

LIMITED LIABILITY COMPANY ORDINANCE

PART 1. GENERAL PROVISIONS

Section 101. Short Title.

This ordinance shall be known as the "Kickapoo Traditional Tribe of Texas Limited Liability Company Ordinance."

Section 102. Purposes; Sovereign Immunity.

- (1) The purposes of this Ordinance are to provide for economic development of the Kickapoo Traditional Tribe of Texas and its members by:
 - (a) providing the legal framework for organizing individually-owned business entities in order to expand the private business sector on the Reservation; and
 - (b) authorizing the formation of wholly-owned Tribal business entities for managing the Tribe's economic activities separate from the general affairs of its Tribal Council, with the ability to enter into legally-binding contracts and commercial relationships without the need for formal Tribal Council action.
- (2) By the adoption of this Ordinance, the Tribe does not waive its sovereign immunity or consent to suit in any court, federal tribal or state, and neither the adoption of this Ordinance, nor the incorporation of any limited liability company hereunder, shall be construed to be a waiver of the sovereign immunity of the Tribe or a consent to suit against the Tribe in any court.

Section 103. Scope.

This Ordinance shall apply to all limited liability companies organized under its provisions or which elect to accept the provisions of this Ordinance.

Section 104. Applicable Law.

The companies organized and created under this Ordinance shall be subject to this Ordinance and all other laws of the Tribe. Unless displaced by particular provisions of this Ordinance or other Tribal law, the principles of law and equity supplement this Ordinance.

Section 105. Definitions.

Terms used in this Ordinance have the following meaning:

- (1) "Articles of Organization" means the articles filed under Section 201 and those articles as amended or restated.

- (2) "Corporation" means a domestic corporation for profit organized under the law of the Tribe or a foreign corporation formed under the laws of any other jurisdiction.
- (3) "Distribution" means a direct or indirect transfer by a limited liability company of money or other property to or for the benefit of its members in respect of their interests.
- (4) "Entity" includes an individual, a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation or any other legal or commercial entity.
- (5) "Foreign" refers to limited liability companies, corporations and limited partnerships organized under the laws of a jurisdiction other than the Tribe.
- (6) "Limited Liability Company" or "Domestic Limited Liability Company" means an organization formed under this Ordinance, except as provided for in Section 801(1).
- (7) "Limited Liability Company Interest" or "Interest in the Limited Liability Company" or "Member's Interest" means a member's rights in the limited liability company, including rights to distributions, profits and losses, and to participate in management, as specified in the Operating Agreement.
- (8) "LLC" means a limited liability company.
- (9) "Majority in Interest" means members contributing more than fifty percent (50%) of the value of total capital contributions to the limited liability company excluding any interest which is not to be counted as voting on a matter as described elsewhere in this Ordinance.
- (10) "Manager" or "Managers" means the person(s) or entity(ies) designated to manage the LLC pursuant to the Articles of Organization and Operating Agreement.
- (11) "Member" means a Person who has been admitted to membership in a limited liability company and who has not dissociated from the limited liability company.
- (12) "Office of the Secretary" means the Office of the Secretary of the Tribal Council as provided by Article IV, Section 2 of the Tribal Constitution, or that individual's designee.
- (13) "Operating Agreement" means an agreement in writing among all of the members as to the conduct of the business of a limited liability company and its relationships with its members.
- (14) "Organizer(s)" means the person(s) or entity(ies) which signs and delivers the Articles of Organization for filing to the Office of the Secretary.
- (15) "Person" includes a natural person, Tribal Entity and an organization such as a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, or a corporation.

(16) "Reservation" means all lands under the jurisdiction of the Tribe pursuant to the Constitution, including all lands within the boundaries of the Tribe's Reservation, individual tribal member allotments, whether located on or off the Reservation, and all lands held in trust by the United States of America for the benefit of the Tribe.

(17) "State" includes a state, territory, or possession of the United States and the District of Columbia.

(18) "Tribal Entity" includes the Tribe, the Tribal Council, a general partnership, limited partnership, a domestic or foreign limited liability company, 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.

(19) "Tribal Council" means the Traditional Council as established by Article III of the Tribal Constitution as the governing body of the Tribe.

(20) "Tribal Constitution" means the Constitution of the Kickapoo Traditional Tribe of Texas.

(21) "Tribal Court" means the Court of Indian Offenses operated by the Bureau of Indian Affairs for the Tribe, the Appeals Board as may be established by the Tribal Council pursuant to Article XI of the Tribal Constitution, or a judicial entity or administrative entity established or authorized by the Tribal Council to hear and resolve legal disputes associated with this Ordinance.

(22) "Tribally-owned LLC" means a limited liability company wholly-owned by the Tribe with the Tribe as its sole member.

(23) "Tribe" means the Kickapoo Traditional Tribe of Texas.

(24) "Trust Land" means land held in trust by the United States for the benefit of the Tribe or its members.

Section 106. Name.

- (1) The name of a limited liability company as set forth in its Articles of Organization must contain the words "limited liability company" or end with the abbreviation "L.L.C." or "LLC". The name may not contain language stating or implying that the limited liability company is organized for any purpose other than that permitted under Section 109, below.
- (2) The name of a domestic LLC shall be distinguishable from any LLC or corporation previously organized under the laws of the Tribes.

Section 107. Registered Office and Registered Agent.

- (1) A limited liability company's registered agent is the company's agent for receiving service of process, notice, or demand required or permitted by law to be served on the company under the laws of the Tribe.

- (2) Each LLC shall continuously maintain a registered office and a registered agent. The registered office may, but need not, be the same as any of its places of business. The agent may be the same person then serving in a designated office of the Tribe rather than a specified person if the Tribe is a Member in the LLC of which the Tribe's officer is the appointed agent.
- (3) A LLC may change its registered office or registered agent, or both, 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 Office of the Secretary and paying the filing fee.
- (4) The registered agent of a LLC may resign as a registered agent by delivering to the Office of the Secretary for filing a written statement of resignation and the appointment by the LLC of another registered agent.

Section 108. Tribe as a Member.

- (1) A Tribe shall form or become a member of a Tribally-owned LLC formed under this Ordinance only upon approval of such action by the Tribal Council.
- (2) If the Tribe is a member of a 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 Section 941 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.
- (3) If the Tribe is the sole member of a LLC formed under this Ordinance, such Tribally-owned LLC shall possess the Tribe's sovereign immunity from suit except to the extent otherwise provided in its Operating Agreement.
- (4) In no event shall any manager not a member of a 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 by manager or member actions as stated in this Ordinance and the Operating Agreement of the LLC.
- (5) 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 Member concerning the exercise of any right or privilege or discharge of any duty with respect to an interest in a 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.
- (6) For all Tribally-owned limited liability companies, the additional provisions of Part 9 of this Ordinance shall apply.

Section 109. Nature of Business.

A limited liability company may be organized under this Ordinance for any lawful purpose. Unless otherwise provided in its Operating Agreement, a 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 a LLC is Tribally-owned, or wholly-owned by a other 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.
- (2) Purchase, take, receive, lease, or otherwise acquire and own, 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.
- (3) Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, or otherwise dispose of all or any part of its property.
- (4) Lend money, property, and services to, and otherwise assist, its members and managers, if any.
- (5) Purchase, take, receive, subscribe for, or otherwise acquire and own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in, or obligations of, any other enterprise or entity.
- (6) Make contracts and guarantees; incur liabilities; borrow money; issue notes, bonds, and other obligations; and secure any of its obligations by mortgage or pledge of all or part of its property, franchises, and income.
- (7) Lend money, invest and reinvest its funds, and receive and hold real or personal property as security for repayment.
- (8) Conduct its business, locate offices, and exercise the powers granted by this Ordinance inside or outside of the Reservation.
- (9) Be a promoter, incorporator, partner, member, associate, or manager of any enterprise or entity.
- (10) Elect or appoint managers, agents, and employees, define their duties, and fix their compensation.
- (11) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, and benefit or incentive plans for any or all of its current or former members, managers, employees, and agents.
- (12) Make donations to and otherwise devote its resources for the public welfare or for charitable, scientific, educational, humanitarian, philanthropic, or religious purposes.
- (13) Indemnify a member, manager, employee, officer or agent, or any other person.

- (14) Provide benefits or payments to members, managers, employees, and agents of the LLC, and to their estates, families, dependants or beneficiaries in recognition of the past services of the members, managers, employees, and agents of the LLC.
- (15) Make payments or donations, or do any other act not prohibited by law, that furthers the business of the LLC.
- (16) Transact any lawful business that the members or the managers find to be appropriate to promote and further the business and affairs of the limited liability company.

Section 110. Execution of Documents.

- (1) Except as otherwise provided in this Ordinance, any document required or permitted by this Ordinance to be delivered for filing in accordance with Section 111 shall be executed by any of the following:
 - (a) Any manager, if management of the LLC is vested in a manager or managers, or by a member, if management of the LLC is reserved to the members.
 - (b) All organizers of the LLC if the LLC has not been organized. The name and address of each organizer shall be provided.
 - (c) The name of the drafter of the document.
- (2) The person executing the document shall sign it and state beneath or opposite the signature the person's name and capacity in which the person signs.
- (3) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the executing of the document need not be shown to nor filed with the Office of the Secretary.

Section 111. Filing.

- (1) The Office of the Secretary shall receive all filings required under this Ordinance and maintain the records of such filings pursuant to this Section, including but not limited to the Articles of Organization, amended or restated articles, annual reports, names and addresses of registered offices and agents, and, in the case of Tribally-owned LLC's, the Operating Agreement and amendments thereto, and other reports required by this Ordinance.
- (2) Upon receipt of a document for filing under this Ordinance, the Office of the Secretary shall ensure it meets the requirements herein and then shall stamp or otherwise endorse the date and time of receipt of the original, the duplicate copy, and, upon request, any additional copy received.
- (3) If the Office of the Secretary refuses to file a request, the Office shall return it to the person tendering the document for filing within five (5) business days after the

date on which the document is received by the Office for filing, together with a brief written explanation of the reason for refusal.

- (4) Any document accepted by the Office of the Secretary shall be effective at the time of receipt unless a delayed effective date and/or time not more than ninety (90) days after receipt by the Office of the Secretary is specified in the document.
- (5) Fees. The Office of the Secretary shall impose a reasonable filing fee for each document filed, initially not to exceed the sum of \$100.00, and an annual renewal fee initially not to exceed the sum of \$25.00 during the life of the LLC, subject to any uniform schedule of fees as may hereafter be adopted by the Office from time to time.

Section 112. Certificate of Status.

Any person may obtain from the Office of the Secretary, upon request, a certificate of status for either a domestic or a foreign LLC.

Section 113. Execution by Judicial Act.

Any person who is adversely affected by the failure or refusal of any person to execute and file any articles or other document to be filed under this Ordinance may petition the Tribal Court to direct the execution and filing of the articles or other document. 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.

Section 114. Interstate Application.

A LLC may conduct its business, carry on its operations and have and exercise the powers granted by this Ordinance, in any sovereign Native Nation, any state, territory, district or possession of the United States, or in any foreign jurisdiction.

PART 2. OPERATING AGREEMENT AND DEALING WITH LLC

Section 201. Articles of Organization.

- (1) One or more persons may organize a limited liability company by signing and delivering the Articles of Organization to the Office of the Secretary for filing. The organizer(s) need not be members of the LLC at the time of organization or thereafter.
- (2) A limited liability company shall have one or more members.
- (3) The Articles of Organization shall contain all of and only the following information:
 - (a) A statement that the LLC is organized under this Ordinance.

- (b) A name for the LLC that satisfies the provisions of this Ordinance.
 - (c) The street address of the registered office and the name of the registered agent at that office. For all LLC's formed pursuant to this Ordinance and for all foreign LLC's operating within the Reservation, such office and agent shall be located within the exterior boundaries of the Reservation.
 - (d) If management of the LLC is vested in one or more managers, a statement to that effect.
 - (e) The name and address of each person organizing the LLC.
 - (f) Whether the LLC is Tribally-owned.
 - (g) If Tribally-owned, whether the LLC is to enjoy Tribal sovereign immunity and the scope of any waiver of that immunity.
- (4) The Office of the Secretary shall assign each Articles of Organization an identification number.
 - (5) Amendment. A LLC may amend its Articles of Organization at any time by delivering an amendment, with filing fee, for filing to the Office of the Secretary.
 - (6) Effect of Delivery or Filing.
 - (a) A LLC is formed when the Articles of Organization become effective under Section 111(4).
 - (b) The Office of the Secretary's filing of the Articles of Organization is conclusive proof that the LLC is organized and formed under this Ordinance.

Section 202. Agency Power of Members and Managers.

- (1) Except as provided in subsection 2, below:
 - (a) Each member is an agent of the LLC, but not of the other members or any of them, for the purpose of its business.
 - (b) The act of any member, including the execution in the name of the LLC of any instrument for apparently carrying on in the ordinary course of business the business of the LLC, binds the LLC in the particular matter, unless the person with whom the member is dealing has knowledge that the member has no authority to act in this matter.
 - (c) If the Tribe is a Member, the Tribe's authority shall be exercised pursuant to Section 941.
- (2) If management of the LLC is vested in one or more managers:

- (a) No member, solely by being a member, is an agent of the LLC or of the other members.
- (b) Each manager is an agent of the LLC, but not of the other members, for the purpose of its business. The act of any manager, including the execution in the name of the LLC of any instrument for apparently carrying on the ordinary course of business of the LLC, binds the LLC unless the manager has, in fact, no authority to act for the LLC in the particular matter, and the person with whom the manager is dealing has knowledge that the manager has no authority to act in the matter.
- (3) No act of a member or, if management of the LLC is vested in one or more managers, of a manager that is not apparently authorized for the carrying on in the ordinary course of business the business of the LLC, shall bind the LLC unless in fact authorized at the time of the transaction or at any other time.

Section 203. Admissions of Members and Managers.

- (1) Except as provided in Section 203(2)(b), an admission or representation made by any member concerning the business of a LLC within the scope of the member's actual authority may be used as evidence against the LLC in any legal proceeding.
- (2) If management of the LLC is vested in one or more managers:
 - (a) An admission or representation made by a manager concerning the business of a LLC within the scope of the manager's authority may be used as evidence against the LLC in any legal proceeding.
 - (b) The admission or representation of any member, acting solely in the member's capacity as a member, is not evidence against the LLC in any legal proceeding.

Section 204. Knowledge of or Notice to Member or Manager.

- (1) Except as provided in Section 204(2)(b), notice to any member of any matter relating to the business of a LLC, and the knowledge of a 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 member who reasonably could and should have communicated it to the acting member, operate as notice to or knowledge of the LLC.
- (2) If management of the LLC is vested in one or more managers:
 - (a) Notice to any manager of any matter relating to the business of the LLC, and the knowledge of the manager acting in the particular matter acquired while a manager 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.

- (b) Notice to or knowledge of any member while the member is acting solely in the capacity of a member is not notice to or knowledge of the LLC.

Section 205. Liability of Members to Third Parties.

The debts, obligations, and liabilities of a LLC, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the LLC. Except as otherwise specifically provided in this Ordinance, a member or manager of a LLC is not personally liable for any debt, obligation, or liability of a LLC, as defined in the Operating Agreement.

Section 206. Parties to Action.

A member of a LLC is not a proper party to a proceeding by or against a LLC solely by reason of being a member of the LLC, except if any of the following exist:

- (1) The object of the proceeding is to enforce a member's right against or liability to the LLC.
- (2) The action is brought by a member under Section 207.

Section 207. Authority to Sue.

Unless otherwise provided in the Operating Agreement, an action on behalf of a LLC may be brought in the name of the LLC by:

- (1) One or more members of the LLC, if authorized by a Majority in Interest of 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.
- (2) One or more managers of a 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 in Interest of members.

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

PART 3. MEMBERS AND MANAGERS

Section 301. Management.

- (1) Unless the Articles of Organization vest management in one or more managers, management of the LLC shall be vested in the members subject to any provision in the Operating Agreement or this Ordinance restricting or enlarging the management rights and duties of any member or group of members.
- (2) If the Articles of Organization vest management in one or more managers, management of the business or affairs of the LLC shall be invested in the manager or managers subject to any provisions in the Operating Agreement or this Ordinance restricting or enlarging the management rights and duties of any

manager or group of managers. Unless otherwise provided in the Operating Agreement, the manager or managers:

- (a) Shall be designated, appointed, elected, removed, or replaced by a vote of a Majority in Interest of the members.
- (b) Need not be members of the LLC nor individuals.
- (c) Unless earlier removed or earlier resigned, shall hold office until a successor is elected and qualified.

Section 302. Duties.

Unless otherwise provided in the Operating Agreement:

- (1) No member or manager shall act or fail to act in a manner that constitutes any of the following:
 - (a) 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.
 - (b) A violation of criminal law, unless the member or manager had reasonable cause to believe that the person's conduct was lawful or no reasonable cause to believe that the conduct was unlawful.
 - (c) A transaction from which the member or manager derived an improper personal profit.
 - (d) Willful misconduct.
- (2) 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:
 - (a) A transaction connected with the organization, conduct, or winding up of the LLC.
 - (b) A use by a member or manager of the property of a 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.
 - (c) Operating Agreement may impose duties on its members and managers that are in addition to, but not in abrogation of, those provided in subsection (1) above.

Section 303. Limitation of Liability and Indemnification.

- (1) In this Section, "expenses" mean expenses of defending a lawsuit, including attorney's fees, and any civil judgment or penalty, or settlement payment in lieu

thereof, paid in connection with a lawsuit against a member or manager in such capacity.

- (2) A LLC shall indemnify or allow expenses to each member and each manager for all reasonable expenses incurred with respect to a proceeding if that member or manager was a party to the proceeding in the capacity of a member or manager.
- (3) The Operating Agreement may alter or provide additional rights to indemnification or allowance of expenses to members and managers.
- (4) Notwithstanding subsections (2) and (3) above, a LLC may not indemnify a member or manager unless it is determined that the member or manager did not breach or fail to perform a duty to the LLC as provided in Section 302.
- (5) Unless otherwise provided in Operating Agreement:
 - (a) A member or manager shall be conclusively presumed not to have breached or failed to perform a duty to the LLC to the extent that the member or manager has been successful on the merits or otherwise in the defense of the proceeding.
 - (b) In situations not described in paragraph (a), above, the determination of whether member or manager has breached or failed to perform a duty to the LLC shall be made by the vote of a Majority in Interest of the members, excluding any member who is a party to the same or related proceeding unless all members are parties.

Section 304. Voting.

- (1) Unless otherwise provided in the Operating Agreement or this Section, and subject to subsection (2) below, an affirmative vote, approval, or consent as follows shall be required to decide any matter connected with the business of a LLC.
 - (a) If management of a LLC is reserved to the members, an affirmative vote, approval, or consent by a Majority in Interest of members.
 - (b) If the management of a LLC is vested in one or more managers, the affirmative vote, consent, or approval of more than fifty percent (50%) of the managers.
- (2) Unless otherwise provided in the Operating Agreement or this Ordinance, the affirmative vote, approval, or consent of all members shall be required to do any of the following:
 - (a) Amend the Articles of Organization.
 - (b) Issue an interest in a LLC to any person.
 - (c) Adopt, amend, or revoke Operating Agreement.

- (d) Allow a LLC to accept any additional contribution from a member.
 - (e) Allow a partial redemption of an interest in a LLC under Section 503.
 - (f) Value contributions of members under Section 401.
 - (g) Authorize a manager, member, or other person to do any act on behalf of the LLC that contravenes the Operating Agreement.
- (3) 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 Section 105(9) for that matter.
 - (4) Unless otherwise provided in Operating Agreement or this Section, if all or part of an interest in the LLC is assigned under Section 604, the assigning member shall be considered the owner of the assigned interest for purposes of determining the 50% threshold under Section 105(9) until the assignee of the interest in the LLC becomes a member under Section 606.

Section 305. Records and Information.

- (1) A LLC shall keep at its principal place of business all of the following:
 - (a) A list, in alphabetical order, of each past and present member and, if applicable, manager.
 - (b) A copy of the Articles of Organization and all amendments to the articles, together with executed copies of any powers of attorney under which any articles were executed.
 - (c) A copy of the Operating Agreement and all amendments thereto.
 - (d) A record of all matters referred to in this Ordinance as maintained in such records which are not otherwise specified in the Operating Agreement.
- (2) Upon reasonable request, a member may, at the member's own expense, inspect and copy during ordinary business hours any LLC record unless otherwise provided in the Operating Agreement.
- (3) Members or, if the management of the LLC is vested in one or more managers, managers shall provide true and full information of all things affecting the members to any member or to the legal representative of any member upon reasonable request of the member or the legal representative.
- (4) Failure of a LLC to keep or maintain any of the records of information required under this Section shall not be grounds for imposing liability on any person for the debts and obligations of the LLC.

Section 306. Admission of Members.

- (1) In connection with the formation of a LLC, a person acquiring a LLC interest is admitted as a member upon formation unless the Operating Agreement otherwise provides.
- (2) After the formation of a LLC, a person acquiring a LLC interest is admitted as a member of the LLC as specified in the Operating Agreement or, if not so specified, by consent of all the other members, or, if the person is an assignee of another person's LLC interest, only pursuant to Section 606.

Section 307. Dissociation.

- (1) A person ceases to be a member of a LLC upon the simultaneous occurrence of and at the same time of any of the following events:
 - (a) The member withdraws by voluntary act.
 - (b) The member is removed as a member in accordance with the Operating Agreement or this Ordinance.
 - (c) Unless otherwise provided in the Operating Agreement or by the written consent of all members at the time of the event, the member does any of the following:
 - i. Makes an assignment for the benefit of the creditors.
 - ii. Files a petition in bankruptcy.
 - iii. Becomes the subject of an order for relief under the federal bankruptcy laws or state or tribal insolvency laws.
 - iv. Fails to gain dismissal of any federal bankruptcy or state or tribal insolvency proceeding within 120 days of commencement of an involuntary proceeding.
 - (d) Unless provided in the Operating Agreement or by the written consent of all members, if the member is an individual, either of the following occurs:
 - i. The member's death.
 - ii. The entry of an order by a court of competent jurisdiction adjudicating the member incompetent to manage the member's person or estate.
 - (e) Unless otherwise provided in the Operating Agreement or by written agreement or by the written consent of all members at the time, if the member is a trust, corporation, partnership, or limited liability company upon liquidation, dissolution, or termination.

- (2) The members may provide in the Operating Agreement for other events the occurrence of which result in a person ceasing to be a member of the LLC.
- (3) Unless the Operating Agreement provides that a member does not have the power to withdraw by voluntary act from a LLC, the member may do so at any time by giving written notice to the other members or as provided in the Operating Agreement. If the member has the power to withdraw but the withdrawal is a breach of the Operating Agreement, the LLC may offset the damages against the amount otherwise distributable to the member, in addition to pursuing any remedies provided for in the Operating Agreement or otherwise available under applicable law.

PART 4. FINANCE

Ordinance 401. Contributions.

- (1) A member's contributions to a LLC may consist of cash, property, or services rendered, or promissory notes or other written obligations to provide cash or property or to perform services.
- (2) 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 by a Majority in Interest of the members, shall be properly reflected in the records and information kept by the LLC under Section 305(1). The value of contributions so determined shall be binding and conclusive on the LLC and its members.

Ordinance 402. Liability for Contribution.

- (1) An obligation of a member to provide cash or property or to perform services as a contribution to a LLC is not enforceable unless specified in a writing signed by the member.
- (2) Unless otherwise provided in the Operating Agreement, a member is obligated to a LLC to perform any enforceable promise to provide cash or property or to perform services, even if the member is unable to perform because 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.
- (3) Unless otherwise provided in the Operating Agreement, a member's obligation to provide cash or property or perform services as a contribution to the LLC may be compromised only by the written consent of all of the members.

Ordinance 403. Allocation of Profits and Losses.

The profits and losses of a LLC shall be allocated among the members in the manner provided in the Operating Agreement. If the members do not enter into an Operating Agreement or the Operating Agreement does not provide otherwise, profits and losses shall be allocated on the basis of value of the contributions made by each member.

PART 5. NON-LIQUIDATING DISTRIBUTIONS

Section 501. Interim Distributions.

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

Section 502. Allocation of Distributions.

Distributions of cash or other assets of a LLC shall be allocated among the members as provided in Operating Agreement, or if the Operating Agreement does not so provide, on the basis of the value of the contributions made by each member.

Section 503. Distribution Upon Partial Redemption.

Except as provided in this Part, 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.

Section 504. Distribution Upon Dissociation.

Except as otherwise provided in this Part, upon an event of dissociation under Section 307 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.

Section 505. Distribution in Kind.

Unless otherwise provided in the Operating Agreement:

- (1) A member may not demand and receive any distribution from a LLC in any form other than cash.
- (2) A member may not be compelled to accept a distribution of any asset in kind except for a liquidating distribution made proportionately.

Section 506. Right to Distribution.

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

Section 507. Limitations of Distributions.

- (1) A LLC may not declare or make a distribution to any of its members, if after giving effect to the distribution, any of the following would occur:
 - (a) The LLC would be unable to pay its debts as they become due in the usual course of business.
 - (b) The fair market value of the LLC's total assets would be less than the sum of its total liabilities plus, unless the Operating Agreement provides otherwise, the amount that would be needed for the preferential rights upon dissolution of members, if any.
- (2) A LLC may base a determination that a distribution is not prohibited by subsection (1), above, on any of the following:
 - (a) Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable under the circumstances.
 - (b) A fair market valuation or other method that is reasonable under the circumstances.
- (3) A LLC's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the LLC's indebtedness to its general unsecured creditors, except to the extent subordinated by written agreement. This Section does not affect the validity or priority of a security interest in a LLC's property that is created to secure the indebtedness to the member.

Section 508. Liability for Wrongful Distribution.

- (1) Except as provided in subsection (2) below, a member (other than the Tribe or Tribal Entity) or manager who votes or assents to a distribution in violation of Section 507 or of the Operating Agreement is personally liable to the LLC for the amount of the excess distribution, subject to contribution from all other managers or members participating in such action.
- (2) 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 brought within two (2) years after the date of the distribution.
- (3) 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.

PART 6. OWNERSHIP AND TRANSFER OF PROPERTY

Section 601. Ownership of LLC Property.

- (1) All property originally transferred to or acquired by a LLC is property of the LLC and not the members individually.
- (2) Property acquired with LLC funds is presumed to be LLC property.
- (3) Property may be acquired, held, and conveyed in the name of the LLC.

Section 602. Transfer of Property.

The property of a LLC may be transferred by an instrument of transfer executed by any member in the name of the LLC, unless management is vested in managers, in which case the document of transfer shall be executed by a manager, subject to any limitation that may be imposed by the Operating Agreement.

Section 603. Nature of Interest.

A LLC interest is personal property.

Section 604. Assignment of LLC Interest.

- (1) Unless otherwise provided in the Operating Agreement:
 - (a) A LLC interest is assignable in whole or in part.
 - (b) An assignment of a LLC interest entitles the assignee to receive only the distributions and to share in the allocations of profits and losses to which the assignee would be entitled with respect to the assigned interest.
 - (c) An assignment of a LLC interest does not dissolve the LLC.
 - (d) Unless and until the assignee becomes a member of the LLC under Section 606, the assignment of a LLC interest does not entitle the assignee to participate in the management or exercise rights of a member.
 - (e) Unless and until the assignee of a LLC interest becomes a member of the LLC under Section 606, the assignor continues to be a member.
 - (f) The assignor of a LLC interest is not released from any personal liability arising under this Ordinance as a member of the LLC solely as a result of the assignment.
- (2) Unless otherwise provided in the Operating Agreement, the granting of a security interest, lien, or other encumbrance in or against any or all of a member's LLC interest is not assignable and shall not cause the member to cease to have the power to exercise any rights or powers of a member.

Section 605. Rights of Judgment Creditor.

Upon application to a court of competent jurisdiction, including a court other than the Tribal Court having valid jurisdiction over a member, by any judgment creditor of the member, the court may charge the LLC interest of any member (other than the Tribe) with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of an assignee of the member's LLC interest in distributions 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 the LLC interest. In no event shall the Tribe's interest be attachable in abrogation of its sovereign immunity.

Section 606. Right of Assignee to Become a Member.

- (1) Unless otherwise provided in the Operating Agreement, an assignee of a LLC interest may become a member only if the other members unanimously consent.
- (2) An assignee of a LLC interest who becomes a member has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of the assignor under the Operating Agreement and this Ordinance.
- (3) Unless otherwise provided in the Operating Agreement, an assignor of a LLC interest is not released from any liability to the LLC without the written consent of all the members, whether or not the assignee becomes a member.

Section 607. Powers of Legal Representative.

If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage his or her person or property, the member's personal representative, administrator, guardian, conservator, trustee, or other legal representative shall have all the rights of an assignee of the member's interest. If a member is a corporation, trust, partnership, limited liability company, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor.

PART 7. DISSOLUTION

Section 701. Dissolution.

A limited liability company is dissolved and its affairs shall be wound up upon the happening of the first of the following:

- (1) The occurrence of events specified in the Operating Agreement.
- (2) The written consent of all members.
- (3) An event of dissociation of a member, unless otherwise provided in the Operating Agreement or continuation is consented to by all remaining members.
- (4) Entry of a decree of judicial dissolution under Section 702.

Section 702. Judicial Dissolution.

- (1) In a proceeding by or for a member, the Tribal Court or court of competent jurisdiction may order dissolution of a LLC if any of the following is established:
 - (a) That it is not reasonably practicable to carry on the business of the LLC.
 - (b) That the LLC is not acting in conformity with its Operating Agreement.
 - (c) That one or more managers are acting or will act in a manner that is illegal, oppressive, or fraudulent.
 - (d) That one or more members in control of the LLC are acting or will act in a manner that is illegal, oppressive, or fraudulent.
 - (e) That LLC assets are being misapplied or wasted.
- (2) 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. 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.

Section 703. Winding Up.

- (1) 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.
- (2) Unless otherwise provided in its Operating Agreement:
 - (a) The business of the LLC may be wound up by any of the following:
 - i. The members or managers who have authority to manage the LLC before dissolution.
 - ii. In a judicial dissolution, the person(s) designated by the Tribal Court or court of competent jurisdiction.
 - (b) 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:
 - i. Collect its assets.
 - ii. Prosecute and defend suits.
 - iii. Take any action necessary to settle and close the business of the LLC.
 - iv. Dispose of and transfer the property of the LLC.
 - v. Discharge or make provision for discharging the liabilities of the LLC.
 - vi. Distribute to the members any remaining assets of the LLC.

- (3) Dissolution of a LLC does not do any of the following:
 - (a) Transfer title to the LLC's property.
 - (b) Prevent transfer of all or part of a member's interest.
 - (c) Prevent commencement of a civil, criminal, administrative, or investigatory proceeding by or against the LLC.
 - (d) Abate or suspend a civil, criminal, administrative, or investigatory proceeding pending by or against the LLC at the time of dissolution.
 - (e) Terminate the authority of the registered agent of the LLC.
 - (f) Alter the limited liability of a member.

Section 704. Distribution of Assets.

Upon the winding up of a LLC, the assets shall be distributed in the following order:

- (1) To creditors, including to the extent permitted by law, members, and former members in satisfaction of liabilities of the LLC.
- (2) Unless otherwise provided in the Operating Agreement, to members and former members in satisfaction of liabilities for distributions under Sections 501, 503 and 504.
- (3) 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.

Section 705. Articles of Dissolution.

After the dissolution of a LLC under Section 701, the LLC may file articles of dissolution with the Office of the Secretary that include the following:

- (1) The name of the LLC.
- (2) The date of filing of its Articles of Organization.
- (3) The statutory grounds under Section 701 for dissolution.
- (4) The delayed effective date of the articles of dissolution under Section 111(3), if applicable.

Section 706. Known Claims Against Dissolved LLC.

- (1) A dissolved LLC may notify its known claimants in writing of the dissolution and specify a procedure for making claims.
- (2) A claim against the LLC is barred if:

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

Section 707. Unknown or Contingent Claims.

A claim not barred under Section 706 may be enforced:

- (1) Against the dissolved LLC, to the extent of its undistributed assets.
- (2) If the dissolved LLC's assets have been distributed in liquidation, against a member of the LLC, other than the Tribe, to the extent of the member's proportionate share of the claim or of the assets of the LLC distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this Section may not exceed the total value of assets at the time distributed to the member.

PART 8. MERGER

Section 801. Merger.

- (1) Unless the context requires otherwise, in this Part, LLC includes a domestic LLC and a foreign LLC.
- (2) Unless otherwise provided in the Operating Agreement, one or more LLC's may merge with or into one or more LLC's or one or more other foreign LLC's as provided in the plan of merger.
- (3) Interests in a LLC that is a party to a merger may be exchanged for or converted into cash, property, obligations, or interest in the surviving LLC.

Section 802. Approval of Merger.

- (1) Unless otherwise provided in the Operating Agreement, a LLC that is a party to a proposed merger shall approve the plan of merger by an affirmative vote by all of the members.
- (2) Unless otherwise provided in the Operating Agreement, the manager or managers of a LLC may not approve a merger without also obtaining the approval of the LLC's members under subsection (1), above.
- (3) Each foreign LLC that is a party to a proposed merger shall approve the merger in the manner and by the vote required by the laws applicable to the foreign LLC.

- (4) Each LLC that is a party to the merger shall have any rights to abandon the merger that are provided for in the plan of merger or in the laws applicable to the LLC.
- (5) Upon approval of a merger, the LLC shall notify each member of the approval and of the effective date of the merger.

Section 803. Plan of Merger.

Each LLC that is a party to a proposed merger shall enter into a written plan of merger to be approved under Section 802.

Section 804. Articles of Merger.

- (1) The surviving LLC shall deliver to the Office of the Secretary articles of merger, executed by each party to the plan of merger, that include all of the following:
 - (a) The name and state or jurisdiction of organization for each LLC that is to merge.
 - (b) The plan of merger.
 - (c) The name of the surviving or resulting LLC.
 - (d) A statement as to whether the management of the surviving LLC will be reserved to its members or vested in one or more managers.
 - (e) The delayed effective date of the merger under Section 111(4), if applicable.
 - (f) A statement as to whether the LLC is Tribally-Owned.
 - (g) If Tribally-Owned, a statement as to whether the LLC enjoys the Tribe's sovereign immunity.
 - (h) A statement that the plan of merger was approved in accordance with Section 802.
- (2) A merger takes effect upon the effective date of the articles of merger.

Section 805. Effects of Merger.

A merger has the following effects:

- (1) The LLC's that are parties to the plan of merger must become a single entity, which shall be the entity designated in the plan of merger as the surviving LLC.
- (2) Each party to the plan of merger, except the surviving LLC, ceases to exist.
- (3) The surviving LLC possesses all of the rights, privileges, immunities, and powers of each merged LLC and is subject to all of the restrictions, disabilities, and duties of each merged LLC.

- (4) All property and all debts, including contributions, and each interest belonging to or owed to each of the parties to the merger are vested in the surviving LLC without further act.
- (5) Title to all real estate and any interest in real estate, vested in any party to the merger, does not revert and is not in any way impaired because of the merger.
- (6) The surviving LLC has all the liabilities and obligations of each of the parties to the plan of merger and any claim existing or action or proceedings pending by or against any merged LLC may be prosecuted as if the merger had not taken place, or the surviving LLC may be substituted in the action.
- (7) The rights of creditors and any liens on the property of any party to the plan of merger survive the merger.
- (8) The interests in a LLC that are to be converted or exchanged into interest, cash, obligations, or other property under the terms of the plan of merger are converted and the former interest holders are entitled only to the rights provided in the plan of merger of the rights otherwise provided by law.
- (9) The Articles of Organization of the surviving LLC is amended to the extent provided in the articles of merger.

Section 806. Right to Object.

Unless otherwise provided in the Operating Agreement, upon receipt of the notice required by Section 802(5), a member who did not vote in favor of the merger may, within twenty (20) days after the date of the notice, voluntarily dissociate from the LLC under Section 307(3) and receive fair value for the member's LLC interest under Section 504.

PART 9. LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE

SUBPART 1. GENERAL PROVISIONS FOR TRIBALLY-OWNED LLC'S

Section 911. Tribally-Owned Companies.

There are hereby authorized to be created limited liability companies wholly-owned by the Tribe, with the Tribe as the sole member and owner. Tribally-owned limited liability companies shall be created by a duly adopted resolution of the Tribal Council. The organizer shall file in accordance with Section 111. When the organizer files the Articles of Organization and the Operating Agreement of a Tribally-owned LLC, a certified copy of the resolution authorizing the formation of the LLC and approving the articles shall be included. Tribally-owned LLC's shall be considered to be instrumentalities of the Tribe.

Section 912. Tribally-Owned Subsidiary Companies.

There are hereby authorized to be created by resolution of the Board of Directors of a Tribally-owned limited liability company, or of a wholly-owned subsidiary of such a LLC, subsidiary LLC's to be wholly-owned by the parent LLC, which shall be instrumentalities of the

Tribe. The organizer of such a Tribally-owned subsidiary LLC shall file in accordance with Section 111. When the organizer files the Articles of Organization and the Operating Agreement of the Tribally-owned subsidiary LLC, a certified copy of a resolution of the Board of Directors of the parent LLC authorizing the formation of the subsidiary LLC and approving the articles shall be included.

Section 913. Privileges and Immunities.

The limited liability companies established under Sections 911 and 912 shall be considered to be instrumentalities of the Tribe, and their officers and employees considered officers and employees 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. Such LLC's, their directors, officers 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.

Section 914. Ownership.

(1) No membership interest in any LLC in which the Tribe is a member may be alienated unless approved by the Tribal Council. Further, no membership 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 LLC.

(2) 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 Tribally-owned LLC. No individual citizen 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 citizen of a Tribe, as an officer of a Tribe's Government, or otherwise.

Section 915. Project Companies with Non-Tribal Owners.

Any LLC created pursuant to this Part, including subsidiary LLC's, may form or own interests or shares in partnerships, corporations, or other limited liability companies with other governmental or non-governmental entities or persons under the laws of the Tribes 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 LLC's or Tribally-owned subsidiary LLC's created pursuant to this Part.

Section 916. Purpose of Tribally-Owned LLC's.

All Tribally-owned LLC's, 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.

Section 917. Waiver of Sovereign Immunity.

The limited liability companies established under Sections 911 and 912 may only waive the privileges and immunities granted under Section 913 in the following manner:

- (1) 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 pursuant to the procedures and authorities set forth in the LLC's Operating Agreement; provided, however, that
 - (i) 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;
 - (ii) 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
 - (iii) 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.
- (2) 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 LLC created pursuant to this Part, by the parent LLC acting as member, pursuant to Section 991 of this Part.
- (3) The LLC must follow the method mandated by Section 922.

SUBPART 2. SPECIAL FORMATION REQUIREMENTS FOR TRIBALLY-OWNED LLC'S

Section 921. Formation.

- (1) Tribally-owned LLC's. The Chairman of the Tribal Council shall be the organizer of any Tribally-owned limited liability company.
- (2) Subsidiaries of Tribally-owned LLC's. A Board member of the parent LLC shall be the organizer of any Tribally-owned subsidiary LLC; provided, however, that such Board member must also be a member of the Tribe.
- (3) Unless a delayed effective date is specified:

- (a) 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 Section 911 and have been filed with the Office of the Secretary in accordance with Section 111.
- (b) the existence of a subsidiary LLC owned by a Tribally-owned LLC begins when the Articles of Organization have been approved by a resolution of the Directors of the parent LLC and have been filed with the Office of the Secretary in accordance with Section 111.
- (c) The Articles of Organization of any Tribally-owned LLC or subsidiary thereof, and any amendments thereto, shall be filed with the Office of the Secretary in accordance with Section 111, and shall state at a minimum the items set forth in Section 922 below.

Section 922. Additional Requirements for the Articles of Organization.

As set forth in Section 917, Tribally-owned limited liability companies established under 911 and 912 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. 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; and
 - (b) the language of the waiver must be explicit; and
 - (c) the waiver must be contained in a written contract or commercial document to which the LLC is a party.
- (2) Waivers of sovereign immunity by resolution of the Tribal Council 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, court having jurisdiction and applicable law.

SUBPART 3. MANAGEMENT OF TRIBALLY-OWNED LLC'S.

Section 931. Board of Directors as Manager.

- (1) All Tribally-owned LLC's, and all wholly-owned subsidiaries of Tribally-owned LLC's, shall be managed by a Board of Directors in the manner described in the Company's Operating Agreement.

- (2) The number, terms and method for selecting and removing Directors of any Tribally-owned LLC shall be specified in the LLC's Operating Agreement.

Section 932. Qualifications of Board Members.

- (1) Board Members of all Tribally-owned limited liability companies must be at least twenty-one (21) years of age, possess a high school diploma or a General Equivalency Diploma, and have no felony convictions.
- (2) At all times, the majority of the Board Members in all Tribally-owned LLC's shall be either enrolled members of the Tribe or individuals eligible to be enrolled; provided, however, that this requirement shall not apply if a vacancy occurs resulting in the majority of the Board Members not being enrolled members of the Tribe so long as such vacancy is filled by a member of the Tribe within a timely manner. This requirement shall not apply to Tribally-owned subsidiary LLC's.
- (3) Board Members who are not citizens of the Tribe shall have substantial business, financial or industry experience.

SUBPART 4. DECISIONS AND VOTING FOR TRIBALLY-OWNED LLC'S.

Section 941. Voting.

- (1) The membership interests in all Tribally-owned LLC's shall be voted in the accordance with the Tribal Council's procedures for voting and passing Tribal resolutions.
- (2) The membership interests in a Tribally-owned subsidiary LLC shall be voted as provided in the Company's Operating Agreement.

SUBPART 5. DISTRIBUTIONS FOR TRIBALLY-OWNED LLC'S.

Section 951. Distributions of Income.

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 may 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 Section 507 and in the Operating Agreement.

SUBPART 6. ADDITIONAL REPORTS AND AUDITS.

Section 961. Audit.

In addition to any member inspection rights provided in the Operating Agreement of a Tribally-owned LLC, the Tribal Council may at any time, by process in the manner required to be provided in the Operating Agreement, require that any LLC wholly-owned by the Tribe, whether directly or indirectly, or a LLC in which the Tribe owns the majority interest, be audited by an independent auditor hired 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.

Section 962. Financial, Business, and Budget Information

In addition to any reports to the member 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 corporation within 120 days after the close of each fiscal year; and
- (3) A proposed annual budget for the following Tribal fiscal year, including any proposed funding from the Tribe or anticipated distributions to the Tribe, by May 15 of each year, and the final annual budget adopted by each Board of Directors by October 1 of each Tribal fiscal year.

SUBPART 7. ACTIONS AGAINST TRIBALLY-OWNED LLC'S

Section 971. Court Actions By a Tribe Authorized.

The Tribe, as member of any Tribally-owned limited liability company organized pursuant to this Ordinance, or in the case of a subsidiary LLC created pursuant to this Part, the parent LLC 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.
 - (c) require the distribution of the LLC's surplus net income, to the extent permitted by Section 507.
- (2) In accordance with Section 913, the sovereign immunity of the LLC shall not extend to actions against the LLC by a Tribe acting as member, or, in the case of a

subsidiary LLC created pursuant to this Part, by the parent LLC acting as member.

- (3) Nothing contained herein shall be construed as authorizing actions of any kind whatsoever against a Tribe.

Section 972. Tribal Approval Required.

The filing of any court action against a Tribally-owned LLC pursuant to this Part must be authorized by the Tribe as member in the same manner as required Section 941 for voting on any item properly coming before the Tribe as member. The request for consideration of the proposed court action may be made by the Chairman of the Tribal Council.

Section 973. Relief Available.

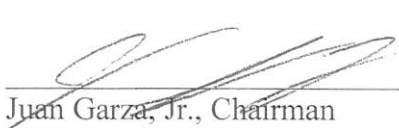
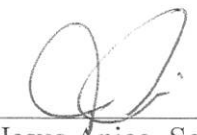
In any action brought under this Part, the Tribal Court may, based on clear and convincing evidence set forth in its findings of fact and conclusions of law:

- (1) Issue a temporary restraining order, preliminary injunction, and permanent injunctive relief pursuant to the procedures and standards applicable in the Tribal Court, except that no bond need be posted for any preliminary injunctive relief; or
- (2) Order that funds of the LLC be distributed to a Tribe to the extent permitted by the Operating Agreement and Section 507 of this Ordinance.


READ, PASSED, APPROVED AND ENACTED at a duly called Tribal Council

meeting on the 21st day of August, 2008.

**KICKAPOO TRADITIONAL TRIBE OF TEXAS
TRIBAL COUNCIL**

 _____ Juan Garza, Jr., Chairman	<u>8/21/08</u> _____ Date	 _____ Jesus Anico, Secretary	<u>08/21/08</u> _____ Date
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 _____ Rogelio Elizondo, Treasurer	_____ Date	 _____ Jose "Pepe" Trevino, Member	<u>8/21/08</u> _____ Date
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 _____ David Gonzalez, Member	<u>8, 21, 08</u> _____ Date
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