

MODEL TRIBAL BUSINESS CORPORATION CODE

A CODE to provide for the creation, organization, and regulation of tribally chartered corporations; to prescribe their duties, rights, powers, immunities and liabilities; and to prescribe penalties for violations of this Code. **[NOTE: THIS CODE SERVES AS AN EXAMPLE CORPORATION CODE. IT IS NOT COMPREHENSIVE AND WILL NOT COMPLY WITH EACH TRIBE'S EXISTING LAWS AND CONSTITUTION. THE TRIBE'S LEGAL COUNSEL SHOULD REVIEW ANY PROPOSED BUSINESS CORPORATION CODE PRIOR TO ITS ADOPTION.]**

CHAPTER 1 GENERAL PROVISIONS

1.1 Short Title.

This Code shall be known and cited to as “[TRIBE’s] Business Corporation Code.”

1.2 Purpose.

This Code is enacted to provide for the creation, organization, and regulation of corporations under the law of the [TRIBE].

1.3 Definitions.

(1) “Administrator” means the [TRIBAL SECRETARY/OTHER PERSON/ENTITY] authorized by law to administer this Code, or his or her designated representative.

(2) “Articles of incorporation” includes any of the following:

(a) The original articles of incorporation or any other instrument filed or issued under any statute to organize a domestic or foreign corporation, as amended, supplemented, or restated by certificates of amendment, merger, or consolidation or other certificates or instruments filed or issued under any statute.

(b) A special act or charter creating a domestic or foreign corporation, as amended, supplemented, or restated.

(3) “Authorized shares” means shares of all classes that a corporation is authorized to issue.

(4) “Board” means board of directors or other governing board of a corporation.

(5) “Class,” when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation

(6) “Corporation” means a corporation formed under this Code and formed under any other statute of this state for a purpose for which a corporation may be formed under this Code.

(7) “Director” means a member of the board of a corporation.

(8) “Distribution” means a direct or indirect transfer of money or other property, except the corporation's shares, or the incurrence of indebtedness by the corporation to or for the benefit of its shareholders in respect to the corporation's shares. A distribution may be in the form of a dividend, a purchase, redemption or other acquisition of shares, an issuance of indebtedness, or any other declaration or payment to or for the benefit of the shareholders.

(9) “Electronic transmission” or “electronically transmitted” means any form of communication that meets all of the following:

(a) It does not directly involve the physical transmission of paper.

(b) It creates a record that may be retained and retrieved by the recipient.

(c) It may be directly reproduced in paper form by the recipient through an automated process.

(10) “Person” means an individual, a partnership, a domestic or foreign corporation, or any other association, corporation, trust, or legal entity.

(11) “Reservation” means the reservation of the Tribe as is now or hereafter may be recognized by the Secretary of the Interior of the United States of America.

(12) “Shareholder” means a person holding units of proprietary interest in a corporation and is considered to be synonymous with “member” in a nonstock corporation.

(13) “Shares” means the units into which proprietary interests in a corporation are divided and is considered to be synonymous with “membership” in a nonstock corporation.

(14) “Tribe” means the [TRIBE].

(15) “Tribal corporation” means a corporation incorporated under this Code.

(16) “Tribal Council” means the Tribal Council of the [TRIBE].

(17) “Tribal Court” means the Tribal Court of the [TRIBE].

1.4 Applicability of act generally.

The provisions of this Ordinance shall apply to all corporations organized hereunder or which elect to accept the provisions of this Code.

1.5 Applicability to existing tribal corporations.

Any tribal corporation that legally existed before the effective date of this Code shall be deemed to be in valid existence and allowed a ninety (90) day grace period from the effective date of this Code to amend or to conform their articles of incorporation in order to comply with the provisions herein.

1.6 Applicable law.

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

1.7 Amendment or repeal of Act.

This Code may be supplemented, altered, amended or repealed in accordance with the Tribal Constitution and every corporation to which this Code applies is bound thereby.

1.8 Submission of documents required under the Act; effective date.

The articles of incorporation shall be delivered to [PERSON/ENTITY]. The [PERSON/ENTITY] shall stamp the articles filed, along with the date, and issue the corporation a Certificate of Incorporation. A document filed under this section is effective at the time it is endorsed unless a subsequent effective time, not later than 90 days after the date of delivery, is set forth in the document. The Certificate of Incorporation shall be conclusive evidence that the corporation has been incorporated under this Code.

CHAPTER 2 FORMATION, POWER, DUTIES

2.1 Incorporators.

One or more [TRIBAL MEMBER/ENROLLED TRIBAL MEMBER], who has attained at least 18 years of age, may be the incorporators of a corporation by signing and filing articles of incorporation for the corporation.

2.2 Articles of incorporation; contents.

The articles of incorporation shall set forth the following information:

- (a) The name of the corporation.
- (b) The purposes for which the corporation is formed. It is a sufficient compliance with this subsection to state that the corporation may engage in any activity within the purposes for which corporations may be formed under the Business Corporation Code, and all activities shall by the statement be considered within the purposes of the corporation, subject to expressed limitations.
- (c) The aggregate number of shares which the corporation has authority to issue.

(d) If a corporation is authorized pursuant to its articles of incorporation to create and issue shares of stock, the articles of incorporation shall also set forth the following:

(1) If the shares are, or are to be, divided into classes, or into classes and series, the designation of each class and series, the number of shares in each class and series, and a statement of the relative rights, preferences and limitations of the shares of each class and series, to the extent that the designations, numbers, relative rights, preferences, and limitations have been determined.

(2) If any class of shares is to be divided into series, a statement of any authority vested in the board to divide the class of shares into series, and to determine or change for any series its designation, number of shares, relative rights, preferences and limitations.

(e) The street address, and the mailing address if different from the street address, of the corporation's initial registered office and the name of the corporation's initial resident agent at that address.

(f) The names and addresses of each incorporator.

(g) The duration of the corporation, which may be perpetual.

2.3 Articles of incorporation; permissible provisions.

The articles of incorporation may contain any provision not inconsistent with this Code or another statute or ordinance of the Tribe, including any of the following:

(a) A provision for management of the business and conduct of the affairs of the corporation, or creating, defining, limiting, or regulating the powers of the corporation, its directors and shareholders, or a class of shareholders.

(b) A provision that under this Code is required or permitted to be set forth in the bylaws.

2.4 Articles of incorporation; tribal council approval.

(1) Whenever a provision of the articles of incorporation is inconsistent with the corporate bylaws, the articles shall be controlling.

(2) If a corporation is to be owned and operated in whole or in part by the [TRIBE], the [TRIBAL COUNCIL/LEGISLATURE] must approve the articles of incorporation by a two-thirds vote.

2.5 Corporate name; required words and abbreviations.

The corporate name of a domestic corporation shall contain the word “corporation,” “company,” “incorporated,” or “limited” or shall contain 1 of the following abbreviations: corp., co., inc., or ltd., with or without periods. The corporate name may be in English or [TRIBE’S LANGUAGE].

2.6 Beginning of corporate existence; filing of articles as evidence.

The corporate existence shall begin on the effective date of the articles of incorporation as provided in section 1.7. Filing is conclusive evidence that all conditions precedent required to be performed under this Code have been fulfilled and that the corporation has been formed under this Code.

2.7 Selection of board; adoption of bylaws; first meeting; quorum; election of officers; transaction of business.

Before or after filing of the articles of incorporation, a majority of the incorporators, at a meeting or by written instrument, shall select a board and may adopt bylaws. On or after the filing date of the articles any member of the board may call the first meeting of the board upon not less than 3 days notice by mail to each director. A majority of the directors constitutes a quorum for the first meeting of the board. At the first meeting, the board may adopt bylaws, elect officers and transact such other business as may come before the meeting.

2.8 Adoption, amendment, or repeal of bylaws; contents of bylaws.

The initial bylaws of a corporation shall be adopted by its incorporators, its shareholders, or its board. The shareholders or the board may amend or repeal the bylaws or adopt new bylaws unless the articles of incorporation or bylaws provide that the power to adopt new bylaws is reserved exclusively to the shareholders or that the bylaws or any particular bylaw shall not be altered or repealed by the board. The bylaws may contain any provision for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

2.9 Registered office and resident agent.

Each corporation authorized to transact business under this Code shall have and continuously maintain both of the following:

(a) A registered office which may be the same as its place of business.

(b) A corporation [MAY/SHALL] designate in its articles a registered agent. The registered agent may be a natural person residing on the [TRIBAL LAND/RESERVATION], or a tribal corporation. The registered agent must maintain an office that is identical with the registered office.

2.10 Changing registered office or resident agent; statement; changing address of registered office.

(1) A corporation authorized to transact business under this Code may change its registered office or change its resident agent, or both, upon filing a statement with the [TRIBAL SECRETARY/ENTITY]. The statement shall provide all of the following information:

- (a) The corporate name.
- (b) The street address of the corporation's then registered office, and its mailing address if different from its street address.
- (c) If the address of the corporation's registered office is changed, the street address and the mailing address, if different from the street address, to which the registered office is to be changed.
- (d) The name of the corporation's then resident agent.
- (e) If the corporation's resident agent is changed, the name of its successor resident agent.
- (f) That the address of the corporation's registered office and the address of its resident agent, as changed, will be identical.
- (g) That the change was authorized by resolution duly adopted by the corporation's board.

(2) If a resident agent changes its business or residence address to another place, the resident agent may change the address of the registered office of any corporation of which the person is a resident agent by filing a statement as required in subsection (1), except, the statement need only be signed by the resident agent, need not be responsive to subsection (1)(e) or (g), and shall recite that a copy of the statement has been mailed to the corporation.

2.11 Resignation of resident agent.

A resident agent of a corporation may resign by filing a written notice of resignation with the [TRIBAL SECRETARY/CORPORATION PRESIDENT/TRIBAL ENTITY]. The corporation shall promptly appoint a successor resident agent. The appointment of the resigning agent terminates upon appointment of a successor, or upon expiration of 30 days after receipt of the notice by the administrator, whichever first occurs. Upon the resignation becoming effective, the business or residence address of the resigned agent shall no longer be the registered office of the corporation.

2.12 Service of process.

(1) A process, notice, or demand required or permitted by law to be served upon a corporation may be served either upon (1) the registered agent, if one has been identified, of the

corporation named in the articles, or (2) an officer of the corporation, or (3) the [TRIBAL SECRETARY/ENTITY] as provided herein.

[(2) If a corporation has appointed and maintained a registered agent on the [TRIBAL LAND/RESERVATION] but neither its registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to appoint or maintain a registered agent and an officer of the corporation cannot be found at the registered office, then the [TRIBAL SECRETARY/ENTITY] shall be the agent of the corporation upon whom the process, notice, or demand may be served. The [TRIBAL SECRETARY/ENTITY] shall immediately forward, by certified mail addressed to the corporation at its registered office, a copy of the process, notice, or demand. Service on the [TRIBAL SECRETARY/ENTITY] is returnable in not less than 30 days notwithstanding a shorter period specified in the process, notice, or demand.]

2.13 Formation of corporation for lawful purpose.

A corporation may be formed under this Code for any lawful purpose, except to engage in a business for which a corporation may be formed under any other tribal law unless that law permits formation under this Code or as prohibited under the [TRIBAL CONSTITUTION].

2.14 Corporate powers.

A corporation, subject to any limitation provided in this Code, in any other law under [TRIBAL LAW], or in its articles of incorporation, shall have power in furtherance of its corporate purposes to do all of the following:

- (a) Have perpetual duration.
- (b) Have a corporate seal, and alter the seal, and use it by causing it or a facsimile to be affixed, impressed, or reproduced in any other manner.
- (c) Adopt, amend, or repeal bylaws, including emergency bylaws, relating to the business of the corporation, the conduct of its affairs, its rights and powers and the rights and powers of its shareholders, directors, or officers.
- (d) Elect or appoint officers, employees, and other agents of the corporation, prescribe their duties, fix their compensation and the compensation of directors, and indemnify corporate directors, officers, employees, and agents.
- (e) Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with, real or personal property, or an interest in real or personal property, wherever situated.
- (f) Sell, convey, lease, exchange, transfer, or otherwise dispose of, or mortgage or pledge, or create a security interest in any of its property or an interest in its property, wherever situated.

(g) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer or otherwise dispose of, mortgage, pledge, use and otherwise deal in and with, bonds and other obligations, shares or other securities or interests issued by others, whether engaged in similar or different business, governmental, or other activities, including banking corporations or trust companies.

(h) Make contracts, give guarantees and incur liabilities, borrow money at rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property or an interest in its property, wherever situated. This power shall include the power to give guarantees that are necessary or convenient to the conduct, promotion, or attainment of the business of any of the following corporations, whether or not subject to this Code, and domestic or foreign limited liability companies, and those guarantees shall be considered to be in furtherance of the corporate purposes of the contracting corporation:

(i) All of the outstanding shares or interests of which are owned, directly or indirectly, by the contracting corporation.

(ii) A corporation or limited liability company that owns, directly or indirectly, all of the outstanding shares of the contracting corporation.

(iii) All of the outstanding shares or interests of which are owned, directly or indirectly, by a corporation, whether or not subject to this Code, or a limited liability company that owns, directly or indirectly, all of the outstanding shares of the contracting corporation.

(i) Lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(j) Make donations for any of the following: The public welfare; community fund or hospital; or a charitable, educational, scientific, civic, or similar purpose. A corporation also has the power to provide aid in time of war or other national emergency.

(k) Pay pensions, establish and carry out pension, profit sharing, share bonus, share purchase, share option, savings, thrift and other retirement, incentive and benefit plans, trusts, and provisions for any of its directors, officers, and employees.

(l) Purchase, receive, take, otherwise acquire, own, hold, sell, lend, exchange, transfer, otherwise dispose of, pledge, use and otherwise deal in and with its own shares, bonds, and other securities.

(m) Participate with others in any corporation, partnership, limited partnership, joint venture, or other association of any kind, or in any transaction, undertaking, or agreement which the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control with or to others.

(n) Cease its corporate activities and dissolve.

(o) Transact business, carry on its operations, and have offices and exercise the powers granted by this Code in any jurisdiction in or outside the United States.

(p) Sue and be sued, complain and defend its corporate name.

(q) Have and exercise all powers necessary or convenient to effect any purpose for which the corporation is formed.

(r) Participate as a member of any mutual insurance company for purposes of insuring property or activities relative to nuclear facilities owned, operated, constructed, or being constructed by the corporation.

(s) Any corporation which holds an interest in trust land may not encumber that interest without the prior approval of the Tribal Council.

(t) Consent to suit by a corporation shall in no way extend to the Tribe, nor shall a consent to suit by a corporation in any way be deemed a waiver of any of the rights, privileges and immunities of the Tribe.

[CAN PLACE LIMITS ON ANY OF THESE ACTIVITIES TO REQUIRE TRIBAL COUNCIL APPROVAL]

2.15 Jurisdiction; no waiver of sovereign immunity.

To the maximum extent consistent with the due process of law, all corporations formed under this Code and all directors, officers, and shareholders of such corporations shall be subject to the jurisdiction of the [TRIBAL COURT] in all actions which arise out of the acts, omissions, or participation of such persons in connection with the affairs of such corporations; provided, however that this section shall not apply to corporations which are owned in whole or in part by the [TRIBE] or which are controlled by the [TRIBAL COUNCIL/LEGISLATURE], or to the directors or officers of such corporations. This section shall not be construed as a waiver of sovereign immunity.

CHAPTER 3
CAPITAL STRUCTURE AND CORPORATE FINANCE

3.1 Issuance and classes of shares; rights, preferences, and limitations.

(1) A corporation may issue the number of shares authorized in its articles of incorporation. The shares may be all of 1 class or may be divided into 2 or more classes. Each class shall consist of shares having the designations and relative voting, distribution, dividend, liquidation, and other rights, preferences, and limitations, consistent with this Code, as stated in the articles of incorporation. The articles of incorporation may deny, limit, or otherwise prescribe the voting rights and may limit or otherwise prescribe the distribution, dividend, or liquidation rights of shares of any class.

(2) If the shares are divided into 2 or more classes, the shares of each class shall be designated to distinguish them from the shares of the other classes.

(3) Subject to the designations, relative rights, preferences, and limitations applicable to separate series, each share shall be equal to every other share of the same class.

(4) Any of the voting, distribution, liquidation, or other rights, preferences, or limitations of a class or series may be made dependent upon facts or events ascertainable outside of the articles of incorporation or a resolution of the board, if the manner in which the facts or events operate on the rights, preferences, or limitations is set forth in the articles of incorporation or board resolution.

[THE TRIBE MAY CHOSE TO INCLUDE A PROVISION THAT REQUIRES THE TRIBE TO BE THE SOLE SHAREHOLDER OF ANY CORPORATION FORMED UNDER THE CODE.]

3.2 Class of shares; division and issuance in series; rights and preferences; certificate; amendment eliminating series of shares.

(1) If provided for in the articles of incorporation, a class of shares may be divided into and issued in series. The shares of each series shall be designated to distinguish them from the shares of the other series and classes.

(2) Any series of any class and the variations in the relative rights and preferences among different series may be prescribed by the articles of incorporation.

(3) If the articles of incorporation authorize the board, to the extent that the articles of incorporation have not established series and prescribed variations in the relative rights and preferences among series, the board may divide any class into series, and, within the limitations set forth in the articles of incorporation, prescribe the relative rights and preferences of the shares of any series.

(4) A certificate containing the resolution of the board establishing and designating the series and prescribing the relative rights and preferences shall be filed, and when filed shall constitute an amendment to the articles of incorporation.

(5) Unless otherwise provided in the articles of incorporation, the board may adopt and file an amendment of the articles of incorporation eliminating a series of shares if there are no outstanding shares of the series, no outstanding shares or bonds convertible into shares of the series, or other rights, options, or warrants issued by the corporation that could require issuing shares of the series.

3.3 Issuance or transfer of shares without certificates; statement.

(1) Unless the articles of incorporation or bylaws provide otherwise, the board may authorize the issuance of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until the certificates are surrendered to a corporation.

(2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates under this Code.

3.4 Share certificates.

Except as provided in section 1.25, the shares of a corporation shall be represented by certificates which shall be signed by the chairperson of the board, vice-chairperson of the board, president or a vice-president and which also may be signed by another officer of the corporation. The certificate may be sealed with the seal of the corporation or a facsimile of the seal. The signatures of the officers may be facsimiles. If an officer who has signed or whose facsimile signature has been placed upon a certificate ceases to be an officer before the certificate is issued, it may be issued by the corporation with the same effect as if he or she were the officer at the date of issue.

3.5 Liability.

The [TRIBE] shall be under no obligation to the corporation or the creditors of any corporation which the Tribe incorporates, owns, or operates, in whole or in part, and the Tribe shall not be deemed to have waived any of the Tribe's privileges or immunities if the Tribe incorporates, owns, or operates a corporation, in whole or in part. [MAY WISH TO BE FLEXIBLE].

CHAPTER 4 SHAREHOLDERS

4.1 Meetings of shareholders; place.

Meetings of shareholders may be held at a place within or without the [TRIBAL LAND/RESERVATION] as provided in the bylaws. In the absence of such a provision, meetings shall be held at the registered office or such other place as may be determined by the board.

4.2 Annual meeting of shareholders.

An annual meeting of shareholders for election of directors and for such other business as may come before the meeting shall be held at a time as provided in the bylaws, unless such action is taken by written consent as provided in the articles of incorporation. Failure to hold the annual meeting at the designated time, or to elect a sufficient number of directors at the meeting or any adjournment thereof, does not affect otherwise valid corporate acts or work a forfeiture or give cause for dissolution of the corporation. If the annual meeting is not held on the date designated therefor, the board shall cause the meeting to be held as soon thereafter as convenient. If the annual meeting is not held for 90 days after the date designated therefor, or if no date has been designated for 15 months after organization of the corporation or after its last annual meeting, the [TRIBAL COURT/TRIBAL COUNCIL], upon application of a shareholder, may summarily order the meeting or the election, or both, to be held at such time and place, upon such notice and for the transaction of such business as may be designated in the order. At any such meeting ordered to be called by the [TRIBAL COURT/TRIBAL COUNCIL], the shareholders present in person or by proxy and having voting powers constitute a quorum for transaction of the business designated in the order.

4.3 Special meeting of shareholders.

A special meeting of shareholders may be called by the board, or by officers, directors or shareholders as provided in the bylaws. Notwithstanding any such provision, upon application of the holders of not less than 10% of all the shares entitled to vote at a meeting, the [TRIBAL COURT/TRIBAL COUNCIL], for good cause shown, may order a special meeting of shareholders to be called and held at such time and place, upon such notice and for the transaction of such business as may be designated in the order. At any such meeting ordered to be called by the [TRIBAL COURT/TRIBAL COUNCIL], the shareholders present in person or by proxy and having voting powers constitute a quorum for transaction of the business designated in the order.

4.4 Meetings of shareholders; notice; adjournment; result of shareholder's attendance at meeting.

(1) Except as otherwise provided in this Code, written notice of the time, place if any, and purposes of a meeting of shareholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each shareholder of record entitled to vote at the meeting. Notice may be given personally, by mail, or by electronic transmission. If a shareholder or proxy holder may be present and vote at the meeting by remote communication, the means of remote communication allowed shall be included in the notice.

(2) Unless the corporation has securities registered under section 12 of title I of the securities exchange act of 1934, chapter 404, 48 Stat. 892, 15 U.S.C. 781, notice of the purposes of a meeting shall include notice of shareholder proposals that are proper subjects for shareholder action and are intended to be presented by shareholders who have notified the corporation in writing of their intention to present the proposals at the meeting. The bylaws may establish reasonable procedures for the submission of proposals to the corporation in advance of the meeting.

(3) If a meeting is adjourned to another time or place, it is not necessary, unless the bylaws otherwise provide, to give notice of the adjourned meeting if the time, and place if any, to which the meeting is adjourned are announced at the meeting at which the adjournment is taken. A shareholder or proxy holder may be present and vote at the adjourned meeting by a means of remote communication if he or she was permitted to be present and vote by that means of remote communication in the original meeting notice. At the adjourned meeting, only business that might have been transacted at the original meeting may be transacted if a notice of the adjourned meeting is not given. If after the adjournment the board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record on the new record date entitled to notice under subsection (1).

(4) A shareholder's attendance at a meeting will result in both of the following:

(a) Waiver of objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

(b) Waiver of objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

4.5 Shareholder meeting; quorum.

(1) Unless a greater or lesser quorum is provided in the articles of incorporation, in a bylaw adopted by the shareholders or incorporators, or in this Code, shares entitled to cast a majority of the votes at a meeting constitute a quorum at the meeting. The shareholders present in person or by proxy at the meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum. Whether or not a quorum is present, the meeting may be adjourned by a vote of the shares present.

(2) When the holders of a class or series of shares are entitled to vote separately on an item of business, this section applies in determining the presence of a quorum of the class or series for transaction of the item of business.

4.6 Voting by shareholders.

(1) Each outstanding share is entitled to 1 vote on each matter submitted to a vote of the shareholders, unless otherwise provided in the articles of incorporation. A vote may be cast either orally or in writing, unless otherwise provided in the bylaws.

(2) Other than the election of directors, if an action is to be taken by vote of the shareholders, it shall be authorized by a majority of the votes cast by the holders of shares entitled to vote on the action, unless a greater vote is required in the articles of incorporation or another section of this Code. Unless otherwise provided in the articles of incorporation, abstaining from a vote or submitting a ballot marked "abstain" with respect to an action is not a vote cast on that action. Unless otherwise provided in the articles, directors shall be elected by a plurality of the votes cast at an election.

4.7 Voting agreements between shareholders; voting trusts; cumulative voting.

An agreement between 2 or more shareholders, if in writing and signed by the parties, may provide that in exercising voting rights, the shares held by them shall be voted as provided in the agreement, or as they may agree, or as determined in accordance with a procedure agreed upon by them. A voting agreement under this section shall be specifically enforceable.

A shareholder may confer upon a trustee the right to vote or otherwise represent his shares for not to exceed 10 years, by entering into a written voting trust agreement setting forth the terms and conditions of the voting trust, by filing an executed counterpart of the agreement at the registered office of the corporation, and by transferring his shares to the trustee for purposes of the agreement. After filing of the agreement, certificates for shares so transferred shall be surrendered and canceled and new certificates therefor issued to the trustee stating that they are issued under the agreement. In the entry of such ownership in the records of the corporation that fact shall also be noted, and the trustee may vote the transferred shares during the term of the agreement. The filed copy of the voting trust agreement is subject to inspection at any reasonable time by a shareholder or a holder of a beneficial interest in the voting trust, in person or by agent or attorney. Voting trust certificates shall be issued to evidence beneficial interests in the voting trust.

The articles of incorporation may provide that a shareholder entitled to vote at an election for directors may vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving 1 candidate as many votes as the number of such directors multiplied by the number of his shares, or by distributing his votes on the same principle among any number of the candidates.

CHAPTER 5 DIRECTORS AND OFFICERS

5.1 Management of corporation; qualifications of director.

The business and affairs of a corporation shall be managed by or under the direction of its board, except as otherwise provided in this Code or in its articles of incorporation. A director need not be a shareholder of the corporation unless the articles or bylaws so require. The articles or bylaws may prescribe qualifications for directors.

5.2 Number, election, and term of directors; resignation; designation, and compensation.

(1) The board shall consist of 1 or more members. The number of directors shall be fixed by, or in the manner provided in, the bylaws, unless the articles of incorporation fix the number.

(2) The first board of directors shall hold office until the first annual meeting of shareholders. At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the succeeding annual meeting, except in case of the classification of directors as permitted by this Code. A director shall hold office for the term for which he or she is elected and until his or her successor is elected and qualified, or

until his or her resignation or removal. A director may resign by written notice to the corporation. The resignation is effective upon its receipt by the corporation or a later time as set forth in the notice of resignation.

5.3 Director; duties and authority; reports to Tribal Council.

(1) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitations set forth in the articles of incorporation.

(2) [The corporation shall submit annual reports to the Tribal Council concerning the corporation's actions.]

5.4 Director or officer; manner of discharging duties; reliance on information, opinions, reports, or statements; action against director or officer; limitations.

(1) A director or officer shall discharge his or her duties as a director or officer including his or her duties as a member of a committee in the following manner:

- (a) In good faith.
- (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances.
- (c) In a manner he or she reasonably believes to be in the best interests of the corporation.

(2) In discharging his or her duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

- (a) One or more directors, officers, or employees of the corporation, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented.
- (b) Legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence.
- (c) A committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence.

(3) A director or officer is not entitled to rely on the information set forth in subsection (2) if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) An action against a director or officer for failure to perform the duties imposed by this section shall be commenced within 3 years after the cause of action has accrued, or within 2 years after the time when the cause of action is discovered or should reasonably have been discovered, by the complainant, whichever occurs first.

5.5 Removal of directors.

(1) The shareholders may remove 1 or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause. The vote for removal shall be by a majority of shares entitled to vote at an election of directors except that the articles may require a higher vote for removal without cause.

(2) In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no 1 of the directors may be removed if the votes cast against his or her removal would be sufficient to elect him or her if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which he or she is a part.

(3) If holders of a class or series of stock or of bonds are entitled by the articles to elect 1 or more directors, this section applies, with respect to removal of a director so elected, to the vote of the holders of the outstanding shares of that class or series of stock or the holders of those bonds.

[(4) The [TRIBAL COUNCIL] may remove a director under the following circumstances: upon the filing of a complaint by [BOARD MEMBERS/SHAREHOLDERS/TRIBAL MEMBERS] and a response from the director complained of, the [TRIBAL COUNCIL] shall conduct a hearing to determine whether the Director substantially failed in his or her performance as Director and a majority of the [TRIBAL COUNCIL] voted to remove the Director.

5.6 Filling vacancy in board.

(1) Unless otherwise limited by the articles of incorporation, if a vacancy, including a vacancy resulting from an increase in the number of directors, occurs in a board, the vacancy may be filled as follows:

(a) The shareholders may fill the vacancy.

(b) The board may fill the vacancy.

(c) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) Unless otherwise provided in the articles, if the holders of any class or classes of stock or series are entitled to elect 1 or more directors to the exclusion of other shareholders, vacancies of that class or classes or series may be filled only by 1 of the following:

(a) By a majority of the directors elected by the holders of that class or classes or series then in office, whether or not those directors constitute a quorum of the board.

(b) By the holders of shares of that class or classes of shares, or series.

(3) Unless otherwise limited by the articles or bylaws, in the case of a corporation the directors of which are divided into classes, any director chosen to fill a vacancy shall hold office until the next election of the class for which the director shall have been chosen, and until his or her successor is elected and qualified.

(4) If because of death, resignation, or other cause, a corporation has no directors in office, an officer, a shareholder, a personal representative, administrator, trustee, or guardian of a shareholder, or other fiduciary entrusted with like responsibility for the person or estate of a shareholder, may call a special meeting of shareholders in accordance with the articles or the bylaws.

(5) A vacancy that will occur at a specific date, by reason of a resignation effective at a later date, may be filled before the vacancy occurs but the newly elected or appointed director may not take office until the vacancy occurs.

5.7 Regular or special meetings of board.

(1) Regular or special meetings of a board may be held either in or outside of the [TRIBAL LAND/RESERVATION].

(2) A regular meeting may be held with or without notice as prescribed in the bylaws. A special meeting shall be held upon notice as prescribed in the bylaws. A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting. Unless required by the bylaws, neither the business to be transacted at, nor the purpose of, a regular or special meeting need be specified in the notice or waiver of notice of the meeting.

(3) Unless otherwise restricted by the articles of incorporation or bylaws, a member of the board or of a committee designated by the board may participate in a meeting by means of conference telephone or other means of remote communication through which all persons participating in the meeting can communicate with the other participants. Participation in a meeting pursuant to this subsection constitutes presence in person at the meeting.

5.8 Quorum; majority vote as constituting action of board.

(1) A majority of the members of the board then in office, or of the members of a committee of the board, constitutes a quorum for transaction of business, unless the articles of incorporation or bylaws, or in the case of a committee, the board resolution establishing the committee, provide for a larger or smaller number. The vote of the majority of members present at a meeting at which a quorum is present constitutes the action of the board or of the committee,

unless the vote of a larger number is required by this Code, the articles, or the bylaws, or in the case of a committee, the board resolution establishing the committee.

(2) Amendment of the bylaws by the board requires the vote of not less than a majority of the members of the board then in office.

5.9 Consent to action of board without meeting.

Unless prohibited by the articles of incorporation or bylaws, action required or permitted to be taken under authorization voted at a meeting of the board or a committee of the board, may be taken without a meeting if, before or after the action, all members of the board then in office or of the committee consent to the action in writing or by electronic transmission. The written consents shall be filed with the minutes of the proceedings of the board or committee. The consent has the same effect as a vote of the board or committee for all purposes.

5.10 Committees; designation by board; membership; absence or disqualification of member; terms.

(1) Unless otherwise provided in the articles of incorporation or bylaws, the board may designate 1 or more committees, each committee to consist of 1 or more of the directors of the corporation. The board may designate 1 or more directors as alternate members of a committee, who may replace an absent or disqualified member at a meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of a committee, the members thereof present at a meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the board to act at the meeting in place of such an absent or disqualified member.

(2) A committee, and each member thereof, shall serve at the pleasure of the board.

5.11 Committees; powers and authority; limitations; subcommittees.

(1) A committee designated pursuant to section 1.43, to the extent provided in a resolution of the board or in the bylaws, may exercise all powers and authority of the board in management of the business and affairs of the corporation. A committee does not have power or authority to do any of the following:

(a) Amend the articles of incorporation, except that a committee may prescribe the relative rights and preferences of the shares of a series pursuant to section 1.24.

(b) Adopt an agreement of merger or share exchange.

(c) Recommend to shareholders the sale, lease, or exchange of all or substantially all of the corporation's property and assets.

(d) Recommend to shareholders a dissolution of the corporation or a revocation of a dissolution.

(e) Amend the bylaws of the corporation.

(f) Fill vacancies in the board.

(2) Unless a resolution of the board, the articles of incorporation, or the bylaws expressly provide the power or authority, a committee does not have the power or authority to declare a distribution or dividend or to authorize the issuance of shares.

(3) Unless otherwise provided in a resolution of the board, the articles of incorporation, or the bylaws, a committee may create 1 or more subcommittees. Each subcommittee shall consist of 1 or more members of the committee. The committee may delegate all or part of its power or authority to a subcommittee.

5.12 Officers of corporation; election or appointment; holding 2 or more offices; authority and duties.

(1) The officers of a corporation shall consist of a president, secretary, treasurer, and, if desired, a chairman of the board, 1 or more vice-presidents, and such other officers as may be prescribed by the bylaws or determined by the board. Unless otherwise provided in the articles of incorporation or bylaws, the officers shall be elected or appointed by the board.

(2) Two or more offices may be held by the same person but an officer shall not execute, acknowledge or verify an instrument in more than 1 capacity if the instrument is required by law or the articles or bylaws to be executed, acknowledged or verified by 2 or more officers.

(3) An officer elected or appointed as herein provided shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal.

(4) An officer, as between himself and other officers and the corporation, has such authority and shall perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board not inconsistent with the bylaws.

5.13 Removal or resignation of officers; contract rights.

(1) An officer elected or appointed by the board may be removed by the board with or without cause. An officer elected by the shareholders may be removed, with or without cause, only by vote of the shareholders, but his authority to act as an officer may be suspended by the board for cause.

(2) The removal of an officer shall be without prejudice to his contract rights, if any. The election or appointment of an officer does not of itself create contract rights.

(3) An officer may resign by written notice to the corporation. The resignation is effective upon its receipt by the corporation or at a subsequent time specified in the notice of resignation.

5.14 Liability of directors for corporate actions; liability of shareholders accepting or receiving share dividend or distribution.

(1) Directors who vote for, or concur in, any of the following corporate actions are jointly and severally liable to the corporation for the benefit of its creditors or shareholders, to the extent of any legally recoverable injury suffered by its creditors or shareholders as a result of the action but not to exceed the difference between the amount paid or distributed and the amount that lawfully could have been paid or distributed:

- (a) Declaration of a share dividend or distribution to shareholders contrary to this Code or contrary to any restriction in the articles of incorporation.
- (b) Distribution to shareholders during or after dissolution of the corporation without paying or providing for debts, obligations, and liabilities of the corporation as required under this Code.
- (c) Making a loan to a director, officer, or employee of the corporation or of a subsidiary of the corporation contrary to this Code.

(2) A director is not liable under this section if he or she has complied with section 1.38.

(3) A shareholder who accepts or receives a share dividend or distribution with knowledge of facts indicating it is contrary to this Code, or any restriction in the articles of incorporation, is liable to the corporation for the amount accepted or received in excess of the shareholder's share of the amount that lawfully could have been distributed.

5.15 Interest of director or officer in transaction; compensation of directors.

(1) A transaction in which a director or officer is determined to have an interest shall not, because of the interest, be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, if the person interested in the transaction establishes any of the following:

- (a) The transaction was fair to the corporation at the time entered into.
- (b) The material facts of the transaction and the director's or officer's interest were disclosed or known to the board, a committee of the board, or the independent director or directors, and the board, committee, or independent director or directors authorized, approved, or ratified the transaction.
- (c) The material facts of the transaction and the director's or officer's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction.

(2) For purposes of subsection (1)(b), a transaction is authorized, approved, or ratified if it received the affirmative vote of the majority of the directors on the board or the committee

who had no interest in the transaction, though less than a quorum, or all independent directors who had no interest in the transaction. The presence of, or a vote cast by, a director with an interest in the transaction does not affect the validity of the action taken under subsection (1)(b).

(3) For purposes of subsection (1)(c), a transaction is authorized, approved, or ratified if it received the majority of votes cast by the holders of shares who did not have an interest in the transaction. A majority of the shares held by shareholders who did not have an interest in the transaction constitutes a quorum for the purpose of taking action under subsection (1)(c).

(4) Satisfying the requirements of subsection (1) does not preclude other claims relating to a transaction in which a director or officer is determined to have an interest. Those claims shall be evaluated under principles of law applicable to a transaction in which a director or officer does not have an interest.

(5) The board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the corporation as directors or officers, but approval of the shareholders is required if the articles of incorporation, bylaws, or another provision of this Code requires that approval. Transactions pertaining to the compensation of directors for services to the corporation as directors or officers shall not be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation unless it is shown that the compensation was unreasonable at the time established.

5.16 Indemnification generally.

A corporation has the power to indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, other than an action by or in the right of the corporation, by reason of the fact that he or she is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit, or proceeding, if the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders, and with respect to a criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of an action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders, and, with respect to a criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

CHAPTER 6
AMENDMENTS TO ARTICLES OF INCORPORATION

6.1 Powers to amend.

General power of amendment.

A corporation may amend its articles of incorporation if the amendment contains only provisions that might lawfully be contained in original articles of incorporation filed at the time of making the amendment.

Specific powers of amendment.

Without limiting the general power of amendment, a corporation may amend its articles of incorporation to do any of the following:

- (a) Change its corporate name.
- (b) Enlarge, limit, or otherwise change its corporate purposes or powers.
- (c) Change the duration of the corporation.
- (d) Increase or decrease the aggregate number of shares, or shares of any class or series of any class, which the corporation has authority to issue.
- (e) Exchange, classify, reclassify, or cancel any of its issued or unissued shares.
- (f) Change the designation of any of its issued or unissued shares, and change the preferences, limitations, and relative rights in respect of any of its issued or unissued shares.
- (g) Change the issued or unissued shares of any class or series into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series.
- (h) Create new classes or series of shares having rights and preferences superior or inferior to, or equal with, the issued or unissued shares of any class or series then authorized.
- (i) Cancel or otherwise affect the right of the holders of the shares of any class or series to receive dividends that have accrued but have not been declared.
- (j) Divide any class of issued or unissued shares into series and fix the designations of the series and the preferences, limitations, and relative rights of the shares of the series.

(k) Authorize the board to divide authorized but unissued shares of any class into series and fix the designations and number of shares of the series and the preferences, limitations, and relative rights of the shares of the series.

(l) Authorize the board to fix or change the designation, number of, preferences, limitations, or relative rights of the shares of an established series the shares of which have not been issued.

(m) Revoke, diminish, or enlarge the authority of the board to take any action set forth in subdivisions (k) and (l).

(n) Limit, deny, or grant to shareholders of a class the preemptive right to acquire shares of the corporation.

(o) Change its registered office or change its resident agent.

(p) Strike out, change, or add any provision for management of the business and conduct of the affairs of the corporation, or creating, defining, limiting, and regulating the powers of the corporation, its directors and shareholders, or any class of shareholders, including any provision that under this Code is required or permitted to be set forth in the bylaws.

6.2 Articles of incorporation; amendment procedure.

(1) Before the first meeting of the board, the incorporators may amend the articles of incorporation by filing a certificate of amendment that is signed by a majority of the incorporators that sets forth the amendment and certifying that the amendment is adopted by unanimous consent of the incorporators.

(2) Unless the articles of incorporation provide otherwise, the board may adopt 1 or more of the following amendments to the corporation's articles of incorporation without shareholder action:

(a) Extend the duration of the corporation if it was incorporated at a time when limited duration was required by law.

(b) Delete the names and addresses of the initial directors.

(c) Delete the name and address of the initial resident agent or registered office, if a statement of change is on file with the [PERSON/ENTITY].

(d) Change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding.

(e) Change the corporate name by substituting the word “corporation,” “incorporated,” “company,” “limited,” or the abbreviation “corp.,” “inc.,” “co.,” or “Ltd.,” for a similar word or abbreviation in the corporate name, or by adding, deleting, or changing a geographical attribution for the corporate name.

(f) Any other change expressly permitted by this Code to be made without shareholder action.

(3) Other amendments of the articles of incorporation, except as otherwise provided in this Code, shall be proposed by the board and approved by the shareholders as provided in this section. The board may condition its submission of the amendment to the shareholders on any basis.

(4) Notice of a meeting setting forth the proposed amendment or a summary of the changes to be effected by the proposed amendment shall be given to each shareholder of record entitled to vote on the proposed amendment within the time and in the manner provided in this Code for giving notice of meetings of shareholders.

(5) At the meeting, a vote of shareholders entitled to vote shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the outstanding shares entitled to vote on the proposed amendment and, in addition, if any class or series of shares is entitled to vote on the proposed amendment as a class, the affirmative vote of a majority of the outstanding shares of that class or series. The voting requirements of this section are subject to any higher voting requirements provided in this Code for specific amendments or provided in the articles of incorporation.

(6) Any number of amendments may be acted upon at 1 meeting.

(7) Upon adoption of an amendment, a certificate of amendment shall be filed as with [PERSON/ENTITY] that sets forth the amendment and certifies that it was adopted by the board of directors.

[CAN ALSO REQUIRE TRIBAL COUNCIL APPROVAL FOR ALL AMENDMENTS]

CHAPTER 7 DISSOLUTION

7.1 **Methods of dissolution.**

(1) A corporation may be dissolved in any of the following ways:

(a) Automatically by expiration of a period of duration to which the corporation is limited by its articles of incorporation.

(b) By action of the incorporators or directors under section 1.54.

- (c) By action of the board and the shareholders under section 1.55.
- (d) Pursuant to a shareholder agreement, effected by filing a certificate of dissolution with [PERSON/ENTITY] stating the name of the corporation and that the corporation dissolved pursuant to a shareholder agreement.
- (e) By a judgment of the [TRIBAL COURT] in an action brought under this Code or otherwise.
- (f) By action of the [TRIBAL COUNCIL] brought under section 1.56.
- (g) Automatically for failure to file an annual report or pay the filing fee.

(2) A corporation whose assets have been wholly disposed of under court order in receivership or bankruptcy proceedings may be summarily dissolved by order of the court having jurisdiction of the proceedings. A copy of the order shall be filed by the [CLERK OF THE TRIBAL COURT] with the [PERSON/ENTITY].

7.2 Conditions to dissolution by incorporators or directors; certificate of dissolution.

(1) A corporation may be dissolved by action of its incorporators or directors, if the corporation complies with all of the following conditions:

- (a) Has not commenced business.
- (b) Has not issued any shares.
- (c) Has no debts or other liabilities.
- (d) Has received no payments on subscriptions for its shares, or, if it has received payments, has returned them to those entitled thereto, less any part thereof disbursed for expenses.

(2) The dissolution of the corporation shall be effected by a majority of the incorporators or directors, executing and filing a certificate of dissolution stating:

- (a) The name of the corporation.
- (b) That the corporation has not commenced business and has issued no shares, and has no debts or other liabilities.
- (c) That the corporation has received no payments on subscriptions to its shares, or, if it has received payments, has returned them to those entitled thereto, less any part thereof disbursed for expenses.
- (d) That a majority of the incorporators or directors have elected that the corporation be dissolved.

7.3 Dissolution by action of board and shareholders; certificate of dissolution.

(1) A corporation may be dissolved by action of its board and shareholders as provided in this section.

(2) A corporation's board may propose dissolution for action by the shareholders.

(3) The board must recommend dissolution to the shareholders unless the board determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders.

(4) The board may condition its submission of the proposal for dissolution on any basis.

(5) The proposed dissolution shall be submitted for approval at a meeting of shareholders. Notice shall be given to each shareholder of record whether or not entitled to vote at the meeting within the time and in the manner as provided in this Code for the giving of notice of meetings of shareholders, and shall state that a purpose of the meeting is to vote on dissolution of the corporation.

(6) At the meeting a vote of shareholders shall be taken on the proposed dissolution. The dissolution shall be approved upon receiving the affirmative vote of the holders of a majority of the outstanding shares of the corporation entitled to vote thereon.

(7) If the dissolution is approved, it shall be effected by the execution and filing of a certificate of dissolution on behalf of the corporation, setting forth all of the following:

- (a) The name of the corporation.
- (b) The date and place of the meeting of shareholders approving the dissolution.
- (c) A statement that dissolution was proposed and approved by the requisite vote of the board and shareholders.

7.4 Dissolution by the [TRIBAL COUNCIL].

(1) A corporation may be dissolved involuntarily by a decree of the [TRIBAL COURT] in an action filed by the [TRIBAL COUNCIL] when it is established that:

- (a) The articles and certificate of incorporation were procured through fraud;
- (b) The corporation was incorporated for a purpose not permitted under this Code;
- (c) The corporation failed to comply with the requirements under this Code to incorporate;

- (d) The corporation has flagrantly violated a provision of this Code, or has violated a provision of this Code more than once, or has violated more than one provision of this Code; or
- (e) The corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate franchise, privileges, or enterprise.

(2) An action shall not be commenced under this section until 30 days after notice to the corporation by the Tribal Council of the reason for the filing of the action. If the reason for filing the action is an act that the corporation has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the Tribal Council shall give the corporation 30 additional days in which to effect the correction before filing the action.

7.5 Certificate of dissolution; filing; time of effectiveness; conditions; date stamp as evidence.

(1) A certificate of dissolution filed with the administrator is effective at the time the certificate is first received by the administrator, not the date of filing, if all of the following are met:

- (a) The dissolution is pursuant to a shareholder agreement or is commenced under section 1.55.
- (b) The certificate does not set forth a subsequent effective time, not later than 90 days after the date the certificate is received by the administrator.

(2) For purposes of subsection (1), the administrator's date stamp on the certificate of dissolution is evidence of the date the administrator received the certificate. If there are multiple date stamps on the certificate, the earliest date stamp is evidence of the date the administrator first received the certificate.

7.6 Renewal of corporate existence; manner.

A corporation whose term has expired may renew its corporate existence in the following manner:

- (a) The board shall adopt a resolution that the corporate existence be renewed. The proposed renewal shall be submitted for approval at a meeting of shareholders. Notice shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner provided in this Code for the giving of notice of meetings of shareholders, and shall state that a purpose of the meeting is to vote on the renewal of corporate existence.
- (b) At the meeting a vote of shareholders entitled to vote on the renewal shall be taken on the proposed renewal which shall be adopted upon

receiving the affirmative vote of holders of a majority of the outstanding shares.

(c) If renewal of the corporate existence is approved, a certificate of renewal shall be executed and filed on behalf of the corporation, setting forth all of the following:

- (i) The name of the corporation.
- (ii) The date and place of the meeting of shareholders approving the renewal of existence.
- (iii) A statement that renewal was approved by the requisite vote of directors and shareholders.
- (iv) The duration of the corporation if other than perpetual.

7.7 Occurrences dissolving corporation.

A corporation is dissolved when any of the following occurs:

- (a) The period of duration stated in the corporation's articles of incorporation expires.
- (b) A certificate of dissolution is filed under this Code.
- (c) A judgment of forfeiture of corporate franchises or of dissolution is entered by the Tribal Court and a copy of a judicial order of dissolution shall be forwarded promptly to the administrator by the receiver or other person designated by the court.
- (d) Failure to file an annual report or pay an annual filing fee.

7.8 Corporate existence continued for purpose of winding up affairs.

Except as the Tribal Court may otherwise direct, a dissolved corporation shall continue its corporate existence but shall not carry on business except for the purpose of winding up its affairs by:

- (a) Collecting its assets.
- (b) Selling or otherwise transferring, with or without security, assets which are not to be distributed in kind to its shareholders.
- (c) Paying its debts and other liabilities.
- (d) Doing all other acts incident to liquidation of its business and affairs.

7.9 Functions of dissolved corporation and its officers, directors, and shareholders continued.

Subject to section 1.60 and except as otherwise provided by court order, a dissolved corporation, its officers, directors and shareholders shall continue to function in the same manner as if dissolution had not occurred. Without limiting the generality of this section:

- (a) The directors of the corporation are not deemed to be trustees of its assets and shall be held to no greater standard of conduct than that prescribed by section 1.38.
- (b) Title to the corporation's assets remains in the corporation until transferred by it in the corporate name.
- (c) The dissolution does not change quorum or voting requirements for the board or shareholders, and does not alter provisions regarding election, appointment, resignation or removal of, or filling vacancies among, directors or officers, or provisions regarding amendment or repeal of bylaws or adoption of new bylaws.
- (d) Shares may be transferred.
- (e) The corporation may sue and be sued in its corporate name and process may issue by and against the corporation in the same manner as if dissolution had not occurred.
- (f) An action brought against the corporation before its dissolution does not abate because of the dissolution.

7.10 Notice to existing claimants of dissolution; contents; notice as recognition of validity of claim; conditions barring claim; "existing claim" defined; effective date of notice.

(1) The dissolved corporation may notify its existing claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice shall include all of the following:

- (a) A description of the information that must be included in a claim. The corporation may demand sufficient information to permit it to make a reasonable judgment whether the claim should be accepted or rejected.
- (b) A mailing address where a claim may be sent.
- (c) The deadline, which may not be less than 6 months from the effective date of the written notice, by which the dissolved corporation must receive the claim.
- (d) A statement that the claim will be barred if not received by the deadline.

(2) The giving of notice described above does not constitute recognition that a person to whom the notice is directed has a valid claim against the corporation.

(3) A claim against the dissolved corporation is barred if either of the following applies:

(a) If a claimant who was given written notice under subsection (1) does not deliver the claim to the dissolved corporation by the deadline.

(b) If a claimant whose claim was rejected by a written notice of rejection by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the written notice of rejection.

(4) For purposes of this section and section 1.63, “existing claim” means any claim or right against the corporation, liquidated or unliquidated. It does not mean a contingent liability or a claim based on an event occurring after the effective date of dissolution.

(5) For purposes of this section, the effective date of the written notice is the earliest of the following:

(a) The date it is received.

(b) Five days after its deposit in the United States mail, as evidenced by the postmark, if it is mailed postpaid and correctly addressed.

(c) The date shown on the return receipt, if the notice is sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

7.11 Publication of notice of dissolution; requirements; claimants commencing proceedings within 1 year of notice.

(1) A dissolved corporation may also publish notice of dissolution at any time after the effective date of dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(2) The notice must be in accord with both of the following:

(a) Be published 1 time in a newspaper of general circulation in the county where the dissolved corporation’s principal office or on the [TRIBAL LANDS/RESERVATION].

(b) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within 1 year after the publication date of the newspaper notice.

(3) If the dissolved corporation publishes a newspaper notice in accordance with subsection (2), the claim of each of the following claimants is barred unless the claimant

commences a proceeding to enforce the claim against the dissolved corporation within 1 year after the publication date of the newspaper notice:

- (a) A claimant who did not receive written notice under section 1.62.
- (b) A claimant whose claim was timely sent to the dissolved corporation but not acted on.
- (c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) Notwithstanding subsection (3), a claimant having an existing claim known to the corporation at the time of publication in accordance with subsection (2) and who did not receive written notice under section 1.62 is not barred from commencing a proceeding until 6 months after the claimant has actual notice of the dissolution.

7.12 Provision for debts, obligations, and liabilities; distribution of remaining assets.

Before making a distribution of assets to shareholders in dissolution, a corporation shall pay or make provision for its debts, obligations, and liabilities. Compliance with this section requires that, to the extent that a reasonable estimate is possible, provision be made for those debts, obligations, and liabilities anticipated to arise after the effective date of dissolution. Provision need not be made for any debt, obligation, or liability that is or is reasonably anticipated to be barred under section 1.62 or 1.63. The fact that corporate assets are insufficient to satisfy claims arising after a dissolution does not create a presumption that the corporation has failed to comply with this section. Adequate provision is deemed to have been made for any debt, obligation, or liability of the corporation if payment has been assumed or guaranteed in good faith by 1 or more financially responsible corporations, persons, or the United States government or agency of the United States government, and the provision, including the financial responsibility of the corporations or other persons, was determined in good faith and with reasonable care by the board to be adequate. After payment or adequate provision has been made for the corporation's debts, obligations, or liabilities, the remaining assets shall be distributed, except as otherwise provided in this section, in cash, in kind, or both in cash and in kind, to shareholders according to their respective rights and interests. A shareholder beneficially owning less than 5% of the outstanding shares may be paid in cash only, even if a shareholder beneficially owning 5% or more of the outstanding shares receives a distribution in kind, if the ownership of all shareholders receiving cash instead of distributions in kind without their written consent does not exceed 10% of all outstanding shares.

CHAPTER 8 SOVEREIGN IMMUNITY

8.1 Sovereign immunity.

By the adoption of this Code, 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 Code, nor the incorporation of any corporation hereunder, shall by itself be construed to be a waiver of the sovereign immunity of the Tribe or a consent to suit against the Tribe in any such court.

CHAPTER 9
WHOLLY OWNED TRIBAL CORPORATIONS

9.1 Scope.

This chapter applies to all tribal corporations wholly owned by the Tribe, whether directly or as a subsidiary of another tribal corporation wholly owned by the Tribe, as provided in this chapter.

9.2 Directly owned corporations; indirectly owned corporations; consent.

(1) The consent of the Tribal Council shall be required prior to the incorporation under this Code of any corporation to be wholly owned by the Tribe. For this purpose, the incorporator shall file with the Tribal Secretary, when the incorporator files the articles of incorporation of a corporation to be wholly owned by the Tribe, a certified copy of a resolution of the Tribal Council authorizing the formation of the corporation.

(2) The consent of the board of directors of the corporation wholly owned by the Tribe shall be required prior to the incorporation under this Code of a subsidiary corporation to be wholly owned by a parent corporation that is wholly owned by the Tribe. For this purpose, the incorporator shall file with the Tribal Secretary, when the incorporator files the articles of incorporation of a subsidiary corporation to be wholly owned by a parent corporation that is wholly owned by the Tribe, a certified copy of a resolution of the board of the parent corporation authorizing the formation of the subsidiary corporation.

(3) The articles of a corporation wholly owned, directly or indirectly, by the Tribe and subject to the provisions of this chapter shall expressly so state and when accepting the articles for filing, the administrator shall note that the corporation is governed by the provisions of this Code applicable to wholly owned tribal corporations.

9.3 Special powers, privileges, and immunities.

The special powers, privileges and immunities described in this section shall be available to a corporation wholly owned, directly or indirectly, by the Tribe.

(1) Jurisdictional and tax immunities. All of the rights, privileges and immunities of the Tribe concerning federal, state, or local taxes, regulations and jurisdiction are hereby conferred on all tribal corporations wholly owned, directly or indirectly, by the Tribe to the same extent that the Tribe would have such rights, privileges and immunities if it engaged in the activities undertaken by the corporation. Absent consent by the corporation, a corporation wholly owned, directly or indirectly, by the Tribe shall not be subject to taxation by the Tribe, except to the extent that such taxation is necessary and reasonably appropriate to compensate the Tribe for services provided to the corporation by the Tribe.

(2) Sovereign Immunity. The sovereign immunity of the Tribe is hereby conferred on all tribal corporations wholly owned, directly or indirectly, by the Tribe. A corporation wholly owned, directly or indirectly, by the Tribe shall have the power to sue and is authorized to

consent to be sued in the court, and in all other courts of competent jurisdiction, provided, however, that:

(a) no such consent to suit shall be effective against the corporation unless such consent is:

(i) explicit,

(ii) contained in a written contract or commercial document to which the corporation is a party, and

(iii) specifically approved by the board of directors of the corporation, and

(b) any recovery against such corporation shall be limited to the assets of the corporation. Any consent to suit may be limited to the court or courts in which suit may be brought, to the matters that may be made the subject of the suit and to the assets or revenues of the corporation against which any judgment may be executed.

9.4 Liability of Tribe as a shareholder.

Neither the Tribe nor any member of the Tribal Council shall be under any obligation to a corporation wholly owned, directly or indirectly, by the Tribe or to the creditors of any such corporation and the Tribe shall not be deemed to have waived any of the Tribe's privileges or immunities if the Tribe incorporates, owns or operates a corporation, directly or indirectly.

CHAPTER 10 SEVERABILITY; PENALTIES

10.1 Severability.

If the court shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, article or part of this Code, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Code, but the effect thereof shall be confined to the clause, sentence, paragraph, section, article or part of this Code as adjudged to be invalid or unconstitutional.

10.2 Penalties.

The Tribal Court shall have the authority to determine, apply and enforce appropriate remedies and penalties, including, but not limited to, civil fines, for violations of this Code, or of the articles of incorporation or bylaws of any corporation formed pursuant to this Code. The remedies available to corporations and their shareholders, shall include declaratory and injunctive relief, and special writs of mandamus, to compel actions necessary to secure the rights, obligations or privileges of such parties, whether or not those rights, obligations or privileges arise under this Code. A prevailing plaintiff in any action shall be awarded costs and reasonable attorneys fees.

If it appears at any stage of a proceeding in the court that the Tribe is, or is likely to be, interested therein, or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the Tribal Council in the same manner prescribed for serving a summons in a civil action. The Tribal Council shall intervene in a proceeding when the Tribal Council determines that the public interest requires it, whether or not the Tribal Council has been served.