

## **TITLE 15 COMMERCE**

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### **Chapter 1 - GTB Secured Transactions Ordinance**

#### **§ 101 - Statement of Purpose**

This Ordinance shall be known as the GTB Secured Transactions Ordinance. The central purpose of this Ordinance is to facilitate the conducting of secured transactions where the property or instrument—financial or otherwise—is subject to the expressed or implied limitations of Indian trust status, either by federal or tribal law, in the property or instruments disposition as a security interest.

History: GTB Secured Transactions Ordinance, enacted by Tribal Council on May 12, 1998, as amended by Tribal Act #98-16.668, enacted by Tribal Council on January 16, 1999.

#### **§ 102 - Policy and Subject Matter of Ordinance**

- (a) Except as otherwise provided by § 104 on excluded transactions, this Ordinance applies to:
  - (1) any transaction (regardless of form) which is intended to create a security interest in personal property or fixtures, including goods, documents, instruments or accounts.
- (b) This Ordinance applies to security interests created by contract, including pledge, conditional sale other lien or title retention contract and lease or consignment intended as security.

History: GTB Secured Transactions Ordinance, enacted by Tribal Council on May 12, 1998, as amended by Tribal Act #98-16.668, enacted by Tribal Council on January 16, 1999.

#### **§ 103 - Perfection of Security Interest in Multi-Jurisdictional Transactions**

- (a) Documents, Instruments and Ordinary Goods.

- (1) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (b).
- (2) Except as otherwise provided in the subsection, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.
- (3) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or non-perfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.
- (4) When collateral is brought into and kept on GTB Indian Country (which includes reservation and GTB trust lands), while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected under the law of that jurisdiction.

(b) Certificate of Title

- (1) This subsection applies to goods covered by a certificate of title issued under GTB law or under a statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.
- (2) Except as otherwise provided in this subsection (b), perfection and the effect of perfection or non-perfection of the security interest are governed by the law (including the conflict of law rules) of the jurisdiction issuing the certificate.
- (3) Except with respect to the rights of a buyer described in the next paragraph (4), a security interest perfected in another jurisdiction otherwise than by notation on a certificate of title in goods brought into GTB Indian Country, and thereafter covered by a certificate of title issued under GTB law, is subject to the rules stated in subsection (a)(4).
- (4) If goods are brought into GTB Indian Country while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued under GTB law and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

- (5) Unless and until the GTB Tribal Council adopts laws creating a system for the issuance of certificates of title for such goods, perfection of security interests in vehicles, boats and other goods registered under the certificate of title laws of a state of the United States or other jurisdiction shall be governed by such laws.

(c) Accounts, General Intangibles and Mobile Goods

- (1) This subsection (c) applies to accounts and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, boats, rolling stock, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (b).
- (2) The law (including the conflict of laws rule) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or non-perfection of the security interest.
- (3) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence.
- (4) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

History: GTB Secured Transactions Ordinance, enacted by Tribal Council on May 12, 1998, as amended by Tribal Act #98-16.668, enacted by Tribal Council on January 16, 1999.

**§ 104 - Transactions Excluded from Ordinance**

- (a) This Ordinance does not apply:
- (1) To a security interest subject to any statute of the United States, to the extent that such statute governs the rights of parties to, and third parties affected by, transactions in particular types of property; or
  - (2) To a landlord's lien; or
  - (3) To a lien given by statute or other rule of law for services or materials except as provided in § 107 on priority of such liens; or
  - (4) To a transfer of a claim for wages, salary or other compensation of an employee; or

- (5) To a transfer by a government or governmental subdivision, official or agency except to the extent that such entity has made an effective waiver of its sovereign immunity in accordance with GTB law; or
- (6) To a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or
- (7) To any right of set-off; or
- (8) Except to the extent that provision is made for fixtures in § 110, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder or to any property held in trust; or
- (9) To a transfer in whole or in part of any claim arising out of tort.

History: GTB Secured Transactions Ordinance, enacted by Tribal Council on May 12, 1998, as amended by Tribal Act #98-16.668, enacted by Tribal Council on January 16, 1999.

### **§ 105 - Sufficiency of Description**

For purposes of this Ordinance, any description of personal property or real estate is sufficient, whether or not it is specific, if it reasonably identifies what is described.

History: GTB Secured Transactions Ordinance, enacted by Tribal Council on May 12, 1998, as amended by Tribal Act #98-16.668, enacted by Tribal Council on January 16, 1999.

### **§ 106 - Security Interests Arising Under This Ordinance**

- (a) Except as otherwise provided by applicable law, a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors.
- (b) Nothing in this article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, consumer protection, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

History: GTB Secured Transactions Ordinance, enacted by Tribal Council on May 12, 1998, as amended by Tribal Act #98-16.668, enacted by Tribal Council on January 16, 1999.

### **§ 107 - Attachment and Enforceability of Security Interest; Proceeds; Formal Requisites**

- (a) A security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

- (1) The collateral is in the possession of the secured party pursuant to an agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;
  - (2) Value has been given; and
  - (3) The debtor has rights in the collateral.
- (b) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (a) have taken place unless explicit agreement postpones the time of attaching.

History: GTB Secured Transactions Ordinance, enacted by Tribal Council on May 12, 1998, as amended by Tribal Act #98-16.668, enacted by Tribal Council on January 16, 1999.

#### **§ 108 - When Filing is Required to Perfect Security Interest**

- (a) A financing statement must be filed to perfect all security interests except the following:
- (1) A security interest in collateral in possession of the secured party;
  - (2) A security interest temporarily perfected in instruments or documents without delivery;
  - (3) A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;
  - (4) A purchase money security interest in consumer goods; and
  - (5) An assignment of accounts.
- (b) If a secured party assigns a perfected security interest, no filing under this Ordinance is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

History: GTB Secured Transactions Ordinance, enacted by Tribal Council on May 12, 1998, as amended by Tribal Act #98-16.668, enacted by Tribal Council on January 16, 1999.

#### **§ 109 - Perfection of Security Interest in Instruments, Documents and Goods Covered by Documents; Perfection by Permissive Filing**

- (a) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments can be perfected only by the secured party's taking possession.

- (b) A secured party shall notify the Tribal Police prior to taking possession. Lack of actual notification shall nullify the rights of the secured party.

History: GTB Secured Transactions Ordinance, enacted by Tribal Council on May 12, 1998, as amended by Tribal Act #98-16.668, enacted by Tribal Council on January 16, 1999.

### **§ 110 - Place of Filing**

- (a) In all secured transactions, the proper place to file in order to perfect a security interest is the Legal Department of the Grand Traverse Band of Ottawa and Chippewa Indians.
- (b) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

History: GTB Secured Transactions Ordinance, enacted by Tribal Council on May 12, 1998; as amended by Tribal Act #98-16.668, enacted by Tribal Council on January 16, 1999; as amended by Tribal Act #03-21.1215, enacted by Tribal Council on March 19, 2003.

### **§ 111 - Termination of Filing Statement**

All perfected statements shall be terminated by Tribal Court order consistent with the generally accepted practices of perfected security interest termination procedures as recognized by general commercial practices.

History: GTB Secured Transactions Ordinance, enacted by Tribal Council on May 12, 1998, as amended by Tribal Act #98-16.668, enacted by Tribal Council on January 16, 1999.

### **§ 112 - Collection Rights of Secured Party**

- (a) When so agreed in a conspicuous manner, in writing and on default, the secured party is entitled to notify an account debtor to make payment to the secured party directly.
- (b) The secured party may perfect peaceful repossession with the consent of the account debtor.
- (c) Absent the consent of the account debtor, in writing, the secured party must seek a Tribal Court order to assert collection rights.
- (d) All repossessions shall only be implemented after the Tribal Police have actually been notified by the secured party.

History: GTB Secured Transactions Ordinance, enacted by Tribal Council on May 12, 1998, as amended by Tribal Act #98-16.668, enacted by Tribal Council on January 16, 1999.

## Chapter 1a - GTB Governmental Secured Transactions Ordinance

### § 101a - Authority and Purpose

- (a) The purpose of this Ordinance is to recognize that under Band law, except as otherwise provided in this Ordinance, secured parties shall have the same rights with respect to collateral in which a security interest is created and governed by this Ordinance that would exist if all aspects of the security interest (including but not limited to its creation, attachment, perfection and priority) had been governed by the State UCC, as defined below, without regard to the choice of law principles set forth therein.
- (b) This Ordinance may be cited as the “GTB Governmental Secured Transactions Ordinance.”

History: Tribal Act #03-21.1215, enacted by Tribal Council on March 19, 2003.

### § 102a - Scope

- (a) This Ordinance shall apply only with respect to those security interests that (i) are granted by a Tribal Party, and (ii) are expressly stated to be subject to and governed by this Ordinance by resolution or ordinance of the Tribal Council.
- (b) Once applicable to any security interest, this Ordinance shall remain in effect with respect to such security interest so long as the obligations secured thereby have not been fully and finally discharged or otherwise satisfied, except that this Ordinance may be amended in any manner that is not adverse to any person then secured by a security interest at the time of such amendment.

History: Tribal Act #03-21.1215, enacted by Tribal Council on March 19, 2003.

### § 103a - Definitions

- (a) In this Ordinance the following terms have the following meanings:
  - (1) “Collateral” means “collateral” as defined in the State UCC, including Pledged Revenues.
  - (2) “Pledged Revenues” means a Tribal Party’s earnings, income and revenues, and the rights to receive the foregoing, whether in the form of money, deposit accounts, investments or other assets, and the proceeds thereof, in which such Tribal Party has granted a security interest in a writing signed by such Tribal Party from the sale, lease or transfer of any interest in real property.
  - (3) “State” means the State of Michigan.

- (4) “State UCC” means the Uniform Commercial Code as enacted and in effect from time to time in the State.
  - (5) “Tribal Party” means the Grand Traverse Band of Ottawa and Chippewa Indians, and any subdivision, agency, department, board, committee, commission, instrumentality, subdivision, or entity wholly owned or wholly controlled, directly or indirectly, by the Band, including the Grand Traverse Band Economic Development Corporation created under Section 17 of the Indian Reorganization Act of 1934, as amended, their successors and assigns.
- (b) Any undefined terms that are defined in the State UCC are used in this Ordinance with the meanings that apply in the State UCC.

History: Tribal Act #03-21.1215, enacted by Tribal Council on March 19, 2003.

#### **§ 104a - Laws Applicable to Security Interests**

- (a) Except as provided in this Section, the rights and duties of any party with respect to any security interest covered by this Ordinance shall be governed (i) by the law of any state of the United States expressly so designated by the parties in any document governing such security interest, or (ii) barring such designation, by the State UCC, including the choice of law principles set forth therein, except to the extent that such choice of law principles would apply the law of the Band (in which case the State UCC shall govern, without regard to the choice of law principles set forth therein).
- (b) The perfection, effect of perfection or nonperfection and priority of any security interest governed by this Ordinance shall be determined in accordance with the State UCC, without regard to the choice of law principles set forth therein.
- (c) Notwithstanding any other provision of the State UCC or this Ordinance to the contrary, a security interest granted in pledged revenues shall be perfected upon the granting thereof by the applicable Tribal Party in a writing executed by that Tribal Party, and the filing of a financing statement with respect to such security interest shall be neither necessary nor effective to perfect such security interest. Priority with respect to competing security interests in such pledged revenues shall rank according to the time of such grant.
- (d) For purposes of this Ordinance and the application of the State UCC, including Sections 9-301 through 9-307 thereof, each Tribal Party shall be located in the State.

History: Tribal Act #03-21.1215, enacted by Tribal Council on March 19, 2003.

#### **§ 105a - Effective Date and Repealer**

- (a) To the extent any provision of any law, ordinance, resolution, motion or any other action of any Tribal Party heretofore taken is in conflict with any provision of this Ordinance, the provision of this Ordinance shall supersede and the conflicting provision shall be and hereby is repealed as it shall apply to a security interest governed by this Ordinance.



- (b) This Ordinance is effective upon the date of its enactment by the Tribal Council.
- (c) To the extent lawful, any prior security interest in pledged revenues purported to be created by a Tribal Party is hereby annulled and of no further force or effect.

History: Tribal Act #03-21.1215, enacted by Tribal Council on March 19, 2003.

## **Chapter 2 - GTB Economic Development Corporation - Federal Charter of Incorporation**

### **Part 1 - Corporate Identity and Status**

#### **§ 201 - Name**

The name of the Corporation is the GRAND TRAVERSE BAND ECONOMIC DEVELOPMENT CORPORATION.

#### **§ 202 - Federal Charter**

This Corporation is organized, incorporated and granted its corporate powers, privileges and immunities under the laws of the United States as a federally chartered Indian business corporation.

#### **§ 203 - Corporation Distinct Entity**

This Corporation is a distinct legal entity wholly owned by the Grand Traverse Band of Ottawa and Chippewa Indians (GTB or Grand Traverse Band) and its corporate activities, transactions, obligations, liabilities and property are not those of the Tribe. Nothing in this Charter shall be deemed to have waived or to permit the Corporation to waive the sovereign immunity from suit of agencies or enterprises of the GTB not specifically assigned to the Corporation pursuant to [Part 2, § 205(a)] of this Charter.

#### **§ 204 - Immunity**

This Corporation shall have the same immunity from taxation under federal and Tribal law as the Grand Traverse Band but shall be subject to Tribal taxes where applicable.

**Part 2 - Corporate Purposes****§ 205 - Purposes**

The purposes of this Corporation are as follows:

- (a) To engage in any type of lawful business, enterprise or venture, when authorized to do so by written resolution of the Grand Traverse Band; and
- (b) To promote the economic development of the Grand Traverse Band; and
- (c) To enable the Grand Traverse Band to develop its resources for the benefit of the Tribal members of the Grand Traverse Band; and
- (d) To specifically operate the class II and class III gaming enterprises (IGRA, 25 U.S.C. § 2701 et al.) of the Grand Traverse Band and related activities; and
- (e) To provide for the efficient and effective utilization of the resources of the GTB in a manner which protects the long-term interests of the Tribe and provides income to the Tribe from the utilization of those resources.

**Part 3 - Status of Corporation****§ 206 - Status**

- (a) The Corporation is a legal entity wholly owned by the GTB, a federally recognized Indian tribe, but distinct and separate from the GTB.
- (b) The activities, transactions, obligations, liabilities, and properties of the Corporation are not those of the GTB.

**§ 207 - Sovereign Immunity of GTB**

Nothing in this Charter of Incorporation shall be deemed to waive, or to permit the Corporation to waive, the sovereign immunity of the GTB.

**§ 208 - Taxation**

The Corporation shall have the same status and immunities respecting taxation under federal law as the GTB.

**§ 209 - Business Affairs Management**

- (a) The business affairs of the Corporation shall be managed exclusively by its Board of Directors.
- (b) The GTB shall have no authority to direct the business affairs of the Corporation, except through its status as the sole shareholder of the Corporation and as provided in this Charter of Incorporation.

#### **Part 4 - Period of Duration**

##### **§ 210 - Duration**

The period of duration of the Corporation is perpetual, or until this Charter of Incorporation is revoked or surrendered by an Act of Congress pursuant to 25 U.S.C. § 477, as amended.

#### **Part 5 - Corporate Powers**

##### **§ 211 - Corporate Powers**

Subject to applicable federal law, the Corporation is expressly authorized and empowered to engage in, carry on, and conduct any lawful business in which federally chartered corporations may engage under 25 U.S.C. § 477, as amended, including, but without limiting the generality of the foregoing, the following:

- (a) 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 therefore interests in corporate property.
- (b) To engage in, carry on, and conduct the business of purchasing parcels of real estate; of surveying, platting, subdividing, and otherwise developing parcels of real estate; of constructing roads, streets, infrastructures, systems, and other improvements of all types upon, across, or under real estate; of mortgaging or otherwise encumbering real estate; of owning, using, improving, managing, maintaining, operating, leasing, renting, selling, conveying, exchanging, disposing of, and otherwise dealing in real estate and all improvements constructed thereon; to enter into contracts for the purchasing, surveying, platting, subdividing and developing of real estate and for the design, construction, and financing of improvements upon, across, or under real estate; to engage in and conduct, or authorize others to engage in and conduct, any business or activity incident, necessary, advisable, or advantageous in connection with any of the real and personal properties owned, leased, managed, supervised, or operated by the Corporation; and, in doing, exercising, or performing any of the foregoing, to do so as a principal, agent, contractor, subcontractor, or employee, on its own account or in association, partnership (general and/or limited partnerships, as a general and/or limited partner), limited liability company, corporation, joint venture, or any other relationship with any Indian tribe, or other person,

firm, corporation, partnership, limited liability company, or joint venture, and/or in any other capacity.

- (c) To purchase, take, receive, acquire, own, hold, use, lease, rent, sell, convey, exchange, dispose of, improve, develop, manage, care for, maintain, operate, mortgage, encumber, pledge, hypothecate, release any and all mortgages, encumbrances, pledges, or hypothecations, and otherwise deal in and with real and personal properties, tangible or intangible, of every kind and description, wherever situated, within or without the boundaries of the Grand Traverse Band Reservation, and any and all rights, concessions, interests, and privileges therein, including but not limited to oil, gas, and mineral leases, working interests, royalties, and other interests in real estate, surface and subsurface, and including oil, gas, and other minerals.
- (d) To manufacture, produce, purchase, or otherwise acquire, sell or otherwise dispose of, import, export, distribute, deal in and with, whether as principal or agent, goods, wares, merchandise, and materials of every kind and description, whether now known or hereafter discovered or invented.
- (e) To undertake, conduct, manage, assist, promote, invest in, and participate in every kind of commercial, industrial, or mercantile enterprise, business, undertaking, venture, or operation, wherever situated, within or without the boundaries of the Grand Traverse Band Reservation.
- (f) To adopt, apply for, obtain, register, purchase, lease, or otherwise acquire; to maintain, protect, hold, use, own, exercise, develop, manufacture under, operate, and introduce; and to sell and grant licenses or other rights in respect to, assign or otherwise dispose of, turn to account, or in any manner deal with and contract with reference to; any trademarks, trade names, patents, patent rights, concessions, franchises, designs, copyrights, and distinctive marks, and rights analogous thereto, and inventions, devices, improvements, processes, receipts, formulae, and the like, including such thereof as may be covered by, used in connection with, or secured or received under, Letters Patent of the United States of America or any other country, state, territory, or locality, domestic or foreign, and any licenses and rights in respect thereto, in connection therewith, or appertaining thereto.
- (g) To guarantee the performance and/or payment of any contract, undertaking, obligation, liability, bond, sinking fund, security, note, or other evidence of indebtedness, including interest, of any Indian tribe, or other person, firm, or other corporation, and to secure and collateralize such guarantee by mortgage, deed of trust, assignment, pledge, or other encumbrance upon the assets, or any part thereof, or any interest therein, of the Corporation.
- (h) To acquire by purchase, exchange, merger, or otherwise, all or any part of, or any interest in, the properties, assets, business, and goodwill of any one or more persons, firms, associations, partnerships, limited liability companies, corporations, or Indian tribes engaged in any lawful business; to pay for the same in cash, property, securities, or other consideration; to own, hold, use, lease, rent, sell, convey, exchange, dispose of, improve, develop, operate, manage, reorganize, liquidate, merge, sell, or in any manner retain or dispose of the whole or any part thereof; and, in connection therewith, to assume or

guarantee the payment and performance of any liability, obligation, contract, or other undertaking.

- (i) To lend its uninvested funds from time to time for any lawful purpose to such extent, to such Indian tribes, or other persons, firms, associations, partnerships, limited liability companies, corporations, governments or subdivisions thereof, on such terms, at such rates of interest, and with such collateral, if any, as the Board of Directors from time to time may determine.
- (j) To borrow money for any lawful purpose for itself or for any person, firm, association, partnership, limited liability company, other corporation or Indian tribe, from time to time, and without limit as to amount, upon such terms and conditions, and at such rates of interest, as the Board of Directors may determine.
- (k) To adopt, use, and alter, at the direction of the Board of Directors, a corporate seal.
- (l) To employ or appoint employees and agents of the Corporation and define their duties and fix their compensation.
- (m) To authorize payment of a stipend and reimbursement of expenses to the members of the Board of Directors for time spent in carrying out the work of the Corporation, including regularly scheduled Board meetings, other meetings for education and informational purposes, personal time spent on working on corporate issues, per diem, and mileage (if a personal vehicle is used) for conducting business of the Corporation.
  - (1) The payment of stipends and reimbursements of expenses incurred by members of the Board of Directors may be altered by formal action of the Tribal Council of the Grand Traverse Band, as the governing body of the sole shareholder, without the necessity of an amendment to this Charter of Incorporation.
  - (2) Such stipends and reimbursements shall be fair, just, and reasonable, and subject to the availability of funds of the Corporation for that purpose.
- (n) To distribute all revenues of the Corporation to:
  - (1) defray corporate obligations;
  - (2) make dividend payments to the sole shareholder; and
  - (3) establish and invest in a suitable capital reserve fund,
  - (4) provided, that the Board of Directors shall at all times endeavor to manage and operate the Corporation with the objective of minimizing expenses and maximizing dividends to the Grand Traverse Band.
- (o) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, and other incentive plans for any or all of its Directors, officers, and employees, subject to prior approval of the Tribal Council of the Grand Traverse Band.

- (p) To enter into, make, execute, and deliver contracts of every kind and nature with any person, firm, association, partnership, limited liability company, corporation, municipality, nation, Indian tribe, state or body politic, without the approval of the Secretary of the Interior of the United States, except when the use of trust or federally-restricted Indian property requires such approval.
- (q) To apply for, purchase, or otherwise acquire, and exercise, carry out, and enjoy any license, power, authority, franchise, concession, right, or privilege which any government, public body, authority, corporation, or other entity may be empowered to grant, make, or enact, and to pay for the same and all necessary costs, charges, and expenses associated therewith.
- (r) To engage in, carry on, and conduct any business or business activity of the Corporation wherever situated, within or without the boundaries of the Grand Traverse Band Reservation.
- (s) To sue and be sued in its Corporation name in courts of competent jurisdiction within the United States, including, without limitation, the courts of the State of Michigan and the United States of America in conformity with the procedures stated in Article XIII of the GTB Tribal Constitution and Article VII of this Charter [Part 7 of this Chapter].
- (t) To do, exercise, and perform any and all other powers which may be incidental to the conduct of the corporate business, not inconsistent with law.

## **Part 6 - Limitation on Corporate Powers**

### **§ 212 - Limitation on Corporate Power**

The Corporation shall have no power:

- (a) To sell, mortgage, or lease for a period exceeding forty (40) years any trust or restricted lands included in the limits of the Grand Traverse Band Reservation.
- (b) To expressly or implicitly enter into agreements of any kind on behalf of the Grand Traverse Band.
- (c) To pledge the credit of the Grand Traverse Band.
- (d) To dispose of, pledge, or otherwise encumber real or personal property of the Grand Traverse Band.
- (e) To waive any right, privilege, or immunity of, or release any obligation owed to, the Grand Traverse Band.

- (f) To enter into any sublease or other encumbrance or other instrument respecting lands leased to the Corporation by the Grand Traverse Band without the prior written approval of the Tribal Council of the Grand Traverse Band.
- (g) To sell or otherwise dispose of all, or substantially all, of the Corporation's assets, other than in the usual and regular course of its business, without the prior written approval of the Grand Traverse Band Tribal Council, except that the Corporation shall have the power, without such approval, to mortgage the property known as the fee simple lands.

## **Part 7 - Limited Liability**

### **§ 213 - General**

The properties and assets, both real and personal, of the shareholder, Directors, and officers shall be exempt from the debts and liabilities of the Corporation.

### **§ 214 - Tribal Assets**

Nothing in this Charter of Incorporation shall be construed as creating or recognizing any rights to encumber, levy, affix, adjudicate, and/or take judgment against any Tribal assets or property owned by the Grand Traverse Band for any action, adjudication, or determination of liability of the Corporation.

### **§ 215 - Tribal Sovereign Immunity**

- (a) Any waiver of the Corporation's sovereign immunity, if any, is not intended to be, nor shall it be construed as, a waiver of the sovereign immunity of the Grand Traverse Band, nor shall any such waiver create a liability on the part of the Grand Traverse Band for the debts or obligations of the Corporation.
- (b) Any exercise of the Corporation's authority to sue or to be sued shall not be construed or operate as a consent to suit by or against, or to attachment of assets of, the Grand Traverse Band.

### **§ 216 - Sovereign Immunity of the Corporation**

- (a) The Corporation is hereby clothed with all the privileges and immunities of the Grand Traverse Band, except as specifically limited by this Title or other Tribal law, including sovereign immunity from suit in any state, federal or Tribal Court.
- (b) Except as provided in this section, nothing in this Charter nor any action of the Tribe or the Corporation shall be deemed or construed to be a waiver of sovereign immunity from suit of the Corporation, or to be a consent of the Tribe or the Corporation to the jurisdiction of

the United States or of any state or any other tribe with regard to the business or affairs of the Tribe or the Corporation to any cause of action, case or controversy, or to the levy of any judgment, lien or attachment upon any property of the Tribe or the Corporation, or to be a consent of the Tribe or the Corporation to suit in respect to any Indian land, or to be a consent of the Tribe or the Corporation to the alienation, attachment or encumbrance of any such land.

#### **§ 217 - Sovereign Immunity of the Tribe**

- (a) All inherent sovereign rights of the Tribe as a federally-recognized Indian tribe with respect to the existence and activities of the Corporation are hereby expressly reserved, including sovereign immunity from suit in any state, federal or tribal court.
- (b) Except as provided in § 218 below, nothing in this Charter nor any action of the Corporation shall be deemed or construed to be a waiver of sovereign immunity from suit of the Tribe, or to be a consent of the Tribe to the jurisdiction of the United States or of any state or of any other tribe with regard to the business or affairs of the Corporation or the Tribe, or to be a consent of the Tribe to any cause of action, case or controversy, or to the levy of any judgment, lien or attachment upon any property of the Tribe; or to be a consent to suit in respect to any Indian land, or to be a consent to the alienation, attachment or encumbrance of any such land.

#### **§ 218 - Waiver of Sovereign Immunity of the Corporation**

- (a) Sovereign immunity of the Corporation may be waived only by express resolutions of both the Corporation and the GTB Tribal Council after consultation with the Tribe's attorneys.
- (b) All waivers of sovereign immunity must be preserved by resolutions of the Corporation and the Tribal Council of continuing force and effect.
- (c) Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the Corporation.
- (d) Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the Corporation subject thereto, court having jurisdiction pursuant thereto and law applicable thereto.
- (e) Neither the power to sue and be sued provided in § 211(s), Corporate Powers, nor any express waiver of sovereign immunity by resolution of the Corporation shall be deemed a consent to the levy of any judgment, lien or attachment upon property of the Corporation other than property specifically pledged or assigned, or a consent to suit with respect to any land within the exterior boundaries of the Reservation or a consent to the alienation, attachment or encumbrance of any such land.



**Part 8 - Sole Shareholder****§ 219 - Sole Shareholder**

The sole shareholder of the Corporation shall be the Grand Traverse Band.

**§ 220 - Shareholder Shall Act Through Its Tribal Council**

The sole shareholder shall act through its Tribal Council pursuant to the laws of the Grand Traverse Band.

**§ 221 - Annual Meeting**

- (a) The annual meeting of the shareholder shall be held on the 20th day in the month of June beginning with the year 1997, at the hour of 10:00 a.m., for the purpose of appointing Directors and the transaction of any business that may come before the meeting.
- (b) If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day.
- (c) If the appointment of Directors shall not be held on the date designated herein for any meeting of the shareholder, or at any adjournment thereof, the Board of Directors shall cause the appointment to be held at a special meeting of the shareholder as soon thereafter as is convenient.

**§ 222 - Special Meetings**

- (a) Special meetings of the shareholder, for any purpose or purposes, unless otherwise prescribed by applicable law, may be called by a majority of the Directors, upon ten (10) days notice to the shareholder, such notice to contain a statement of the business to be transacted at such meeting, and to be served personally or mailed through the U.S. Post Office addressed to the Tribal Chair of the Grand Traverse Band; but at any meeting of the Tribal Council of the Grand Traverse Band at which a quorum of the Tribal Council is present, the giving of notice as above described may be dispensed with.
- (b) Any business, in addition to that specified in the notice of the meeting, may be transacted at any special meeting of the shareholder with the consent of the Tribal Council of the Grand Traverse Band.

**§ 223 - Voting**

At all meetings of the shareholder all questions shall be determined in the manner provided by the laws of the Grand Traverse Band for actions of its Tribal Council, or by any applicable federal law.

**Part 9 - Board of Directors****§ 224 - Affairs and Management of the Corporation**

The affairs and management of the Corporation shall be under the control of its Board of Directors, which shall have the full power and authority to manage and operate the Corporation in accordance with this Charter of Incorporation.

**§ 225 - Number**

The initial Board of Directors shall consist of seven (7) members appointed by the Tribal Council of the Grand Traverse Band, but the number of Directors may thereafter be increased or decreased at any time by a duly adopted resolution of the shareholder.

**§ 226 - How Appointed**

- (a) At the annual meeting of the shareholder, the seven (7) persons appointed by the Tribal Council shall be Directors and shall constitute the Board of Directors for the ensuing year.
- (b) The Tribal Council at the annual meeting of the shareholder shall designate one member of the Board of Directors as the Chairperson of the Board of Directors and one member of the Board of Directors as the Vice Chairperson.

**§ 227 - Term of Office**

- (a) The Directors shall be appointed for terms of two years each, and until his or her successor has been duly nominated and elected and has qualified and taken office.
- (b) A Director may serve any number of consecutive two-year terms for which he or she is appointed.

**§ 228 - Qualifications of Directors**

- (a) All Directors shall be members of the Grand Traverse Band, as determined by the laws of the Grand Traverse Band.

- (b) All Directors must pass a mandatory background investigation to determine their suitability for the directorship position.
  - (1) A felony conviction, theft-related misdemeanor or the commission and/or conviction of a crime of violence shall be disqualifying.
- (c) No employee of the Corporation managed enterprises shall be eligible to serve as a Director during the time of such employment.

History: Amended Tribal Act #00-18.856, enacted by Tribal Council on May 2, 2000, retroactive to October 23, 1998.

#### **§ 229 - Duties of Directors**

- (a) The Board of Directors shall manage the general affairs and business of the Corporation.
- (b) The Directors shall in all cases act as a Board of Directors, regularly convened, by a majority vote, and they may adopt such rules and regulations for the conduct of their meetings and the management of the Corporation as they may deem proper, not inconsistent with this Charter of Incorporation, the Bylaws of the Corporation, and applicable Tribal or federal law.
- (c) The Vice-Chairperson shall assume the duties of the Chairperson in the absence of the Chairperson.

#### **§ 230 - Director's Meetings**

- (a) Regular meetings of the Board of Directors shall be held immediately following the annual meetings of the shareholder.
- (b) Special meetings of the Board of Directors may be called by the Chairperson of the Board of Directors or the C.E.O. of the Corporation at any time, and shall be called by the President or the Secretary upon the request of two Directors.

#### **§ 231 - Notice of Meetings**

- (a) Notice of meetings, other than the regular annual meeting, shall be given by service upon each Director in person, or by mailing to the last known post office address of the Director, at least ten (10) days before the date therein designated for such meeting, including the day of mailing, of a written or printed notice thereof specifying the time and place of such meeting, and the business to be brought before the meeting.
- (b) At any meeting at which every member of the Board of Directors shall be present, whether held with or without notice, any business may be transacted which might have been transacted if the meeting had been duly called.

**§ 232 - Quorum**

At a meeting of the Board of Directors, a majority of the Board shall constitute a quorum for the transaction of business; but in the event of a quorum not being present, a lesser number may adjourn the meeting from time to time without further notice.

**§ 233 - Voting**

At a meeting of the Board of Directors, each Director shall have one vote.

**§ 234 - Presumption of Assent**

- (a) A Director who is present at a meeting of the Board of Directors at which action on any matter is taken shall be presumed to have assented to the action taken, unless a dissent to such action shall be entered in the minutes of the meeting, or unless the Director shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof, or shall forward such dissent by registered or certified mail to the Secretary of the Corporation immediately after the adjournment of the meeting.
- (b) Such right to dissent shall not apply to a Director who voted in favor of such action.

**§ 235 - Resignation and Removal of Directors**

- (a) Any Director may resign at any time by giving written notice to the C.E.O. of the Corporation, and such resignation shall be effective on the date specified in the notice.
- (b) Any one or more of the Directors may be removed either with or without cause, at any time by a vote of the shareholder, at any special meeting of the shareholder called for that purpose, or at the annual meeting of the shareholder.

**§ 236 - Vacancies**

- (a) Whenever any vacancy shall occur in the Board of Directors by death, resignation, removal, or otherwise, the same shall be filled without undue delay by the shareholder at a special meeting which shall be called for that purpose.
- (b) Such appointment shall be held within sixty (60) days after the occurrence of such vacancy.
- (c) The person so appointed shall hold office until the next annual meeting of the Board of Directors and until his or her successor shall have been duly nominated and appointed, and shall have qualified and taken office.

**§ 237 - Action Without a Meeting**

Any action required or permitted to be taken by the Board of Directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the Board of Directors.

**§ 238 - Initial Board of Directors**

The initial Board of Directors of the Corporation shall consist of the following persons, who shall serve until the first annual meeting of the shareholder and thereafter until their successors have been duly nominated and appointed, and shall have qualified and taken office:

<b>Name</b>	<b>Address</b>
George E. Bennett, Tribal Chairman	2605 N. West Bayshore Drive Suttons Bay, MI 49682

[1 Tribal Councilor]  
[5 Tribal members appointed by Tribal Council]

**Part 10 - Officers**

**§ 239 - General**

- (a) The officers of the Corporation shall be employees of the Grand Traverse Band Economic Development Corporation.
- (b) The officers shall be Chief Executive Officer, Assistant Executive Officer, Chief Financial Officer and Treasurer, Secretary and Records Keeper, and General Counsel.
- (c) The Board of Directors may by resolution add additional officer positions at any time and appoint qualified candidates to fill such positions.

**§ 240 - Appointment**

All officers of the Corporation shall be appointed by the Board of Directors annually, at the Regular Meeting of the Board of Directors to be held immediately following the annual meeting of the shareholder, to serve for a term ending on the next annual Regular Meeting, or until such officers or their successors are duly elected and are qualified. The initial term of any officer appointed at a different meeting, or by consent of the Board, as provided herein, shall serve until the next annual Regular Meeting of the Board of Directors.

History. As amended by Res. # 03-024, enacted by the Economic Development Corporation on October 7, 2003.

**§ 241 - Resignation and Removal of Officers**

- (a) Any officer may resign at any time by giving written notice to the Chairperson of the Board of Directors, and such resignation shall be effective on the date specified in the notice.
- (b) Any one or more of the officers may be removed with or without cause, at any time, by a majority vote of the Board of Directors at any special meeting called for that purpose, or at the annual meeting.
- (c) The terms of the officers employment contract shall be honored as liquidated damages.

**§ 242 - Vacancies**

All vacancies in any office shall be filled by the Board of Directors without undue delay, at any regular meeting or at a meeting specially called for that purpose, for the unexpired portion of the term.

**§ 243 - The Chief Executive Officer**

- (a) The C.E.O. shall be the chief executive officer of the Corporation and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Corporation on a day-to-day basis.
- (b) He or she shall, when present, preside at all meetings of the Board of Directors.
- (c) He or she may sign, without the Secretary or other officer of the Corporation, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of chief executive officer and such other duties as may be prescribed by the Board of Directors from time to time.

**§ 244 - The Assistant Executive Officer**

- (a) In the absence of the C.E.O., or in the event of his or her death or inability to act, the Assistant Executive Officer (or in the event there be more than one A.E.O., the A.E.O. in the order designated at the time of their appointment, or in the absence of any designation, then in the order of their appointment), shall perform the duties of the C.E.O., and when so acting, shall have all the powers of and be subject to all the restrictions upon the C.E.O.
- (b) Any A.E.O. shall perform such other duties as from time to time may be assigned to him or her by the Board of Directors.

**§ 245 - The Secretary and Records Keeper**

The Secretary shall:

- (a) keep the minutes of the proceedings of the Board of Directors in one or more books provided for that purpose;
- (b) see that all notices are duly given in accordance with the provisions of this Charter of Incorporation, or as required by law;
- (c) be custodian of the corporate records and of the seal of the Corporation and see that the seal of the Corporation is affixed, if required by law or if otherwise appropriate, to all documents the execution of which on behalf of the Corporation under its seal is duly authorized; and
- (d) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Board of Directors.

**§ 246 - The Chief Financial Officer and Treasurer**

- (a) The C.F.O. Treasurer shall:
  - (1) have charge and custody of and be responsible for all funds and securities of the Corporation;
  - (2) receive and give receipts for monies due and payable to the Corporation from any source whatsoever, and deposit all such monies in the name of the Corporation from any source whatsoever, and deposit all such monies in the name of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Directors; and
  - (3) in general perform all of the duties incident to the office of C.F.O. Treasurer and such other duties as from time to time may be assigned to him or her by the Board of Directors.
- (b) If required by the Board of Directors, the C.F.O. Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine.

**§ 247 - General Counsel**

The General Counsel shall provide legal advice and opinions on corporate matters of the Corporation and act as the legal representative of the Corporation in all matters related to the management or litigation conducted by the Corporation or filed against the Corporation.

**§ 248 - Salaries or Other Compensation**

The salaries or other compensation of the officers shall be fixed from time to time by the Board of Directors.

**Part 11 - Indemnification of Directors, Officers, Employees, and Agents****§ 249 - Liability Indemnification**

The Corporation shall indemnify any current or former Director, officer, employee, or agent of the Corporation, or any person who is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, limited liability company, or other enterprise, against any liability asserted against him or her, including all reasonable expenses actually and necessarily incurred by him or her in connection therewith in the defense of any action, suit, or proceeding in which he or she is made a party, or is threatened to be made a party, by reason of being, or having been such a director, officer, employee, or agent, and the reasonable costs of settlement of any such action, suit, or proceeding, whether pending or threatened, if a majority of the Board of Directors not seeking indemnification shall determine in good faith:

- (a) That such person did not act, fail to act, or refuse to act willfully or with gross negligence, or with fraudulent or criminal intent.
- (b) That any legal fees paid or any settlements made are reasonable.
- (c) That the person seeking indemnification did not act beyond the scope of his or her employment or office.

**§ 250 - Defense Costs Reimbursement**

- (a) The Corporation shall also reimburse any current or former Director, officer, employee, or agent of the Corporation, or any person who may have served at its request as a director, officer, employee, or agent of another corporation, partnership, limited liability company, or other enterprise, for reasonable costs of defense and of settlement of any such action, suit, or proceeding, whether pending or threatened, if it shall be found by a majority of the Board of Directors, other than Board members involved in the matter in controversy, that it is in the best interests of the Grand Traverse Band that such settlement be made and that:
  - (1) such person did not act, fail to act, or refuse to act, willfully or with gross negligence, or with fraudulent or criminal intent, and
  - (2) that any legal fees paid or any settlements made are reasonable.



- (b) In the event that less than a quorum of the Board of Directors is not involved in the matter in controversy within the meaning of § 249 or § 250(a), the decision whether to indemnify Board members under § 249 or to reimburse Board members under § 250(a) shall be made by the Tribal Council of the Grand Traverse Band.

### **Part 12 - Ownership of Corporation**

#### **§ 251 - GTB Sole Owner and Shareholder**

- (a) The Corporation shall be wholly owned by the Grand Traverse Band for the benefit of the Grand Traverse Band and its members.
- (b) The Grand Traverse Band shall be the sole shareholder of the Corporation.
- (c) No individual or other legal entity, except only the Grand Traverse Band, shall acquire any shares of the Corporation.

#### **§ 252 - Exercise of Ownership Rights**

- (a) The sole shareholder shall exercise its ownership rights through its Tribal Council, in accordance with applicable Tribal law.
- (b) No individual member of the Tribal Council of the Grand Traverse Band, or individual member of the Grand Traverse Band, or any other person whomsoever, shall be recognized as acting as or on behalf of the sole shareholder.

#### **§ 253 - Prohibition on Sale or Transfer of Shares without Consent**

The sole shareholder shall be the Grand Traverse Band, and no interest in the shares of the Corporation may be sold, transferred, pledged, or hypothecated, either voluntarily or involuntarily, without the prior written consent of the Grand Traverse Band Tribal Council, and the approval of the Secretary of the Interior.

#### **§ 254 - Tribal Council as Shareholder Representative**

- (a) The sole right and authority to represent the Grand Traverse Band in voting its shares in the Corporation shall be vested in the Grand Traverse Band Tribal Council.
- (b) The decision of a majority of the members of the Grand Traverse Band Tribal Council voting at any duly called and noticed meeting at which a quorum is present, or otherwise in accordance with the Grand Traverse Band Constitution, shall be the decision and vote of the Grand Traverse Band in exercise of its authority as the sole shareholder of the Corporation.

**Part 13 - Dividends****§ 255 - Profit Declaration and Distribution**

- (a) The Board of Directors shall declare and pay profits in accord with the Revenue Allocation Ordinance of the Grand Traverse Band.
- (b) Non-gaming retained earnings, or other available funds of the Corporation may be declared and paid whenever, in Board of Director's opinion, the condition of the Corporation's affairs will render it expedient for such dividends to be declared and paid; provided that no distribution may be made if:
  - (1) The Corporation would not be able to pay its debts as they become due in the usual course of its business; or
  - (2) The Corporation's total assets would be less than the sum of its total liabilities.

**§ 256 - Dividends from Non-Gaming Funds**

All dividends from non-gaming funds declared by the Board of Directors shall be paid to the Grand Traverse Band as the sole shareholder.

**Part 14 - Books and Records; Financial Reports****§ 257 - Books and Records**

- (a) The Corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its Board of Directors.
- (b) Any books, records and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

**§ 258 - Financial Reports**

- (a) The Corporation must file an annual audited financial statement with the Tribal Council.
- (b) The audited financial statement must include all income from whatever sources, including but not limited to federal, state or private grants, enterprises, profits, and all expenditures of whatever nature.
- (c) All financial records of the Corporation are considered the public property of the Grand Traverse Band of Ottawa and Chippewa Indians.

- (d) Access to the financial records shall be determined and controlled by the Grand Traverse Band Tribal Council.
  - (1) In no event shall access to financial records be denied to a Tribal Councilor acting pursuant to Tribal Council authority.
  - (2) Such financial statements may be consolidated statements of the Corporation and one or more of its subsidiaries.

#### **§ 259 - Maintenance of Financial Records**

The Corporation shall maintain its financial records in conformity with generally accepted accounting principles.

#### **§ 260 - Reports to Shareholders**

The Board of Directors of the Corporation shall, no less frequently than quarterly, report in writing to the shareholder on the financial and operating condition of the Corporation, including its assets, liabilities, and operating results.

#### **§ 261 - Financial and Operating Records**

The financial and operating records of the Corporation shall at all reasonable times be open to inspection by the representative(s) of the shareholder designated by resolution of the Tribal Council of the Grand Traverse Band.

#### **§ 262 - Audited Financial Statements**

The Corporation shall, within one hundred twenty (120) days following the close of the Corporation's fiscal year, submit to the shareholder an audited (or unaudited if approved by the shareholder) financial statement reflecting the financial status of the Corporation as of the last day of the Corporation's fiscal year.

### **Part 15 - Insurance**

#### **§ 263 - Insurance Coverage**

- (a) All appropriate insurance, including comprehensive general liability, physical damage, and workers' compensation insurance, reasonably sufficient to protect the interests of the Corporation and the Grand Traverse Band from all insurable liability and other risks shall be carried on all enterprises, properties, and persons under the jurisdiction or management

of the Corporation, including all employees of the Corporation, insofar as such insurance is reasonably obtainable by the Corporation.

- (b) The Corporation shall have the power to obtain and maintain insurance on behalf of any person who 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, employee, or agent of another corporation, partnership, limited liability company, or other enterprise, against all liability asserted against him or her and incurred by him or her in such capacity or arising out of his or her status in such capacity.

### **Part 16 - Principal Office and Agent for Service of Process**

#### **§ 264 - Principal Office Address; Agent for Service of Process**

- (a) The address of the principal office of the Corporation shall be the Grand Traverse Band Economic Development Corporation, 2331 N. West Bayshore Drive, Suttons Bay, Michigan 49682, the mailing address being the same as the aforementioned address.
- (b) The agent of the Corporation for service of process and otherwise at such address is the C.E.O.

### **Part 17 - Claims Against the Corporation**

#### **§ 265 - Assets and Properties of Grand Traverse Band**

Nothing in this Charter of Incorporation shall be construed as creating or recognizing any right to encumber, levy, affix, adjudicate, or take judgment against any assets or properties of the Grand Traverse Band for any action, adjudication, or other determination of liability of any nature incurred by the Corporation, but all assets and properties of the Corporation shall be available for such purpose, subject to valid prior liens, if any.

#### **§ 266- Waiver on Part of Corporation not Waiver on Part of GTB**

- (a) The waiver by the Corporation of any defense of sovereign immunity shall not be construed as a waiver of the sovereign immunity of the Grand Traverse Band, nor shall any such waiver by the Corporation create any liability on the part of the Grand Traverse Band for the debts and obligations of the Corporation.
- (b) Any exercise by the Corporation of its power to sue shall not be construed to suit by or against, or to the attachment of any asset of, the Grand Traverse Band.

**Part 18 - Amendment of Charter of Incorporation****§ 267 - Petitioning for Amendments; Secretarial Approval**

The authority to petition for amendments to this Charter of Incorporation is vested in the Tribal Council of the Grand Traverse Band, but such amendments shall have no legal effect until approved by the Secretary of the Interior and ratified by the Tribal Council of the Grand Traverse Band, as the governing body of the Grand Traverse Band, in accordance with 25 U.S.C. § 477, as amended, and in accordance with applicable Tribal law.

**§ 268 - Tribal Council Final Decisionmaker for Amendments**

The Board of Directors may request the Tribal Council of the Grand Traverse Band to petition the Secretary of the Interior for amendments to this Charter of Incorporation, but the final decision on submitting any such petition shall be made by the Tribal Council of the Grand Traverse Band.

History: Federal charter signed by Kevin Gover, Assistant Secretary of the Interior for Indian Affairs, on October 23, 1998.

**Chapter 3 - (Reserved)**

History: Former Chapter 3, Wages for Tribal Enterprise Employees, adopted by Tribal Act #90-823, enacted by Tribal Council on March 31, 1990, was REPEALED by Tribal Act #97-15.511, enacted by Tribal Council on November 10, 1997.

**Chapter 4 - GTB Construction Company****§ 401 - Establishment of GTB Construction Company**

- (a) The Tribal Council hereby charters the GTB Construction Company for the purposes of developing a construction enterprise with independent authority to bid on construction projects within the Tribe's federal reservation and six (6) county services area.
- (b) Said GTB Construction Company shall be governed by the attached By-Laws, adopted and approved by the Grand Traverse Band Tribal Council.

History: Tribal Act #89-764, enacted by Tribal Council on September 16, 1989.

## **Chapter 5 - GTB Rental and Leasing Company**

### **§ 501 - Establishment of GTB Leasing Company**

The Grand Traverse Band establishes the “GTB Rental and Leasing Company” for the purposes of purchasing and renting/leasing supplies and equipment both within and outside the Tribal administrative structure.

History: Tribal Act #83-155, enacted by Tribal Council on December 16, 1983.

## **Chapter 6 - (Reserved)**

History: Former Chapter 6 - Exclusive Monopoly License and Credit Enhancement - adopted by Tribal Act #03-21.1228, enacted by Tribal Council polling on March 27, 2003; as amended 11-19-2003 by Tribal Act #03-21.1327, was REPEALED by Tribal Council on 2-16-2006 by Tribal Act #06-24.1635.

## **Chapter 7 - Transfer of Assets Ordinance**

### **§ 701 - Definitions**

When used in this Ordinance, the following terms have the following meanings:

- (a) “Compact” means the Tribal-State Compact Between the Grand Traverse Band of Ottawa and Chippewa Indians and the State of Michigan, concerning which approval by the Secretary of Interior was published on November 30, 1993, in the Federal Register (58 Fed. Reg. 63262), as the same may be amended or supplemented from time to time, and any replacement or substitute therefor.
- (b) “Effective Date” means the first date on which each of the following shall have occurred: (i) this Ordinance has been duly adopted by the Tribal Council and declared effective immediately in accordance with 1 GTBC § 108(a); and (ii) all licenses required under the Compact, IGRA or any other applicable law or regulation required for the EDC to engage in the gaming business have been obtained in the name of the EDC.
- (c) “EDC” means the Grand Traverse Band Economic Development Corporation organized in accordance with Section 17 of the Indian Reorganization Act (25 U.S.C. § 447) on October 23, 1998.

- (d) “EDC Board” means the governing body of the EDC.
- (e) “Financing” means the “Financing” defined in the document entitled “Grand Traverse Band of Ottawa and Chippewa Indians: \$85,000,000 Senior Secured Credit Facilities,” dated February 2003, and prepared by National City and Banc One Capital Markets, Inc.
- (f) “Financing Documents” means the “Financing Documents” defined in Tribal Council Resolution No. 03-21.1220, dated March 24, 2003, as the same may be amended or supplemented from time to time.
- (g) “Gaming Business” means Class II and Class III gaming (as such terms are defined in IGRA) and resort business and any activity or business incidental, directly related or similar thereto, or any business or activity that is a reasonable extension, development or expansion thereof or ancillary thereto, including any hotel, entertainment, recreation or other activity or business designed to promote, market, support, develop, construct or enhance the casino gaming and resort business operated by or on behalf of the Tribe or the EDC.
- (h) “Gaming-Related Personal Property” means all property and property interests of any nature (other than real property or interests in real property) used or intended to be used on or after the effective date in the gaming business.
- (i) “Gaming-Related Obligations” means all obligations of any nature, whether arising from contract, indebtedness owing or otherwise, of the Tribe or any agency, enterprise, authority, controlled entity or instrumentality of the Tribe, arising from or incurred in connection with the gaming business; payable from revenues of the gaming business; or secured by gaming-related personal property.
- (j) “Gaming-Related Rights” means all rights of any nature, whether arising from contract, indebtedness owing or otherwise, of the Tribe or any agency, enterprise, authority, controlled entity or instrumentality of the Tribe, arising from or related in any manner to the gaming business.
- (k) “IGRA” means the federal Indian Gaming Regulatory Act of 1988, Public Law 100-497, as amended from time to time.
- (l) “Tribal Constitution” means the Constitution of the Grand Traverse Band of Ottawa and Chippewa Indians adopted by members of the Tribe and certified by the Assistant Secretary of the Interior on or about March 29, 1988, as duly amended from time to time.
- (m) “Tribal Council” means the Tribal Council referred to in the Tribal Constitution.
- (n) “Tribe” means the Grand Traverse Band of Ottawa and Chippewa Indians, a federally recognized Indian tribe.

History: Tribal Act #03-21.1222, enacted by Tribal Council in Special Session on March 24, 2003.

**§ 702 - Tribal and EDC Authority**

- (a) Gaming Compact. The Tribe has a gaming compact with the State of Michigan to conduct Class III gaming that was approved by the Secretary of the Interior on November 30, 1998.
- (b) Gaming Code. The Tribe implements and administers the Gaming Code (Grand Traverse Band Code, Title 18). The Gaming Code was approved by the National Indian Gaming Commission on June 13, 1994 (Letter from Anthony J. Hope to John F. Petoskey) and, as amended, on July 28, 1997 (Letter from Thomas J. Foley to Richard Bailey).
- (c) GTB Gaming Commission. The Tribe established a Gaming Commission (see 18 GTBC, Chapter 4) to regulate and license gaming authorized in accordance with the Compact and the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701 et seq.) and the implementing regulations promulgated by the National Indian Gaming Commission (25 CFR Parts 500-599).
- (d) License. The GTB Gaming Commission licenses the EDC to operate Class III gaming facilities and licenses employees of the Class III gaming facilities. The GTB Gaming Commission also regulates gaming consistent with the regulations of the National Indian Gaming Commission. The GTB Gaming Commission has implemented (1) procedures for background investigations and licensing of key employees; and (2) minimum internal control standards for casino operations in accordance with the regulations of the National Indian Gaming Commission.
- (e) NIGC Approval. The National Indian Gaming Commission approved the Gaming Code on June 13, 1994 and, as amended, on July 28, 1997.

History: Tribal Act #03-21.1222, enacted by Tribal Council in Special Session on March 24, 2003.

**§ 703 - Conveyance of Property and Rights; Assumption of Obligations; Access to Tribal Lands**

- (a) On the effective date, without further action or instrument:
  - (1) All right, title and interest of the Tribe in all gaming-related personal property and gaming-related rights shall be thereupon transferred to and vested in the EDC;
  - (2) The EDC shall assume and thereafter faithfully discharge all gaming-related obligations, holding the Tribe harmless from any failure of the EDC to perform or comply with the obligations so assumed; and
  - (3) The Tribe shall cease to employ or engage, and the EDC shall thereupon commence to employ and engage upon the same terms as the Tribe, all employees, agents, consultants, and independent contractors employed or engaged by the Tribe in connection with the gaming business immediately before the effective date.
- (b) On and after the effective date, the EDC shall have all rights of access to the lands owned by, leased or licensed to or held in trust for the Tribe, including any improvements thereon, that



are necessary or desirable to permit the EDC to exercise its powers as herein permitted or otherwise carry out the purposes of this Ordinance.

- (c) As promptly as practicable on or after the effective date, the EDC shall seek to obtain all third-party consents required by any agreement or instrument relating to the foregoing, and take all actions as are necessary or appropriate to effectuate this Ordinance, including the transfer of all bank and securities accounts that are a part of the gaming-related personal property.

History: Tribal Act #03-21.1222, enacted by Tribal Council in Special Session on March 24, 2003.

#### **§ 704 - Enumerated Powers**

The EDC shall have the following powers with respect to the gaming business, which powers may be exercised in the name of the EDC upon such terms as the EDC shall determine, but which powers may not be exercised in contravention of the financing documents:

- (a) To receive, collect and own all revenues and to pay all expenses and expenditures, subject to the obligation to distribute revenues as provided in this Ordinance;
- (b) To open and maintain deposit, securities or other accounts with banks or other financial institutions, which accounts shall be separate from the accounts of the Tribe, and no assets in such accounts shall be commingled with the assets of the Tribe;
- (c) To acquire by gift, lease or otherwise, and own any now existing or hereafter acquired property or property interest of any nature, and to dispose of by any lawful means any now existing or hereafter acquired property or property interest of the EDC;
- (d) To employ all now or hereafter existing gaming-related employees and employ or engage any agents, consultants, or independent contractors, including attorneys and accountants;
- (e) To enter into any contract or agreement of any nature with any other party or parties;
- (f) To make any filing or file any report or application with any Tribal, state or federal authority;
- (g) To incur any form of indebtedness or obligation, including through issuance of debt securities or by means of a guarantee, and to pledge as security for the same any property or rights of the EDC, other than any interest in real property;
- (h) To sue and, subject to 15 GTBC § 706 of this Ordinance, to waive the sovereign immunity of the EDC and to agree to and engage in any dispute resolution process;
- (i) To develop, construct or equip facilities for use or useful to the gaming business;
- (j) To undertake the "Project" and the "Financing" referred to in Tribal Council Resolution No. 03-21.1220, dated March 24, 2003, and to execute, deliver and perform the "Financing Documents" referred to therein;

- (k) To take any other action deemed necessary, appropriate or convenient by the EDC for the operation of the gaming business; and
- (l) To take any other action as shall be expressly authorized or directed by the Tribal Council.

Any exercise by the EDC of any powers or authority in accordance with this Ordinance shall constitute the exercise of a governmental function of the Tribe.

History: Tribal Act #03-21.1222, enacted by Tribal Council in Special Session on March 24, 2003.

#### **§ 705 - Enumerated Limitations**

Notwithstanding any other provision in this Ordinance, the EDC shall not take any of the following actions without written authorization from the Tribal Council:

- (a) Waive or purport to waive the sovereign immunity of the Tribe;
- (b) Pledge as security for any debt or other obligation any revenues or assets of the Tribe;
- (c) Bind the Tribe or create any obligation or liability of the Tribe;
- (d) Terminate the operation of any material portion of the gaming business; and
- (e) Convey or encumber any interest in real property.

History: Tribal Act #03-21.1222, enacted by Tribal Council in Special Session on March 24, 2003.

#### **§ 706 - Application of Revenues**

All revenues derived from the gaming business that are not required to be applied to or reserved for the operation of the business (including the payment of principal, interest or other amounts on debt of the EDC) or maintenance of related facilities and reserves shall be distributed to the Tribe or its members in accordance with Tribal law. Notwithstanding the foregoing, no revenues of the EDC shall be distributed to the Tribe in contravention of the financing documents referred to in Tribal Council Resolution No. 03-21.1220, dated March 24, 2003.

History: Tribal Act #03-21.1222, enacted by Tribal Council in Special Session on March 24, 2003.

#### **§ 707 - Records and Audits**

The EDC shall maintain such books and records with respect to its operations as are customary or required by any applicable legal requirement. The EDC shall cause annual audits of the gaming business in compliance with generally accepted auditing procedures and the preparation of financial statements based thereon in accordance with generally accepted accounting principles, IGRA and the Compact.

History: Tribal Act #03-21.1222, enacted by Tribal Council in Special Session on March 24, 2003.

**§ 708 - Miscellaneous**

- (a) To the extent reasonable, this Ordinance shall be read and interpreted in a manner that is consistent with the Tribal Constitution, but in the event of any inconsistency, the provisions of the Tribal Constitution shall control.
- (b) Subject to Subsection (a) of this Section, all provisions of any law, statute, ordinance, resolution or action of the Tribe that are inconsistent with or would frustrate the intent of this Ordinance are hereby repealed.
- (c) This Ordinance shall become effective as the law of the Tribe for all purposes on the effective date.
- (d) The rights and powers of the EDC created by this Ordinance with respect to the gaming business and the gaming-related personal property shall be exclusive as between the EDC, the Tribe and any other any branch, department, agency, instrumentality, division, subsidiary, enterprise, authority, subsidiary or enterprise of the Tribe.

History: Tribal Act #03-21.1222, enacted by Tribal Council in Special Session on March 24, 2003.

**Chapter 8 - Grand Traverse Band Tribal Limited Liability Company Code****PART 1 - GENERAL PROVISIONS****§ 801 – Short Title**

This Title shall be known as the “Grand Traverse Band Tribal Limited Liability Company Code.”

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 802 - Authority; Purposes; Sovereign Immunity**

- (a) This Code is enacted pursuant to the Grand Traverse Band’s inherent sovereign powers and as specifically authorized by the Constitution and Bylaws of the Tribe.
- (b) The purpose of this Code is to provide for economic development of the Grand Traverse Band and its members by:
  - (1) Providing the legal framework for organizing individually-owned business entities in order to expand the private business sector on Tribal Lands; and
  - (2) Authorizing the formation of wholly-owned Tribal business entities for managing the Tribe’s economic activities separate from the general affairs of its Tribal

Council, with the ability to enter into legally-binding contracts and commercial relationships without the need for formal Tribal Council action.

- (c) 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 limited liability company hereunder, shall be construed to be a waiver of the sovereign immunity of the Tribe or a consent to suit against the Tribe in any court.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 803 - Scope**

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

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 804 - Applicable Law**

- (a) The companies organized and created under this Code shall be subject to this Code, and all other laws of the Tribe except as stated in the next paragraph of this section. By organizing and creating a company under this Code, the company 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.
- (b) All Tribal ordinances or other laws inconsistent with this Tribal limited liability company Code are hereby repealed only to the extent that such ordinances or laws would otherwise apply to companies organized and created under this Code. To the extent that this Code provides differently than any other Tribal law governing any limited liability company created under this Code, this Code shall govern. This provision shall apply generally to Tribal ordinances and laws and specifically to Title 6 of the Grand Traverse Band Code, known as the Grand Traverse Band of Ottawa and Chippewa Indians Sovereign Immunity Waiver Ordinance.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 805 - Definitions**

Terms used in this Code have the following meanings:

- (a) "Articles of Organization" means the articles filed under Section 815 and those articles as amended or restated.
- (b) "Corporation" means a domestic corporation for profit organized under the law of the

Tribe or a foreign corporation formed under the laws of any other jurisdiction.

- (c) “Distribution” means a direct or indirect transfer by a limited liability company of money or other property to or for the benefit of its owners in respect of their interests.
- (d) “Entity” includes an individual, a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation or any other legal or commercial entity.
- (e) “Foreign” refers to limited liability companies, corporations, and limited partnerships organized under the laws of a jurisdiction other than the Tribe.
- (f) “Limited liability company” or “domestic limited liability company” means an organization formed under this Code, except as provided for in Section 854(a).
- (g) “Limited liability company interest” or “interest in the limited liability company” or “owner’s interest” means an owner’s rights in the limited liability company, including rights to distributions, profits and losses, and to participate in management, as specified in the operating agreement.
- (h) “LLC” means a limited liability company.
- (i) “Majority in interest” means an owner or owners holding more than fifty percent (50%) of the total voting interests in the limited liability company, excluding any interest which is not to be counted as voting on a matter as described elsewhere in this Code.
- (j) “Manager” or “managers” means the person(s) or entity(ies) designated to manage the LLC pursuant to the Articles of Organization and operating agreement.
- (k) “Office of the Secretary” means the Office of the Secretary of the Tribal Council as provided by Article III of the Tribal Constitution, or that individual’s designee.
- (l) “Operating agreement” means an agreement in writing among all of the owners as to the conduct of the business of a limited liability company and its relationships with its owners.
- (m) “Organizer(s)” means the person(s) or entity(ies) which signs and delivers the Articles of Organization for filing to the Office of the Secretary.
- (n) “Owner” means a person that is a member of a limited liability company or has ownership interest in a limited liability company. The term does not include a person that has dissociated as an owner under Section 828.
- (o) “Person” includes a natural person, Tribal entity and an organization such as a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, or a corporation.
- (p) “Secretary of the Tribe” means the individual duly elected to the position of Secretary of the Tribal Council, or that individual’s designee.

- (q) “State” includes a state, territory, or possession of the United States, and the District of Columbia.
- (r) “Tribal Constitution” means the Constitution of the Grand Traverse Band of Ottawa and Chippewa Indians.
- (s) “Tribal corporation” means a corporation wholly owned by the Tribe and duly formed pursuant to a Section 17 Charter, a Tribal Resolution, a Business corporation Code adopted by the Tribe, or other law.
- (t) “Tribal Council” means the Tribal Council as established by Article III of the Tribal Constitution as the governing body of the Tribe.
- (u) “Tribal Court” means the Grand Traverse Band Tribal Court as established by Article V of the Tribal Constitution.
- (v) “Tribal entity” includes the Tribe, the Tribal Council, a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, a program, a department, an administrative agency or any other legal, commercial or governmental entity of the Tribe.
- (w) “Tribal Lands” means lands owned by the Grand Traverse Band of Ottawa and Chippewa Indians; lands owned by the United States of America in trust for the Grand Traverse Band of Ottawa and Chippewa Indians; and lands within the exterior boundaries of the Grand Traverse Band Reservation.
- (x) “Tribally-owned LLC” means a limited liability company wholly owned by the Tribe with the Tribe as its sole owner.
- (y) “Tribally-owned second tiered subsidiary LLC” means a limited liability company wholly owned by a Tribally-owned subsidiary LLC.
- (z) “Tribally-owned subsidiary LLC” means a limited liability company wholly owned by a Tribally-owned LLC.
- (aa) “Tribe” means the Grand Traverse Band of Ottawa and Chippewa Indians.
- (bb) “Trust Land” means land held in trust by the United States for the benefit of the Tribe or its members.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **§ 806 - Name**

- (a) The name of a limited liability company as set forth in its Articles of Organization must contain the words “limited liability company” or end with the abbreviation “L.L.C.” or “LLC.” The name may not contain language stating or implying that the limited liability

company is organized for any purpose other than that permitted under Section 809, below.

- (b) The name of a domestic LLC shall be distinguishable from any LLC or corporation previously organized under the laws of the Tribe.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **§ 807 - Registered Office and Registered Agent**

- (a) A limited liability company's registered agent is the company's agent for receiving service of process, notice, or demand required or permitted by law to be served on the company under the laws of the Tribe.
- (b) Each LLC shall continuously maintain a registered office and a registered agent. The registered office may, but need not be, the same as any of its places of business. The agent may be the same person then serving in a designated office of the Tribe rather than a specified person if the Tribe is an owner in the LLC of which the Tribe's officer is the appointed agent.
- (c) An LLC may change its registered office or registered agent, or both, by filing a written notice of change containing the name of its registered agent and the street address of its registered office, as changed, with the Office of the Secretary and paying the filing fee.
- (d) The registered agent of an LLC may resign as a registered agent by delivering to the Office of the Secretary for filing a written statement of resignation and the appointment by the LLC of another registered agent.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **§ 808 - Tribe as an owner**

- (a) The Tribe shall form or become an owner of a Tribally-owned LLC formed under this Code only upon approval of such action by duly enacted resolution of the Tribal Council.
- (b) If the Tribe or a Tribal entity is an owner of an LLC formed under this Code, any action which the Tribe is required or permitted to take with respect to any vote, approval, consent, appointment, direction, or other matter shall be taken as specified in Section 882 of this Code or, as to actions related to the managers of a manager-managed LLC, as stated in the LLC's operating agreement approved by the Tribal Council or, if applicable, as approved by the Board of Directors of a Tribally-owned LLC or Tribal entity.
- (c) If the Tribe is the sole owner of an LLC formed under this Code, such Tribally-owned LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit except to the extent otherwise provided in its operating agreement.
- (d) If a Tribally-owned LLC, of which the Tribe or a Tribal entity is the sole owner, forms a

Tribally-owned subsidiary LLC, of which the Tribally-owned LLC is the sole owner, such Tribally-owned subsidiary LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit except to the extent otherwise provided in its operating agreement.

- (e) If a subsidiary Tribally-owned LLC, of which the Tribally-owned LLC is the sole owner, forms a Tribally-owned second tier subsidiary LLC, such Tribally-owned second tier subsidiary LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit except to the extent otherwise provided in its operating agreement.
- (f) If the Tribe or a Tribal entity is an owner with a majority in interest in an LLC formed under this Code, such LLC may possess the privileges and immunities of the Tribe, including sovereign immunity from suit, to the extent allowed by federal law, this Code or its operating agreement.
- (g) In no event shall any manager who is not an owner of an LLC in which the Tribe is an owner, bind the Tribe in any manner; provided that the Tribe's interest as an owner may be bound by manager or owner actions as stated in this Code and the operating agreement of the LLC.
- (h) Nothing contained in this Code shall be construed as creating any liability or waiving of sovereign immunity of the Tribe in any manner; provided that the assets of the LLC in which the Tribe holds an interest may be subject to liabilities and claims unless otherwise provided herein. In no event shall any action taken by the Tribe as owner concerning the exercise of any right or privilege or discharge of any duty with respect to an interest in an LLC be construed as a waiver of immunity or creation of a liability on the part of the Tribe separate and apart from its interests as an owner of the LLC.
- (i) For all Tribally-owned limited liability companies, the additional provisions set forth in Part 9 of this Code shall apply.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 809 - Nature of Business**

- (a) A limited liability company may be organized under this Code for any lawful purpose. Unless otherwise provided in its operating agreement, an LLC organized and existing under this Code has the same powers as an individual to do all things necessary and convenient to carry out its business, including, but not limited to, all of the following:
  - (1) Consent to be sued, complain and defend in its name; provided, however, that if an LLC is Tribally-owned, or wholly-owned by another entity which itself is wholly-owned by the Tribe or is a Tribally-owned second tier subsidiary LLC, it shall be entitled to and shall enjoy the Tribe's sovereign immunity from suit unless the operating agreement otherwise provides.
  - (2) Purchase, take, receive, lease, or otherwise acquire and own, hold, improve, use, and



otherwise deal in or with real, or personal property or any legal or equitable interest in real or personal property, wherever situated.

- (3) Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, or otherwise dispose of all or any part of its property.
- (4) Lend money, property, and services to, and otherwise assist, its owners and managers, if any.
- (5) Purchase, take, receive, subscribe for, or otherwise acquire and own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in, or obligations of, any other enterprise or entity.
- (6) Make contracts and guarantees; incur liabilities; borrow money; issue notes, bonds, and other obligations; and secure any of its obligations by mortgage or pledge of all or part of its property, franchises, and income.
- (7) Lend money, invest and reinvest its funds, and receive and hold real or personal property as security for repayment.
- (8) Conduct its business, locate offices, and exercise the powers granted by this Code inside or outside of Tribal Lands.
- (9) Be a promoter, incorporator, partner, owner, associate, or manager of any enterprise or entity.
- (10) Elect or appoint managers, agents, and employees, define their duties, and fix their compensation.
- (11) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, and benefit or incentive plans for any or all of its current or former owners, managers, employees, and agents.
- (12) Make donations to and otherwise devote its resources for the public welfare or for charitable, scientific, educational, humanitarian, philanthropic, or religious purposes.
- (13) Indemnify an owner, manager, employee, officer, or agent, or any other person.
- (14) Provide benefits or payments to owners, managers, employees, and agents of the LLC, and to their estates, families, dependents, or beneficiaries in recognition of the past services of the owners, managers, employees, and agents of the LLC.
- (15) Make payments or donations, or do any other act not prohibited by law, that further the business of the LLC.
- (16) Transact any lawful business that the owners or the managers find to be appropriate to promote and further the business and affairs of the limited liability company,

including the creation of subsidiary entities.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 810 - Execution of Documents**

- (a) Except as otherwise provided in this Code, any document required or permitted by this Code to be delivered for filing in accordance with Section 811 shall be executed by any of the following:
  - (1) Any manager, if management of the LLC is vested in a manager or managers, or by an owner, if management of the LLC is reserved to the owners.
  - (2) All individuals that will be listed as organizers of the LLC in the documents that will be filed pursuant to Section 811. The name and address of each organizer shall be provided.
  - (3) The name of the drafter of the document.
- (b) The person executing the document shall sign it and state beneath or opposite the signature the person's name and capacity in which the person signs.
- (c) The person executing the document may do so as an attorney-in-fact. Powers-of-attorney relating to the executing of the document need not be shown to nor filed with the Office of the Secretary.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 811 - Filing**

- (a) The Office of the Secretary shall receive all filings required under this Code and maintain the records of such filings pursuant to this section, including, but not limited to, the Articles of Organization, amended or restated articles, annual reports, names and addresses of registered offices and agents, and, in the case of Tribally-owned LLCs, the operating agreement and amendments thereto, and other reports required by this Code.
- (b) Upon receipt of a document for filing under this Code, the Office of the Secretary shall ensure it meets the requirements herein and then shall stamp or otherwise endorse the date and time of receipt of the original, the duplicate copy, and, upon request, any additional copy received.
- (c) If the Office of the Secretary refuses to file a request, the Office shall return it to the person tendering the document for filing within five (5) business days after the date on which the document is received by the Office for filing, together with a brief written explanation of the reason for refusal.
- (d) Any document accepted by the Office of the Secretary shall be effective at the time of

receipt unless a delayed effective date and/or time not more than ninety (90) days after receipt by the Office of the Secretary is specified in the document.

- (e) Fees. The Office of the Secretary shall impose a reasonable filing fee for each document filed, initially not to exceed the sum of one hundred dollars (\$100), and an annual renewal fee initially not to exceed the sum of twenty-five dollars (\$25) during the life of the LLC, subject to any uniform schedule of fees as may hereafter be adopted by the Office from time to time.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 812 - Certificate of Status**

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

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 813 - Execution by Judicial Act**

Any person who is adversely affected by the failure or refusal of any person to execute and file any articles or other document required to be filed under this Code may petition the Tribal Court to direct the execution and filing of the articles or other document. Nothing in this Code, however, serves to waive any aspect of the Tribe's sovereign immunity, and any waiver thereof must be provided explicitly in the LLC's Articles of Organization and/or operating agreement.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 814 - Interstate Application**

An LLC may conduct its business, carry on its operations and have and exercise the powers granted by this Code, in any sovereign native nation, any state, territory, district or possession of the United States, or in any foreign jurisdiction.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

## **PART 2 - OPERATING AGREEMENT AND DEALING WITH LLC**

### **§ 815 - Articles of Organization**

- (a) One or more persons may organize a limited liability company by signing and delivering the Articles of Organization to the Office of the Secretary for filing. The organizer(s) need not be an owner of the LLC at the time of organization or thereafter.

- (b) A limited liability company shall have one or more owners.
- (c) The Articles of Organization shall contain all of and only the following information:
  - (1) A statement that the LLC is organized under this Code.
  - (2) A name for the LLC that satisfies the provisions of this Code.
  - (3) The street address of the registered office and the name of the registered agent at that office. For all LLCs formed pursuant to this Code and for all foreign LLCs operating within Tribal Lands, such office and agent shall be located within the exterior boundaries of Tribal Lands.
  - (4) If management of the LLC is vested in one or more managers, a statement to that effect.
  - (5) The name and address of each person organizing the LLC.
  - (6) Whether the LLC is Tribally-owned.
  - (7) If Tribally-owned, whether the LLC is to enjoy Tribal sovereign immunity and the scope of any waiver of that immunity.
- (d) The Office of the Secretary shall assign each Article of Organization an identification number.
- (e) Amendment. An LLC may amend its Articles of Organization at any time by delivering an amendment, with filing fee, for filing to the Office of the Secretary.
- (f) Effect of delivery or filing.
  - (1) An LLC is formed when the Articles of Organization become effective under Section 811(d).
  - (2) The Office of the Secretary's filing of the Articles of Organization is conclusive proof that the LLC is organized and formed under this Code.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 816 - Agency Power of Owners and Managers**

- (a) Except as provided in Subsection (b) below:
  - (1) Each owner is an agent of the LLC, but not of any of the other owners, for the purpose of its business.
  - (2) The act of any owner, including the execution in the name of the LLC of any instrument for apparently carrying on in the ordinary course of business the business

of the LLC, binds the LLC in the particular matter, unless the person with whom the owner is dealing has knowledge that the owner has no authority to act in this matter.

- (3) If the Tribe is an owner, the Tribe's authority shall be exercised pursuant to Section 882.
- (b) If management of the LLC is vested in one or more managers:
  - (1) No owner, solely by being an owner, is an agent of the LLC or of the other owners.
  - (2) Each manager is an agent of the LLC, but not for the other owners, for the purpose of its business. The act of any manager, including the execution in the name of the LLC of any instrument for apparently carrying on the ordinary course of business of the LLC, binds the LLC unless the manager has, in fact, no authority to act for the LLC in the particular matter, and the person with whom the manager is dealing has knowledge that the manager has no authority to act in the matter.
- (c) No act of an owner or, if management of the LLC is vested in one or more managers, of a manager that is not apparently authorized for the carrying on in the ordinary course of business the business of the LLC, shall bind the LLC unless in fact authorized at the time of the transaction or at any other time.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **§ 817 - Admissions of Owners and Managers**

- (a) Except as provided in Section 817(b)(2), an admission or representation made by any owner concerning the business of an LLC within the scope of the owner's actual authority may be used as evidence against the LLC in any legal proceeding.
- (b) If management of the LLC is vested in one or more managers:
  - (1) An admission or representation made by a manager concerning the business of an LLC within the scope of the manager's authority may be used as evidence against the LLC in any legal proceeding.
  - (2) The admission or representation of any owner, acting solely in the owner's capacity as an owner, is not evidence against the LLC in any legal proceeding.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **§ 818 - Knowledge of or Notice to Owner or Manager**

- (a) Except as provided in Section 818(b)(2), notice to any owner of any matter relating to the business of an LLC, and the knowledge of an owner acting in the particular matter, acquired while an owner or known by the person at the time of becoming an owner, and the knowledge of any owner who reasonably could and should have communicated it to

the acting owner, operate as notice to or knowledge of the LLC.

- (b) If management of the LLC is vested in one or more managers:
- (1) Notice to any manager of any matter relating to the business of the LLC, and the knowledge of the manager acting in the particular matter acquired while a manager or known by the person at the time of becoming a manager and the knowledge of any other manager who reasonably could and should have communicated it to the acting manager, operate as notice to or knowledge of the LLC.
  - (2) Notice to or knowledge of any owner while the owner is acting solely in the capacity of an owner is not notice to or knowledge of the LLC.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 819 - Liability of Owners to Third Parties**

The debts, obligations, and liabilities of an LLC, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the LLC. Except as otherwise specifically provided in this Code, an owner or manager of an LLC is not personally liable for any debt, obligation, or liability of an LLC, as defined in the operating agreement.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 820 - Parties to Action**

- (a) An owner of an LLC is not a proper party to a proceeding by or against an LLC solely by reason of being an owner of the LLC, except if any of the following exist:
- (1) The object of the proceeding is to enforce an owner's right against or liability to the LLC.
  - (2) The action is brought by an owner under Section 821.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 821 - Authority to Sue**

- (a) Unless otherwise provided in the operating agreement, an action on behalf of an LLC may be brought in the name of the LLC by:
- (1) One or more owners of the LLC, if authorized by a majority in interest of owners, excluding the vote of any owner who has an interest in the outcome of the action that is adverse to the interest of the LLC.
  - (2) One or more managers of an LLC if the management of the LLC is vested in one or

more managers, or if the managers are authorized to sue by a majority in interest of owners.

- (b) Nothing contained herein shall be construed as authorizing actions of any kind whatsoever against the Tribe as owner unless otherwise provided in the operating agreement.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **PART 3 - OWNERS AND MANAGERS**

#### **§ 822 - Management**

- (a) Unless the Articles of Organization vest management in one or more managers, management of the LLC shall be vested in the owners, subject to any provision in the operating agreement or this Code restricting or enlarging the management rights and duties of any owner or group of owners.
- (b) In an owner-managed liability company, the following rules shall apply, subject to the provisions of the operating agreement or this Code:
  - (1) A difference arising among owners as to a matter in the ordinary course of the activities of the LLC may be decided by a majority of the owners.
  - (2) An act outside the ordinary course of activities of a limited liability company may be undertaken only with the consent of all the owners.
- (c) If the Articles of Organization vest management in one or more managers, management of the business or affairs of the LLC shall be invested in the manager or managers, subject to any provisions in the operating agreement or this Code restricting or enlarging the management rights and duties of any manager or group of managers. Unless otherwise provided in the operating agreement, the manager, or managers:
  - (1) Shall be designated, appointed, elected, removed, or replaced by a vote of a majority in interest of the owners.
  - (2) Need not be owners of the LLC nor individuals.
  - (3) Unless earlier removed or earlier resigned, shall hold office until a successor is elected and qualified.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **§ 823 - Duties**

- (a) Unless otherwise provided in the operating agreement:

- (1) No owner or manager shall act or fail to act in a manner that constitutes any of the following:
    - (A) A willful failure to deal fairly with the LLC or its owners in connection with a matter in which the owner or manager has a material conflict of interest.
    - (B) A violation of criminal law involving moral turpitude.
    - (C) A transaction from which the owner or manager derived an improper personal profit.
    - (D) Willful misconduct.
  - (2) Every owner and manager shall account to the LLC and hold as trustee for it any improper personal profit derived by that owner or manager without the consent of a majority of the disinterested owners or managers, or other persons participating in the management of the LLC, from any of the following:
    - (A) A transaction connected with the organization, conduct, or winding up of the LLC.
    - (B) A use by an owner or manager of the property of an LLC, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as owner or manager.
- (b) An LLC's operating agreement may impose duties on its owners and managers that are in addition to, but not in abrogation of, those provided in Subsection (a) above.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **§ 824 - Limitation of Liability and Indemnification**

- (a) In this section, "expenses" mean expenses of defending a lawsuit, including attorney's fees, and any civil judgment or penalty, or settlement payment in lieu thereof, paid in connection with a lawsuit against an owner or manager in such capacity.
- (b) An LLC shall indemnify or allow expenses to each owner and each manager for all reasonable expenses incurred with respect to a proceeding if that owner or manager was a party to the proceeding in the capacity of an owner or manager.
- (c) The operating agreement may alter or provide additional rights to indemnification or allowance of expenses to owners and managers.
- (d) Notwithstanding Subsections (b) and (c) above, an LLC may not indemnify an owner or manager unless it is determined that the owner or manager did not breach or fail to perform a duty to the LLC as provided in Section 823.
- (e) Unless otherwise provided in the operating agreement:



- (1) An owner or manager shall be conclusively presumed not to have breached or failed to perform a duty to the LLC to the extent that the owner or manager has been successful on the merits or otherwise in the defense of the proceeding.
- (2) In situations not described in Paragraph (1), above, the determination of whether an owner or manager has breached or failed to perform a duty to the LLC shall be made by the vote of a majority in interest of the owners, excluding any owner who is a party to the same or related proceeding unless all owners are parties.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 825 - Voting**

- (a) Unless otherwise provided in the operating agreement or this section, and subject to Subsection (b) below, an affirmative vote, approval, or consent as follows shall be required to decide any matter connected with the business of an LLC:
  - (1) If management of an LLC is reserved to the owners, an affirmative vote, approval, or consent by a majority in interest of owners.
  - (2) If the management of an LLC is vested in one or more managers, the affirmative vote, consent, or approval of more than fifty percent (50%) of the managers.
- (b) Unless otherwise provided in the operating agreement or this Code, the affirmative vote, approval, or consent of all owners shall be required to do any of the following:
  - (1) Amend the Articles of Organization.
  - (2) Issue an interest in an LLC to any person.
  - (3) Adopt, amend, or revoke the operating agreement.
  - (4) Allow an LLC to accept any additional contribution from an owner.
  - (5) Allow a partial redemption of an interest in an LLC under Section 834.
  - (6) Value contributions of owners under Section 829.
  - (7) Authorize a manager, owner, or other person to do any act on behalf of the LLC that contravenes the operating agreement.
- (c) Unless otherwise provided in the operating agreement, if any owner is precluded from voting with respect to a given matter, the value of the contribution represented by the interest in the LLC with respect to which the owner would otherwise have been entitled to vote shall be excluded from the total contributions made to the LLC for purposes of determining the fifty percent (50%) threshold under Section 805(i) for that matter.

- (d) Unless otherwise provided in operating agreement or this section, if all or part of an interest in the LLC is assigned under Section 843, the assigning owner shall be considered the owner of the assigned interest for purposes of determining the fifty percent (50%) threshold under Section 805(i) until the assignee of the interest in the LLC becomes an owner under Section 845.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 826 - Records and Information**

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

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 827 - Admission of Owners**

- (a) In connection with the formation of an LLC, a person acquiring an LLC interest is admitted as an owner upon formation unless the operating agreement otherwise provides.
- (b) After the formation of an LLC, a person acquiring an LLC interest is admitted as an owner of the LLC as specified in the operating agreement or, if not so specified, by consent of all the other owners, or, if the person is an assignee of another person's LLC interest, only

pursuant to Section 842.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### § 828 - Dissociation

- (a) A person ceases to be an owner of an LLC upon the simultaneous occurrence of and at the same time of any of the following events:
  - (1) The owner withdraws by voluntary act.
  - (2) The owner is removed as an owner in accordance with the operating agreement or this Code.
  - (3) Unless otherwise provided in the operating agreement or by the written consent of all owners at the time of the event, the owner does any of the following:
    - (A) Makes an assignment for the benefit of the creditors.
    - (B) Files a petition in bankruptcy.
    - (C) Becomes the subject of an order for relief under the federal bankruptcy law or state or Tribal insolvency laws.
    - (D) Fails to gain dismissal of any federal bankruptcy or state or Tribal insolvency proceeding within 120 days of commencement of an involuntary proceeding.
  - (4) Unless provided in the operating agreement or by the written consent of all owners, if the owner is an individual, either of the following occurs:
    - (A) The owner's death.
    - (B) The entry of an order by a court of competent jurisdiction adjudicating the owner incompetent to manage the owner's person or estate.
  - (5) Unless otherwise provided in the operating agreement or by written agreement or by the written consent of all owners at the time, if the owner is a trust, corporation, partnership, or limited liability company upon liquidation, dissolution, or termination.
- (b) The owners may provide in the operating agreement for other events the occurrence of which result in a person ceasing to be an owner of the LLC.
- (c) Unless the operating agreement provides that an owner does not have the power to withdraw by voluntary act from an LLC, the owner may do so at any time by giving written notice to the other owners or as provided in the operating agreement. If the owner has the power to withdraw but the withdrawal is a breach of the operating agreement, the LLC may offset the damages against the amount otherwise distributable to the owner, in

addition to pursuing any remedies provided for in the operating agreement or otherwise available under applicable law.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

## **PART 4 - FINANCE**

### **§ 829 - Contributions**

- (a) An owner's contributions to an LLC may consist of cash, property, or services rendered, or promissory notes or other written obligations to provide cash or property or to perform services.
- (b) The value of an owner's contribution shall be determined in the manner provided in the operating agreement. If the operating agreement does not fix a value to a contribution, the value of a contribution shall be approved by a majority in interest of the owners, shall be properly reflected in the records and information kept by the LLC under Section 826(a). The value of contributions so determined shall be binding and conclusive on the LLC and its owners.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 830 - Liability for Contribution**

- (a) An obligation of an owner to provide cash or property or to perform services as a contribution to an LLC is not enforceable unless specified in a writing signed by the owner.
- (b) Unless otherwise provided in the operating agreement, an owner is obligated to an LLC to perform any enforceable promise to provide cash or property or to perform services, even if the owner is unable to perform because of death, disability, or any other reason. If an owner does not provide cash, property, or services as promised, the owner is obligated at the option of the LLC to provide cash equal to that portion of the value of the stated contribution that has not been fulfilled.
- (c) Unless otherwise provided in the operating agreement, an owner's obligation to provide cash or property or perform services as a contribution to the LLC may be compromised only by the written consent of all of the owners.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 831 - Allocation of Profits and Losses**

The profits and losses of an LLC shall be allocated among the owners in the manner provided in the operating agreement. If the owners do not enter into an operating agreement or the operating

agreement does not provide otherwise, profits and losses shall be allocated on the basis of value of the contributions made by each owner.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

## **PART 5 - NON-LIQUIDATING DISTRIBUTIONS**

### **§ 832 - Interim Distributions**

Except as provided in this Part 5, an owner is entitled to receive distributions from an LLC before the owner's dissociation from the LLC and before its dissolution and winding up to the extent and at the times or upon the events specified in the operating agreement, or to the extent and at the times determined by the owners or managers.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 833 - Allocation of Distributions**

Distributions of cash or other assets of an LLC shall be allocated among the owners as provided in operating agreement, or if the operating agreement does not so provide, on the basis of the value of the contributions made by each owner.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 834 - Distribution Upon Partial Redemption**

Except as provided in this Part 5, upon the distribution in partial liquidation of an owner's interest, the redeeming owner is entitled to receive the amount to which the owner is entitled under the operating agreement and, if not otherwise provided in the operating agreement, the fair value of the redeemed interest based on the owner's right to share in distributions from the LLC.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 835 - Distribution Upon Dissociation**

Except as otherwise provided in this Part 5, upon an event of dissociation under Section 828 that does not cause dissolution of the LLC, a dissociating owner is entitled to receive any distribution to which owner is entitled under the operating agreement and, if not otherwise provided in the operating agreement, the fair market value of the owner's interest in the LLC based on the owner's rights to share in distributions from the LLC.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 836 - Distribution in Kind**

- (a) Unless otherwise provided in the operating agreement:
- (1) An owner may not demand and receive any distribution from an LLC in any form other than cash.
  - (2) An owner may not be compelled to accept a distribution of any asset in kind except for a liquidating distribution made proportionately.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 837 - Right to Distribution**

At the time that an owner becomes entitled to receive a distribution from an LLC, the owner has the status of and is entitled to all remedies available to a creditor of the LLC with respect to the distribution; provided, however, that such right shall not in any way limit any other remedy available to such owner under any other provision of applicable law of the operating agreement.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 838 - Limitations of Distributions**

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

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 839 - Liability for Wrongful Distribution**

- (a) Except as provided in Subsection (b) below, an owner (other than the Tribe or Tribal entity) or manager who votes or assents to a distribution in violation of Section 838 or of the operating agreement is personally liable to the LLC for the amount of the excess distribution, subject to contribution from all other managers or owners participating in such action.
- (b) An action to recover under this section may be brought in the Tribal Court; however, a proceeding under this section is barred unless it is brought within two (2) years after the date of the distribution.
- (c) Nothing in this Code serves to waive any aspect of the Tribe's sovereign immunity, and any waiver thereof must be provided explicitly in the LLC's operating agreement.

## **PART 6 - OWNERSHIP AND TRANSFER OF PROPERTY**

### **§ 840 - Ownership of LLC Property**

- (a) All property originally transferred to or acquired by an LLC is property of the LLC and not the owners individually.
- (b) Property acquired with LLC funds is presumed to be LLC property.
- (c) Property may be acquired, held, and conveyed in the name of the LLC.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 841 - Transfer of Property**

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

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 842 - Nature of Interest**

An LLC interest is personal property.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 843 - Assignment of LLC Interest**

- (a) Unless otherwise provided in the operating agreement:
- (1) An LLC interest is assignable in whole or in part.
  - (2) An assignment of an LLC interest entitles the assignee to receive only the distributions and to share in the allocations of profits and losses to which the assignor would be entitled with respect to the assigned interest.
  - (3) An assignment of an LLC interest does not dissolve the LLC.
  - (4) Unless and until the assignee becomes an owner of the LLC under Section 845, the assignment of an LLC interest does not entitle the assignee to participate in the management or exercise rights of an owner.
  - (5) Unless and until the assignee of an LLC interest becomes an owner of the LLC under Section 845, the assignor continues to be an owner.
  - (6) The assignor of an LLC interest is not released from any personal liability arising under this Code as an owner of the LLC solely as a result of the assignment.
- (b) Unless otherwise provided in the operating agreement, the granting of a security interest, lien, or other encumbrance in or against any or all of an owner's LLC interest is not assignable and shall not cause the owner to cease to have the power to exercise any rights or powers of an owner.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 844 - Rights of Judgment Creditor**

Upon application to a court of competent jurisdiction, including a court other than the Tribal Court having valid jurisdiction over an owner, by any judgment creditor of the owner, the court may charge the LLC interest of any owner (other than the Tribe) with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of an assignee of the owner's LLC interest in distributions made by the LLC to owners and other assigned interest holders in the usual course of business. This section does not deprive any owner of the benefit of any exemption laws applicable to the LLC interest. In no event shall the Tribe's interest be attachable in abrogation of its sovereign immunity.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 845 - Right of Assignee to Become an Owner**

- (a) Unless otherwise provided in the operating agreement, an assignee of an LLC interest may



become an owner only if the other owners unanimously consent.

- (b) An assignee of an LLC interest who becomes an owner has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of the assignor under the operating agreement and this Code.
- (c) Unless otherwise provided in the operating agreement, an assignor of an LLC interest is not released from any liability to the LLC without the written consent of all the owners, whether or not the assignee becomes an owner.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 846 - Powers of Legal Representative**

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

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

## **PART 7 - DISSOLUTION**

### **§ 847 - Dissolution**

- (a) A limited liability company is dissolved and its affairs shall be wound up upon the happening of the first of the following:
  - (1) The occurrence of events specified in the operating agreement.
  - (2) The written consent of all owners.
  - (3) An event of dissociation of an owner, unless otherwise provided in the operating agreement or continuation is consented to by all remaining owners.
  - (4) Entry of a decree of judicial dissolution under Section 848.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 848 - Judicial Dissolution**

- (a) In a proceeding by or for an owner, the Tribal Court or court of competent jurisdiction may order dissolution of an LLC if any of the following is established:

- (1) That it is not reasonably practicable to carry on the business of the LLC.
  - (2) That the LLC is not acting in conformity with its operating agreement.
  - (3) That one or more managers are acting or will act in a manner that is illegal, oppressive, or fraudulent.
  - (4) That one or more owners in control of the LLC are acting or will act in a manner that is illegal, oppressive, or fraudulent.
  - (5) That LLC assets are being misapplied or wasted.
- (b) If the Tribe is an owner of the LLC, any action under this section must be brought in the Tribal Court, unless explicitly otherwise provided in the operating agreement. Nothing in this section may be construed as a waiver of the Tribe's sovereign immunity from suit, and any waiver thereof must be provided explicitly in the LLC's operating agreement.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **§ 849 - Winding Up**

- (a) A dissolved LLC continues its legal existence but may not carry on any business except that which is appropriate to wind up and liquidate its business.
- (b) Unless otherwise provided in its operating agreement:
- (1) The business of the LLC may be wound up by any of the following:
    - (A) The owners or managers who have authority to manage the LLC before dissolution.
    - (B) In a judicial dissolution, the person(s) designated by the Tribal Court or court of competent jurisdiction.
  - (2) The persons winding up the business of the LLC may do all of the following in the name of and on behalf of the LLC:
    - (A) Collect its assets.
    - (B) Prosecute and defend suits.
    - (C) Take any action necessary to settle and close the business of the LLC.
    - (D) Dispose of and transfer the property of the LLC.
    - (E) Discharge or make provision for discharging the liabilities of the LLC.

- (F) Distribute to the owners any remaining assets of the LLC.
- (c) Dissolution of an LLC does not do any of the following:
  - (1) Transfer title to the LLC's property.
  - (2) Prevent transfer of all or part of an owner's interest.
  - (3) Prevent commencement of a civil, criminal, administrative, or investigatory proceeding by or against the LLC.
  - (4) Abate or suspend a civil, criminal, administrative, or investigatory proceeding pending by or against the LLC at the time of dissolution.
  - (5) Terminate the authority of the registered agent of the LLC.
  - (6) Alter the limited liability of an owner.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **§ 850 - Distribution of Assets**

- (a) Upon the winding up of an LLC, the assets shall be distributed in the following order:
  - (1) To creditors, including to the extent permitted by law, owners, and former owners in satisfaction of liabilities of the LLC.
  - (2) Unless otherwise provided in the operating agreement, to owners and former owners in satisfaction of liabilities for distributions under Sections 832, 834 and 835.
  - (3) Unless otherwise provided in the operating agreement, to owners and former owners first for the return of their contributions in proportion to their respective values and, thereafter, in proportion to their respective rights to share in distributions from the LLC before dissolution.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **§ 851 - Articles of Dissolution**

- (a) After the dissolution of an LLC under Section 847, the LLC may file articles of dissolution with the Office of the Secretary that include the following:
  - (1) The name of the LLC.
  - (2) The date of filing of its Articles of Organization.
  - (3) The statutory grounds under Section 847 for dissolution.

- (4) The delayed effective date of the articles of dissolution under Section 811(c), if applicable.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 852 - Known Claims Against Dissolved LLC**

- (a) A dissolved LLC may notify its known claimants in writing of the dissolution and specify a procedure for making claims.
- (b) A claim against the LLC is barred if:
  - (1) A claimant who was given written notice under Subsection (a), above, does not deliver the claim, in writing, to the LLC by the deadline specified in the notice; or
  - (2) A claimant whose claim is rejected by the LLC does not commence a proceeding to enforce the claim within ninety (90) days after receipt of the rejection notice.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 853 - Unknown or Contingent Claims**

- (a) A claim not barred under Section 852 may be enforced:
  - (1) Against the dissolved LLC, to the extent of its undistributed assets.
  - (2) If the dissolved LLC's assets have been distributed in liquidation, against an owner of the LLC, other than the Tribe, to the extent of the owner's proportionate share of the claim or of the assets of the LLC distributed to the owner in liquidation, whichever is less, but an owner's total liability for all claims under this section may not exceed the total value of assets at the time distributed to the owner.

## **PART 8 - MERGER AND CONVERSION**

### **§ 854 - Definitions**

- (a) "Business entity" in this Part 8 means a domestic business entity and a foreign business entity.
- (b) "Domestic business entity" means a corporation, incorporated under the laws of the Grand Traverse Band; a domestic LLC, organized under this Code; a Tribally-chartered entity of the Tribe, an unincorporated cooperative of the Tribe; a Section 17 corporation owned by the Tribe; or other Tribally-formed entity, that is party to the merger.

- (c) “Foreign business entity” means a foreign limited liability company; a foreign limited partnership, or a foreign corporation.
- (d) Unless the context requires otherwise, in this Part 8, “LLC” includes a domestic LLC and a foreign LLC.
- (e) “Organizational documents” include Articles of Organization, operating agreements, Articles of Incorporation, bylaws, partnership agreements, agreements of trust and declarations of trust, and any other basic records that create a business entity’s organization and determine its internal governance and relations among persons that own it, have an interest in it, or are owners of it.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 855 - Merger**

- (a) Unless otherwise provided in its operating agreement, one or more LLCs may merge with or into one or more other business entities if the action of merger is a process permitted under the applicable laws of the jurisdiction that governs each such other business entity and each such business entity approves the plan of merger in accordance with its organizational documents.
- (b) Interests or shares in an LLC that is a party to a merger may be exchanged for or converted into cash, property, obligations, or interest in the surviving business entity.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 856 - Approval of Merger**

- (a) Unless otherwise provided in the operating agreement, a domestic LLC that is a party to a proposed merger shall approve the plan of merger by an affirmative vote by all of the owners.
- (b) Unless otherwise provided in the operating agreement, the manager or managers of a domestic LLC may not approve a merger without also obtaining the approval of the LLC’s owners under Subsection (a), above.
- (c) Each business entity, other than a domestic LLC, that is a party to a proposed merger shall approve the merger in the manner and by the vote required by the laws applicable to the business entity and in accordance with their respective organizational documents.
- (d) Each business organization that is a party to the merger shall have any rights to abandon the merger as provided for in the plan of merger or in the laws applicable to the business entity or in accordance with its organizational documents.
- (e) Upon approval of a merger, the LLC shall notify its owners of the approval and of the effective date of the merger.

- (f) After a merger is authorized, and at any time before the Articles of Merger are filed with the Tribal Secretary, the planned merger may be abandoned, subject to any contractual rights, without further action on the part of the shareholders or other owners, in accordance with the procedures set forth in the plan of merger or, if none is set forth, in the manner determined by the governing body of any business entity that is a party to the merger.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 857 - Plan of Merger**

- (a) The plan of merger shall include all of the following:
- (1) The name, form of business entity, and identity of the jurisdiction governing each business entity that is a party to the merger and the name, form of business entity, and identity of the jurisdiction of the surviving business entity with, or into, which each other business entity proposes to merge.
  - (2) The terms and conditions of the proposed merger.
  - (3) The manner and basis of converting the interests in each business entity that is a party to the merger into shares, interests, obligations, or other securities of the surviving business entity or into cash or other property in whole or in part.
  - (4) Amendments to the Articles of Organization or other similar governing document of the surviving business entity.
  - (5) Other necessary or desirable provisions relating to the proposed merger.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 858 - Articles of Merger**

- (a) The surviving business entity shall deliver to the Office of the Tribal Council Secretary Articles of Merger, executed by each party to the plan of merger, that include all of the following:
- (1) The plan of merger.
  - (2) The name of the surviving or resulting LLC.
  - (3) The effective date and time of the merger.
  - (4) A statement as to whether the surviving business entity is Tribally-owned.
  - (5) If Tribally-owned, a statement as to whether the surviving business entity enjoys the

Tribe's sovereign immunity.

- (6) A statement that the plan of merger was approved by each domestic LLC that is a party to the merger in accordance with Section 856.

- (b) A merger takes effect upon the effective date of the Articles of Merger.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 859 - Effects of Merger**

- (a) A merger has the following effects:

- (1) The business organization must become a single entity, which shall be the entity designated in the plan of merger as the surviving LLC.
- (2) Each business organization, except the surviving LLC, ceases to exist.
- (3) The surviving LLC possesses all of the rights, privileges, immunities, and powers of each merged business organization and is subject to all of the restrictions, disabilities, and duties of each merged business organization.
- (4) All property and all debts, including contributions, and each interest belonging to or owed to each of the business organizations are vested in the surviving LLC without further act.
- (5) Title to all real estate and any interest in real estate, vested in any business organization, does not revert, and is not in any way impaired because of the merger.
- (6) The surviving LLC has all the liabilities and obligations of each of the business organizations and any claim existing or action or proceedings pending by or against any merged business organization may be prosecuted as if the merger had not taken place, or the surviving LLC may be substituted in the action.
- (7) The rights of creditors and any liens on the property of any business organization survive the merger.
- (8) The interests in a business organization that are to be converted or exchanged into interest, cash, obligations, or other property under the terms of the plan of merger are converted and the former interest holders are entitled only to the rights provided in the plan of merger or the rights otherwise provided by law.
- (9) The Articles of Organization of the surviving LLC is amended to the extent provided in the Articles of Merger.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 860 - Right to Object**

Unless otherwise provided in the operating agreement, upon receipt of the notice required by Section 856(e), an owner who did not vote in favor of the merger may, within twenty (20) days after the date of the notice, voluntarily dissociate from the LLC under Section 828(c) and receive fair value for the owner's LLC interest under Section 835.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 861 - Conversion**

- (a) Unless otherwise provided in its organizational documents, a domestic LLC may convert to another form of business entity:
  - (1) If it satisfies the requirements under this chapter relating to conversions; and
  - (2) If the conversion is permitted under the applicable law of the jurisdiction that governs the organization of the business entity into which the domestic LLC is converting.
- (b) Unless otherwise provided in its organizational documents, a business entity other than a domestic LLC may convert into a domestic LLC:
  - (1) If it satisfies the requirements under this chapter relating to conversions; and
  - (2) If the conversion is permitted under the applicable law of the jurisdiction that governs the business entity.
- (c) The filing requirements of Section 811 apply to conversions under this chapter.
- (d) Notwithstanding its prior approval, a plan of conversion under this chapter may be amended before the conversion takes effect if the amendment is approved by the members of the converting domestic LLC or business entity in the same manner as was required for the approval of the original plan of conversion.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 862 - Conversion of Domestic LLC into Another Business Entity**

A domestic LLC may convert into another business entity if all of the requirements of Section 863 and Section 864 are satisfied.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 863 - Plan of Conversion for Domestic LLC into Another Business Entity**

- (a) Unless Subsection (c) applies, the domestic LLC proposing to convert shall adopt a plan



of conversion that includes all of the following:

- (1) The name of the domestic LLC, the name of the business entity into which the domestic LLC is converting, the type of business entity into which the domestic LLC is converting, identification of the statute that will govern the internal affairs of the surviving business entity, the street address of the surviving business entity, the street address of the domestic LLC if different from the street address of the surviving business entity, and the principal place of business of the surviving business entity.
  - (2) The terms and conditions of the proposed conversion, including the manner and basis of converting the membership interest of the domestic LLC into ownership interests or obligations of the surviving business entity, into cash, into other consideration that may include ownership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.
  - (3) The terms and conditions of the organizational documents that are to govern the surviving business entity.
  - (4) Any other provisions with respect to the proposed conversion that the domestic LLC considers as necessary or desirable.
- (b) A vote of the members of the domestic LLC is required to adopt a plan of conversion under Subsection (a). A unanimous vote of the members entitled to vote is required to approve a plan of conversion unless its organizational documents provide otherwise.
- (c) If the domestic LLC has not commenced business; has not issued any membership interests; has no debts or other liabilities; and has not received any payments, or has returned any payments it has received after deducting any amount disbursed for payment of expenses, for subscriptions for its membership interests, Subsections (a) and (b) do not apply and the owners of the domestic LLC, may approve of the conversion of the domestic LLC into another business entity by majority vote. To effect the conversion, a majority of the owners must execute and file a certificate of conversion under Section 864.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **§ 864 - Filing of Certificate of Conversion for Domestic LLC**

- (a) If the plan of conversion is approved under Section 863(b), the domestic LLC shall file any formation documents required to be filed under the laws governing the internal affairs of the surviving business entity, in the manner prescribed by those laws, and shall file a certificate of conversion with the Office of the Secretary. The certificate of conversion shall include all of the following:
- (1) Unless Section 863(c) applies, a copy of the plan of conversion.
  - (2) The name of the domestic LLC that is converting into another business entity.

- (3) The type of business entity the domestic LLC is converting into and the jurisdiction under which the surviving business entity shall be governed.
- (4) A statement that the members of the domestic LLC have adopted the plan of conversion under Section 863(b), or that the owners of the domestic LLC have approved of the conversion under Section 863(c), as applicable.
- (5) A statement that the surviving business entity will furnish a copy of the plan of conversion, on request and without cost, to any owner of the domestic LLC.
- (6) The registered agent and registered office of the domestic LLC before and after conversion.
- (7) A statement whether the domestic LLC is Tribally-owned.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 865 - Effect of Conversion of Domestic LLC into Another Business Entity**

- (a) When a conversion under this section takes effect, all of the following apply:
  - (1) The domestic LLC converts into the surviving business entity, and the organizational documents of the domestic LLC are canceled.
  - (2) Except as otherwise provided in this Code, the surviving business entity is organized under and subject to the organizational laws of the jurisdiction of the surviving business entity as stated in the Certificate of Conversion.
  - (3) The surviving business entity has all of the liabilities of the domestic LLC. The conversion of the domestic LLC into a business entity under this section shall not be considered to affect any obligations or liabilities of the domestic LLC incurred before the conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the domestic LLC with respect to matters arising before the conversion.
  - (4) The title to all real estate and other property and rights owned by the domestic LLC remain vested in the surviving business entity without reversion or impairment.
  - (5) The surviving business entity is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the domestic LLC was originally organized.
  - (6) The membership interests of the domestic LLC that were to be converted into ownership interest or obligations of the surviving business entity or into cash or other property are converted.
  - (7) Unless otherwise provided in the plan of conversion, the domestic LLC is not

required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute dissolution of the domestic LLC.

- (8) The organizational documents of the surviving business entity are as provided in the plan of conversion.
- (9) All other provisions of the plan of conversion apply.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 866 - Conversion of Business Entity into Domestic LLC**

A business entity may convert into a domestic LLC if all of the requirements of Section 867 and 868 are satisfied.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 867 - Plan of Conversion Business Entity into Domestic LLC**

- (a) The business entity proposing to convert into a domestic LLC adopts a plan of conversion that includes all of the following:
  - (1) The name of the business entity, the type of business entity that is converting, identification of the statute that governs the internal affairs of the business entity, the name of the surviving domestic LLC into which the business entity is converting, the street address of the surviving domestic LLC company, the street address of the business entity if different from the street address of the surviving domestic LLC, and the principal place of business of the surviving domestic LLC.
  - (2) The terms and conditions of the proposed conversion, including the manner and basis of converting the ownership interests of the business entity into membership interests of the surviving domestic LLC, into cash, into other consideration that may include ownership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.
  - (3) The terms and conditions of the organizational documents that are to govern the surviving domestic LLC.
  - (4) Any other provisions with respect to the proposed conversion that the business entity considers necessary or desirable.
- (b) If a plan of conversion is adopted by the business entity under Subsection (a), the plan of conversion is submitted for approval in the manner required by the law governing the internal affairs of that business entity.
- (c) If the plan of conversion is approved under Subsections (a) and (b), the business entity

shall file a Certificate of Conversion with the Office of the Tribal Secretary. The Certificate of Conversion shall include all of the following:

- (1) A copy of the plan of conversion.
- (2) A statement that the business entity has obtained approval of the plan of conversion under Subsection (b).
- (3) A statement that the surviving domestic LLC will furnish a copy of the plan of conversion, on request and without cost, to any owner of the business entity.
- (4) The registered agent and registered office, record agent and record office, or other similar agent and office of the surviving domestic LLC before and after conversion.
- (5) The type of business entity and the date and location of jurisdiction where the business entity was formed prior to converting into a domestic LLC.
- (6) A statement whether the surviving domestic LLC is Tribally-owned.
- (7) Submission of Articles of Organization for the surviving domestic LLC that meet all of the requirements of this Code.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 868 - Effect of Conversion of Business Entity into Domestic LLC**

- (a) When a conversion under this Part 8 takes effect, all of the following apply:
  - (1) The business entity converts into the surviving domestic LLC. Except as otherwise provided in this section, the surviving domestic LLC is organized under and subject to this Code.
  - (2) The surviving domestic LLC has all of the liabilities of the business entity. The conversion of the business entity into a domestic LLC under this section shall not be considered to affect any obligations or liabilities of the business entity incurred before the conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the business entity with respect to matters arising before conversion.
  - (3) The title to all real estate and other property and rights owned by the business entity remains vested in the surviving domestic LLC without reversion or impairment.
  - (4) A proceeding pending against the business entity may be continued as if the conversion had not occurred, or the surviving domestic LLC may be substituted in the pending proceeding for the business entity.
  - (5) The surviving domestic LLC is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the business entity

was originally organized.

- (6) The ownership interests of the business entity that were to be converted into membership interests or obligations of the surviving domestic LLC or into cash or other property are converted.
- (7) Unless otherwise provided in a plan of conversion, the business entity is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute a dissolution of the business entity.
- (8) The organizational documents of the domestic LLC are as provided in the plan of conversion.
- (9) All other provisions of the plan of conversion apply.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

## **PART 9 - LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE**

### **SUBPART 1**

**[Reserved]**

### **SUBPART 1A – General Provisions for Tribally-Owned LLCs**

#### **§ 869 - Tribally-Owned Companies**

There are hereby authorized to be created limited liability companies wholly-owned by the Tribe, with the Tribe as the sole owner. Tribally-owned limited liability companies shall be created by a duly adopted resolution of the Tribal Council. The organizer shall file in accordance with Section 811. When the organizer files the Articles of Organization and the operating agreement of a Tribally-owned LLC, a certified copy of the resolution authorizing the formation of the LLC and approving the articles shall be included. Tribally-owned LLCs shall be considered to be instrumentalities of the Tribe.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **§ 870 - Tribally-Owned Subsidiary Companies**

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

Tribe. The organizer of such a Tribally-owned subsidiary LLC shall file in accordance with Section 811. When the organizer files the Articles of Organization and the operating agreement of the Tribally-owned subsidiary LLC, a certified copy of a resolution of the Board of Directors of the parent Tribally-owned LLC or parent Tribal corporation authorizing the formation of the subsidiary LLC and approving the articles shall be included.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 871 - Privileges and Immunities**

The limited liability companies established under Sections 869 and 870 shall be considered to be instrumentalities of the Tribe, and their officers and employees considered officers and employees of the Tribe, created for the purpose of carrying out authorities and responsibilities of the Tribal Council for economic development of the Tribe and the advancement of its Tribal members. Such LLCs, their directors, officers, managers and employees shall, therefore, be entitled to all of the privileges and immunities enjoyed by the Tribe, including but not limited to immunities from suit in federal, state and Tribal courts and from federal, state, and local taxation or regulation.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 872 - Ownership**

- (a) No ownership interest in any LLC in which the Tribe is an owner may be alienated unless approved by a duly adopted resolution of the Tribal Council. Further, no ownership interest in any Tribally-owned subsidiary LLC may be alienated unless approved by a duly adopted resolution of the Board of Directors of the parent Tribally-owned LLC or parent Tribal corporation.
- (b) All interests in any Tribally-owned LLC shall be held by and for a Tribe, or in the case of a wholly-owned subsidiary LLC, by the parent Tribally-owned LLC or parent Tribal corporation. No individual member of the Tribe shall have any personal ownership interest in any LLC organized under this Part 9, whether by virtue of such person's status as a member of a Tribe, as an officer of a Tribe's government, or otherwise.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 873 - Project Companies with Non-Tribal Members**

Any LLC created pursuant to this Part 9, including subsidiary LLCs, may form or own interests or shares in partnerships, corporations, or other limited liability companies with other governmental or non-governmental entities or persons under the laws of the Tribe or any other jurisdiction ("project companies"); provided, however, that the partial ownership interest in such project companies shall not diminish or affect the privileges and immunities of the Tribally-owned LLCs or Tribally-owned subsidiary LLCs created pursuant to this Part 9.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 874 - Purpose of Tribally-Owned LLCs**

All Tribally-owned LLCs, whether directly or indirectly owned, shall state in their operating agreement the purpose of the LLC that relates to the overall needs, priorities, goals, and objectives of the Tribe's government, including how the LLC will contribute to tribal economic policy and further the goals of self-determination and economic self-sufficiency.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 875 - Waiver of Sovereign Immunity**

- (a) The limited liability companies established under Sections 869 and 870 may only waive the privileges and immunities granted under Section 871 in the following manner:
- (1) The LLC may specifically grant limited waivers of its immunity from suit and consent to be sued in Tribal Court or another court of competent jurisdiction or consent to binding arbitration pursuant to the procedures and authorities set forth in the LLC's operating agreement; provided, however, that:
    - (A) Any such waiver or consent to suit granted pursuant to the LLC's operating agreement shall include written language in any contract or agreement explicitly limiting said waiver to the specific dollar amount of the agreement;
    - (B) Any contract or agreement with such waiver or consent to suit language shall be reviewed and approved by an attorney representing the Tribe or the Tribally-owned LLC prior to contract execution;
    - (C) Any such waiver or consent to suit granted pursuant to the LLC's operating agreement shall in no way extend to any action against the Tribe, nor shall it in any way be deemed a waiver of any of the rights, privileges and immunities of the Tribe;
    - (D) Any recovery against the LLC shall be limited to the assets of the LLC (or such portion of the LLC's assets as further limited by the waiver or consent) and the Tribe shall not be liable for the payment or performance of any of the obligations of the LLC, and no recourse shall be had against any assets or revenues of the Tribe in order to satisfy the obligations of the LLC; including assets of the Tribe leased, loaned, or assigned to the LLC for its use, without transfer of title; and
    - (E) Any waiver of the LLC's immunities granted pursuant to the LLC's operating agreement shall be further limited or conditioned by the terms of such waiver.
- (b) The sovereign immunity of the LLC shall not extend to actions against the LLC by the Tribe acting as owner, or, in the case of a subsidiary LLC created pursuant to this Part 9,

by the parent LLC acting as owner, pursuant to Section 869.

- (c) The LLC must follow the method mandated by Section 878.
- (d) Notwithstanding Subsection (a)(1) above, the LLC may also specifically grant a limited waiver of its immunity from suit for participation in the Small Business Administration 8a program in the manner required by federal regulations governing the program.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

## **SUBPART 2 - Special Formation Requirements for Tribally-Owned LLCs**

### **§ 876 – (Reserved)**

### **§ 877 – (Reserved)**

### **§ 878 - Formation**

- (a) Tribally-owned LLCs. The Chairperson or any other member of the Tribal Council who is not the Secretary of the Tribal Council shall be the organizer of any Tribally-owned limited liability company.
- (b) Subsidiaries of Tribally-owned LLCs. A Board member of the parent Tribally-owned LLC or parent Tribal corporation shall be the organizer of any Tribally-owned subsidiary LLC. If practicable, such Board member shall also be a member of the Tribe. The C.E.O. of the parent Tribally-owned LLC or manager of a Tribally-owned subsidiary LLC shall be the organizer of any Tribally-owned second tier subsidiary LLC.
- (c) Unless a delayed effective date is specified:
  - (1) The existence of a Tribally-owned LLC begins when the Articles of Organization have been approved by resolution of the Tribal Council in accordance with Section 869 and have been filed with the Office of the Secretary in accordance with Section 811.
  - (2) The existence of a subsidiary LLC owned by a Tribally-owned LLC or Tribal corporation begins when the Articles of Organization have been approved by a resolution of the Directors of the parent Tribally-owned LLC or Tribal corporation and have been filed with the Office of the Secretary in accordance with Section 811.
  - (3) The existence of a Tribally-owned second tier subsidiary LLC owned by a Tribally-owned subsidiary begins when the Articles of Organization have been approved by the C.E.O. or manager of the Tribally-owned subsidiary or C.E.O. of the parent Tribally-owned LLC and have been filed with the Office of the Secretary in accordance with Section 811.



- (4) The Articles of Organization of any Tribally-owned LLC or subsidiary thereof, and any amendments thereto, shall be filed with the Office of the Secretary in accordance with Section 811, and shall state at a minimum the items set forth in Section 879 below.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 879 - Additional Requirements for the Articles of Organization**

- (a) As set forth in Section 875, Tribally-owned limited liability companies established under Sections 869 and 870 may grant a limited waiver of sovereign immunity in order to promote economic development through commercial transactions for which such a waiver is necessary and beneficial to the Tribe. The method for granting a limited waiver of sovereign immunity through the above-mentioned entities is as follows:
  - (1) The sovereign immunity of a Tribally-owned LLC may be waived only by:
    - (A) A resolution adopted by the Board of Directors of the Tribally-owned LLC for the specific purpose of granting a waiver, or in the case of owner-managed Tribally-owned subsidiary LLC, by the owner's Board of Directors; and
    - (B) The language of the waiver must be explicit and state that said waiver be specifically limited to the dollar amount of the agreement; and
    - (C) The waiver must be contained in a written contract or commercial document to which the LLC is a party.
  - (2) Waivers of sovereign immunity by resolution of the Board of Directors may be granted only when necessary to secure a substantial advantage or benefit to the Tribally-owned LLC. Waivers of sovereign immunity by resolution may not be general but must be specific and limited as to duration, grantee, transaction, property, court having jurisdiction, applicable law, and shall be specifically limited to the dollar amount of the agreement.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

## **SUBPART 3 - Management of Tribally-Owned LLCs**

### **§ 880 - Management**

- (a) All Tribally-owned LLCs formed pursuant to Section 869 of this Code shall be managed by a Board of Directors in the manner described in the company's operating agreement. The qualifications, number, terms and method for selecting and removing Directors of any Tribally-owned LLC shall be specified in the LLCs operating agreement, subject to

requirements set forth in this Part 9.

- (b) All Tribally-owned subsidiary LLCs formed pursuant to Section 870 of this Code, including Tribally-owned second tier subsidiary LLCs, may be owner-managed or manager-managed. If manager-managed, the company's operating agreement shall set forth the qualifications, number, terms, and method for selecting and removing such managers. If owner-managed, the LLC shall have one or more persons exercising the functions of Chief Executive Officer.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 881 - Board of Directors**

- (a) Appointment of directors. The Tribal Council shall retain the power to appoint the Board of Directors for Tribally-owned LLCs wholly-owned by the Tribe. For all such LLCs, including subsidiary tribal corporations, that may have a Board of Directors, the Board of Directors shall be comprised of members of the Tribal Council, Tribal members, and/or individuals experienced in business and Tribal government. In addition to any requirements set forth in the company's operating agreement, Board Members of Tribally-owned LLCs shall meet the following requirements:
  - (1) Be at least twenty-five (25) years old.
  - (2) Possess a Bachelor's Degree in a related field; or possess a high school diploma (or a general equivalency diploma) and at least five (5) years of business, financial, legal, government contracting or industry experience; or be a currently elected Tribal Council member.
  - (3) Have no felony convictions.
  - (4) Submit to a background investigation which yields no results showing convictions involving tax evasion, tax fraud, embezzlement or moral turpitude.
- (b) Removal of directors. A director of an LLC wholly-owned by the Tribe may be removed with or without cause by the Tribal Council; or as specified in the LLCs operating agreement.
  - (1) "Cause" shall mean any the following:
    - (A) Breach of a fiduciary duty.
    - (B) Conviction of a felony.
    - (C) Conviction of a misdemeanor that, in the determination of the Tribal Council, adversely affects the company or such Director's ability to perform his or her duties.
    - (D) Adjudication as incompetent by a court of competent jurisdiction.

- (E) Misappropriation of corporate funds or other acts of dishonesty with respect to the company.
  - (F) Gross negligence, fraud, deceit or intentional misconduct that had a material adverse effect on the Company.
- (2) Loans to directors. An LLC wholly-owned, directly or indirectly, by the Tribe may not lend money to or guarantee the personal obligation of a director, officer, or employee of the corporation under any circumstances.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **SUBPART 4 - Decisions and Voting for Tribally-Owned LLCs**

##### **§ 882 - Voting**

- (a) The ownership interests in all Tribally-owned LLCs shall be voted in accordance with the Tribal Council's procedures for voting and passing Tribal resolutions.
- (b) The ownership interests in a Tribally-owned subsidiary LLC, including Tribally-owned second tier subsidiary LLCs, shall be voted as provided in the company's operating agreement.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **SUBPART 5 - Distributions for Tribally-Owned LLCs**

##### **§ 883 - Distributions of Income**

- (a) Subject to the Tribe's ultimate ownership right to all income generated by its Tribally-owned LLCs, a Tribally-owned LLC shall distribute the net income of the LLC to the Tribe as set forth in a dividend plan adopted in accordance with the operating agreement and duly approved by the Tribal Council, except that a Tribally-owned LLC may retain reserves necessary to carry on the LLCs business in a reasonably prudent manner and as recommended by the Board of Directors, subject to further limitations set forth in Section 838 and in the operating agreement.
- (b) Subject to the parent Tribally-owned LLC's or parent Tribal corporation's ultimate ownership right to all income generated by its subsidiary LLCs, a subsidiary LLC created pursuant to Section 870 shall distribute the net income of the LLC to the parent Tribally-owned LLC or parent Tribal corporation as set forth in a dividend plan adopted in accordance with the operating agreement and duly approved by its Board of Directors, except that a Tribally-owned LLC may retain reserves necessary to carry on the LLCs business in a reasonably prudent manner and as recommended by the Board of Directors,

subject to further limitations set forth in Section 838 and in the operating agreement.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

## **SUBPART 6 - Additional Reports and Audits**

### **§ 884 - Audit**

In addition to any owner inspection rights provided in the operating agreement of a Tribally-owned LLC, the Tribal Council may at any time, by process in the manner required to be provided in the operating agreement, require that any LLC wholly-owned by the Tribe, whether directly or indirectly, or an LLC in which the Tribe owns the majority interest, be audited by an independent auditor hired by the Tribe, who shall have the absolute right to require access to all of the LLC's records and documents necessary for such an audit.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 885 Financial, Business, and Planning Information**

- (a) In addition to any reports to the owner required by the operating agreement, the Board of Directors of each Tribally-owned LLC, whether owned directly or indirectly, shall submit the following information to the Tribal Council:
- (1) Copies of any periodic financial statements (including monthly or quarterly balance sheets, profit and loss statements, and cash flow statements) as may be prepared in the ordinary course of business, promptly after such statements are furnished to the LLC's Board of Directors;
  - (2) A full report of the business activities of the company within one hundred twenty (120) days after the close of each fiscal year; and
  - (3) A proposed annual plan for the following year, including any proposed funding from the Tribe or anticipated distributions to the Tribe.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

## **SUBPART 7 - Actions Against Tribally-Owned LLCs**

### **§ 886 - Court Actions by a Tribe Authorized**

- (a) The Tribe, as owner of any Tribally-owned limited liability company organized pursuant to this Code, or in the case of a subsidiary LLC created pursuant to this Part 9, the parent Tribally-owned LLC or Tribal corporation acting as owner, may bring a civil action against the LLC to:

- (1) Enjoin temporarily or permanently any action of the LLC that is an ultra vires act outside the authority of the LLC and that is either:
  - (A) Unlawful; or
  - (B) Has or could cause material harm to the assets of the LLC or the Tribe if no immediate action is taken.
  - (C) Require the distribution of the LLC's surplus net income, to the extent permitted by Section 838.
- (2) An action against an LLC pursuant to this section by the Tribe or by a parent LLC or corporation, acting as owner, shall not act as a waiver of the Tribe's, or the parent LLC's or parent corporation's, sovereign immunity from suit of any kind, including a countersuit by the Tribally-owned LLC, its Board of Directors or its officers.
- (3) In accordance with Section 871, the sovereign immunity of the LLC shall not extend to actions against the LLC by a Tribe acting as owner, or, in the case of a subsidiary LLC created pursuant to this Part 9, by the parent LLC acting as owner.
- (4) Nothing contained herein shall be construed as authorizing actions of any kind whatsoever against the Tribe.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 887 - Tribal Approval Required**

The filing of any court action against a Tribally-owned LLC pursuant to this Part 9 must be authorized by the Tribe as owner in the same manner as required in Section 882 for voting on any item properly coming before the Tribe as owner. The request for consideration of the proposed court action may be made by any member of the Tribal Council.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 888 - Relief Available**

- (a) In any action brought under this Part 9, the Tribal Court may, based on clear and convincing evidence set forth in its findings of fact and conclusions of law:
  - (1) Issue a temporary restraining order, preliminary injunction, and permanent injunctive relief pursuant to the procedures and standards applicable in the Tribal Court, except that no bond need be posted for any preliminary injunctive relief; or
  - (2) Order that funds of the LLC be distributed to a Tribe to the extent permitted by the operating agreement and Section 838 of this Code.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**PART 10 - FOREIGN LIMITED LIABILITY COMPANIES****§ 889 - Governing Law**

- (a) The laws of the jurisdiction under which the foreign limited liability company is organized shall govern its organization and internal affairs and the liability and authority of its managers and members, regardless of whether the foreign LLC obtained or should have obtained a certificate of registration under this Part 10. However, a foreign LLC that has filed a certificate of conversion under Part 8 to become a domestic LLC shall be subject to the requirements of this chapter governing domestic LLCs on the effective date of the conversion and shall not be subject to the requirements of this chapter governing foreign LLCs.
- (b) A foreign LLC may not be denied a certificate of registration by reason of any difference between the laws of the other jurisdiction under which it is organized and the laws of the Tribe.
- (c) A foreign LLC holding a valid certificate of registration under this Part 10 shall have no greater rights and privileges than a domestic LLC. Registration may not be considered to authorize a foreign LLC to exercise any powers or purposes that a domestic LLC is forbidden by law to exercise.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 890 - Registration Required**

- (a) A foreign limited liability company may not transact business on Tribal Lands until it obtains a certificate of registration from the Office of the Secretary.
- (b) Activities that for the purposes of Subsection (a) do not constitute transacting business include, but are not limited to:
  - (1) Maintaining, defending, or settling any civil, criminal, administrative, or investigatory proceeding.
  - (2) Holding meetings of its owners or managers or carrying on other activities concerning its internal affairs.
  - (3) Maintaining financial institution accounts.
  - (4) Maintaining offices or agencies for the transfer, exchange and registration of the foreign LLCs own securities or interests or maintaining trustees or depositories with respect to those securities or interests.
  - (5) Selling through independent contractors.

- (6) Soliciting or obtaining orders, by mail or through employees or agents or otherwise, if the orders require acceptance outside Tribal Lands before they become contracts.
- (7) Lending money or creating or acquiring indebtedness, mortgages, and security interests in property.
- (8) Securing or collecting debts or enforcing mortgages and security interests in property security the debts.
  - (A) Owning, without more, property.
  - (B) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature.
  - (C) Transacting business in interstate commerce.
- (c) A foreign LLC shall not be considered to be transacting business on Tribal Lands solely because of any of the following:
  - (1) The foreign LLC owns a controlling interest in a corporation that is transacting business on Tribal Lands.
  - (2) The foreign LLC is a limited partner of a limited partnership that is transacting business on Tribal Lands.
  - (3) The foreign LLC is an owner or manager of a limited liability company or a foreign LLC that is transacting business on Tribal Lands.
  - (4) The foreign limited liability partnership is a limited partner of a limited partnership that is transacting business on Tribal Lands.
- (d) This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation on Tribal Lands or to regulation under any other law of the Tribe.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **§ 891 - Consequences of Transacting Business Without Registration**

- (a) A foreign LLC transacting business without a certificate of registration may not maintain a proceeding in Tribal Court until the foreign LLC obtains a certificate of registration.
- (b) Neither the successor to a foreign LLC that transacted business on Tribal Lands without a certificate of registration nor the assignee of a cause of action arising out of that business may maintain a proceeding based on that cause of action in Tribal Court until the foreign LLC or its successor obtains a certificate of registration.
- (c) The Tribal Court may stay a proceeding commenced by a foreign LLC, or its successor or

assignee, until the Tribal Court determines if the foreign LLC or its successor requires a certificate of registration. If the Tribal Court determines that a certificate is required, the Tribal Court may further stay the proceedings until the foreign LLC or its successor obtains the certificate of registration.

- (d) The failure of a foreign LLC to obtain a certificate of registration does not do any of the following:
  - (1) Impair the validity of any contract or act of the foreign LLC or its title to property on Tribal Lands.
  - (2) Affect the right of any other party to contract to maintain any action, suit or proceeding on a contract.
  - (3) Prevent the foreign LLC from defending any proceeding in Tribal Court.
- (e) Civil penalty.
  - (1) A foreign LLC that transacts business on Tribal Lands without a certificate of registration is liable to the Tribe, for each year or any part of a year during which it transacted business on Tribal Lands without a certificate of registration, in an amount equal to the sum of the following:
    - (A) All fees that would have been imposed by this Part 10 upon the foreign LLC had it applied for and received a certificate of registration.
    - (B) Fifty percent (50%) of the amount owed under Subsection (e)(1)(A) above or five thousand dollars (\$5,000), whichever is less.
  - (2) The foreign LLC shall pay the amount owed under Subsection (e)(1) to the Office of the Secretary. The Secretary may not issue a certificate of registration to the foreign LLC until the amount owed is paid.
- (f) An owner or manager of a foreign LLC is not liable for the debts and obligations of the LLC solely because the LLC transacted business on Tribal Lands without a certificate of registration.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 892 - Application for Certificate of Registration**

- (a) A foreign LLC may apply for a certificate of registration to transact business on Tribal Lands by delivering an application to the Office of the Secretary for filing signed by a person with authority to do so under the laws of the state or other jurisdiction of its organization. The application shall include all of the following:
  - (1) The name of the foreign limited liability company and, if different, the name under which it proposes to transact business on Tribal Lands.



- (2) The name of the state or other jurisdiction under whose laws it is organized.
- (3) The date of its organization.
- (4) The street address of its registered office on Tribal Lands and the name of its registered agent at that office.
- (5) If management of the LLC is vested in one or more managers, a statement to that effect.
- (6) The street address of the office required to be maintained in the state or other jurisdiction of its organization by the laws of that state or jurisdiction or, if no office is required, its principal office.
- (7) A statement that the applicant is a foreign limited liability company.
- (8) A statement that the foreign limited liability company is in good standing in the state or other jurisdiction under whose laws it is organized.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 893 - Name**

A certificate of registration may not be issued to a foreign LLC unless its name satisfies Section 806. If the name under which a foreign LLC is registered in the jurisdiction of its formation does not satisfy Section 806, the foreign LLC may obtain a certificate of registration to transact business on Tribal Lands under a fictitious name that is available and that satisfies Section 806.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **§ 894 - Amended Certificate of Registration**

- (a) A foreign LLC authorized to transact business on Tribal Lands shall obtain an amended certificate of registration from the Office of the Secretary if the foreign LLC changes any of the following:
  - (1) Its name or the fictitious name under which it has been issued a certificate of registration.
  - (2) The state or jurisdiction under whose laws it is organized or its date of organization.
  - (3) Whether management of the foreign LLC is vested in one or more managers.
- (b) The requirements of Section 892 for obtaining an original certificate of registration apply to obtaining an amended certificate of registration.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 895 - Registered Office and Registered Agent of Foreign LLC**

- (a) A foreign LLC authorized to transact business on Tribal Lands shall continuously maintain on Tribal Lands a registered office and registered agent. The registered office may, but need not, be the same as any of its places of business on Tribal Lands, if any.
- (b) A foreign LLC may change its registered office or registered agent, or both, by filing a written notice of change containing the name of its registered agent and the street address of its registered office, as changed, with the Office of the Secretary and paying the filing fee.
- (c) The registered agent of a foreign LLC may resign as a registered agent by delivering to the Office of the Secretary for filing a written statement of registration and the appointment by the foreign LLC of another registered agent.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 896 - Service of Foreign Limited Liability Company**

- (a) Except as otherwise provided in Subsection (b) and (c), the registered agent of a foreign LLC authorized to transact business on Tribal Lands is the foreign LLC's agent for service of process, notice, or demand required or permitted by law to be served on the foreign LLC.
- (b) A foreign LLC authorized to transact business on Tribal Lands may be served in the manner provided in Subsection (d) if the foreign LLC has no registered agent or its registered agent cannot with reasonable diligence be served.
- (c) A foreign LLC formerly authorized to transact business on Tribal Lands may be served in the manner provided in Subsection (d) in any civil, criminal, administrative or investigatory proceeding based on a cause of action arising while it was authorized to transact business on Tribal Lands, if the foreign LLC has withdrawn its registration under Section 897.
- (d) With respect to a foreign LLC described in Subsection (b) or (c), the foreign LLC may be served by registered or certified mail, return receipt requested, addressed to the foreign LLC at its principal office as shown on the records of the Office of the Secretary. Service is perfected under this paragraph at the earliest of the following:
  - (1) The date on which the foreign LLC receives the mail.
  - (2) The date shown on the return receipt, if signed on behalf of the foreign LLC.
  - (3) Five (5) days after the mail is deposited in the U.S. mail, if mailed postpaid and correctly addressed.

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

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **§ 897 - Withdrawal of Registration.**

- (a) A foreign LLC authorized to transact business on Tribal Lands may not withdraw until it obtains a certificate of withdrawal from the Office of the Secretary.
- (b) A foreign LLC authorized to transact business on Tribal Lands may apply for a certificate of withdrawal by delivering an application to the Office of the Secretary for filing signed by a person with authority to do so under the laws of the state or other jurisdiction of its organization. The application shall include all of the following:
  - (1) The name of the foreign LLC and the name of the state or jurisdiction under whose laws it is organized.
  - (2) A statement that the foreign LLC is not transacting business on Tribal Lands and that it surrenders its authority to transact business on Tribal Lands.
  - (3) A statement that the foreign LLC revokes the authority of its registered agent to accept service on its behalf and that it consents to services of process under Section 896(c) and (d) in any proceeding based on a cause of action arising while it was authorized to transact business on Tribal Lands.
  - (4) An address to which a person may mail a copy of any process against the foreign LLC.
  - (5) A commitment to notify the Office of the Secretary in the future of any change in the mailing address of the foreign LLC principal office.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **§ 898 - Grounds for Revocation**

- (a) Except as provided in Subsection (b), the Office of the Secretary may bring a proceeding under Section 899 to revoke the certificate of registration of a foreign LLC registered to transact business on Tribal Lands if any of the following applies:
  - (1) The foreign LLC failed to file its annual report with the Office of the Secretary within four (4) months after it is due.
  - (2) The foreign LLC does not pay, within four (4) months after they are due, any fees or penalties due the Office of the Secretary under this Tribal Limited Liability Company Code.

- (3) The foreign LLC is without a registered agent or registered office on Tribal Lands for at least six (6) months.
  - (4) The foreign LLC obtained a certificate of registration through fraud.
  - (5) The Office of the Secretary receives an authenticated certificate from the Secretary of State or other official having custody of LLC records in the state or country under whose law the foreign LLC is incorporated stating that it has been dissolved or disappeared as the result of a merger.
- (b) The Tribal Court may revoke the certificate of registration of the foreign LLC registered to transact business on Tribal Lands. The Tribal Court shall notify the Office of the Secretary of the action, and the Office of the Secretary shall revoke the foreign LLC's certificate of registration under Section 899(b)(2).

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **§ 899 - Procedure for and Effect of Revocation**

- (a) If the Office of the Secretary determines that one or more grounds exist under Section 898(a) for revocation of a certificate of registration, the Office of the Secretary shall give the foreign LLC written notice of the determination by first class mail, addressed to the foreign LLC's registered office.
- (b) Correction of grounds.
- (1) Within sixty (60) days after the notice takes effect, the foreign LLC shall correct each ground for revocation or demonstrate to the reasonable satisfaction of the Office of the Secretary that each ground determined by the Office of the Secretary does not exist.
  - (2) If the foreign LLC fails to satisfy Subsection (b)(1) above, the Office of the Secretary may revoke the foreign LLC's certificate of registration by entering a notation in the Office's records to reflect each ground for revocation and the effective date of the revocation. The Office of the Secretary shall give written notice of those facts to the foreign LLC by first class mail, addressed to the foreign LLC's registered office.
- (c) If any such notice under this section is undeliverable, then the Office of the Secretary shall give written notice to the foreign LLC addressed to the principal office of the foreign LLC. Notice to the registered office or principal office takes effect at the earliest of the following:
- (1) When received.
  - (2) Five (5) days after its deposit in the U.S. mail, if mailed postpaid and correctly addressed.

- (3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.
- (d) The authority of a foreign LLC to transact business on Tribal Lands, other than as provided in Section 890(b), ends as of the effective date of revocation of its certificate of registration as reflected in the records of the Office of the Secretary.
- (e) If the Office of the Secretary or the Tribal Court revokes a foreign LLC's certificate of registration, the foreign LLC may be served under Section 896(c) and (d) or the foreign LLC's registered agent may be served until the registered agent's authority is terminated, in any proceeding based on a cause of action which arose while the foreign LLC was registered to transact business on Tribal Lands.
- (f) Revocation of a foreign LLC's certificate of registration does not terminate the authority of its registered agent.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

#### **§ 899-1 - Appeal from Revocation**

- (a) A foreign LLC may appeal the Office of the Secretary's revocation of its certificate of registration under Section 898(a) to the Tribal Court. The foreign LLC shall appeal by petitioning the Tribal Court to set aside the revocation and attaching to the petition copies of its certificate of registration and the Office of the Secretary's notice of revocation.
- (b) The Tribal Court may order the reinstatement of the certificate of registration or may take any other action that the Tribal Court considers appropriate.
- (c) The Tribal Court's final decision may be appealed as in other civil proceedings.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

### **PART 11 - EFFECTIVE DATE AND AUTHORITY**

#### **§ 899-2 - Severability; Effect of Invalidity of Part of this Code**

If the Tribal 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 chapter of this Code as adjudged to be invalid or unconstitutional.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 899-3 - Effective Date**

This Code shall be in full force and effect according to its terms upon adoption by the Tribal Council.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 899-4 - Authority**

This Code is enacted by the Grand Traverse Band Tribal Council under the authority vested in the Tribal Council by the Tribe pursuant to its inherent governmental power, fiscal authority, and tribal sovereignty as recognized in the Tribe's Constitution. The Tribal Council reserves the right to repeal or amend the provisions of this Code, subject to the limitation of Section 899-5.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 899-5 - No Impairment of Contracts**

Otherwise lawful contracts and other obligations of any LLC shall not be impaired by any subsequent action of the Tribe or the Tribal Council. Actions to restrain any attempts to impair contracts of Tribal LLCs, or to declare such actions null and void, shall be available to any interested party before the Tribal Court. Nothing in this section shall be construed to restrict the general application of law or of this Code to the acts and contracts of Tribal LLCs.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 899-6 - Fees for Filing Documents and Issuing Certificates**

The Tribal Council is authorized to make regulations providing for reasonable fees for other services not specifically stated in the Title of this Code or to make changes in any and all fees for services set out in this Title. These changes shall be available through the Office of the Secretary.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 899-7 - Certificates and Certified Copies to be Received into Evidence**

All certificates or documents issued by the Tribal Council Secretary in accordance with the provisions of this Code and all copies of documents filed in his or her office in accordance with the provisions of this Code, when certified by him or her, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Tribal Council Secretary under the seal of his or her office as to the existence or non-existence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the existence or non-existence of the facts therein stated.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.

**§ 899-8 - Forms to be Furnished by Tribal Council Secretary**

The Tribal Council Secretary shall have the authority to prescribe certain forms for documents required by this chapter to be filed in the office of the Tribal Council Secretary; such forms shall be furnished by the Tribal Council Secretary and used by the public for such filing.

History: Tribal Act #11-29.2313, enacted by Tribal Council February 15, 2012.