

TITLE 78
THE LIMITED LIABILITY COMPANY ORDINANCE
OF THE HOOPA VALLEY TRIBE

WHEREAS: The Hoopa Valley Tribal Council ("Tribal Council") is empowered by Article IX, Sections 1(l) and 1(p) of the Constitution and Bylaws of the Hoopa Valley Tribe ("Constitution") to regulate the economic affairs and enterprises of the Tribe and promote the general welfare of the Tribe by regulating the use and disposition of property on the Reservation; and

WHEREAS: The Tribal Council finds it is necessary and appropriate to enact a limited liability company Ordinance to authorize the formation of Tribal limited liability companies in furtherance of the Tribe's economic development and the expansion of opportunities for tribal businesses and tribal entrepreneurs.

NOW THEREFORE, BE IT ENACTED BY THE HOOPA VALLEY TRIBAL COUNCIL that this Limited Liability Company Ordinance is hereby established. Any and all previously adopted Ordinances of the Tribe which conflict in any way with the provisions of this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance.

GENERAL PROVISIONS

A. Citation.

This Ordinance shall be known and cited as the "The Limited Liability Company Ordinance of the Hoopa Valley Tribe."

B. Purpose.

The purpose of this Ordinance is to permit, pursuant to laws of the Tribe, the formation of certain limited liability companies by the Tribe, tribal entities, and tribal members, and to regulate such companies so as to promote economic development, expand business opportunities for tribal members, and further the exercise of tribal sovereignty of the Hoopa Valley Tribe.

C. Reservation of Power.

The Tribal Council shall have the power to amend, repeal, or modify this Ordinance in accordance with Tribal Law.

D. Sovereign Immunity.

The sovereign immunity of the Tribe extends to entities wholly owned by the Tribe, including entities created under this Ordinance that are wholly owned by the Tribe. The Tribe shall not be liable for the debts or obligations of any description or kind, including pre-filing activities, of limited liability companies formed under this Ordinance.

E. Definitions.

As used in this Ordinance, the words and phrases identified below shall have the following meanings.

- (1) "Articles of Organization" means the original articles of organization and all amendments thereto or alterations thereof.
- (2) "Bankruptcy" means bankruptcy under federal bankruptcy law.
- (3) "Business" means every trade, occupation, or profession.
- (4) "Company" or "Limited Liability Company" means a limited liability company organized under this Ordinance.
- (5) "Court" means the Hoopa Valley Tribal Court.
- (6) "Department of Commerce" means the Hoopa Valley Tribal Department of Commerce, established under Title 51 of the Hoopa Valley Tribal Code.
- (7) "Director of Commerce" means the Director of the Department of Commerce.
- (8) "Dissolution" means the process that terminates a Company's existence, whether automatic, voluntary, or involuntary.
- (9) "Enrolled Tribal member" means an individual who is a duly enrolled member of the Hoopa Valley Tribe and is at least eighteen years of age.
- (10) "Manager" means an individual, business, or governmental entity which has been designated by the Member(s) of the Company to manage the day-to-day operations of the Company.
- (11) "Member" means an individual, business, or governmental entity which maintains an ownership interest of a Company organized under this Ordinance.
- (12) "Operating Agreement" means the governing document of the Company which identifies the Company and defines and/or details the Company's ownership, Member or Manager duties, and other operational terms.
- (13) "Person" means natural persons, business entities, governments, and their political subdivisions.
- (14) "Professional Services" means services provided by an individual or business based on their specialized education, knowledge, labor, judgment, and skill, and which require professional licensure and insurance by a state or tribe for the service they provide, including, but not limited to, accounting, medical, or legal services.
- (15) "Reservation" means all lands within the jurisdiction of the Tribe as set forth in Article III of the Constitution.

(15) "Successor Limited Liability Company" or "Successor Company" means the surviving or resulting limited liability company existing pursuant to a merger or consolidation of two or more limited liability companies.

(16) "Tribal Council" means the Tribal Council of the Hoopa Valley Tribe.

(17) "Tribe" means the Hoopa Valley Tribe.

SECTION I

FORMATION, REGISTERED AGENT, AND POWERS

1.1 Formation.

(1) A limited liability company may be formed by delivering to the Director of Commerce articles of organization for the company that:

- (a) meet the requirements of § 1.8; and
- (b) are executed as required by § 1.15.

(2) A limited liability company shall, at formation of the company, and at all times have at least one Member.

- (a) Any Person may be a Member of a limited liability company so long as, at all times, a majority of the Member interest of a limited liability company shall be held by one or more (i) Enrolled Tribal members, (ii) governmental departments or subdivisions of the Tribe, or (iii) entities chartered by the Tribe or in which the Tribe holds a majority ownership interest.
- (b) Failure to maintain at least one Member shall be an event of dissolution, subject to § 2.1.

1.2 Registered Agent.

(1) Each limited liability company shall continuously maintain an agent on the Reservation for service of process on the company. The address of the registered agent shall be the same as the registered office of the limited liability company.

(2) The registered agent shall be either the duly elected and currently serving Manager of the limited liability company, or a person appointed by the Member(s) who resides on the Reservation and who is at least eighteen (18) years of age. A registered agent must consent in writing to serve in such a capacity. A limited liability company or entity having its usual place of business on the Reservation may serve as its own registered agent. In the event that the agent has resigned, the authority of the agent has been revoked, or the agent cannot be found or served with the exercise of reasonable diligence, the current and acting Chief Executive Officer of the company shall act as agent of the company for service of process.

(3) The registered agent of a limited liability company may resign by filing an original, and one copy of a signed written notice of resignation with the Director of Commerce.

- (a) The Department of Commerce will send a filed endorsed or stamped copy accepting resignation to the registered agent of the limited liability company.
- (b) If the registered agent's written notice of resignation does not conform to the requirements of this Section, the Department of Commerce shall deliver the resignation back to the registered agent of the company for any necessary corrections at the street address for the registered agent most recently furnished to the Director of Commerce by notice, annual report, or other document.

1.3 Scope.

Except as otherwise provided by the laws of the Tribe, a limited liability company may conduct or promote any lawful business or purpose which a partnership, general corporation, or professional corporation may conduct or promote.

1.4 Powers.

- (1) Each limited liability company organized and existing under this Ordinance may:
 - (a) sue and be sued, or institute or defend any action, arbitration, or proceeding, whether judicial, administrative or otherwise, in its own name;
 - (b) purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in or with real or personal property or an interest in real or personal property, wherever situated; provided, that a Tribal limited liability company shall be without authority to sell, mortgage or assign personal property that is owned by the Tribe;
 - (c) 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 a limited liability company shall be without authority to mortgage, assign, lease or otherwise dispose of land owned by the Tribe;
 - (d) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use employ, sell, mortgage, lend, pledge, otherwise dispose of, or otherwise use or deal in or with:
 - (i) shares or other interests in or obligations of other limited liability companies, domestic or foreign corporations, associations, general or limited partnerships, or individuals; or

- (ii) direct or indirect obligations of the United States or government, state, territory, governmental district, or municipality or of any instrumentality of them.
- (e) make contracts or guarantees or incur liabilities, borrow money at such rates of interest as the limited liability company 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;
- (f) invest or reinvest its funds, or take and hold real or personal property as security for the payment of funds so invested;
- (g) conduct its business and maintain offices and exercise the powers granted by this Ordinance within or without the Reservation;
- (h) elect or appoint Managers and Agents of the limited liability company, define their duties, and fix their compensation;
- (i) make and alter an Operating Agreement, not inconsistent with its articles of organization or with the laws of the Tribe, for the administration and regulation of its affairs;
- (j) indemnify a Member or Manager or any other person to the same extent that a partnership may indemnify any of the partners, Managers, employees, or agents of the partnership against expenses actually and reasonably incurred by the Member or Manager in connection with the defense of an action, suit, or proceeding, whether civil or criminal, in which the Member or Manager is made a party;
- (k) cease its activities and surrender its certificate of organization;
- (l) have and exercise all powers necessary or convenient to effect any or all of the purposes for which the company is organized;
- (m) pay pensions and establish pension plans, profit-sharing plans, and other incentive plans for any or all of its Managers and employees; and
- (n) be a promoter, incorporator, general partner, limited partner, Member, associate, or Manager of any corporation, partnership, limited partnership, limited liability company, joint venture, trust, or other enterprise.

(2) Notwithstanding the provisions of this Ordinance, a limited liability company may not organize under this Ordinance for the sole purpose of rendering Professional Services on the Reservation, regardless of whether those Members of the limited liability company rendering such professional services are authorized to do so pursuant to the law of the Tribe. Exceptions to this Section 1.4(2) shall be approved only by consent of the Tribal Council.

1.5 Name – Exclusive Right.

- (1) The name of each limited liability company established under this Ordinance:
 - (a) shall not contain the words “Hoopa Valley Tribe,” “Hoopa Valley Indian Tribe,” or in any way imply that it is an official entity or subdivision of the Tribe or its government, unless the Tribe, a governmental department or entity of the Tribe, or an entity wholly owned by the Tribe holds a majority interest in such limited liability company;
 - (b) shall contain the words “limited company,” “limited liability company,” “L.C.,” or “L.L.C.,” and
 - (c) shall not contain the words “association,” “corporation,” “incorporated,” “limited partnership,” “limited,” “L.P.,” “Ltd.” or words or any abbreviation with a similar meaning in any other language.

Notwithstanding any limitations set forth above with respect to the formal name of the limited liability company, the Members and Managers of a limited liability corporation whose Members include Enrolled Tribal members may promote and advertise themselves as a company that is:

- owned by Enrolled Tribal members;
- located on the Hoopa Valley Indian Reservation (if its principal place of business is so located);
- indigenous- or Native-owned;
- organized under the laws of the Tribe.

(2) A person, other than a limited liability company formed under this Ordinance, may not use any of the terms “limited liability company,” “limited company,” “L.L.C.,” “L.C.,” “LLC,” or “LC,” in its name on the Reservation, except that any duly organized foreign limited liability company may use its actual name on the Reservation.

(3) The name of a limited liability company must be distinguishable as defined in § 1.5(4) upon the records of the Department of Commerce from:

- (a) the name of any other limited liability company organized under this Ordinance;
- (b) the name of any limited partnership formed or authorized to transact business on the Reservation;
- (c) the corporate name of any corporation incorporated or authorized to transact business on the Reservation;

- (d) any fictitious name adopted by a foreign corporation, limited partnership, or limited liability company transacting business on the Reservation;
- (e) the Tribe or any of its affiliate governmental departments, subdivisions, or organizations, unless the Tribe is the majority owner of such company; and
- (f) any assumed name, trademark, or service mark of any person, company or corporation on file with the Department of Commerce.

(4) A name is distinguishable from other names, trademarks, and service marks registered with the Department of Commerce if it contains one (1) or more different letters or numerals from other names upon the Department of Commerce's records and is not confusingly similar. Differences between singular and plural forms of words are not distinguishing. The following differences are not distinguishing:

- (a) the words "corporation," "incorporated," "company," "limited partnership," "limited," "L.P.," "Ltd." "limited liability company," "limited company," "L.C.," "L.L.C.," or any abbreviation of these words;
- (b) the presence or absence of the words or symbols of the words "the," "and," "a," or "plus";
- (c) differences in punctuation and special characters; or
- (d) differences in capitalization.

(5) The Director of Commerce and Department of Commerce shall have the power and authority reasonably necessary to interpret and efficiently administer this Section and to perform the duties imposed upon the Director of Commerce and Department of Commerce, respectively, by this Section.

(6) The exclusive right to a name may be reserved by:

- (a) any person intending to organize a limited liability company under this Ordinance and to adopt the name;
- (b) any limited liability company registered with the Department of Commerce and intending to adopt that name.

(7) The reservation shall be made by filing with the Director of Commerce an application executed under penalty of perjury by the applicant to reserve a specified name. If the Department of Commerce finds that the name is available for use by a limited liability company, it shall reserve the name exclusively for the applicant for a period of one-hundred-and-twenty (120) days. At the discretion of the Director of Commerce, the name reservation may be renewed for no more than two subsequent periods of one-hundred-and-twenty (120) days so long as no other entity or applicant has also requested to reserve the same name. The exclusive right to a reserved name may be transferred to any other person by filing with the Director of Commerce a

notice of the transfer executed under penalty of perjury by the applicant for whom the name was reserved and specifying the name and address of the transferee.

1.6 Limited Liability Company Name – Limited Rights.

The authorization to file articles of organization under or to reserve or register a limited liability company name as granted by the Department of Commerce does not:

- (1) abrogate or limit the law governing unfair competition or unfair trade practices;
- (2) derogate from the laws of the Tribe with respect to the right to acquire and protect names and trademarks; or
- (3) create an exclusive right in geographic or generic terms contained within a name.

1.7 Name – Omission.

(1) The words “limited company,” “limited liability company,” or the abbreviations “L.C.,” “L.L.C.,” “LLC,” or “LC” shall be the last words of the name of every limited liability company formed under this Ordinance. The name of a limited liability company shall be such as to distinguish it upon the records of the Department of Commerce of any corporation, business name, or trademark of record, or actually known to the Department of Commerce.

(2) Omission of the words “limited company,” “limited liability company,” or the abbreviations “L.C.,” “L.L.C.,” or “LC” in the commercial use of the name of the limited liability company shall render any person who participates in the omission, or knowingly acquiesces in it, liable for any indebtedness, damage, or liability occasioned by the omission.

1.8 Articles of Organization.

- (1) The articles of organization of a limited liability company shall set forth:
 - (a) the name of the limited liability company;
 - (b) the period of its duration;
 - (c) the business purpose or purposes for which the company is organized and, if necessary, a statement specifically limiting the scope of the business;
 - (d) the street address of its registered office;
 - (e) the name and signature of its initial registered agent at that address, as required by § 1.2;

(f) if the limited liability company is to be managed by a Manager(s):

- (i) a statement that the company is to be managed in that fashion; and
- (ii) the names and street addresses of the Managers who are to serve until the first meeting of Members or until their successors are elected;
- (iii) and, if necessary, a statement specifically limiting the authority of the Manager to bind the company

(g) the names, street addresses, and tribal enrollment of the Members. If the management of a limited liability company is reserved to the Members, the articles of organization shall set forth, if necessary, a statement specifically limiting the authority of a Member to bind the company; and

(h) any other provision, not inconsistent with law, that the Members choose to include in the articles of organization for the regulation of the internal affairs of the company, including any provision that is required or permitted to be included in the Operating Agreement of the company under this Ordinance.

(2) A schedule describing the capital contribution of each Member shall be attached to the articles of incorporation as set forth in § 4.1.

(3) It is not necessary to include in the articles of organization any of the powers enumerated in this Ordinance.

1.9 Filing of Articles.

(1) Two (2) copies of the articles of organization and of any certificate of amendment, or of any judicial decree of amendment, shall be delivered to the Director of Commerce. The documents to be filed shall be executed as provided in § 1.15, 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.

(a) A person who executes articles of organization or a certificate of amendment as an attorney-in-fact or fiduciary need not exhibit evidence of the person's authority as a prerequisite to filing.

(b) Unless it finds that the articles of organization or certificate of amendments do not conform to law as to their form, the Director of Commerce, upon receipt of all filing fees established under § 6.2, shall:

- (i) certify or endorse both copies, indicating the time, day, month, and year of the filing, the name of the Director of Commerce, and the signature of the Director of Commerce;

- (ii) file one copy in its office; and
- (iii) return the second copy to the person who filed it or as directed by the person who filed it.

(2) Upon the filing with the Director of Commerce of a certificate of amendment, the articles of organization shall be amended as set forth in the certificate of amendment, and upon the effective date of a certificate of dissolution or of a judicial decree of cancellation, the articles of organization shall be cancelled.

1.10 Effect of Filing and Pre-filing Activities.

(1) Upon certifying or endorsing, as provided in § 1.9(1), the articles of organization, the limited liability company shall be considered organized.

(2) Except as against the Department of Commerce in a proceeding to cancel or revoke the certificate of organization or in a proceeding for involuntary dissolution of the limited liability company, the filed articles shall be conclusive evidence that all conditions precedent required to be performed by the Member(s) have been complied with and that the limited liability company has been legally organized under this Ordinance.

(3) A limited liability company 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 filed with the Department of Commerce. Subject to the limitations of sovereign immunity, 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 limited liability company incurred on behalf of the company prior to the filing of its articles of organization with the Department of Commerce.

1.11 Annual Report.

(1) (a) Each company authorized to transact business under the Act shall submit an annual report to the Director of Commerce during the month of its anniversary date of formation.

(b) The annual report required by Subsection (1)(a) shall set forth:

- (i) the name of the company; and
- (ii) any change in:
 - the street address of its designated office;
 - the street address of its registered office;
 - the name of the agent for service of process;

- the identity or ownership interest of the Members; and
 - the street address or legal name of any Manager in a Manager-managed company, or of any Member in a Member-managed company.
- (2) (a) The annual report required by Subsection (1) shall:
- (i) be made on forms prescribed and furnished by the Department of Commerce; and
 - (ii) contain information that is given as of the date of signing the annual report.
- (b) The annual report forms shall include a statement notifying the company that failure to file the annual report may result in the dissolution of the company.
- (3) (a) The annual report shall be signed by:
- (i) any Manager in a Manager-managed company;
 - (ii) any Member in a Member-managed company; or
 - (iii) any other person with management authority.
- (b) If the registered agent has changed since the filing of the articles of organization or last annual report, the annual report shall also be signed by the new registered agent.
- (4) (a) If the annual report conforms to the requirements of this Section, the Department of Commerce shall file the report.
- (b) If the annual report does not conform to the requirements of this Section, the Department of Commerce shall deliver the report to the registered agent of the company for any necessary corrections at the street address for the registered agent most recently furnished to the Department of Commerce by notice, annual report or other document.
- (c) If the Department of Commerce returns an annual report in accordance with Subsection (4)(b), the penalties for failure to file the report within the time prescribed in this section do not apply as long as the annual report is corrected and returned to the Department of Commerce within thirty (30) days from the date the nonconforming report was delivered or mailed to the registered agent of the company.

1.12 When Amendments Required.

The articles of organization of a limited liability company shall be amended when:

- (a) there is a change in: (i) the registered office, (ii) registered agent or (iii) the name of the limited liability company;
- (b) there is a change in the character of the business of the company specified in the articles of organization;
- (c) there is a false or erroneous statement in the articles of organization;
- (d) there is a change in the time, as stated in the articles of organization, for the dissolution of the company;
- (e) there is a change in who is a Manager or Member of the company;
- (f) the Members determine to fix a time, not previously specified in the articles of organization, for the dissolution of the company; or
- (g) the Members desire to make a change in any other statement in the articles of organization in order for the articles to accurately represent the agreement among them.

Each limited liability company shall file with the Director of Commerce a copy of any amendment to the articles within sixty (60) days after the adoption of the amendment, unless such amendments relate to Subsections 1.12(a) or 1.12(e) above, where disclosure in the annual report shall render amendment of the articles of organization unnecessary.

1.13 Records.

- (1) Each limited liability company shall keep at its principal place of business the following:
 - (a) a current list in alphabetical order of the full name and last known business street address of each Member;
 - (b) a copy of the certified or endorsed articles of organization and all certificates of amendment 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;
 - (c) copies of the company's federal, state and tribal income tax returns and reports, if any, for the three (3) most recent years;
 - (d) copies of any financial statements of the company, if any, for the three (3) most recent years;
 - (e) a copy of the company's Operating Agreement, if any;
 - (f) a copy of any documents evidencing powers of attorney relating to the signing of a certificate or article under this Ordinance by an attorney-in-fact; and

(g) unless otherwise set forth in the articles of organization, a written statement setting forth:

- (i) 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;
- (ii) 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;
- (iii) any right of a Member to receive distributions which include a return of all or any of the Member's contributions; and
- (iv) any event upon the happening of which the company is to be dissolved and its affairs wound up.

(2) Records kept under this Section are subject to inspection and copying at the reasonable request and expense of any Member during ordinary business hours. The Department of Commerce or Court may compel the production of any of these records if a limited liability company denies any Member access to the records.

1.14 Additional Members.

After the filing of a limited liability company's original articles of organization, additional Members may be admitted:

- (1) as provided in the Operating Agreement; or
- (2) if the Operating Agreement does not provide for the admission of additional Members, with the written consent of all existing Members of the limited liability company.
- (3) in no event shall the admission of additional Members result in less than a majority of the ownership interest in the limited liability company being held by one or more (i) Enrolled Tribal members, (ii) governmental departments or subdivisions of the Tribe, or (iii) entities chartered by the Tribe or in which the Tribe holds a majority interest.

1.15 Execution of Documents.

(1) Unless otherwise specified in this Ordinance, each certificate or report required by this Chapter to be filed with the Department of Commerce shall be executed in the following manner:

- (a) articles of organization shall be signed by at least one Manager or, if the limited liability company is managed by its Members, by at least one Member;
- (b) a certificate of amendment shall be signed by at least one Manager, or one Member with management authority, subject to any restriction or

requirement in the Operating Agreement, and by each other Member designated in the certificate of amendment as a new Member; and

(c) articles of dissolution shall be signed by at least one Manager or one Member with management authority subject to any restriction or requirement in the Operating Agreement.

(2) Any Manager or Member may designate an attorney-in-fact to sign any certificate or articles, but a power of attorney to sign a certificate relating to the admission of a Member shall specify the admission of a Member. Powers of attorney relating to the signing of a certificate by an attorney-in-fact need not be filed with the Department of Commerce but shall be retained by the company.

(3) The execution of the articles of organization, dissolution, or of a certificate of amendment constitutes 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.

1.16 Penalty for False Execution.

Each Member or Manager of a limited liability company who signs any articles, certificate, statement, report, application, or other document filed with the Department of Commerce that is known to that Member or Manager to be false in any material respect shall be subject to civil penalties as the Tribal Court may deem appropriate or as the Tribal Council may promulgate pursuant to Tribal law.

1.17 Restated Articles of Organization.

(1) A limited liability company may integrate into a single instrument all of the provisions of its articles of organization and amendments to them, and it may at the same time also further amend its articles of organization by adopting restated articles of organization.

(2) If the restated articles of organization merely restate and integrate but do not further amend the initial articles of organization, as previously amended or supplemented by any certificate or instrument that was executed and filed pursuant to this Ordinance, they shall be specifically designated in their heading as "Restated Articles of Organization" and shall be executed and filed with the Director of Commerce.

(3) If the restated articles restate and integrate and also further amend in any respect the articles of organization, as previously amended or supplemented, they shall be specifically designated in their heading as "Amended and Restated Articles of Organization" and shall be executed and filed with the Director of Commerce.

(4) Restated articles of organizations shall state that they were duly executed and filed in accordance with this Section, and shall state, either in their heading or in an introductory paragraph:

- (a) the company's present name, and, if it has been changed, the name under which it was originally filed and the date of filing of its original articles of organization with the Department of Commerce, or
- (b) if the restated articles only restate and integrate and do not further amend the provisions of the articles of organization as previously amended or supplemented and there is no discrepancy between those provisions and the provisions of the restated articles, they shall so state.

(5) Upon the filing of restated articles of organization with the Director of Commerce, the initial articles, as previously amended or supplemented, shall be superseded. Thereafter, the restated articles of organization, including any further amendment or changes made by the restated articles, shall be the articles of organization, but the original effective date of formation shall remain unchanged.

(6) Any amendment or change made in connection with the restatement and integration of the articles of organization shall be subject to the requirements of Section 1.9 and this Section that would apply if a separate certificate of amendment were filed to make the amendment or change.

1.18 Merger and Consolidation.

(1) Pursuant to any agreement ratified by a majority, by ownership sharing ratios, of the Members or as required by the Operating Agreement, whichever is greater, a limited liability company may merge or consolidate with or into one or more limited liability companies formed under the laws of the Tribe. The successor company shall be as provided in the agreement.

(2) A limited liability company that is not the successor company in the merger or consolidation shall file articles of dissolution, which shall have an effective date not later than the effective date of the merger or consolidation.

(3) When the articles of dissolution required by § 1.18(2) have become effective, the following shall be vested in and enforced against the successor limited liability company as they were in each of the companies that have merged or consolidated:

- (a) all of the rights, privileges, and powers of each of the limited liability companies that have merged or consolidated;
- (b) all debts due to any of the limited liability companies; and
- (c) all other things and causes of action belonging to each of the limited liability companies.

1.19 Application of Partnership Provisions to Limited Liability Companies.

As employed in laws of the Tribe or by the Court in a proceeding before it, the terms “partnership” and “limited partnership” are considered to include a limited liability company organized under this Ordinance, unless the context clearly requires otherwise.

1.20 Correction of Technical Errors in Instruments.

(1) If any instrument filed under this Ordinance contains, as of the date of the action referred to in the instrument, a typographical error, misspelling, or other technical error or defect, the instrument may be corrected by filing, in accordance with this Section, a statement of correction.

(2) The statement of correction shall set forth:

(a) the name of the limited liability company and the date of its organization;

(b) the instrument being corrected and the date it was filed with the Department of Commerce;

(c) the error, misspelling, or defect to be corrected and the portion of the instrument being correct in corrected form.

(3) A statement of corrections shall be executed in the same manner in which the instrument being corrected was required to be executed.

(4) The corrected instrument is effective as of the date the original instrument was filed.

SECTION II

DISSOLUTION AND CANCELLATION OF ARTICLES.

2.1 Automatic Dissolution.

A limited liability company organized under this Ordinance shall be dissolved by the Department of Commerce, pursuant to the terms of this Section, upon the occurrence of any of the following events:

(1) when the period fixed for the duration of the company in its articles of organization or Operating Agreement expires;

(2) when the limited liability company fails to meet the requirements to maintain at least one (1) Member;

(3) when the limited liability company fails to meet the requirement that a majority of the ownership interest in the limited liability company be held by one or more (i) Enrolled Tribal

members, (ii) governmental departments or subdivisions of the Tribe, or (iii) entities chartered by the Tribe or in which the Tribe holds a majority interest.

(4) upon the occurrence of a triggering event specified in the articles of organization or Operating Agreement as an event resulting in dissolution; or

(5) when the company is not the successor limited liability company in the merger or consolidation of two (2) or more limited liability companies.

Upon the Department of Commerce's becoming aware that any of the above events have occurred, the Department of Commerce shall promptly issue a written notice of required automatic dissolution to the Members of the limited liability company.

2.2 Grounds for Voluntary Dissolution

Subject to complying with the requirements set forth in Subsection 2.3, a limited liability company may voluntarily dissolve by:

(1) written agreement signed by the Members entitled to receive a majority of the profits of the company, unless otherwise provided in the Operating Agreement.

(2) for a Manager-managed limited liability company, upon a unanimous vote by all Manager(s) and an accompanying vote of a majority of Members of the company, regardless of the ownership shares of the Members.

2.3 Filing of Articles of Dissolution and Issuance of Certificate of Dissolution.

(1) Following an automatic or voluntary dissolution pursuant to Subsection 2.1 or 2.2, and when all debts, liabilities, and obligations of the limited liability company have been paid or discharged, or adequate provision has been made to do so, and all of the remaining property and assets of the company have been distributed to the Members, articles of dissolution shall be executed and submitted by the Members of the dissolved limited liability company to the Director of Commerce. The articles shall set forth:

- (a) the name of the limited liability company;
- (b) that all taxes payable, debts, obligations, and liabilities have been paid or discharged, or that adequate provision has been made to do so;
- (c) that all the remaining property and assets have been distributed among its Members in accordance with their respective rights and interests; and
- (d) that there are no suits pending against the company in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in any pending suit.

(2) If the articles of dissolution conform to law and all fees have been paid as prescribed in this Ordinance, the Director of Commerce shall file the articles of dissolution of the company

and shall issue a certificate of dissolution and return it to the representative of the dissolved limited liability company.

(6) Upon the issuance of the certificate of dissolution, the existence of the company shall cease, except for the purpose of suits, other proceedings, and appropriate actions relating to winding down the company as provided in this Ordinance. The Members of the dissolved company shall maintain a duty and responsibility to distribute any company property discovered after dissolution, convey real estate, and take other necessary action on behalf of and in the name of the dissolved company.

2.4 Cancellation of Articles of Organization.

The articles of organization of a limited liability company shall be cancelled by the Department of Commerce upon issuance of the certificate of dissolution. Such cancellation shall be noted in the records of the Department of Commerce.

2.5 Involuntary Dissolution by Tribal Court Action.

(1) A limited liability company, except for such companies as may be wholly owned by the Tribe or in which the Tribe owns and holds a majority interest, may be dissolved involuntarily by order of the Court in an action filed by the legal counsel for the Department of Commerce when it is established that the limited liability company:

- (a) obtained the issuance of its certificate of organization or of its execution through fraud, in which case the certificate of organization shall be canceled as of the date of filing;
- (b) continually exceeded or abused the authority conferred upon it by law or by the Operating Agreement;
- (c) committed a violation of any provision of law whereby it has forfeited its charter;
- (d) carried on, conducted, or transacted its business in a persistently fraudulent or illegal manner;
- (e) failed to amend its articles of organization as required by § 1.12;
- (f) no longer has the majority of its ownership interest held by one or more (i) Enrolled Tribal members, (ii) governmental departments or subdivisions of the Tribe, or (iii) entities chartered by the Tribe or in which the Tribe holds a majority interest;
- (g) abused its powers contrary to the public policy of the Tribe; or
- (h) failed to maintain a registered office or registered agent on the Reservation for sixty (60) consecutive days, pursuant to § 1.2 and § 2.6 (2) hereof.

(2) If the Court issues a final order of dissolution in an action brought under this Subsection 2.5(1) against a limited liability company, the Director of Commerce shall issue a certificate of dissolution and cancel the company's articles of organization.

2.6 Involuntary Dissolution Following Delinquency and Suspension

(1) Delinquency. A limited liability company is delinquent if:

- (a) it fails to maintain a registered agent on the Reservation for sixty (60) consecutive days;
- (b) it fails to file an annual report with the Department of Commerce no later than thirty (30) days following the anniversary date of its organization. A company is delinquent if; or
- (c) it fails to file the required articles of dissolution within thirty (30) days following the receipt of a notice of required automatic dissolution pursuant to Section 2.1.
- (d) A company that has acquired a new Manager or registered agent or has changed the address of its registered office will not be considered delinquent if disclosure of such changes is made in an annual report filed with the Department of Commerce, provided that such changes occurred within sixty (60) days prior to the date that the annual report is due. Should the acquiring of a new Manager or registered agent or changing the address of the Company's registered office occur more than sixty (60) days prior to the due date for the annual report, then those events must be reported in an amended articles of incorporation pursuant to § 1.12.

(2) Notice of Delinquency. Unless the limited liability company's certificate of organization is already suspended for any reason, the Department of Commerce shall mail a notice of delinquency of each delinquent company to the Managers of the limited liability company at the addresses set forth in the company's articles of organization, or, if the limited liability company is managed by its Members, to the Members at the addresses set forth in the company's articles of organization. The notice of delinquency shall be mailed first class, postage prepaid, shall include any forms necessary to correct the delinquency, and shall state:

- (a) the nature of the delinquency;
- (b) that the limited liability company shall be suspended, unless it corrects the delinquency and pays a notification fee within thirty (30) days of the mailing of the notice of delinquency; and
- (c) that a suspended limited liability company may be reinstated only after payment of a reinstatement fee.

The Director of Commerce shall assess the limited liability company a notification fee, as determined by the Director of Commerce or in an amount the Tribal Council may promulgate pursuant to a duly passed resolution.

(3) Notice of Suspension. A limited liability company that remains delinquent for more than thirty (30) days after the mailing of the notice of delinquency under this Section shall be suspended:

(a) Unless the limited liability company's certificate of organization is already suspended for any reason, if a company is suspended under this Section, the Director of Commerce shall mail a notice of suspension to the Managers of the limited liability company at the addresses set forth in the articles of organization, or, if the company is managed by its Members, then to the Members at the addresses set forth in the limited liability company's articles of organization.

(b) The notice of suspension shall state:

- (i) that the certificate of organization has been suspended;
- (ii) the reason for the suspension;
- (iii) the date of the suspension;
- (iv) that the limited liability company may remove the suspension by correcting the delinquency and paying a reinstatement fee, in addition to any fees required by § 2.6(3); and
- (v) that the limited liability company's certificate of organization will be canceled involuntarily one year after the date of mailing of the notice of suspension unless the limited liability company has removed the suspension before that time.

(4) Cancellation of Certificate. If the limited liability company does not remove the suspension within one (1) year after the date of mailing of the notice of suspension, the Director of Commerce shall issue a certificate of dissolution and the limited liability company's articles of organization shall be cancelled by the Department of Commerce. The Director of Commerce shall mail a certificate of cancellation to the Managers of the limited liability company at the address set forth in the company's articles of organization, or, if the limited liability company is managed by its Members, then to the Members at the addresses set forth in the company's articles of organization. Any assumed names (a "doing business as" or "DBA" name) filed on behalf of the canceled limited liability company under § 1.5 are also canceled. The name of a canceled limited liability company and any assumed names on its behalf are available one year after the date of cancellation for use by any other person transacting business on the Reservation, or person doing business under an assumed name under § 1.5.

(5) Member Liability. A Member of a limited liability company has no personal liability solely by reason of the limited liability company having had its articles of organization suspended or canceled.

(6) Maintenance of Actions. A limited liability company that has had its articles of organization suspended may not maintain any action, suit, or proceeding in the Court until it has removed the suspension. A limited liability company that has had its articles of organization cancelled may not maintain any action, suit, or proceeding in the Court.

2.7 Settlement Upon Dissolution.

(1) In settling accounts upon dissolution, the liabilities of the limited liability company shall be entitled to payment in the following order:

- (a) liabilities to creditors, in the order of priority as provided by law, except those liabilities to Members of the company on account of their contributions;
- (b) except as provided in the Operating Agreement, liabilities to Members of the company in respect of their contributions to capital; and
- (c) liabilities to Members of the company in respect of their shares of the profits and other compensation by way of income on their contributions.

(2) In settling accounts upon dissolution, the assets of the limited liability company shall be shared among the Members as provided in the Operating Agreement, or if not so provided, in respect to their claims for capital and in respect to their claims for profits or for compensation by way of income on their contributions, respectively, in proportion to the respective amounts of claims.

SECTION III

LIABILITY OF MEMBERS AND MANAGERS

3.1 Liability of Members, Managers, Officers and Employees – Waiver.

(1) Freedom from Liability. Except as otherwise specifically set forth in this Ordinance, neither the Members, the Managers, nor the employees of a limited liability company are personally liable under a judgment, decree, or order of the Court, or in any other manner, for a debt, obligation, or liability of the company.

(2) Personal Liability. Personal liability shall be neither eliminated nor limited for any person vested with management authority to the company or its Members for damages for any

breach of duty in the capacity where a judgment or final adjudication adverse to the Manager establishes that the Manager's acts or omissions:

- (a) were in bad faith;
- (b) involved gross negligence;
- (c) involved willful misconduct; or
- (d) or the Manager personally retained a material financial benefit or other material advantage to which the Manager was not legally entitled.

(3) Waiver. A Member of a limited liability company may waive the protection against personal liability of this Section for the debts, obligations, or liabilities of a limited liability company by executing a waiver in the articles of organization, by a certificate of amendment of the articles of organization or by a separate writing. The Member waiving protection from liability shall execute the waiver.

(4) Extent of Waiver. The extent of the waiver is determined by the executed waiver in the articles of organization or certificate of amendment.

3.2 Liability for Acting Without Authority.

All persons who assume to act as a limited liability company without authority granted by the Department of Commerce to do so are jointly and severally liable for all debts and liabilities so incurred, except as provided in § 1.10 and according to sovereign immunity.

3.3 Professional Relationship – Personal Liability.

(1) This Ordinance does not alter any law applicable to the relationship between a person rendering Professional Services and a person receiving those services, including liability arising out of those Professional Services.

(2) All persons rendering Professional Services shall remain personally liable for any results of that person's acts or omissions. No Member, Manager, or employee of a limited liability company is personally liable for the acts or omissions of any other Member, Manager, or employee of the limited liability company.

3.4 Member Liabilities.

- (1) A Member of a limited liability company is liable to the company:
 - (a) for the difference between the amount of the Member's contributions to capital which have been actually made, and the amount which is stated in the Operating Agreement or other contract as have been made; and
 - (b) for any unpaid contribution to capital which the Member, in the Operating Agreement or other contract, agreed to make in the future at the time and on the conditions stated in the Operating Agreement or other contract.

(2) A Member holds as trustee for the limited liability company:

(a) specific property which is stated in the Operating Agreement or other contract as having been contributed by the Member, if the property was not contributed or it has been wrongfully or erroneously returned; and

(b) money or other property wrongfully paid or conveyed to the Member on account of the Member's contribution.

(3) The liabilities of a Member as set out in this Section may be waived or compromised upon the consent of all other Members. This waiver or compromise does not affect the rights of a creditor of the limited liability company who extended credit or whose claim arose prior to the dissolution of the limited liability company.

(4) When a Member has rightfully received the return, in whole or in part, of his or her capital contribution, the Member remains liable to the limited liability company for any sum, not in excess of the return with interest, necessary to discharge the limited liability company's obligations to all creditors of the company who extended credit or whose claims arose before the return.

SECTION IV

OPERATING AGREEMENTS, MANAGEMENT AND MEMBER INTERESTS

4.1 Capital Contributions.

The contributions to capital of a Member to the limited liability company may consist of cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services. A schedule describing the capital contribution of each Member (whether in cash, property or other assets, and in the case of cash, the section of the statutory fund from which such start-up contributions was disbursed) and the proportion of each such Members' interest shall be attached to both the Articles of Organization filed with the Department of Commerce and the Operating Agreement.

4.2 Management by Members.

(1) The management of a limited liability company, unless otherwise provided in the articles of organization, shall be vested in its Members in proportion to their interests in the profits of the company, as reflected in the Operating Agreement and as adjusted from time to time to properly reflect any additional contributions or withdrawals by the Members or as provided in § 4.9.

- (2) The affirmative vote, approval, or consent of the Member(s) shall be required to:
- (a) amend the articles of organization, except to make ministerial amendments including:
 - (i) amendments made only to reflect actions previously taken with the requisite approval, such as changes in Managers; or
 - (ii) the change of an address; or
 - (b) amend the Operating Agreement, except to make ministerial amendments including:
 - (i) amendments made only to reflect actions previously taken with the requisite approval, such as change in Managers; or
 - (ii) to change an address, or
 - (c) (i) authorize a Member or any other person to do any act on behalf of the company that contravenes the articles of organization or Operating Agreement; and
 - (ii) after authorizing an act under Subsection (2)(c)(i) to terminate the authority so granted.
- (3) The affirmative vote, approval or consent of the Member of the company shall be required to bind the company to any of the following actions:
- (a) (i) authorizing a Member or any other person to do any act on behalf of the company that is not in the ordinary course of the company's business or business of the kind carried on by the company; and
 - (ii) after authorizing an act under Subsection (3)(a)(i) to terminate the authority so granted;
 - (b) making a current distribution to Members;
 - (c) resolving any dispute connected with the usual and regular course of the company's business;
 - (d) making a substantial change in the business purpose of the company;
 - (e) a conversion of the company to another entity;
 - (f) a merger in which the company is a party to the merger;
 - (g) any sale, lease, exchange, or other disposition of all or substantially all of the company's property other than in the usual and regular course of the company's business;

(h) any mortgage, pledge, dedication to the repayment of indebtedness, whether with or without recourse, or other encumbering of all or substantially all of the company's property other than in the usual and regular course of the company's business, or

(i) any waiver of a liability of a Member under § 3.1(2)

(4) If the management of a limited liability company is vested in the Members, any Member has authority to bind the limited liability company, unless otherwise provided in the articles of organization or Operating Agreement.

4.3 Managers.

(1) If the articles of organization provide for the management of the limited liability company by a Manager(s):

(a) the Manager(s) shall be any person elected by the Members in the manner prescribed by and provided in the Operating Agreement of the company;

(b) any Manager has authority to bind the company, unless otherwise provided in the articles of organization or Operating Agreement; and

(c) any Manager has the authority to delegate management responsibilities.

(2) A Manager shall serve for the term specified in the Operating Agreement. This term may not exceed the duration of the limited liability company as specified in the articles of organization.

(3) A Manager need not be a Member of the limited liability company unless required by the articles of organization or Operating Agreement.

(4) The Manager(s) shall hold office and have the responsibilities accorded to them by the members and as provided for in the Operating Agreement of the limited liability company.

(5) After the initial Managers, the Managers shall be those persons identified in documents filed with the Department of Commerce including: (i) amendments to the articles of organization, or (ii) the annual reports required under §1.11.

(6) When there is a change in the Management structure from a Member-managed company to a Manager-managed company, the Managers shall be those persons identified in the certificate of amendment to the articles of organization that makes the change.

(7) Each Manager, who is a natural person, must have attained the age of majority under Tribal law.

(8) No Manager shall have authority to perform any act in contravention of the articles of organization or the Operating Agreement.

(9) Unless otherwise provided in the articles of organization or Operating Agreement of the company:

(a) except for the initial Managers, each Manager shall be elected at any time by the Members holding at least a majority of the profits' interests of the company, and any vacancy occurring in the position of Manager shall be filled in the same manner;

(b) the number of Managers:

(i) shall be fixed by the Members in the Operating Agreement; or

(ii) shall be the number designated by Members holding at least a majority of the profits interests of the company if the Operating Agreement fails to designate the number of Managers.

(c) each Manager shall serve until the earliest to occur of:

(i) the Manager's death, withdrawal or removal; or

(ii) if Membership in the company is a condition to being a Manager, the loss of Membership status;

(d) a Manager, if a natural person, need not be a Member of the company, nor a resident of the Reservation;

(e) any Manager may be removed with or without cause by the Members, at any time, by the decision of Members' owning a majority of the profit interests in the company; and

(f) there shall be only one class of Managers.

4.4 Operating Agreement.

(1) An Operating Agreement may be adopted with the majority consent of the Members.

(2) An Operating Agreement may be altered, amended, or repealed as provided in the Operating Agreement of the limited liability company.

(3) The Operating Agreement may provide for:

(a) the regulation and management of the affairs of the limited liability company in any manner not inconsistent with law or the articles of organization;

(b) the removal of a Manager(s); and

(c) the termination of a Member's interest in the limited liability company.

(4) If a Member's interest in the limited liability company is terminated pursuant to the Operating Agreement, the Member may rightfully demand a return of the Member's contribution pursuant to § 4.10.

(5) A written declaration or written guidelines adopted by the sole Member of a limited liability company constitutes an Operating Agreement for purposes of this Ordinance if:

(a) the limited liability company has only one Member; and

(b) the Member designates in the written declaration or guidelines that the written declaration or guidelines is the Operating Agreement.

4.5 Ownership and Disposition of Property.

(1) Real or personal property owned or purchased by a limited liability company may be held and owned, and conveyance shall be made, in the name of the limited liability company.

(2) Instruments and documents providing for the acquisition, mortgage, or disposition of property of the limited liability company shall be valid and binding upon the company if they are executed by one or more Managers of a limited liability company having a Manager(s) or if they are executed by one or more Members of a limited liability company in which management has been retained by the Members.

4.6 Conditions for Property Distribution.

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

4.7 Asset Distribution.

Distributions of cash or other assets of a limited liability company shall be allocated among the Members in the manner provided in the Operating Agreement. If the Operating Agreement does not otherwise provide, cash or other assets shall be allocated on the basis of value of the contributions made by each Member to the extent they have been received by the limited liability company and have not been returned. Value of the contributions made shall be determined as stated in the articles of organization or the records of the limited liability company as required by § 1.13.

4.8 Profits and Losses.

The profits and losses of a limited liability company 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 value of the contributions made by each Member to the extent they have been received by the limited liability company and have not been returned. The value of the contributions made shall be determined as stated in the articles of organization or the records of the limited liability company as required by § 1.13.

4.9 Character, Transfer, Adjustment, and Assignment of Member Interests – Effect – Charge Order.

- (1) An interest of a Member in a limited liability company is personal property.
- (2) An interest of a Member in a limited liability company may be adjusted, transferred, or assigned as provided in the Operating Agreement.
- (3) Except as otherwise provided in the Operating Agreement, if the non-transferring Members entitled to receive a majority of the non-transferred profits of the limited liability company, pursuant to § 4.8, do not consent to the proposed transfer or assignment:
 - (a) the transferee of the interest of the Member has no right to:
 - (i) participate in the management of the business and affairs of the limited liability company; or
 - (ii) become a Member; and
 - (b) the transferee is entitled to receive only the share of profits or other compensation by way of income and the return of contributions to which that Member would otherwise be entitled.
- (4) On application to the Court by any judgment creditor of a Member in a limited liability company, the Court may charge the interest of the Member in the limited liability company with payment of the unsatisfied amount of the judgment with interest.
 - (a) To the extent a judgment creditor is a beneficiary of a charging order issued under § 4.9(4), the judgment creditor has only the rights of a transferee under § 4.9(3) of the Member's interest in the limited liability company.
 - (b) This Section does not deprive any Member of the benefit of any exemption laws applicable to the Member's interest in the limited liability company.
- (5) Any transfer of a Member's interest in a limited liability company in violation of this Section is void.

4.10 Conditions for Distribution of Property – Return of Contribution.

- (1) A Member shall receive no distribution of limited liability company property as a return of the Member's contribution to capital until:
 - (a) all liabilities of the limited liability company, except liabilities to Members on account of their contributions to capital, have been paid or sufficient property of the company remains to pay them; and
 - (b) the consent of all Members is obtained, unless the return of the contribution to capital may be rightfully demanded as provided in this Section, the articles of organization or the Operating Agreement.

(2) Subject to § 4.10(1), a Member may rightfully demand the return of the Member's contribution:

- (a) upon the dissolution of the limited liability company;
- (b) when the date an event specified in the articles of organization for the return of the contribution has arrived; or
- (c) after the Member has given all other Members of the limited liability company six (6) months' prior notice in writing, if no other time period is specified in the articles of organization, for the dissolution of the limited liability company.

(3) In the absence of a statement in the articles of organization to the contrary or the consent of all Members of the limited liability company, a Member, irrespective of the nature of the Member's contribution, has only the right to demand and receive cash in return for the Member's contribution to capital.

SECTION V

DERIVATIVE ACTIONS, PROCEEDINGS, NOTICE AND SERVICE OF PROCESS

5.1 Member as a Party to Proceedings.

A Member of a limited liability company is not a proper party to proceedings by or against a limited liability company, except when the object is to enforce a Member's right against, or liability to, the limited liability company.

5.2 Service of Process, Notice, or Demand.

(1) Process against a limited liability company may be served upon the registered agent by personal delivery or by registered or certified mail. If service is effectuated by personal delivery upon the registered agent, service is perfected as of the date of delivery. If service is effectuated by registered or certified mail, service is perfected on the earlier of (i) the date shown on the return receipt, if signed on behalf of the company or (ii) ten (10) calendar days after mailing.

(2) In the event that the registered agent has resigned, the authority of the agent has been revoked, or the agent cannot be found or served with the exercise of reasonable diligence, service on a company organized under this Ordinance may be made by publication pursuant to the procedure provided in Title II, Section 2.3.04(c) of the Tribal Code.

(3) 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 a limited liability company.

5.3 Waiver of Notice.

If, under the provisions of this Ordinance, the articles of organization, or the Operating Agreement of a limited liability company, notice is required to be given to a Member of a limited liability company or to a Manager of a limited liability company having a Manager(s), 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.

5.4 Right of Action.

A Member may bring an action in the right of a limited liability company to recover a judgment in its favor if the Manager(s) with authority to do so have refused to bring the action and the Managers' decision not to sue constitutes an abuse of discretion or involves a conflict of interest that prevents an unprejudiced exercise of judgment, or if an effort to cause those Managers to bring the action is not likely to succeed.

5.5 Proper Plaintiff.

In a derivative action, the plaintiff must be a Member at the time of bringing the action and:

(1) must have been a Member at the time of the transaction of which the Member complains; or

(2) the Member's status as a Member must have devolved upon him by operation of law or pursuant to the terms of the Operating Agreement from a person who was a Member at the time of the transaction.

5.6 Pleading.

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a Manager or the reasons for not making the effort.

5.7 Expenses.

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the Court may award the plaintiff reasonable expenses, including attorneys' fees, and shall direct him to remit to the limited liability company the remainder of those proceeds received by him.

5.8 Security and Costs.

(1) In any action instituted in the right of any limited liability company, unless the contributions to the company property that are allocable to the plaintiff amount to five percent (5%) or more of the contributions of all Members, or the contributions that are allocable to the plaintiff have a market value in excess of \$25,000.00, the limited liability company in whose right the action is brought shall be entitled, at any time before final judgment, to require the plaintiff to give security for the costs and reasonable expenses which may be directly attributable to and

incurred by it in the defense of the action or may be incurred by other parties named as defendant for which the limited liability company may become legally liable, but not including attorneys' fees.

(2) Market value shall be determined as of the date that the plaintiff institutes the action, or, in the case of an intervenor, as of the date that he becomes a party to the action.

(3) The amount and nature of the security shall be determined by the Court, and the amount of the security may from time to time be increased or decreased by the Court, upon showing that the security provided has or may become inadequate or is excessive.

(4) The limited liability company shall have recourse to the security in the amount as the court shall determine upon the termination of such action if the Court finds the action was brought without reasonable cause.

5.9 Indemnification of a Manager.

To the extent that a Manager has been successful on the merits or otherwise in defense of any action, suit, or proceeding brought against the Manager under § 5.4, or in defense of any claim, suit, or matter therein, the Manager shall be indemnified by the Members against expenses, including attorneys' fees, that the Manager actually and reasonably incurred.

SECTION VI

COURT AUTHORITY, DIRECTOR OF COMMERCE, APPEALS AND FEES AND CHARGES

6.1 Director of Commerce Duties and Functions.

(1) The Director of Commerce is charged with the administration and enforcement of this Ordinance.

(2) Administration shall include, without limitation,

(a) the development and publication of procedures and forms responsive to the requirements of this Ordinance;

(b) acting as the official filing/recording office, archive and repository for documents filed or recorded by limited liability companies pursuant to the requirements of this Ordinance.

(3) Every certificate and other document or paper executed by the Director of Commerce pursuant to any authority conferred upon it by this Ordinance, and which has been certified or endorsed by the Tribe or Department of Commerce, and all copies of such papers as well as documents and other papers filed in accordance with the provisions of this Ordinance, shall have the same force and effect as evidence as would the originals thereof in any action or proceeding in any court and before a public officer or official body.

6.2 Fees and Charges.

The Director of Commerce shall maintain and publish a schedule of fees and charges as authorized by this Ordinance, which may be modified at any time by the Tribal Council via a duly passed resolution.

6.3 Nonpayment of Fees.

(1) The Department of Commerce shall not file any articles, statements, certificates, reports, applications, notice or other papers relating to any company 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 company 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 a company.

(2) No company required to pay a fee, charge or sanction under this Ordinance shall maintain any civil action in Tribal Court until all such fees, charges and sanctions have been paid in full.

6.4 Administrative Appeals.

(1) Right to Appeal. Any person aggrieved by a decision of the Department of Commerce may appeal in writing for a hearing with the Director of Commerce.

(2) Initiation of Appeals Process. Any appeal as provided for under this Section must be begun by filing a written request for a hearing with the Director of Commerce within thirty (30) days of the decision being appealed.

6.5 Court Review.

(1) Exhaustion. The Court shall have jurisdiction to review final decisions of the Department of Commerce subject to the limitations set forth in this Section, only if the appellant has first exhausted all administrative remedies provided by the Department of Commerce. An appellant shall be deemed to have exhausted the administrative remedies of the Department of Commerce if the Director of Commerce shall have failed:

(a) to schedule and hold a hearing on the merits of the administrative appeal within forty-five (45) days after receipt of a written request for a hearing, unless such delay is requested or agreed to by the appellant; or

(b) to issue a written decision on the matter appealed within thirty (30) days of the hearing on the merits of the administrative appeal.

(2) Immunity of Director of Commerce and Tribal Court Jurisdiction. The Director of Commerce shall be immune from any suit in law or equity while performing its lawful duties within the scope of his/her authority. The Court shall have jurisdiction, however, to review any final decision of the Director of Commerce; provided, that decisions of the Director of Commerce

shall only be reversed by the Court if found to be arbitrary and capricious; and provided further, that the Court shall not exercise de novo review of a decision of the Director of Commerce.

6.6 Limitations on Court Review.

(1) Filing of Appeal. The Court shall not have the authority to review final decisions of the Director of Commerce unless commenced by the filing of a petition in the Court not later than (a) thirty (30) days after the date of issuance of a final decision by the Director of Commerce or (b) thirty (30) days after expiration of those periods of review set forth in § 6.5(1).

(2) Damages. In no event shall the Court award or order the payment of damages, costs or attorneys' fees against the Director of Commerce or Tribe or direct any other remedy except to enjoin or overturn the action of the Director of Commerce being appealed.

6.7 Liquidation by Court.

The Court shall have the power to liquidate the assets and business of a company only in the following circumstances:

(1) Member Action. In an action permitted under this Ordinance filed by a Member of the company, when the Court finds that:

(a) The Members are so divided respecting the management of the business and affairs of the company that either the company is suffering or will suffer irreparable injury, or the business and affairs of the company can no longer be conducted to the advantage of the Members generally; or

(b) The company has abandoned its business and has failed within a reasonable period of time to take steps to dissolve and liquidate its affairs and distribute its assets.

(2) Department of Commerce Action. In an action filed pursuant to §2.6(1) by legal counsel for the Department of Commerce against a company (except a company that is wholly owned by the Tribe or owned by an entity that is wholly owned by the Tribe), when the Court finds the company:

(a) Has failed to comply with the provisions of this Ordinance or regulations promulgated thereunder.

(b) Procured its formation through fraudulent misrepresentation or concealment of material fact(s).

(c) Has violated the laws of the Tribe.

(d) Has failed to file any document required by this Ordinance or requested by the Department of Commerce within the time periods prescribed by this Ordinance.

- (e) Has continued or persisted over a period of time to conduct its business in a fraudulent or otherwise illegal manner.

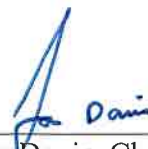
6.8 Other Court Relief.

- (1) The Tribal Court in an action filed by a Member seeking relief under § 6.7(1) shall have the power to make any order or grant any relief other than dissolution or liquidation as in its discretion it may deem appropriate, and is not in conflict with this Ordinance, including but not limited to:
- (a) Canceling, altering or amending provisions contained in the articles of organization or Operating Agreement of a company.
 - (b) Directing, prohibiting or enjoining any act of the company or other persons who are parties to the court action.
 - (c) Providing for the purchase of the interest of the Member bringing the action by the other Members of the company at its fair market value.
- (2) Relief may be granted under this Section even though the Tribal Court does not find any of the elements prescribed for relief under § 6.7.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which eight (8) were present constituting a quorum at a Regular Meeting thereof; duly and regularly called, notified, convened, and held this 3rd day of September 2026; and that this Limited Liability Company Ordinance was duly adopted by a vote of seven (7) in favor with zero (0) opposed and zero (0) abstaining, and that said Limited Liability Company Ordinance has not been rescinded or amended in any way.

Dated this third day of September 2026.



Joe Davis, Chairman
Hoopa Valley Tribal Council

ATTEST: 
Amber Turner, Executive Secretary
Hoopa Valley Tribal Council