vest in the surviving or resulting LLC or other business entity without further act or deed.

e. The title to all real estate and any interest in real estate vested in a constituent LLC or other business entity do not revert and are not in any way impaired by reason of the merger or consolidation.

f. The surviving or resulting LLC or other business entity is liable for all liabilities and obligations of each constituent LLC or other business entities so merged or consolidated and any claim existing or action or proceeding pending by or against a constituent LLC or other business entity may be prosecuted as if the merger or consolidation had not taken

place or the surviving or resulting LLC or other business entity may be substituted in the action.

h. Neither the rights of creditors nor any liens on the property of a constituent LLC or other business entity are impaired by the merger or consolidation.

i. The membership or other interests in an LLC or other business entity that are to be converted or exchanged into interests, cash, obligations or other property under the terms of the merger or consolidation agreement are so converted and the former holders of the membership or other interests are entitled only to the rights provided in the merger or consolidation agreement or the rights otherwise provided by law.

11.05. *Right to Withdraw*. Unless otherwise provided in the Operating Agreement, upon receipt of the notice, a member who did not vote in favor of the merger or consolidation may, within twenty (20) days after the date of the notice, voluntarily withdraw from the LLC under §10.02 and receive fair value for the member's LLC interest, subject to all other provisions of this ordinance.

11.06. *Conversion.*

a. Unless otherwise provided in its Organizational Documents, a Domestic LLC may convert to another form of business entity if it:

1. Satisfies the requirements under this Ordinance relating to conversions; and

2. If the conversion is permitted under the applicable law of the jurisdiction that governs the organization of the business entity into which the limiting liability company is converting.

b. Unless otherwise provided in its organizational documents, a business entity other than a Domestic LLC may convert into an LLC if it:

1. Satisfies the requirements under this Ordinance relating to conversions; and

2. If the conversion is permitted under the applicable law of the jurisdiction that governs the business entity.

c. The filing requirements of §5.11 apply to conversions under this section.

d. Notwithstanding its prior approval, a plan of conversion may be amended before the conversion takes effect if the amendment is approved by the members of the converting LLC or business entity in the same manner as was required for the approval of the original plan of conversion.

11.07. *Conversion of Domestic LLC into another Business Entity.* A Domestic LLC may convert into another business entity if all of the requirements of §11.08 and §11.09 are satisfied.

11.08. *Plan of Conversion for Domestic LLC into another Business Entity.*

a. Unless subsection (c) applies, the LLC proposing to convert shall adopt a plan of conversion that includes all of the following:

1. The name of the LLC, the name of the business entity into which the LLC is converting, the type of business entity into which the LLC is converting, identification of the statute that will govern the internal affairs of the surviving business entity, the street address of the surviving business entity, the street address of the LLC if different from the street address of the surviving business entity, and the principal place of business of the surviving business entity.

2. The terms and conditions of the proposed conversion, including the manner and basis of converting the ownership interest of the LLC into ownership interests or obligations of the surviving business entity, into cash, into other consideration that may include ownership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.

3. The terms and conditions of the organizational documents that are to govern the surviving business entity.

4. Any other provisions with respect to the proposed conversion that the LLC considers as necessary or desirable.

b. A vote of the members of the LLC is required to adopt a plan of conversion under subsection (a). A unanimous vote of the members entitled to vote is required to approve a plan of conversion unless its organizational documents provide otherwise.

c. If the LLC has not commenced business, has not issued any ownership interests, has no debts or other liabilities, and has not received any payments, or has returned any payments it has received after deducting any amount disbursed for payment of expenses, for subscriptions for its ownership interests, subsections (a) and (b) do not apply and the members of the LLC, may approve of the conversion of the LLC into another business entity by majority vote. To effect the conversion, a majority of the members must execute and file a certificate of conversion under §8.10.

11.09. *Filing of Certificate of Conversion for a Domestic LLC.* If the plan of conversion is approved under §11.08(b), the LLC shall file any formation documents required to be filed under the laws governing the internal affairs of the surviving business entity, in the manner prescribed by those laws, and shall file a certificate of conversion with the Department. The certificate of conversion shall include all of the following:

a. Unless §11.08(c) applies, a copy of the plan of conversion.

b. The name of the LLC that is converting into another business entity.

c. The type of business entity the LLC is converting into and the jurisdiction under which the surviving business entity shall be governed

d. A statement that the members of the LLC have adopted the plan of conversion under §11.08(b), or that the members of the LLC have approved of the conversion under §11.08(c), as applicable.

e. A statement that the surviving business entity will furnish a copy of the plan of conversion, on request and without cost, to any member of the LLC.

f. The registered agent and registered office, of the LLC before and after conversion.

g. A statement whether the LLC is Tribally-owned.

11.10. *Effect of Conversion of Domestic LLC into another Business Entity.* When a conversion from an LLC into another business entity takes effect, all of the following apply:

a. The LLC converts into the surviving business entity, and the organizational documents of the LLC are canceled.

b. Except as otherwise provided in this Ordinance, the surviving business entity is organized under and subject to the organizational laws of the jurisdiction of the surviving business entity as stated in the Certificate of Conversion.

c. The surviving business entity has all of the liabilities of the LLC. The conversion of the LLC into a business entity under this section shall not be considered to affect any obligations or liabilities of the LLC incurred before the conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the LLC with respect to matters arising before the conversion.

d. The title to all real estate and other property and rights owned by the LLC remain vested in the surviving business entity without reversion or impairment.

e. The surviving business entity is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the LLC was originally organized.

f. The ownership interests of the LLC that were to be converted into ownership interest or obligations of the surviving business entity or into cash or other property are converted.

g. Unless otherwise provided in the plan of conversion, the LLC is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute dissolution of the LLC.

h. The organizational documents of the surviving business entity are as provided in the plan of conversion.

i. All other provisions of the plan of conversion apply.

11.11. *Conversion of Business Entity into a Domestic Limited Liability Company.* A business entity may convert into an LLC if all of the requirements of §11.12 and §11.13 are satisfied.

11.12. *Plan of Conversion of a business entity into a Domestic LLC.*

a. A business entity proposing to convert into a Domestic LLC shall adopt a plan of conversion that includes all of the following:

1. The name of the business entity, the type of business entity that is converting, identification of the statute that governs the internal affairs of the business entity,

the name of the surviving LLC into which the business entity is converting, the street address of the surviving LLC, the street address of the business entity if different from the street address of the surviving LLC and the principal place of business of the surviving LLC.

2. The terms and conditions of the proposed conversion, including the manner and basis of converting the ownership interests of the business entity into ownership interests of the surviving LLC, into cash, into other consideration that may include ownership interests or obligations of an entity that is not a party to the conversion or into a combination of cash and other consideration.

3. The terms and conditions of the organizational documents that are to govern the surviving LLC.

4. Any other provisions with respect to the proposed conversion that the business entity considers necessary or desirable.

b. If a plan of conversion is adopted by the business entity under subsection (a), the plan of conversion must be submitted for approval in the manner required by the law governing the internal affairs of that business entity.

c. If the plan of conversion is approved under subsections (a) and (b), the business entity shall file a Certificate of Conversion with the Department. The Certificate of Conversion shall include all of the following:

1. A copy of the plan of conversion.

2. A statement that the business entity has obtained approval of the plan of conversion under subsection (b).

3. A statement that the surviving LLC will furnish a copy of the plan of conversion, on request and without cost, to any member of the business entity.

4. The registered agent and registered office, record agent and record office, or other similar agent and office of the surviving LLC before and after conversion.

5. The type of business entity and the date and location of jurisdiction where the business entity was formed prior to converting into an LLC.

6. A statement whether the surviving LLC is Tribally-owned.

7. Submission of Articles of Organization for the surviving LLC that meet all of the requirements of this Ordinance.

11.13. *Effect of Conversion of Business Entity into a Domestic LLC.* When a conversion of a business entity into an LLC takes effect, all of the following apply:

a. The business entity converts into the surviving LLC. Except as otherwise provided in this section, the surviving LLC is organized under and subject to this Ordinance.

b. The surviving LLC has all of the liabilities of the business entity. The conversion of the business entity into an LLC under this section shall not be considered to affect any obligations or liabilities of the business entity incurred before the conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the business entity with respect to matters arising before conversion.

c. The title to all real estate and other property and rights owned by the business entity remains vested in the surviving LLC without reversion or impairment.

d. A proceeding pending against the business entity may be continued as if the conversion had not occurred, or the surviving LLC may be substituted in the pending proceeding for the business entity.

e. The surviving LLC is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the business entity was originally organized.

f. The ownership interests of the business entity that were to be converted into ownership interests or obligations of the surviving LLC or into cash or other property are converted.

g. Unless otherwise provided in a plan of conversion, the business entity is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute dissolution of the business entity.

h. The organizational documents of the LLC are as provided in the plan of conversion.

i. All other provisions of the plan of conversion apply.

Article 12. Dissolution.

12.01. *Dissolution.* An LLC organized under this Ordinance shall be dissolved and its affairs wound up upon the first occurrence of any of the following events:

a. The occurrence of events specified in the Operating Agreement.

b. The written consent of all members.

c. An event of dissociation of a member, unless otherwise provided in the Operating Agreement or continuation is consented to by all remaining members.

d. Entry of a decree of judicial dissolution under §12.07.

12.02. *Winding Up.*

a. A dissolved LLC continues its legal existence but may not carry on any business except that which is appropriate to wind up and liquidate its business.

b. Unless otherwise provided in its Operating Agreement:

1. The business of the LLC may be wound up by any of the following:

A. The members or managers who have authority to manage the LLC before dissolution.

B. In a judicial dissolution, the person(s) designated by the Tribal Court or court of competent jurisdiction.

2. The persons winding up the business of the LLC may do all of the following in the name of and on behalf of the LLC:

A. Collect its assets.

B. Prosecute and defend suits.

C. Take any action necessary to settle and close the business of the LLC.

D. Dispose of and transfer the property of the LLC.

E. Discharge or make provision for discharging the liabilities of the LLC.

F. Distribute to the members any remaining assets of the LLC.

c. Dissolution of an LLC does not do any of the following:

1. Transfer title to the LLC's property.

2. Prevent transfer of all or part of a member's interest.

3. Prevent commencement of a civil, criminal, administrative, or investigatory proceeding by or against the LLC.

4. Abate or suspend a civil, criminal, administrative, or investigatory proceeding pending by or against the LLC at the time of dissolution.

5. Terminate the authority of the registered agent of the LLC.

6. Alter the limited liability of any member(s).

12.03. *Distribution of Assets.* Upon the winding up of an LLC, the assets shall be distributed in the following order:

a. To creditors, including to the extent permitted by law, members, and former members in satisfaction of liabilities of the LLC.

b. Unless otherwise provided in the Operating Agreement, to members and former members in satisfaction of liabilities for distributions under §9.03.

c. Unless otherwise provided in the Operating Agreement, to members and former members first for the return of their contributions in proportion to their respective values and, thereafter, in proportion to their respective rights to share in distributions from the LLC before dissolution.

12.04. *Articles of Dissolution.* After the dissolution of an LLC under §12.01, the LLC may file articles of dissolution with the Department that include the following:

a. The name of the LLC.

b. The date of filing of its Articles of Organization.

c. The grounds under §12.01 for dissolution.

d. The delayed effective date of the articles of dissolution under §12.07(c), if applicable.

12.05. *Known Claims against a Dissolved LLC.*

a. A dissolved LLC may notify its known claimants in writing of the dissolution and specify a procedure for making claims.

b. A claim against the LLC is barred if:

1. A claimant who was given written notice under subsection (a) above, does not deliver the claim, in writing, to the LLC by the deadline specified in the notice; or

2. A claimant whose claim is rejected by the LLC does not commence a proceeding to enforce the claim within ninety (90) days after receipt of the rejection notice.

12.06. *Unknown or Contingent Claims.* A claim not barred under §12.05 may be enforced:

a. Against the dissolved LLC, to the extent of its undistributed assets.

b. If the dissolved LLC's assets have been distributed in liquidation, against any members of the LLC, other than the Tribe, to the extent of the Owner's proportionate share of the claim or of the assets of the LLC distributed to the members in liquidation, whichever is less, but an Owner's total liability for all claims under this Section may not exceed the total value of assets at the time of distribution to the members.

12.07. *Judicial Dissolution.*

a. In a proceeding by or for a member, the Tribal Court may order dissolution of an LLC if any of the following are established:

1. That it is not reasonably practicable to carry on the business of the LLC;

2. That the LLC is not acting in conformity with its Operating Agreement;

3. That one or more managers are acting or will act in a manner that is illegal, oppressive, or fraudulent;

4. That one or more members in control of the LLC are acting or will act in a manner that is illegal, oppressive, or fraudulent; or

5. That the LLC's assets are being misapplied or wasted.

b. If the Tribe is a member of the LLC, any action under this section must be brought in the Tribal Court, unless explicitly otherwise provided in the Operating Agreement. No Tribal member or other individual may bring an action for or on behalf of the Tribe as member under this Section and only the Tribal Council may authorize a suit by the Tribe as member under this Section. Nothing in this Section may be construed as a waiver of the Tribe's sovereign immunity from suit, and any waiver thereof must be provided explicitly in the LLC's Operating Agreement as approved by a Tribal Council resolution.

Article 13. Proceedings, Notice and Service of Process

13.01. *Member as a Party to Proceedings.* A member of an LLC is not a proper party to proceedings by or against an LLC, except when the object is to enforce a member's right against, or liability to, the LLC.

13.02. *Service of Process, Notice, or Demand.*

a. Process against an LLC may be served upon the registered agent.

b. Service on an LLC organized under this Ordinance shall be made:

1. By personal delivery to the registered agent; or

2. By writing, which shall be mailed by registered or certified mail to the registered agent.

c. Service is perfected under paragraph (b) (2) on the earliest of:

1. The date the LLC receives the process;

2. The date shown on the return receipt, if signed on behalf of the LLC; or

3. Five days after mailing.

d. This Section does not limit or affect the right to serve, in any other manner permitted by law, any process, notice or demand required or permitted by law to be served upon an LLC.

13.03. *Waiver of Notice.* If under the provisions of this Ordinance, notice is required to be given, a waiver in writing signed by the person or persons entitled to the notice, whether made before or after the time for notice is given, is equivalent to giving them notice.

Article 14. Tribal Authority; Appeals; Fees and Charges.

14.01. *Commission Duties and Functions.* The Commission (if extant) is vested the authority under the Commissions Ordinance, Ordinance #04-150-01 and its enabling Ordinance, the Commerce Commission Ordinance, Ordinance #05-150-05, to approve policies, forms and procedures developed by the Department relative to implementation of this Ordinance, to enact any regulations necessary to allow the Department to perform its duties under this Ordinance and to act as a hearing

body for all appeals of decisions, denials, suspensions or revocations resulting from Departmental action under this Ordinance, or for all cases in which the issuance of rules and regulations relative to this Ordinance is alleged to be unconstitutional, vague, beyond the scope of the Commission's authority, or for other like reasons. Should the Commission be incapable of executing described duties contained within this Ordinance due to either inability or non-existence resulting from future changes in governing structures, the Ogema and/or Tribal Council as appropriate may address Commission duties and functions included within this Ordinance.

14.02. *Department Duties and Functions.*

a. The Department is charged with the administration and enforcement of this Ordinance.

b. Every certificate and other document or paper executed by the Department, in pursuance of any authority conferred upon it by this Ordinance, and sealed with the seal of the Tribe, and all copies of such papers as well as documents and other papers filed in accordance with the provisions of this Ordinance, when certified by it and authenticated by said seal, shall have the same force and effect as evidence as would the originals thereof in any action or proceeding in any Tribal Court and before a public officer or official body.

c. The Department shall provide a summary of documents received and retained under this Ordinance to the Commerce Commission in monthly reports.

14.03. *Fees and Charges.* The Department or the Commission shall impose fees and charges in accordance with a schedule promulgated through regulations adopted according to the Administrative Procedures Act, Ordinance #04-100-07.

14.04. *Nonpayment of Fees.*

a. The Department shall not file any articles, statements, certificates, reports, applications, notice or other papers relating to any LLC organized under the provisions of this Ordinance until all fees and charges provided to be paid in connection therewith shall have been paid to it or while the LLC is in default in the payment of any fees, charges or sanctions herein provided to be paid by or assessed against it. Nothing in this Section shall prevent the filing, without the payment of all such fees, charges and sanctions, of a written notice of resignation by a registered agent of an LLC.

b. No LLC required to pay a fee, charge or sanction under this Ordinance shall maintain within the Reservation any civil action until all such fees, charges and sanctions have been paid in full.

14.05. *Administrative Appeals.*

a. Any person aggrieved by a decision of the Department may appeal in writing for a full hearing before the Commission under such rules and regulations as the Commission may prescribe.

b. Any administrative appeal as provided for under this section must be initiated by filing a written request for a hearing with the Commission within 30 days of the decision being appealed.

14.06. *Tribal Court Review.*

a. The Tribal Court shall have sole jurisdiction to review final decisions of the Commission, subject to the limitations set forth in this Ordinance, if the appellant has exhausted all administrative remedies provided by the Department and the Commission. An appellant shall be deemed to have exhausted the administrative if the:

1. Commission shall have failed to schedule and hold a hearing on the merits of the administrative appeal within 45 days after receipt of a written request for a hearing, and satisfactory documentation supporting same as determined by the Commission, unless such delay is requested or agreed to by the appellant; or

2. Commission shall fail to issue a written decision on the matter appealed within 30 days of the hearing on the merits of the administrative appeal.

b. The Commission, Department, Director, employees, officers and agents shall be immune from any suit in law or equity while performing their lawful duties within the scope of their authority. The Tribal Court shall have jurisdiction, however, to review any final decision of the Commission; provided, that decisions of the Commission shall only be reversed by the Tribal Court if found to be arbitrary and capricious; and provided further, that the Tribal Court shall not exercise de novo review of a decision of the Commission.

14.07. *Limitations on Suits against Department and Commission.*

a. To be effective, any suit against the Department or Commission must be commenced by the filing of a petition in the appropriate venue not later than 30 days after the date of issuance of a final decision by the Department or Commission or 30 days after expiration of those periods of review set forth in §14.04.

b. In no event shall the Tribal Court award or order the payment of damages, costs or attorney's fees against the Department, the Commission or the Tribe or direct any other remedy except to enjoin or overturn the action of the Department being appealed, or to order performance of a duty prescribed by this Ordinance.

Article 15. LLCs Wholly Owned by the Tribe.

15.01. *Tribally-Owned Companies.* There are hereby authorized to be created LLCs wholly owned by the Tribe, with the Tribe as the sole owner. Tribally-owned LLCs shall be created by a duly adopted resolution of the Tribal Council. The organizer shall file in accordance with §5.11. When the organizer files the Articles of Organization and the Operating Agreement of a Tribally-owned Limited Liability Company, a certified copy of the resolution authorizing the formation of the LLC and approving the articles shall be included. Tribally- owned LLCs shall be considered to be instrumentalities of the Tribe and integral to the operations, financial health, economic self-sufficiency, and continued existence of the tribe.

15.02. *Tribally-Owned Subsidiary Companies.* There are hereby authorized to be created by resolution of the board of directors or by action of a manager, if the Tribally-owned LLC is manager managed, of a Tribally-owned LLC or of a Tribal corporation, or of a wholly-owned subsidiary of such a Tribally-owned LLC or Tribal corporation, subsidiary LLCs to be wholly owned by the parent Tribally-owned LLC or parent Tribal corporation or such wholly-owned subsidiaries, which shall be instrumentalities of the Tribe. The organizer of such a Tribally-owned subsidiary LLC shall file in accordance with §5.11. When the organizer files organizational documents of the Tribally-

owned subsidiary LLC, a certified copy of a resolution of the board of directors of the parent Tribally-owned LLC or parent Tribal corporation authorizing the formation of the subsidiary LLC and approving the articles shall be included.

15.03. *Privileges and Immunities.* The LLCs established under §15.01 and §15.02 shall be considered to be integral instrumentalities of the Tribe, and their agents and officers considered agents and officers of the Tribe, created for the purpose of carrying out authorities and responsibilities of the Tribal Council for economic development of the Tribe and the advancement of its Tribal members and thereby creating a business structure(s) focused on generating profits which are integral to the operations, financial health, economic self-sufficiency, and continued existence of the Nation. Such LLCs, their 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 immunities from suit in federal, state and Tribal courts and from federal, state, and local taxation or regulation.

15.04. *Ownership.*

a. No ownership interest in any LLC in which the Tribe is a Member may be alienated unless approved by the Tribal Council. Further, no ownership interest in any Tribally-owned subsidiary LLC may be alienated unless approved by a duly adopted resolution of the board of directors of the parent Tribally-owned LLC or parent Tribal corporation.

b. All interests in any Tribally-owned LLC shall be held by and for a Tribe, or in the case of a wholly-owned subsidiary LLC, by the parent Tribally-owned LLC or parent Tribal Corporation. No individual member of the Tribe shall have any personal ownership interest in any LLC organized under this part, whether by virtue of such person's status as a member of a Tribe, as an officer of a Tribe's government, or otherwise.

15.05. *Project Companies.* Any LLC created pursuant to this Article, including subsidiary LLCs, may form or own interests or shares in partnerships, corporations, or other LLCs with other governmental or non-governmental entities or Persons under the laws of the Tribe or any other jurisdiction ("project companies"); provided, however, that the partial ownership interest in such project companies shall not diminish or affect the privileges and immunities of the Tribally-owned LLCs or Tribally-owned subsidiary LLCs created pursuant to this Ordinance.

15.06. *Purpose of Tribally-Owned LLCs.* All Tribally-owned LLCs, whether directly or indirectly owned, shall state in their Operating Agreement the purpose of the LLC that relates to the overall needs, priorities, goals, and objectives of the Tribe's government, including how the LLC will contribute to Tribal economic policy and further the goals of self-determination and economic self-sufficiency as outlined in Article 1.02 c.

15.07. *Waiver of Sovereign Immunity.* The Limited Liability Companies established under §§15.01 and 15.02 may only waive the privileges and immunities granted under §15.03in the following manner:

a. The LLC may specifically 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, however, that:

1. Any such waiver or consent to suit granted pursuant to the 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;

2. Any recovery against the 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) and 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 the LLC; including assets of the Tribe leased, loaned, or assigned to the LLC for its use, without transfer of title, and

3. Any waiver of the LLC's immunities granted pursuant to the LLC's Operating Agreement shall be further limited or conditioned by the terms of such waiver.

b. The sovereign immunity of the 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 created pursuant to this part, by the parent Limited Liability Company acting as Member.

c. The LLC must follow the methods mandated by this ordinance..

d. Notwithstanding subsection (a) above, the LLC may also specifically grant a limited waiver of its immunity from suit for participation in the Small Business Administration 8a program, 13 CFR 124, §8a, in the manner required by federal regulations governing the program.

15.08 *Special Formation Requirements for Tribally-Owned Limited Liability Companies.*

a. 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.

b. A board member of the parent Tribally-owned LLC or parent Tribal Corporation shall be the organizer of any Tribally-owned subsidiary LLC. If practicable, such board member shall also be a member of the Tribe. The chief operating officer of the parent Tribally-owned LLC or Manager of a Tribally-owned subsidiary LLC shall be the organizer of any Tribally-owned second tier subsidiary LLC.

c. Unless a delayed effective date is specified:

1. The existence of a Tribally-owned LLC begins when the Articles of Organization have been approved by resolution of the Tribal Council in accordance with §15.01and have been filed with the Department in accordance with §5.11.

2. The existence of a subsidiary LLC owned by a Tribally-owned LLC or Tribal corporation begins when the Articles of Organization have been approved by a resolution of the directors of the parent Tribally-owned LLC or Tribal corporation and have been filed in accordance with §5.11.

3. The existence of a Tribally-owned second tier subsidiary LLC owned by a Tribally-owned subsidiary begins when the Articles of Organization have been approved by the chief operating officer or Manager of the Tribally-owned subsidiary or chief operating officer of the parent Tribally-owned LLC.

4. The Articles of Organization of any Tribally-owned LLC or subsidiary thereof, and any amendments thereto, shall be filed with the Department in accordance with §5.11, and shall state at a minimum the requirements set forth in §15.09.

15.09 *Additional requirements for the Articles of Organization.*

a. As set forth and subject to the limitations delineated in §15.07 and elsewhere within this ordinance, Tribally-owned LLCs established under §15.01and §15.02 may grant a limited waiver of sovereign immunity in order to promote economic development through commercial transactions for which such a waiver is necessary and beneficial to the Tribe.

b. The method for granting a limited waiver of sovereign immunity through the above mentioned entities is as follows:

1. The sovereign immunity of a Tribally-owned LLC may be waived only by:

A. A resolution adopted by the board of directors of the Tribally-owned LLC for the specific purpose of granting a waiver, or in the case of owner managed Tribally-owned subsidiary LLC, by the owner's board of directors; and

B. The language of the waiver must be explicit; and

C. The waiver must be specific to and contained within a written contract or commercial document to which the LLC is a party.

2. Waivers of sovereign immunity by resolution of the board of directors may be granted only when necessary to secure a substantial advantage or benefit to the Tribally-owned LLC. Waivers of sovereign immunity by resolution may not be general but must be specific and limited as to duration, grantee, transaction, property or funds of the Tribally-owned LLC subject to the waiver. Jurisdiction and venue for actions brought under such a waiver must be limited to Tribal Court and Tribal law.

Article 16. Management of Tribally-Owned LLCs.

16.01. *Management.*

a. All Tribally-owned LLCs formed pursuant to §15.01of this Ordinance shall be managed by an executive officer, overseen by a Board of Directors in the manner described in the company's Operating Agreement. The qualifications, number, terms and method for selecting and removing Directors of any Tribally-owned LLC shall be specified in the LLC's Operating Agreement.

b. All Tribally-owned subsidiary LLCs formed pursuant to §15.02 of this Ordinance, including Tribally-owned second tier subsidiary Limited Liability Companies, shall be managed by a Manager. If Manager managed, the Operating Agreement shall set forth the qualifications, number, terms and method for selecting and removing such Managers. If owner managed, the LLC shall have one or more persons exercising the functions of chief executive officer.

16.02. *Board of Directors.*

a. *Appointment.* The Tribal Council shall retain the power to appoint 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, at a minimum:

1. One (1) Tribal Council member in a voting capacity appointed by the Tribal Council for Tribally-owned Limited Liability Companies and by the Board of Directors of the Tribally-owned Limited Liability Company for its subsidiary Limited Liability Company;

2. The Ogema (or one (1) member designated by the Ogema such as the Commerce Director), in a voting capacity;

3. One (1) Tribal voting member who is appointed by Tribal Council and who is experienced in business and Tribal government matters; and

4. Two (2) voting 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. In addition to any requirements set forth in the LLC's Operating Agreement, Board Members of Tribally-owned Limited Liability Companies and the executive officer managing the Tribally-owned LLC, shall meet the following requirements:

1. Be at least twenty-five (25) years old; and

2. Possess a Bachelor's Degree; or possess a high school diploma (or a General Equivalency Diploma) and at least five (5) years of business, financial, legal, government contracting or industry experience; and

3. Have no felony convictions; and

4. Have no misdemeanor convictions within the last ten (10) years: and

5. Submit to a background investigation which yields no results showing convictions involving tax evasion, tax fraud, embezzlement or moral turpitude.

c. *Removal.* Any Director of a Tribally-owned LLC appointed by the Tribal Council may be removed with cause by the Tribal Council or as specified in the LLC's Operating Agreement. If not otherwise specified in the LLC'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.

1. "Cause" shall mean any the following:

A. Breach of a fiduciary duty.

B. Conviction of a felony.

C. Conviction of a misdemeanor that, in the determination of the Tribal Council, adversely affects the Company or such Director's ability to perform his or her duties.

D. Adjudication as incompetent by a Court of competent jurisdiction.

E. Misappropriation of corporate funds or other acts of dishonesty with respect to the Company.

F. Gross negligence, fraud, deceit or intentional misconduct that had a material adverse effect on the Company.

d. *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.

16.03. *Decisions and Voting for Tribally-Owned LLCs.*

a. The ownership interests in all Tribally-owned LLCs shall be voted in the accordance with the Tribal Council's procedures for voting and passing Tribal resolutions.

b. Ownership interests in Tribally-owned subsidiary LLCs, including Tribally-owned second tier subsidiary LLCs, shall be voted as provided in the companies' Operating Agreement.

16.04. *Distributions for Tribally-Owned LLCs.*

a. Subject to the Tribe's ultimate ownership right to all income generated by its Tribally-owned LLCs, a Tribally-owned LLC shall distribute the net income of the LLC to the Tribe as set forth in a dividend plan adopted in accordance with the Operating Agreement and duly approved by the Tribal Council, except that a Tribally-owned LLC must retain reserves necessary to carry on the LLC's business in a reasonably prudent manner and as recommended by the board of directors, subject to further limitations set forth in §9.03(d) and in the Operating Agreement.

b. Subject to the parent Tribally-owned Limited Liability Company's or parent Tribal corporation's ultimate ownership right to all income generated by its subsidiary Limited Liability Companies, any subsidiary Limited Liability Companies created pursuant to §15.02 shall distribute the net income of the LLC to the parent Tribally-owned Limited Liability Company or parent Tribal corporation as set forth in a dividend plan adopted in accordance with the Operating Agreement, except that a Tribally-owned Limited Liability Company must retain reserves necessary to carry on the LLC's business in a reasonably prudent manner and as recommended by the board of directors, subject to further limitations set forth in §9.03(d) and in the Operating Agreement.

c. When any income or assets of an LLC are distributed or otherwise transferred to the Tribe or, in the case of subsidiary Limited Liability Companies, the parent Tribally-owned Limited Liability Company or parent Tribal Corporation, such income and assets shall cease being income or assets of the LLC, and shall become income and assets of the Tribe or, in the case of subsidiary Limited Liability Companies, the parent Tribally-owned

Limited Liability Company or parent Tribal Corporation, and shall not be subject to any attachment or other process which may reach the income or assets of the LLC.

16.05. *Additional Reports and Audits.*

a. 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.

b. 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 submit the following information to the Tribal Council:

1. 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;

2. A full report of the business activities of the company within 120 days after the close of each fiscal year; and

3. A proposed annual plan for the following year, including any proposed funding from the Tribe or anticipated distributions to the Tribe.

Article 17. Actions against Tribally-owned LLCs.

17.01. *Actions against Tribally-owned LLCs.*

a. *Court actions by the Tribe authorized.* The Tribe as Member of any Tribally-owned LLC organized pursuant to this Ordinance, or in the case of a subsidiary LLC, the parent Tribally-owned LLC or Tribal corporation acting as Member, may bring a civil action against the LLC its Board of Directors or its officers in the Tribal court only pursuant to this part to:

1. Enjoin temporarily or permanently any action of the LLC that is an *ultra vires* act outside the authority of the LLC and that is either:

A. Unlawful; or

B. Has or could cause material harm to the assets of the LLC or the Tribe if no immediate action is taken.

2. Require the distribution of the LLC's surplus net income, to the extent permitted by §9.03(d).

b. An action against an LLC pursuant to this section by the Tribe or by a parent LLC or corporation, acting as owner, shall not act as a waiver of the Tribe's, or the parent LLC or

parent corporation's sovereign immunity from suit of any kind, including a countersuit by the Tribally-owned LLC, its Board of Directors or its officers.

c. In accordance with §15.03, the sovereign immunity of the 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 created pursuant to this part, by the parent Limited Liability Company acting as Member.

d. Nothing contained herein shall be construed as authorizing actions of any kind whatsoever against the Tribe.

17.02. *Tribal Approval Required.* The filing of any court action against a Tribally-owned LLC pursuant to this Article must be authorized by the Tribe as Member in the same manner as required in §16.03for voting on any item properly coming before the Tribe as Member. The request for consideration of the proposed court action may be made by any member of the Tribal Council.

17.03. *Relief Available*. In any action brought under this Article, the Tribal Court may, based on a preponderance of the evidence, set forth its findings of fact and conclusions of law and:

a. Issue a declaratory judgment, temporary restraining order, preliminary injunction, permanent injunction, or other appropriate relief pursuant to the procedures and standards applicable in the Tribal Court, except that no bond, obligation, or other security shall be required from the Tribe; or

b. Order that funds of the LLC be distributed to the Tribe to the extent permitted by the Operating Agreement and this Ordinance.

Article 18. Foreign LLCs.

18.01. *Foreign LLCs; Governing Law.*

a. The laws of the jurisdiction under which a Foreign LLC is organized shall govern its organization and internal affairs and the liability and authority of its Managers and Members, regardless of whether the Foreign LLC obtained or should have obtained a certificate of registration under this Article. However, a Foreign LLC that has filed a certificate of conversion under this Article XV to become a Domestic LLC shall be subject to the requirements of this Article governing Domestic LLCs on the effective date of the conversion and shall not thereafter be subject to the requirements of this Article governing Foreign LLCs.

b. A Foreign LLC shall not be denied a certificate of registration by reason of any difference between the laws of the other jurisdiction under which it is organized and the laws of the Tribe.

c. A Foreign LLC holding a valid certificate of registration under this Article shall have no greater rights and privileges than a Domestic LLC. Registration may not be considered to authorize a Foreign LLC to exercise any powers or purposes that a Domestic LLC is forbidden by law to exercise.

18.02. *Foreign LLCs; Registration Required.*

a. A Foreign LLC may not transact business on Tribal Lands until it obtains a certificate of registration from the Department.

b. Activities that for the purposes of subsection (a) do not constitute transacting business include, but are not limited to:

1. Maintaining, defending, or settling any civil, criminal, administrative, or investigatory proceeding.

2. Holding meetings of its Members or Managers or carrying on other activities concerning its internal affairs.

3. Maintaining financial institution accounts.

4. Maintaining offices or agencies for the transfer, exchange and registration of the Foreign LLC's own securities or interests or maintaining trustees or depositories with respect to those securities or interests.

5. Selling through independent contractors.

6. Soliciting or obtaining orders, by mail or through employees or agents or otherwise, if the orders require acceptance outside Tribal Lands before they become contracts.

7. Lending money or creating or acquiring indebtedness, mortgages, and security interests in property.

8. Securing or collecting debts or enforcing mortgages and security interests in property security the debts.

9. Owning, without more, property.

10. Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature.

11. Transacting business in interstate commerce or between different jurisdictions.

c. A Foreign LLC shall not be considered to be transacting business on Tribal Lands solely because of any of the following:

1. The Foreign LLC owns a controlling interest in a Corporation that is transacting business on Tribal Lands.

2. The Foreign LLC is a limited partner of a limited partnership that is transacting business on Tribal Lands.

3. The Foreign LLC is a Member or Manager of an LLC or a Foreign LLC that is transacting business on Tribal Lands.

4. The Foreign limited liability partnership is a limited partner of a limited partnership that is transacting business on Tribal Lands.

d. This Section does not apply in determining the contracts or activities that may subject a Foreign Limited Liability Company to service of process or taxation on Tribal Lands or to regulation under any other law of the Tribe.

18.03. *Foreign LLCs; Consequences of Transacting Business without Registration.*

a. A Foreign LLC transacting business without a certificate of registration shall not maintain a proceeding in Tribal Court relating to or involving such transacted business until the Foreign LLC obtains a certificate of registration.

b. Neither the successor to a Foreign LLC that transacted business on Tribal Lands without a certificate of registration nor the assignee of a cause of action arising out of that business shall maintain a proceeding based on that cause of action in Tribal Court until the Foreign LLC or its successor obtains a certificate of registration.

c. The Tribal Court shall stay a proceeding commenced by a Foreign LLC, or its successor or assignee, until the Tribal Court determines if the Foreign LLC or its successor requires a certificate of registration. If the Tribal Court determines that a certificate is required, the Tribal Court shall further stay the proceedings until the Foreign LLC or its successor obtains the certificate of registration.

d. The failure of a Foreign LLC to obtain a certificate of registration does not do any of the following:

1. Impair the validity of any contract or act of the Foreign LLC or its title to property on Tribal Lands.

2. Affect the right of any other party to contract to maintain any action, suit or proceeding on a contract.

3. Prevent the Foreign LLC from defending any proceeding in Tribal Court.

e. *Civil penalty.*

1. A Foreign LLC that transacts business on Tribal Lands without a certificate of registration is liable to the Tribe, for each year or any part of a year during which it transacted business on Tribal Lands without a certificate of registration, in an amount equal to the sum of the following:

A. All fees that would have been imposed by this Article upon the Foreign LLC had it applied for and received a certificate of registration.

B. Fifty percent of the amount owed under subsection (e) (1) (A) above or $5,000.00, whichever is more.

2. The Foreign LLC shall pay the amount owed under subsection (e) (1) to the Department. The Director shall not issue a certificate of registration to the Foreign LLC until the amount owed is paid.

f. An Owner or Manager of a Foreign LLC is not liable for the debts and obligations of the LLC solely because the LLC transacted business on Tribal Lands without a certificate of registration.

18.04. *Foreign LLCs; Application for Certificate of Registration.* A Foreign LLC may apply for a certificate of registration to transact business on Tribal Lands by delivering an application to the Department for filing signed by a person with authority to do so under the laws of the State or other jurisdiction of its organization. The application shall include all of the following:

a. The name of the Foreign LLC and, if different, the name under which it proposes to transact business on Tribal Lands.

b. The name of the State or other jurisdiction under whose laws it is organized.

c. The date of its organization.

d. The street address of its registered office on Tribal Lands and the name of its registered agent at that office.

e. If management of the LLC is vested in one or more Managers, a statement to that effect.

f. The street address of the office required to be maintained in the State or other jurisdiction of its organization by the laws of that State or jurisdiction or, if no office is required, its principal office.

g. A statement that the applicant is a Foreign LLC.

h. A statement that the Foreign LLC is in good standing in the State or other jurisdiction under whose laws it is organized.

18.05. *Foreign LLCs; Name.* A certificate of registration may not be issued to a Foreign LLC unless its name satisfies §5.08. If the name under which a Foreign LLC is registered in the jurisdiction of its formation does not satisfy §5.08, the Foreign LLC may obtain a certificate of registration to transact business on Tribal Lands under a trade name registered pursuant to this Article that is available and that satisfies §5.08.

18.06. *Foreign LLCs; Amended Certificate of Registration.*

a. A Foreign LLC authorized to transact business on Tribal Lands shall obtain an amended certificate of registration from the Department if the Foreign LLC changes any of the following:

1. Its name or the fictitious or trade name under which it has been issued a certificate of registration.

2. The State or jurisdiction under whose laws it is organized or its date of organization.

3. Whether management of the Foreign LLC is vested in one or more Managers.

b. The requirements of §18.04for obtaining an original certificate of registration apply to obtaining an amended certificate of registration.

18.07. *Foreign LLCs; Registered Office and Registered Agent of a Foreign LLC.*

a. A Foreign LLC authorized to transact business on Tribal Lands shall continuously maintain on Tribal Lands a registered office and registered agent. The registered office may, but need not, be the same as any of its places of business on Tribal Lands, if any.

b. A Foreign LLC may change its registered office or registered agent, or both, by filing a written notice of change containing the name of its registered agent and the street address of its registered office, as changed with the Department and paying the filing fee.

c. The registered agent of a Foreign LLC may resign as a registered agent by delivering to the Department for filing a written statement of registration and the appointment by the Foreign LLC of another registered agent.

18.08. *Service of Foreign Limited Liability Company.*

a. Except as otherwise provided in subsection (b) and (c), the registered agent of a Foreign LLC authorized to transact business on Tribal Lands is the Foreign LLC's agent for service of process, notice, or demand required or permitted by law to be served on the Foreign LLC.

b. A Foreign LLC authorized to transact business on Tribal Lands may be served in the manner provided in subsection (d) if the Foreign LLC has no registered agent or its registered agent cannot with reasonable diligence be served.

c. A Foreign LLC formerly authorized to transact business on Tribal Lands may be served in the manner provided in subsection (d) in any civil, criminal, administrative or investigatory proceeding based on a cause of action arising while it was authorized to transact business on Tribal Lands, if the Foreign LLC has withdrawn its registration under §18.09.

d. With respect to a Foreign LLC described in subsection (b) or (c), the Foreign LLC may be served by registered or certified mail, return receipt requested, addressed to the Foreign LLC at its principal office as shown on the records of the Department. Service is perfected under this paragraph at the earliest of the following:

1. The date on which the Foreign LLC receives the mail.

2. The date shown on the return receipt, if signed on behalf of the Foreign LLC.

3. Five days after the mail is deposited in the U.S. mail, if mailed postpaid and correctly addressed.

e. This Section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a Foreign LLC in any other manner permitted by law.

18.09. *Foreign LLCs; Withdrawal of Registration.*

a. A Foreign LLC authorized to transact business on Tribal Lands may not withdraw until it obtains a certificate of withdrawal from the Department.

b. A Foreign LLC authorized to transact business on Tribal Lands may apply for a certificate of withdrawal by delivering an application to the Department for filing signed by a person with authority to do so under the laws of the State or other jurisdiction of its organization. The application shall include all of the following:

1. The name of the Foreign LLC and the name of the State or jurisdiction under whose laws it is organized.

2. A statement that the Foreign LLC is not transacting business on Tribal Lands and that it surrenders its authority to transact business on Tribal Lands.

3. A statement that the Foreign LLC revokes the authority of its registered agent to accept service on its behalf and that it consents to services of process under §§ 18.08(c) and (d) in any proceeding based on a cause of action arising while it was authorized to transact business on Tribal Lands.

4. An address to which a person may mail a copy of any process against the Foreign LLC.

5. A commitment to notify the Department in the future of any change in the mailing address of the Foreign LLC principal office.

18.10. *Foreign LLCs; Grounds for Revocation.*

a. Except as provided in subsection (b), the Department may revoke the certificate of registration of a Foreign LLC registered to transact business on Tribal Lands in accordance with §18.11if any of the following applies:

1. The Foreign LLC failed to file its annual report with the Department within four (4) months after it is due.

2. The Foreign LLC does not pay, within four (4) months after they are due, any fees or penalties due the Department under this Tribal Limited Liability Company Code.

3. The Foreign LLC is without a registered agent or registered office on Tribal Lands for at least six (6) months.

4. The Foreign LLC obtained a certificate of registration through fraud.

5. The Department receives an authenticated certificate from the Secretary of State or other official having custody of LLC records in the State or jurisdiction under whose law the Foreign LLC is incorporated stating that it has been dissolved or disappeared as the result of a merger.

b. The Tribal Court may revoke the certificate of registration of the Foreign LLC registered to transact business on Tribal Lands. The Tribal Court shall notify the Department of the

action, and the Department shall revoke the Foreign LLC's certificate of registration under §18.11(b) (2).

18.11. *Foreign LLCs; Procedure for and effect of revocation.*

a. If the Department determines that one or more grounds exist under §18.10(a)for revocation of a certificate of registration, the Department shall give the Foreign LLC written notice of the determination by first class mail, addressed to the Foreign LLC's registered office.

b. *Correction of grounds.*

1. Within sixty (60) days after the notice takes effect, the Foreign LLC shall correct each ground for revocation or demonstrate to the reasonable satisfaction of the Department that each ground determined by the Department does not exist.

2. If the Foreign LLC fails to satisfy subsection (b)(1) above, the Department may revoke the Foreign LLC's certificate of registration by entering a notation in the Office's records to reflect each ground for revocation and the effective date of the revocation. The Department shall give written notice of those facts to the Foreign LLC by first class mail, addressed to the Foreign LLC's registered office.

c. If any such notice under this Section is undeliverable, then the Department shall give written notice to the Foreign LLC addressed to the principal office of the Foreign LLC. Notice to the registered office or principal office takes effect at the earliest of the following:

1. When received.

2. Five days after its deposit in the U.S. mail, if mailed postpaid and correctly addressed.

3. On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

d. The authority of a Foreign LLC to transact business on Tribal Lands, other than as provided in §18.02(b), ends as of the effective date of revocation of its certificate of registration as reflected in the records of the Department.

e. If the Department or the Tribal Court revokes a Foreign LLC's certificate of registration, the Foreign LLC may be served under §§18.08(c) and (d) or the Foreign LLC's registered agent may be served until the registered agent's authority is terminated, in any proceeding based on a cause of action which arose while the Foreign LLC was registered to transact business on Tribal Lands.

f. Revocation of a Foreign LLC's certificate of registration does not terminate the authority of its registered agent.

18.12. *Foreign LLCs; Appeal from Revocation.*

a. A Foreign LLC may appeal the Department's revocation of its certificate of registration under §18.10(a)to the Tribal Commission by appealing to the Commission to set aside the

revocation and attaching to the petition copies of its certificate of registration and the Department's notice of revocation.

b. The Commission may order the reinstatement of the certificate of registration only if the Foreign LLC demonstrates that the Department's revocation was a violation of this Title or otherwise arbitrary or unauthorized.

c. The Commission's final decision may be appealed as in other civil proceedings.

d. Appeals to the Commission or Tribal Court under this Section are subject to all other rules for appeal within this Ordinance.

CERTIFICATION

I, Joseph Riley II, Tribal Council Recorder, hereby certify that this is a true and correct copy of the Limited Liability Corporation Ordinance, Ordinance, adopted by Tribal Council Resolution #16-0727-215.

Joseph Riley II, Tribal Council Recorder

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