



**HO-CHUNK NATION CODE (HCC)  
TITLE 5 – BUSINESS AND FINANCE CODE  
SECTION 12 – FEDERALLY CHARTERED  
CORPORATIONS ACT**

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## **CHAPTER I GENERAL PROVISIONS**

### **1. Authority.**

a. The Congress of the United States of America enacted the Indian Reorganization Act of June 18, 1934, as amended, 25 U.S.C. § 461 et seq. (“IRA”), authorizes the Secretary of the Interior to issue a Federal Corporate Charter to an Indian Tribe under Section 17 thereof (25 U.S.C. § 477).

b. Federal charters issued pursuant to 25 U.S.C. § 477 may convey to the Ho-Chunk Nation the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with applicable law.

c. Article I, Section 2 of the Constitution recognizes the jurisdiction of the Ho-Chunk Nation to extend to all territory of the Nation, including but not limited to air, water, surface, subsurface, natural resources and any interest therein, and to any and all persons or activities therein.

d. Article V, Section 2(a) of the Constitution gives the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

e. Article V, Section 2(q) of the Constitution gives the Legislature the power to issue charters of incorporation, to charter corporations and other organizations for economic or other purposes, and to regulate their activities.

### **2. Purpose.**

a. This Act establishes Ho-Chunk Nation law for the establishment and regulation of activities of chartered corporations and other organizations for economic or other purposes.

b. The Nation, through its Legislature, finds that the formation of chartered corporations will serve the best interests of the Nation, its members and its enterprises, and will protect the political integrity, economic security and health and welfare of the Nation and its members by, among other things:

1. Creating a legal structure which provides for the segregation of the Nation’s governmental assets and liabilities from the Nation’s business assets and liabilities; and
2. Creating a legal structure which provides for the segregation of discrete Corporation assets and liabilities into separate Corporation subdivisions,

without divesting either the Corporation or the Nation of the privileges and immunities arising pursuant to their legal status under federal and tribal law.

c. The Nation, through its Legislature, hereby adopts this Act in order to meet the following independent goals:

1. To exercise constitutional legislative powers pursuant to Article V, Section 2(q) of the Constitution over chartered corporations;
2. To increase the land base for the reinvestment of Tribal governmental assets including, but not limited to, properties on or near Ho-Chunk ancestral land;
3. To develop the Nation's resources to obtain the highest value possible taking into consideration factors deemed relevant, including but not limited to monetary value as well as intangible value such as that derived from the creation of opportunities for the Nation's people and the promotion of the Nation's traditional customs and unique cultural heritage;
4. To raise the standard of living and opportunities for all Tribal members;
5. To enter into, take advantage of and realize business and commercial opportunities to benefit the Nation;
6. To promote and maintain the jurisdiction of the Nation to the greatest extent possible; and
7. To promote and perpetuate the unique cultural heritage of the Ho-Chunk Nation.

d. To accomplish the goals set out in subsection (c) of this Section, this Act is designed to further the economic development of the Nation's resources including, but not limited to:

1. The Nation's labor force;
2. Lands;
3. Water;
4. Air;
5. Fish and wildlife;
6. Agricultural products and livestock;
7. Energy;
8. Commercial and industrial enterprises;
9. Timber, minerals, oil and gas;
10. Intellectual property;
11. Interstellar;
12. Artificial intelligence;

13. Health, including but limited to that related to the Nation's members, health sciences and health technologies; and
14. Virtual properties & technologies.

e. To accomplish the goals set out in subsections (c) and (d) of this Section, the Legislature hereby finds that, for purposes of efficiency and wise stewardship, it is necessary for the management of the commercial and economic development of the Nation's resources to be separated from other governmental functions of the Nation and be placed within the responsibility of persons or entities different and politically separate from the Legislature.

f. The Nation shall not be limited in its operation of its businesses.

3. **Applicability.** The provisions of this Act shall apply to all Corporations as defined in this Act that are wholly or partially owned by the Ho-Chunk Nation, and whether such Corporations are owned directly or owned indirectly as a subsidiary of another entity wholly or partially owned by the Nation. Preexisting Corporations shall be deemed to be in valid existence and shall be subject to the provisions hereof. Except as otherwise provided, the provisions of this Act do not apply to the business or undertakings of the Nation that are not conducted by a Corporation.

4. **Rules of Construction.** Rules of construction set forth in this section are applicable for the purposes of this Act.

a. Federal charters issued to Corporations that are subject to this Act are subject to the applicable laws of the United States. To the extent that such federal laws do not expressly address such matters, it is the policy of the Ho-Chunk Nation that it is within its sovereign authority to provide that Corporations shall be governed by and subject to the Constitution of the Ho-Chunk Nation and the Nation's laws as directed by the Ho-Chunk Nation.

b. It is the policy of this Act to provide for the governance of Corporations and the proper exercise of sovereignty by those Corporations.

c. It is the policy of this Act to provide chartered corporations the freedom of contract and to ensure the enforceability of their agreements.

d. Unless displaced by tribal law or a particular provision of this Act, the principles of law and equity supplement this Act.

e. It is the intention of the Legislature to provide a Corporation subject to this Act the greatest possible opportunity to profit and succeed. Other actions, laws and policies of the Ho-Chunk Nation shall not apply to Corporations or any subsidiary of those Corporations that are subject to this Act unless this Act expressly, and not by implication, subjects Corporations and any Subsidiary of those Corporations to such other actions, laws or policies of the Ho-Chunk Nation. It is expressly provided that, in addition to this Act, the

following actions, laws or policies of the Ho-Chunk Nation shall apply to Corporations and any Subsidiary of those Corporations:

1. Criminal Code (9 HCC);
2. Tax Code (5 HCC §10); and the
3. Legislative Organization Act, (2 HCC §11).

f. It is the intention of the Legislature that Subsidiaries of Corporations are subject to the jurisdiction of the Nation and are subject to this Act as provided herein. It is expressly provided that, in addition to this Act and to the actions, laws or policies of the Ho-Chunk Nation as set forth in subsection 4(e), the laws of the Ho-Chunk Nation under which a Subsidiary is organized and formed shall apply to such Subsidiary.

5. **Definitions.** Terms used in this Act have the following meaning:

a. “Board of Directors” means a person or a group of persons vested with management of the affairs of the Corporation.

b. “Bylaws” mean the code of rules adopted for the regulation or management of the affairs of a Corporation.

c. “Cause” means conduct (including a failure to act) that is deemed unauthorized, illegal or unethical, including but limited to conduct as follows:

1. conduct that involves dishonesty, deceit or moral turpitude;
2. any felony conviction or the discovery of previous felony conviction in any jurisdiction not disclosed at the time of appointment or employment;
3. any criminal act involving, or the misappropriation of, the Corporation’s funds or other funds or the funds of the Nation or any tribal entity or enterprise of the Nation;
4. any breach of the individual’s obligations under this this Act, or breach of the fiduciary duty owed by the individual to the Corporation arising as a consequence of the individual’s performance of the duties, including, but not limited to, any violation to the Nation’s Criminal Code;
5. willful misconduct or gross negligence in connection with the performance of his/her duties, or failure to comply with any laws, statutes, rules, regulations, policies, or directions governing as may be established from time to time by the Corporation or Nation and communicated to the individual;

6. unethical business conduct, including, without limitation, self-dealing, acceptance of any item having a value exceeding \$100 from any person or business entity conducting business with the Corporation, the Nation or any tribal entity or enterprise of the Nation, or otherwise utilizing the individual's position for personal gain;
  7. conduct of the individual which harms the business reputation of the Corporation, the Nation or any of the other business or tribal operations or undertakings of the Nation or any of their respective services or products;
  8. abandonment by the Corporation of its support for the individual based on circumstances reasonably attributed to the individual;
  9. commission of any act of fraud or dishonesty; and
  10. failure to reasonably perform all duties and meet all responsibilities required under the terms of this Act, or otherwise incident to the individual's position, or as mandated by operational circumstances, or as directed by the Board of Directors of the Corporation; provided moreover that there shall exist a presumption of such failure if an individual fails to participate in three (3) consecutive Board of Director's meetings.
- d. "Charter" means a federal corporate charter issued by the Secretary of the Interior to the Nation under 25 U.S.C. § 477.
- e. "Control" means the power to vote twenty-five percent (25%) or more of the outstanding voting stock or similar ownership interest of a Subsidiary.
- f. "Corporation" or "Section 17 Corporation" means a corporation chartered under 25 U.S.C. § 477(F).
- g. "Court" means the Ho-Chunk Nation Trial Court.
- h. "Entity" means corporations, associations, trusts, estates, partnerships, limited liability companies, individuals, Indian tribes or Native groups, states, municipalities, the United States, and foreign governments.
- i. "Liaison" means the person appointment a Liaison by the Executive, Legislative and General Council branches of the Ho-Chunk Nation as provided in Section 14 of this Act.
- j. "Member" means tribal members of the Ho-Chunk Nation who are eligible to vote pursuant to the Ho-Chunk Nation's Constitution.
- k. "Nation" or "Owner" means the Ho-Chunk Nation.

l. “Public Official” means any person who holds elective office of the Nation or who is a candidate for elective office, including the President, Vice President, Legislator, Justice, Judge, and appointed professionals of the Nation such as Judges, Departmental Executive Directors, Executive Board members and alternatives, and any person who serves on a Ho-Chunk governmental board, committee or commission.

m. “Quarterly Report” means minutes of the meeting of the Board of Directors and of any committee of the Board of Directors, the Corporation’s balance sheet, income statement and cash flow statement for the period then ended prepared in accordance with generally accepted accounting principles, a report of compensation and expense reimbursements or payment to directors of the Corporation, prospective sale of any corporate assets or property, any other information as the Owner may request regarding the Corporation, and any other information the Board deems, in good faith, important to the Owner with or without Owner’s request.

n. “Shareholder” means the Ho-Chunk Nation as Owner unless the Charter other provides that Members are shareholders in which case Shareholder means Member even though Shares shall only be issued to the Nation as Owner of the Corporation.

o. “Shares” mean the interests in a corporation as such interests are vested in the Ho-Chunk Nation as Owner of the Corporation.

p. “Subsidiary” means an Entity over which a Corporation has Control, regardless of the jurisdiction of its business activities.

q. “Tribal law” means the laws of the Ho-Chunk Nation.

r. “Trust Land” means land held in trust by the United States for the benefit of the Ho-Chunk Nation, a Corporation, or the Nation’s members.

## 6. **Name.**

a. The name of a Corporation shall be as set forth in its Charter, provided, however, that no Corporation’s name shall include the words “Ho-Chunk,” “Ho-Chunk Nation,” “Hochunk,” “Hocak,” “HCN,” “Aatonk,” or any derivative thereof without the express consent and approval by the Ho-Chunk Nation Legislature, whose consent shall not be unreasonably withheld.

## 7. **Privileges and Immunities.**

### a. Generally

1. Corporations shall have the powers, privileges and immunities granted by federal law and the laws of the Nation and embodied in the Corporation’s charter.

2. Corporations shall have the same immunities under federal law as the Nation. No Charter shall be deemed to waive, or permit to waive, the sovereign immunity of the Nation.
3. The Corporation shall retain the Nation's tax exemption status and shall enjoy any tax advantages available to the Corporation.
4. Except as otherwise provided by this Act or by the Corporation's Charter, Corporations and their directors, officers and employees shall be entitled to all of the privileges and immunities enjoyed by the Nation, including but not limited to immunities from suit in federal, state and Tribal courts, and exemption from federal and state taxation or regulation. The right to consent to suit may be delegated by Charter to Corporations.
5. Jurisdictional and tax immunities.
  - (a) All of the rights, privileges and immunities of the Nation concerning federal, state, or local taxes, regulations and jurisdiction are hereby conferred on a Corporation to the same extent that the Nation would have such rights, privileges and immunities if it engaged in the activities undertaken by the Corporation.
  - (b) Absent consent by the Corporation, a Corporation wholly owned, directly or indirectly by the Nation shall not be subject to taxation by the Nation, except to the extent that such taxation is necessary and reasonably appropriate to compensate the Nation for services provided to the Corporation by the Nation and/or if, subject to applicable law, the Nation's law elects to apply tax liability to any such Corporation and/or any of its Subsidiaries.
  - (c) No valid legal contract between the Corporation and any person who is not a member of the Nation or any Entity, and no person who is not a member of the Nation or any Entity which enters into any such contract with the Corporation, shall be subject to any of the Nation's law enacted after the execution of such contract to the extent such subsequent Nation's law is held by the Court to effect a material impairment of such contract and to have a primary purpose other than protecting the health or safety within the jurisdiction of the Nation.

b. Sovereign immunity. The sovereign immunity of the Nation is hereby conferred on all Corporations. A Corporation 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 no such consent to suit shall be effective against the Corporation unless such consent is:

1. Explicit;

2. Contained in a written contract or commercial document to which the corporation is a party; and
  3. Specifically approved by the Board of Directors of the Corporation.
- c. Any recovery against a Corporation or any of its respective Subsidiaries shall be limited to the assets of the Corporation or Subsidiary as may be further limited by the explicit consent to suit by the Corporation.
- d. 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.
- e. The Legislature shall be provided written notice of a consent to suit within five (5) days that the Board of Directors approves the consent.
- f. The Corporation shall have no immunity in connection with any action against it by the Ho-Chunk Nation.
- g. All activities of the corporation and their subsidiaries are not subject to laws of general applicability from outside jurisdictions including but not limited to the Occupational Safety and Health Act and National Labor Relations Act.

## **8. Organization and Powers of Corporation.**

- a. Corporations shall only be organized by the Legislature.
- b. Corporations shall be issued a Charter and shall be subject to the terms and conditions thereof.
- c. General Powers. Unless its Charter provides otherwise, every Corporation shall have the following powers:
  1. To exist perpetually.
  2. To sue and be sued and to complain or defend in its corporate name, except that the extent of the Corporation's liability shall be limited to the assets of the Corporation and shall be subject to the limitations contained in Section 7 of this Act.
  3. To have a corporate seal, which may be altered at will, and to use it or a facsimile of it by impressing or affixing it or in any manner reproduce it.
  4. To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with real or personal property or intangible property,

including virtual properties, intellectual properties and copyrights, or any interest in property of whatever kind and wherever located.

5. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.
6. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in or obligations of any other entity.
7. To make contracts and incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, and income; provided, however, that no activity described in this subsection 8(c)(7) shall be taken that results in any adverse effect upon, or otherwise impedes, the Nation's ability to incur debt, borrow money, issue notes or bonds or incur other obligations.
8. To lend money, invest its funds, and receive and hold real and personal property as security for repayment.
9. To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.
10. To conduct its business, locate offices, and exercise the powers granted by this Act within or without land held in trust for the Nation.
11. To elect or appoint officers and agents of the Corporation, define their duties and fix their compensation.
12. To pay pensions and establish pension plans, trusts, profit sharing plans, share bonus plans, and benefit or incentive plans for any or all its current or former directors, officers, and employees.
13. To indemnify any director or officer against their expenses incurred in connection with the defense of any action suit or proceeding in which they are a party by reason of their service with the Corporation, except in cases where the director or officer is adjudged liable for negligence or misconduct in the performance of duty.
14. To make and amend bylaws, not inconsistent with its Charter or this Act, for managing the business and regulating the affairs of the Corporation.
15. To make donations for the public welfare or for charitable, scientific, or educational purposes.

16. To transact any lawful business that, without the prior consent of the Nation's Legislature, is not contrary to the values and culture of the Nation and does not unnecessarily compete either directly or indirectly with any of the Nation's businesses.
17. To adopt, apply and enforce any of the Nation's laws, including but not limited to the Tribal Employment's Right's Ordinance and/or the Employment Relations Act.
18. To have and exercise all powers necessary or convenient to effect its purposes.

**9. Registered Office and Agent.**

a. Each Corporation shall continuously maintain within the Nation's jurisdiction a registered office and registered agent. The registered office may, but need not, be the same as any of its places of business. The registered agent shall be any of the following:

1. A natural person who resides in the jurisdiction of the Nation.
2. A corporation or a limited liability company incorporated, registered, or organized under the laws of the Nation.
3. A foreign corporation or limited liability company authorized to transact business within the jurisdiction of the Nation.

**10. Shares, Earnings and Ownership.**

a. Ownership. Unless the Charter otherwise provides, the Nation shall be the sole and exclusive owner of a Corporation.

b. Shares. Share certificates (or transaction statements for uncertificated shares) of Corporations shall, unless otherwise stated in its Charter, be issued in the name of the Nation, and all such shares shall be held by and for the Nation. No member of the Nation shall have any personal ownership interest in any Corporation whether by virtue of such person's status as a member of the Nation, this Act, or otherwise. A Corporation may not issue preferred or special shares.

c. Exercise of Powers and Voting. Unless the Charter or this Act otherwise provides, the Legislature as representative of the Owner shall exercise the powers to vote for the Nation. Unless otherwise provided in the Charter, the Legislature as representative of the Owner shall, as sole owner of the Corporation, exercise for the Nation all powers as the shareholder.

d. Shareholders. If and only as designated as shareholders in the Charter, Members of the Nation who are eligible to vote pursuant to the Nation's Constitution shall be deemed to possess certain attributes of shareholders of the Corporation for the limited purpose, and

for no other purpose whatsoever, of receiving dividends and electing members of the Board of Directors of the Corporation. Other than such purposes, Members designated as shareholders shall possess no other attributes of ownership of the Corporation.

e. Earnings.

1. The net earnings of the Corporation may be transferred from time to time as a distribution to the Nation or as a dividend to the Shareholders of the Corporation as deemed prudent by the Board of Directors of the Corporation after provisions are made for payment of all debts, operating expenses, contingencies and, generally, the costs and needs for managing and conducting the business of the Corporation.
2. At the same time as any dividend is paid to the Shareholders of the Corporation, a distribution shall be made to the Nation in an amount of at least ten percent (10%) of the aggregate amount of the dividends paid to the Shareholders. No dividend shall be required to be paid to the Shareholders of the Corporation at any time that a distribution is made to the Nation.
3. Distribution by the Corporation to the Nation shall be used by the Nation's Legislature in its governmental capacity in a manner that is consistent with applicable law and for the benefit and general welfare of the Nation and its people.

f. Information provided to Shareholders. A Shareholder shall receive an annual report prepared by the Corporation and annual audited financial statements of the Corporation as presented to the Shareholders at the annual meeting of the Shareholders and, except for the last quarter which is covered by the annual report, quarterly unaudited financial statements of the Corporation.

g. Information provided to Owner. The Owner shall maintain a right to request and shall receive an annual report prepared by the Corporation, annual audited financial statements of the Corporation as presented to the Shareholders at the annual meeting of the Shareholders, four (4) Quarterly Reports, any other information the Board deems, in good faith, important to the Owner with or without Owner's request, and such other information to which the Owner is entitled pursuant to this Act.

h. Inspection of Books and Records by Shareholders. A Shareholder shall have no right to inspect, investigate, audit or to otherwise have access to the books and records of the Corporation.

i. Inspection of Books and Records by Owner.

1. The Owner of the Corporation, through the Legislature as the representative of the Owner, shall have the authority to inspect, investigate or audit the books

and records of the Corporation and/or any of its Subsidiaries through subpoena, or otherwise.

2. The Owner of the Corporation, through the Legislature as the representative of the Owner, shall have the right during the usual hours for business to inspect for any proper purpose, and to make copies and extracts from:
    - (a) The Corporation's books and records; and
    - (b) A Subsidiary's books and records, to the extent that:
      - i. The Corporation has actual possession and control of such records of such Subsidiary; or
      - ii. The Corporation could obtain such records through the exercise of control over such Subsidiary.
11. **Board of Directors.**
- a. Board of Directors.
    1. The business and affairs of the Corporation shall be managed by a Board of Directors, except as may be otherwise provided in this Act or the Charter. No Public Official shall serve as a director. The Charter or bylaws may prescribe qualifications for directors. A director need not be a member of the Ho-Chunk Nation unless the Charter or bylaws so prescribe.
    2. Unless the Charter otherwise provides, the Board of Directors shall elect a chairperson and a secretary.
    3. Committees.
      - (a) The Board of Directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee must have two or more directors who serve at the pleasure of the Board of Directors.
      - (b) Each committee, to the extent provided by the Board of Directors or in the Charter or in the bylaws, may exercise the authority of the Board of Directors.
    4. Bylaws.
      - (a) The Board of Directors shall adopt and thereafter amend at any time the bylaws of the Corporation for the regulation of the internal affairs of the Corporation unless this Act or the Charter reserves such power exclusively

to the owner in whole or in part or a particular provision of the bylaws expressly prohibits the Board of Directors from doing so.

(b) A certified copy of the bylaws and any amendment shall be filed with the Nation's Legislature within five (5) days of adoption or amendment. Any amendment to the bylaws shall be consistent with the Corporation's Charter and this Act.

b. Number and Election.

1. A Board of Directors must consist of one or more individuals with the number established in the Charter or bylaws.
2. Initial directors shall be elected or appointed as provided in the Charter. The Nation's Legislature shall first ratify the Charter and then, by Resolution, appoint the initial directors. Thereafter, directors shall be elected at the annual shareholders' meeting.
3. The first meeting of the initial directors shall be held within thirty (30) days of their appointment. The Board of Directors shall be deemed to be fully operational for purposes contemplated in the Charter once the first meeting of the initial directors is held.

c. Terms. Unless otherwise provided in the Charter, the terms of the initial directors shall be as follows: The directors shall be classified into two classes and, except for the initial term as hereafter provided, shall be elected for a term of two years. Each class of directors shall be as equal in number as possible. One half of the initial directors shall be designated as Class I Directors and shall serve a term that shall expire at the second annual shareholders' meeting next ensuing; and, one half of said directors shall be designated as Class II Directors and shall serve a term that shall expire at the third annual shareholders' meeting next ensuing. Each director shall hold office until his/her successor is duly elected or appointed and has qualified and, following the initial terms as immediately above provided, successors to the class of directors whose term shall then expire shall be elected to hold office for a term of two years so that the term of the office of one class of directors shall expire each year. Without diminishing the term of an elected Director, the Board shall have the authority to designate subsequent nominees to a particular Class in order to maintain the sizes of the Classes as equal in number as possible.

Directors appointed to fill a vacancy shall be designated to a particular Class as deemed appropriate and shall serve until the next shareholders' meeting at which directors in that Class are elected. Despite expiration of a director's term, a director continues to serve until the successor is elected and qualifies or until the board size is decreased.

d. Resignation. A director may resign at any time by delivering written notice to the Board of Directors or its chairman.

e. Removal.

1. Unless the Charter provides that directors may be removed only for cause, the Nation's Legislature as representative of Owner, may remove one or more directors with or without cause and consistent with Section 16(c) of this Act.
2. Unless the Charter otherwise provides, by the unanimous vote of the remaining directors the Board of Directors may remove one or more directors with cause.
3. Unless the Charter otherwise provides, a director may be removed only at a meeting of the Nation's Legislature as representative of the Owner or the Board of Directors, as the case may be, called for the purpose of removing the director(s). The notice for such meeting must state that the purpose, or one of the purposes, of the meeting is for the removal of the director. Notice of a meeting for such purpose shall be provide in all instances to the Nation's Legislature at least fourteen (14) days prior to such meeting.

f. Vacancies. Unless the Charter otherwise provides, a vacancy on the board may be filled by the Board of Directors. If there is less than a quorum, then the Legislature, as representative of the Owner, shall fill the vacancy or vacancies to the board to attain a quorum.

g. Compensation. Unless the Charter or bylaws otherwise provide, the Board of Directors may establish the compensation of directors.

h. Meetings.

1. The Board of Directors may hold regular or special meetings and need not meet on or near land held in trust by the United States for the Nation. The Nation's Legislature as representative of the Owner through a Resolution may request a special meeting of the Board of Directors. The Resolution shall designate the purpose of the meeting and be provided to the Chairperson of the Corporation.
2. Unless the Charter otherwise provides, the board may permit any or all directors to conduct or participate in a meeting through the use of any means of communication by which all directors may simultaneously hear each other during the meeting. A director so participating is deemed present.
3. Notice.
  - (a) Unless the Charter or bylaws otherwise provide, regular meetings of the board may be held without notice of the date, time, place, or purpose of the meeting.

- (b) Unless the Charter or bylaws otherwise provide, special meetings of the board must be preceded by at least two (2) days' notice of the date, time, and place of the meeting.
  - (c) Waiver. A director may waive any required notice. A director's attendance at a meeting waives any required notice unless the director objects at the meeting's beginning and does not vote thereafter on actions at the meeting. If no notice is given and director is not in attendance, a director has not waived any required notice.
4. Quorum and Voting.
- (a) Unless the Charter or bylaws otherwise provide, a quorum consists of a majority of the existing number of director positions.
  - (b) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the Board of Directors unless the Charter, this Act or the bylaws require the vote of a greater number.
  - (c) Unless the Charter or bylaws otherwise provide, action by the Board of Directors may be taken without a meeting if all members unanimously approve the action. Such action must be evidenced in writing, signed by each director, and included in the minutes or filed with the corporate records.
5. Conflicts of Interest. This Section of the Act shall apply unless the Charter of a Corporation otherwise provides. No member of the Board of Directors shall engage in any transaction that is, or creates the appearance of, a conflict of interest. Any transaction that is a conflict of interest and or creates the appearance of conflict of interest shall be immediately disclosed to the Board of Directors. A conflict of interest transaction is a transaction with the Corporation in which a director of the Corporation has a direct interest. A conflict of interest transaction is not voidable by the Corporation solely because of the director's interest in the transaction if any of the following is true:
- (a) The material facts of the transaction and the director's interest were disclosed or known to a majority of the Board of Directors or a committee of the Board of Directors, excluding the interested director or directors, and a majority of the Board of Directors or committee authorized, approved, or ratified the transaction.
  - (b) The material facts of the transaction and the director's interests were disclosed or known to the Shareholders entitled to vote and the Shareholders authorized, approved, or ratified the transaction.
  - (c) The transaction was not adverse to the Corporation.

**12. Officers of the Corporation.**

a. Unless the Charter or bylaws otherwise provide, the officers of the Corporation shall consist of a president, vice president, secretary, and treasurer. The Board of Directors, in accordance with the bylaws, may appoint any other officers. The Board of Directors shall delegate to one of the officers responsibility for preparing minutes of the directors and shareholder meetings and for authenticating records of the Corporation.

b. Each officer has the authority and shall perform the duties set forth in the Charter or bylaws or, to the extent consistent with the Charter or bylaws, the duties prescribed by the Board of Directors. Except the president or position similar to the president such as a chief executive officer, no member of the Board of Directors shall also be an officer of the Corporation.

c. Resignation and Removal. Any officer may resign at any time by delivering notice to the Corporation. The Board of Directors may remove any officer at any time with or without cause.

d. Contract Rights. The appointment of an officer does not itself create contract rights nor does the resignation or removal of an officer affect the contract rights, if any, of the officer or Corporation.

**13. General Standards for Directors and Officers.**

a. Unless the Charter otherwise provides, directors and officers shall discharge their duties in good faith with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner they reasonably believe to be in the best interests of the Corporation.

b. Unless the Charter otherwise provides, in discharging their duties, directors and officers are entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by one or more of the following:

1. One or more officers or employees of the Corporation whom they reasonably believe to be reliable and competent in the matters presented.
2. Legal counsel, public accountants, or other persons as to matters they reasonably believe are within the person's professional or expert competence.
3. A committee of the Board of Directors if they reasonably believe the committee merits confidence.

c. Directors and officers are not liable for any action taken in their corporate capacity, or any failure to take any action, if they performed their duties of office in compliance with this Section.

d. Directors and officers shall create, adopt and enforce policies or agreements related to director, employee and/or agent non-competition, non-circumvention and non-solicitation. *See Appendix A.*

e. A Corporation may not lend money to or guarantee the personal obligation of a director, officer or employee of the Corporation under any circumstances.

#### **14. Use of Tribal Employees, Products and Services.**

a. A Corporation or its Subsidiaries shall have the authority in the conduct of its business to contract with the Nation or the appropriate department of the Nation to use the services of the Nation's employees, the Nation's products or the Nation's services.

b. Contracts for such purposes shall be on terms deemed reasonable by the Corporation or Subsidiary and the Nation or the appropriate department of the Nation as the case may be.

#### **15. Shareholder Meetings.**

##### **a. Meetings.**

1. A Corporation shall hold a meeting of shareholders annually at a time and place as determined by the Board of Directors. Annual meetings shall be held within the State of Wisconsin at a location that is reasonably accessible to the Members. Annual meetings need not be held on or near lands held in trust by the United States for the Nation. The failure to hold an annual meeting does not affect the validity of any corporate action.

2. A Corporation may hold a special meeting of shareholders at the call of its Board of Directors and with the approval of the Nation's Legislature as representative of the Owner or upon direction of the Nation's Legislature as representative of the Owner through Resolution.

3. The Board of Directors shall conduct shareholders meetings, unless a Corporation is partially owned and operated by the Nation in which case the Nation's Legislature as representative of the Owner shall vote the Nation's ownership interests at the meeting.

b. **Notice of Shareholders Meetings.** A Corporation shall mail written notice to the Shareholders, the General Council Agency Chairperson, the Nation's Legislature and the Nation's President at the address as then provided in the enrollment records of the Nation

of the date, time, place and purpose(s) of each annual or special shareholders meeting at least thirty (30) days before the meeting.

c. Quorum and Voting.

1. Unless the Charter otherwise provides, a quorum at any annual or special meeting of the shareholders consists of at least sixty (60) Members. If less than sixty (60) shareholders are present, the Nation's Legislature shall set a new date and the Board of Directors shall issue an appropriate notice thereof. If two attempts to properly convene an annual meeting shall fail, no further requirement shall be imposed for an annual meeting for that fiscal year of the Corporation.
2. If a quorum is present when a vote is taken, the affirmative vote of a majority of Members present is the act of the Corporation unless the Charter or this Act require the vote of a greater number.

d. Enrollment Records of the Nation.

1. For purposes of establishing who are, and the address of, Members entitled to notice of and to vote at any annual or special meeting of shareholders, the Corporation shall, at its sole cost and expense, have authority to obtain the names and addresses of the Members from the Enrollment Records of the Nation as those records exist ten (10) days prior to the date that a notice to the shareholders is given. The names and addresses of Members as such Enrollment Records exist on such date shall be deemed conclusive and binding upon the Corporation and Shareholders as to any such matters.
2. For purposes of establishing who are, and the address of, Members entitled to receive any dividend declared and paid by the Corporation, the Corporation shall, at its sole cost and expense, have authority to obtain the names and addresses of the Members from the Enrollment Records of the Nation as those records exist as of the date a dividend is declared by the Corporation to be paid to the Members. The names and addresses of Members as such Enrollment Record exist on such date shall be deemed conclusive and binding upon the Corporation and Shareholders as to the payment by the Corporation and the receipt by the Shareholders of the dividend.

**16. Actions by Legislature.**

a. General.

1. Unless the Charter otherwise provides, whenever Notice to or the Consent or Approval of the Nation's Legislature, in its governmental capacity or in its capacity as representative of the Owner, shall be required pursuant to this Act or the Charter, the following shall apply:

- (a) Notice shall be filed with the Office of the Vice President.
  - (b) Notice shall be in writing and delivered by mail, return receipt requested, in person whereby a dated stamped copy of the Notice shall be obtained in person.
  - (c) In those situations where Legislative Consent or Approval is required in connection with the Notice, the Legislature, in its governmental capacity or as representative of the Owner as the case may be, shall take action to provide its Consent or Approval, or its denial or disapproval, within twenty (20) days of receipt of the Notice. The Legislature, in its governmental capacity or as representative of the Owner as the case may be, will deny or disapprove the matter in the event that all information reasonably necessary for the Legislature, in its governmental capacity or as representative of the Owner as the case may be, to act on the matter is not provided with the Notice.
  - (d) Unless the Legislature, in its governmental capacity or as representative of the Owner as the case may be, denies or disapproves the matter within twenty (20) days of receipt of the Notice, the matter shall be deemed to be consented to or approved by the Legislature.
2. Business by the Nation's Legislature in its governmental capacity shall be conducted during a session of the Nation's Legislature. Actions by the Nation's Legislature as the representative of the Owner shall be conducted in a separate meeting of the Nation's Legislature and designated as a meeting of the representative of the Owner. Meetings by the Nation's Legislature in its capacity as the representative of the Owner shall not be subject to the Nation's Open Meeting Act (2 HCC §2).
3. The Nation's Legislature in its governmental capacity or as the representative of the Owner, as the case may be, may in such capacity designate by Resolution a person or persons to act on its behalf in such capacity in connection with any actions required to be taken as provided in the Charter or under this Act.
4. Sale of Real Property and Other Assets of the Corporation – Right of First Refusal.
  - (a) Notice of any sale, conveyance or other disposition of any land or, unless such sale or disposition is in the ordinary course of business, of any sale or disposition of substantially all of the assets of the Corporation or any Subsidiary shall be given the Nation's Legislature in its governmental capacity at least twenty (20) days prior to such sale, conveyance or other disposition. The Notice shall contain information reasonably necessary for the Nation's Legislature to act upon the matter described in the Notice.

- (b) The Nation's Legislature in its governmental capacity and acting on behalf of the Nation shall in all such instances be afforded the right of first refusal to acquire such land or assets upon terms and conditions comparable to those under which it is proposed that such land or assets be sold, conveyed or otherwise disposed. The Nation's Legislature in its governmental capacity shall have a reasonable amount of time in which to make a decision and, if a decision is made to exercise the right of first refusal, to consummate a transaction for the purchase of such land or assets.
- b. Board of Director Vacancies. Notice of any vacancy on the Board of Directors shall be immediately given by the Corporation to the Nation's Legislature. If the Charter provides that the Nation's Legislature is required to fill the vacancy, a special meeting of the Nation's Legislature as representative of the Owner shall be called for the purpose of initiating necessary action.
- c. Removal of Director.
  1. The board chairperson or the Board of Directors or any director shall report to the Legislature any and all acts and circumstances, which come to his/her/its attention regarding the conduct of a director that, in his/her/its judgment, may be reasonably construed as a violation of this Act, whether or not he/she/it recommends removal.
  2. If the Board of Directors or the Board chairperson finds that a director(s) has violated any provision of this Act or that a director(s) has engaged in any activity which constitutes cause for removal, the Board and/or board chairperson may recommend in writing to the Legislature that the director(s) or corporate board chairperson in question be removed.
  3. Unless the Charter otherwise provides, the Legislature as representative of the Owner may remove director or board chairperson for or without cause.
  4. Any director or board chairperson subject to removal shall be informed of the charges, if any, in writing at least ten (10) calendar days before the legislative hearing to consider the charges and/or removal action and the director or board chairperson subject to removal shall be given an opportunity to respond to the charges.
  5. The Legislature as representative of the Owner may, in addition to or in lieu of removal, take such action or make such referral to any designated authority with respect to the conduct of director or corporate board chairperson as may be permitted or required under the Nation's laws or policies.
- d. The Nation's Legislature as representative of the Owner may hold regular meetings subject to and consistent with the Legislative Organization Act. A special meeting of the

Nation's Legislature as representative of the Owner may be called by providing notice to the members of the Nation's Legislature at least five (5) days in advance of the meeting setting forth the date, time, place and purpose(s) of the meeting.

e. Unless this Act or the Charter otherwise provides, the Legislative Organization Act shall apply wherein a quorum at a meeting of the Nation's Legislature acting as representative of the Owner consists of a majority of the members of the Nation's Legislature, and, if a quorum is present at a meeting duly called when a vote is taken, the affirmative vote of a majority of members of the Nation's Legislature as representative of the Owner shall be the act of the Owner.

**17. Liaisons.**

a. If the appointment of Liaisons is provided in the Charter of the Corporation, persons serving as Liaisons shall be at least three (3) persons. At least one Liaison shall be appointed by each of the respective branches of government and shall be selected pursuant to policy established by each branch of government as follows:

1. One (1) person shall be appointed by the Executive Branch by the President;
2. One (1) person shall be appointed by the Legislative Branch; and
3. One (1) person shall be appointed by the General Council.

b. Each person appointed as a Liaison shall serve until his/her successor is appointed by the respective Executive, Legislative or General Council branch or otherwise as the case may be. If a Liaison resigns or fails to reasonably fulfill his/her responsibilities in such capacity, there shall be deemed to exist a vacancy and the vacant position shall be filled by a person appointed by the respective Executive, Legislative or General Council branch or otherwise as the case may be.

c. The Liaison shall attend meetings of the Board of Directors and shall make recommendations, including recommendations to amend the bylaws of the Corporation, to the respective branch of government or otherwise as the case may be. A Liaison shall have no authority to engage in the management, participate in the decision-making activities, or establish or implement policy of the Corporation. In addition, a Liaison is expected to maintain and facilitate ongoing communication with the respective branch of government that appoints that member.

d. The Liaison as well as the Board of Directors and management of the Corporation shall avoid communication which could tend to misrepresent the Liaison's status at the Corporation and will refrain from making any representation that could likely cause the general public to believe that the Liaison has authority to act on behalf of the Corporation or the Board of Directors.

e. As a result of the status of the Liaison, the Liaison will be made aware of sensitive, proprietary and confidential information regarding the Corporation's business and financial affairs and of its customers and other relationships. Disclosure of such information could cause the Corporation to be harmed and to lose specific competitive advantages. The Corporation as well as the Liaison member could be exposed to liability as a result of improper disclosure of such information. Each Liaison shall maintain the confidence of all information made available to him/her during and after his/her tenure as a Liaison.

f. The compensation of any Liaison that is not appointed by the Executive, Legislative or General Council branch shall be established by the Board of Directors of the Corporation. Each Liaison of the Executive, Legislative and General Council branch shall be an employee of the respective branch of government.

18. **Liability.** The Nation shall be under no obligation to a Corporation or a Subsidiary or the creditors of any Corporation or Subsidiary and the Nation shall not be deemed to have waived any of the Nation's privileges or immunities if the Nation incorporates, owns or operates a Corporation, in whole or in part.

19. **Challenges to Corporate Actions.**

a. Except as provided in paragraph b, below, the validity of corporate action may not be challenged on the ground that the Corporation lacks or lacked power to act.

b. A Corporation's power to act may be challenged only in a proceeding before the Ho-Chunk Trial Court by any of the following:

1. The Nation's Legislature as representative of the Owner or a director, but not a Liaison, against the Corporation to enjoin the act or to compel action for a failure to act; or
2. The Corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the Corporation to enjoin the act or to compel action for a failure to act.

20. **Merger, Consolidation, Sale of Assets.**

a. Unless the Charter otherwise provides and subject to federal law, a Corporation may merge or consolidate on terms as its Board of Directors deems expedient and for the best interests of the Corporation.

b. The approval of the Nation's Legislature as representative of the Owner shall be required in connection with such merger or consolidation by the Corporation.

c. Unless the Charter otherwise provides and subject to federal law, a Corporation may sell, lease, exchange or other dispose of all or substantially all of its properties and assets, including its goodwill and its corporate franchise, on terms as its Board of Directors deems expedient and for the best interests of the Corporation. For this Section, substantially all of its properties and assets, including its goodwill and its corporate franchise shall be the sale, lease, exchange or other disposition of such properties and assets constituting fifty one percent (51%) or more of the fair market value of all of the Corporation's properties and assets, including its goodwill and its corporate franchise. Fair market value shall be established by commercially reasonable means as of the date that the transaction is approved by the Board of Directors of the Corporation.

d. The approval of the Nation's Legislation as representative of the Owner shall be required in connection with such sale, lease, exchange or other disposition of all or substantially all of the properties and assets, including goodwill and corporate franchise by the Corporation.

e. For purposes of this Section only, the merger or consolidation or the sale, lease, exchange or other disposition of all or substantially all of the property and assets of the Corporation includes the merger or consolidation or the sale, lease, exchange or other disposition of all or substantially all of the property and assets of any Subsidiary of the Corporation. Unless the Charter otherwise provides, notwithstanding subsection (d) of this Section no approval of the Nation's Legislature shall be required for a sale, lease, exchange or other disposition of property and assets of the Corporation to or with a Subsidiary.

## **21. Suspension of Business of Corporation.**

a. The business of a Corporation may be suspended as follows:

1. The Board of Directors shall adopt a resolution recommending that the business of the Corporation be suspended and the reasons and purpose for, and the terms and conditions of, the recommended suspension.
2. Notice, including a copy of the resolution of the Board of Directors, shall be given to the Nation's Legislature as representative of the Owner.
3. The Nation's Legislature as representative of the Owner shall approve or disapprove the suspension and the terms and conditions thereof at a regular or special meeting of the Nation's Legislature as representative of the Owner. Upon approval, the suspension of business shall be carried out by the Corporation as provided in the resolution.

b. Once the resolution to suspend the business of the Corporation is approved by the Nation's Legislature as representative of the Owner, a statement of intent to suspend business shall be executed by the Corporation by its president or vice president and by its secretary and verified by one of the officers signing the statement. The statement of intent

to suspend business shall then be delivered to the U.S. Secretary of the Interior and a copy thereof shall be delivered to the Vice President on behalf of the Nation's Legislature.

c. The terms and conditions of the suspension can be revoked or amended at any time by (i) the Board of Directors with the approval of the Nation's Legislature as representative of the Owner, or (ii) the Nation's Legislature as representative of the Owner. Notice of a revocation or amendment shall be delivered to the U.S. Secretary of the Interior by the Corporation.

## **22. Dissolution of Corporation.**

a. A Corporation may be dissolved as follows:

1. The Board of Directors shall adopt a resolution recommending that the business of the Corporation be dissolved that sets forth a Plan of Dissolution.
2. Notice, including a copy of the resolution and the Plan of Dissolution, shall be given to the Nation's Legislature as representative of the Owner.
3. The Nation's Legislature as representative of the Owner shall approve or disapprove the Plan of Dissolution a regular or special meeting of the Nation's Legislature as representative of the Owner. Upon approval, the Plan of Dissolution shall be carried out by the Corporation as provided therein.

b. Notice to U.S. Secretary of the Interior. Once the Plan of Dissolution is approved by the Nation's Legislature as representative of the Owner, a statement of intent to dissolve the business of the Corporation shall be executed by the Corporation by its president or vice president and by its secretary and verified by one of the officers signing the statement. The statement of intent to dissolve the business of the Corporation, together with a copy of the Plan of Dissolution, shall then be delivered to the U.S. Secretary of the Interior and a copy thereof shall be delivered to the Vice President on behalf of the Nation's Legislature.

c. Revocation or Amendment. At any time prior to revocation of the Charter, the Plan of Dissolution can be revoked or amended by (i) the Board of Directors with the approval of the Nation's Legislature as representative of the Owner, or (ii) the Nation's Legislature as representative of the Owner. Notice of a revocation or amendment shall be delivered to the U.S. Secretary of the Interior by the Corporation.

d. Plan of Dissolution. A Plan of Dissolution providing for the dissolution of the Corporation and authorizing any transfer or conveyance of assets shall provide, in addition to such terms and conditions as deemed appropriate, as follows:

1. The Corporation shall immediately cause notice to be mailed to each known creditor of the Corporation; and

2. Procedures requiring the Corporation to collect its assets, prosecute and defend suits, convey, and dispose of its properties and discharge or compromise or make provision for the discharge or compromise of the liabilities of the Corporation.

e. Dividend and Distribution of Assets. The assets of a Corporation in the process of dissolution shall be applied and distributed as follows:

1. All liabilities and obligations of the Corporation shall be paid, satisfied, and discharged, or adequate provision shall be made therefore.
2. Assets held by the Corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements.
3. Remaining assets shall be transferred to the shareholders by dividend or to the Nation by distribution, either in cash or in kind, in accordance with a Plan of Dissolution. Trust assets shall under all circumstance be transferred to the Nation or in accordance with federal and the Nation's law. Under no circumstances shall the Nation or the Nation's Legislature assume any liability not covered by the assets of the Corporation.

f. Articles of Dissolution. When all debts, liabilities and obligations of the Corporation have been paid and discharged, or adequate provision has been made therefore, and all of the remaining property and assets of the Corporation have been transferred by dividend or distribution as provided in the Plan of Dissolution, Articles of Dissolution shall be executed in duplicate by the Corporation by its president or a vice president and by its secretary and verified by one of the officers signing such statement, setting forth:

1. The name of the corporation;
2. That all debts, obligations and liabilities of the Corporation have been paid and discharged or that adequate provision has been made therefore;
3. That all remaining property and assets of the Corporation have been distributed among its owners and shareholders in accordance with their respective rights and interests as provided in the Plan of Dissolution; and
4. That there are not suits pending against the Corporation in any court, or that adequate provision has been made for the satisfaction or any judgment, order or decree which may be entered against it in any pending suit.

g. The Articles of Dissolution shall be filed with the Ho-Chunk Tribal Court and the Nation's Legislature.

h. Upon receipt of the Articles of Dissolution and receipt of such assurances as it deemed necessary in connection with the dissolution of the Corporation, the Ho-Chunk Tribal Court shall issue a certificate of dissolution to the Corporation and provide a copy to the Nation's Legislature.

**23. Post Dissolution.**

a. Deposit with the Ho-Chunk Tribal Court of Amount Due Certain Parties. Upon the dissolution of a Corporation, the portion of the assets to be transferred by dividend or distribution to a creditor, owner or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such dividend or distribution, shall be reduced to cash and deposited with the Court and shall be paid over to the creditor, owner or shareholder or to his/her/its legal representative upon proof satisfactory to the Court of his/her/its rights thereto.

b. Survival of Remedy after Dissolution. The Corporation shall be deemed dissolved upon i) the issuance of a certificate of dissolution by the Court, or ii) an order issued by the Court before the Corporation's assets have been liquidated as provided in this Act. Thereupon, no remedy shall be deemed to exist as against a Corporation, its directors, officers, owner or shareholder, for any right or claim existing or any liability incurred, prior to dissolution.

c. Revocation of Charter. Once the Corporation has been dissolved, the Nation's Legislature acting in its governmental capacity and the U.S. Secretary of the Interior shall take all actions necessary to obtain an act of Congress to revoke the Charter and as otherwise required by federal law.

**24. Amendments to Charter.** The Board of Directors may request the Legislature to amend the Charter or the Legislature may amend the Charter via petition to the Secretary of the Interior, however, no amendment shall be valid until such amendment is approved by the Secretary of the Interior and ratified by the Legislature.

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Legislative History:

04/09/15      The Federally Chartered Corporation Act is placed out for forty-five day public comment pursuant to Resolution 04.07.15H.

06/09/15      The Legislature adopts the Federally Chartered Corporation Act (5 HCC § 12) pursuant to Resolution 06.09.15F.

## APPENDIX A

Pursuant to Section 13.d. of the Chartered Corporation Act, 5 HCC § 12, (“Act”) of the Ho-Chunk Nation Code, the following Standards shall apply to all directors and employees (collectively referred to in this Appendix A as an “Insider”) of a Corporation or a Corporation’s Subsidiary. All capitalized terms used in this Appendix A shall have the same meaning as ascribed to them in the Act.

### Section 1. Confidential Information and Non-Disclosure

- 1.1 **“Confidential Information”** shall mean all information of any nature whatsoever obtained or generated in connection with the conduct of the Corporation’s or Subsidiary’s (collective referred to in this Appendix A as the “Corporation”) business, including but not limited to results, work product, trade secrets, intellectual property, inventions, improvements, discoveries, records, analysis, methods, plans, findings, conclusions, derivative, improvements, and proceeds of efforts in connection with the conduct of the Corporation’s business, existing and potential business and marketing plans and strategies, financial information, business relationships or proposed relationships, business opportunities, know-how, concepts, reports, processes, techniques, operations, devices, and the like, whether or not the foregoing information is patented, tested, reduced to practice, or subject to copyright or any other intellectual property right and regardless of whether the Corporation intends to patent such information. The term Confidential Information includes all analysis, compilations, forecasts, studies, notes, reports, records, findings, conclusions or other documents which contain or reflect any Confidential Information. Notwithstanding the foregoing, the term “Confidential Information” does not include information which (i) is or becomes generally available to the public other than as a result of disclosure by the Insider in breach of this Agreement; or (ii) was available to the Insider on a non-confidential basis prior to the Insider’s engagement with the Corporation as a director or an employee.
- 1.2 **Covenant of Confidentiality.** An Insider shall keep the Confidential Information secret and confidential and shall not disclose to any third party in any fashion or for any purpose whatsoever any Confidential Information except as authorized in writing by the Corporation or as otherwise expressly provided in this Appendix A. An Insider may disclose any of the Confidential Information to those persons who actually need such information in connection with the conduct of the Corporation’s business.
- 1.3 **Ownership of Confidential Information.** The Confidential Information shall be works made-for-hire and the Corporation shall be deemed the sole owner of any and all rights, titles and interests of any nature whatsoever therein, whether or not now or hereafter known, existing, contemplated, recognized or developed, with the right to use the same in perpetuity in any manner Corporation determines in its sole discretion without any further payment to an Insider whatsoever. If, for any reason, such Confidential Information shall not legally be a work-for-hire and/or there are

any rights which do not accrue to Corporation under the proceeding sentence, then an Insider irrevocably assigns and agrees to assign any and all of an Insider's right, title and interest thereto, including without limitation, any and all copyrights, patents, trade secrets, trademarks and/or other rights of whatsoever nature therein, whether or not now or hereafter known, existing, contemplated, recognized or developed to the Corporation, and Corporation shall have the exclusive right to use the same in perpetuity in any manner the Corporation determines without any further payment to an Insider whatsoever. An Insider waives his/her rights to attribution or integrity with respect to the Confidential Information. An Insider shall, from time to time, as may be requested by the Corporation, do any and all things which the Corporation may deem useful or desirable to establish or document the Corporation's ownership of any and all rights in any such Confidential Information including, without limitation, the execution of appropriate copyright and/or patent applications or assignments.

- 1.4 **Use of Information by Insider.** An Insider shall not use any Confidential Information for any reason other than as may be necessary for the conduct of the Corporation's business. An Insider shall not incorporate any Confidential Information into any other work or product except as such work or product relates to the conduct of the Corporation's business.
- 1.5 **No License or Right to Other Use.** An Insider does not have, and shall not acquire by implication or otherwise, any right in or title to or license in respect of the Confidential Information.

## **Section 2. Non-Competition and Non-Solicitation**

- 2.1 **Application to Certain Insiders.** This Section 2 shall apply to any Insider that is a director or an executive officer (collectively referred to in this Appendix A as a "Designated Insider"). An executive officer is any employee that serves the Corporation in the capacity of president, chief executive officer, chief financial officer or a managerial position having similar duties and responsibilities.
- 2.2 **Restrictive Covenant.** In consideration of the engagement of a Designated Insider as a director and/or executive officer and payment of compensation related thereto, the Designated Insider shall not, except with the express prior written consent of Corporation:
  - A. use the Confidential Information in any way for his/her benefit or for the benefit of others or for the detriment of the Corporation or its shareholders, parent, subsidiaries, affiliates, successors or assigns; and
  - B. during the term of engagement as a director and/or executive office of the Corporation and for a period of two (2) years after the termination of the Designated Insider's engagement as director and/or executive officer of the Corporation (the "Restrictive Period"), directly or indirectly compete with the business of the Corporation with respect to the following particulars:

1. within a geographic area of 200 miles from any Trust Land of the Nation, directly or indirectly own, manage, operate, control, or directly or indirectly serve as an employee, officer or director of, or consultant to, any person, business, firm, partnership, corporation, trust or other entity that operates, directly or indirectly, a business similar to that conducted by Corporation (a “Competing Entity”);
  2. solicit or induce, or attempt to solicit or induce an employee or agent of the Corporation to terminate employment or engagement with the Corporation, or to establish a relationship with a Competing Entity; or
  3. solicit or induce, or attempt to solicit or induce, any client or account of the Corporation to terminate its relationship with the Corporation or establish a business relationship with a Competing Entity.
- 2.3 **Computation of Time.** If a Designated Insider violates the Restrictive Covenant and the Corporation initiates legal action for injunctive or other relief, the Corporation shall not, as a result of the time involved in obtaining such relief, be deprived of the benefit of the full period of the Restrictive Covenant. Accordingly, the Restrictive Covenant shall be deemed to have the duration specified in this Section 2 computed from the date the relief is granted. Notwithstanding anything contained herein to the contrary, the foregoing Restrictive Covenant shall not prohibit a Designated Insider from owning directly or indirectly capital stock or similar securities, which are listed on a securities exchange or quoted on the NASDAQ, which do not represent more than one percent (1%) of the outstanding capital stock of any Competing Entity.

**Section 3. Remedies.** Insiders acknowledge that money damages may be incalculable and that any such breach may cause the Corporation irreparable harm. Therefore, an Insider agrees that, in the event of any breach or threatened breach of this Appendix A, the Corporation, in addition to any other remedies at law or in equity it may have, shall be entitled to seek equitable relief, including injunctive relief and specific performance without the necessity of posting any bond.

**Section 4. Survival.** The termination of the engagement or employment of an Insider, however effectuated, shall not release the Corporation from its rights under this Appendix A and, moreover, the provisions of this Appendix A shall survive the termination of the engagement or employment of an Insider.

**Section 5. Forum.** All conflicts and any action to enforce this Appendix A shall be brought in the Court and an Insider expressly consents to the jurisdiction of such Court, and agrees that such Court shall have personal jurisdiction over the Insider for all matters arising out of or relating to this Appendix A.

**Section 6. Savings Provision.** The Corporation and the Insider each acknowledge and agree that each of the agreements, representations and covenants of the Insider within this Appendix A are reasonable in geographical and temporal scope, if and as applicable, and in other respects are all reasonably necessary for the protection of the legitimate interest of the Corporation and in consideration of the Corporation's agreements given in connection with the engagement or employment of an Insider. If any court determines that any of the agreements, representations and covenants of this Appendix A, or any part thereof, are invalid or unenforceable, the remainder of this Appendix A shall not thereby be affected and shall be given full effect, without regard to the invalid or unenforceable portions and such invalid or unenforceable portions shall be deemed, without further action on the part of the Corporation and Insider, modified, amended and limited to the extent necessary to render the same valid and enforceable in such jurisdiction. Moreover, if any court determines that any of the agreements, representations or covenants of this Appendix A, or any part thereof, are unenforceable because of the duration or geographic scope of such provisions, such court shall have the power to reduce the duration or scope of such provision, as the case may be, and, in its reduced form, such provision shall then be enforceable.