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ENACTED BY GENERAL COUNCIL: [date]

CATAWBA INDIAN NATION CODE (CINC)

Title - BUSINESS AND FINANCE CODE

This Ordinance/Act is the first Business and Finance Code of the CIN and governs two sections of the business and finance code of the CIN: 1) business corporations and 2) limited liability companies.

Section - BUSINESS CORPORATION ORDINANCE/ACT

CITE AS: BCO-CINC § 2

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1. Authority.

a. Article III, §1 of the 1975 Constitution and By-Laws of the Catawba Nation [Catawba Indian Nation] of South Carolina (hereinafter "CIN" or the "Nation") constitutes the General Council as the governing body of the CIN.

b. Article IV, §1 of the 1975 Constitution and By-Laws of the CIN articulates the General Council's broad powers, under which this code is passed.

2. Purpose. This Business Corporation Ordinance (hereinafter in this Section "Ordinance") is enacted to establish CIN business corporation law.

3. Applicability. The provisions of this Ordinance shall apply to all corporations organized hereunder or previously organized as a CIN Tribal Corporation or Section 17 corporation under The Corporate Nation. Such pre-existing corporations shall be

deemed to be valid under this Ordinance at the time the ordinance is enacted, already in existence and validly formed.

4. **Definitions.** Terms used in this Ordinance have the following meaning:

a. "Articles of Incorporation" means the original articles of incorporation of a corporation organized under this Ordinance, including amendments thereto.

b. "Authorized Shares" mean the shares of all classes which the corporation is authorized to issue.

c. "Board of Directors" means a person or a group of persons vested with management of the affairs of the corporation.

d. "Bylaws" mean the code of rules adopted for the regulation or management of the affairs of a corporation.

e. "CIN" shall mean the Catawba Indian Nation and any wholly owned entities of the Catawba Indian Nation, including The Corporate Nation.

f. "The Corporate Nation" is a wholly owned tribal corporation of the CIN, formed under Section 17 of the Federal Indian Reorganization Act, and it is hereby exempt from the terms of the CINC Business Finance Code as except as specifically set forth herein. It is not, however, exempt from the terms of the CINC Business Finance Code with respect with business entities it may apply to have formed.

g. "Corporation" means a corporation for profit organized under this Ordinance.

h. "Court" means the CIN Trial Court, however it shall eventually be named and established by the CIN. The CIN Economic Development Board shall act as the Court until such time as a CIN Trial Court is established for the purpose of handling civil commercial matters.

i. "Entity" means corporations, associations, trusts, estates, partnerships, limited liability companies, individuals, Indian tribes or Native groups, states, counties, municipalities, the United States, and foreign governments.

j. "EDB" means the Economic Development Board of the Catawba Indian Nation.

k. "EC" means the Executive Committee of the Catawba Indian Nation.

l. The “Nation” shall mean the CIN, which is the Catawba Indian Nation and any entities of the wholly owned entities of the Catawba Indian Nation, including The Corporate Nation.

m. “Net Assets” mean the amount by which the total assets of a corporation exceed the total debts of the corporation.

n. “On or near land held in trust for the CIN” means within the boundaries of those counties where there is land held in trust by the United States for the CIN or its members and land otherwise designated as Indian land or part of the service area of the CIN.

o. “Shareholder” means one who is holder of record of shares in a corporation.

p. “Shares” mean the units into which the ownership interests in a corporation are divided.

5. Organization and Powers.

a. Corporations may be organized under this Ordinance for any lawful purpose.

b. Nothing contained in this Ordinance shall be construed as creating any liability or waiving of sovereign immunity of The Corporate Nation or the CIN in any manner.

c. Fees. The CIN EC shall impose a \$125.00 filing fee for initial filing and \$25.00 for each document filed thereafter and an annual \$25.00 renewal fee during the life of the Corporation.

d. General Powers. Unless its articles of incorporation provide otherwise, every corporation shall have the following powers:

(1) To exist perpetually.

(2) To sue and be sued and to complain or defend in its corporate name, except that the extent of the corporation’s liability shall be limited to the assets of the corporation and shall be subject to all limitations and immunities available to the CIN pursuant to state, federal and tribal law.

- (3) To have a corporate seal, which may be altered at will, and to use it or a facsimile of it by impressing or affixing it or in any manner reproduce it.
- (4) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with real or personal property, or any interest in property wherever located.
- (5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.
- (6) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in or obligations of any other entity.
- (7) To make contracts and incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, and income.
- (8) To lend money, invest its funds, and receive and hold real and personal property as security for repayment.
- (9) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.
- (10) To conduct its business, locate offices, and exercise the powers granted by this Ordinance within or without land held in trust and/or Indian land for the CIN.
- (11) To elect or appoint officers and agents of the corporation, define their duties and fix their compensation.
- (12) To pay pensions and establish pension plans, trusts, profit sharing plans, share bonus plans, and benefit or incentive plans for any or all its current or former directors, officers, and employees.
- (13) To indemnify any director or officer against their expenses incurred in connection with the defense of any action suit or proceeding in which they are a party by reason of their service with the corporation, except in cases where the director or officer is adjudged liable for negligence or misconduct in the performance of duty.

(14) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the CIN, for managing the business and regulating the affairs of the corporation.

(15) To make donations for the public welfare or for charitable, scientific, or educational purposes.

(16) To transact any lawful business that will aid governmental policy.

(17) To have and exercise all powers necessary or convenient to effect its purposes.

e. Applicable Law. Any Corporation established pursuant to this Ordinance shall be bound by all applicable laws of the CIN and of the federal government.

6. Incorporation.

a. Corporate Name. The corporate name:

(1) Shall contain the word “corporation,” “company,” “incorporated,” “limited,” or an abbreviation of one these words and shall carry the by-line “A Catawba Indian Corporation.”

(2) Shall not contain any word or phrase which indicates or implies that it is organized under any purpose other than the purposes contained in its articles of incorporation.

(3) Shall not be the same as or similar to the name of any corporation organized under the laws of the CIN.

(4) Shall not contain any word or phrase which indicates or implies that it is authorized to bind or act for the CIN.

b. Incorporators. Any member of the CIN over the age of eighteen (18) may act as the incorporator of a corporation by delivering articles of incorporation to the EC for filing. Nothing in this Section shall limit the right of non-members of the CIN to own some or all of the shares of a CIN corporation, provided that the EC consents by a majority vote at a duly called meeting at which quorum is present.

7. Articles of Incorporation.

a. The articles of incorporation shall set forth the following:

(1) The name of the Corporation.

(2) The period of existence, which may be perpetual.

(3) The purpose for which the corporation is organized, which may include the transaction of any lawful business for which corporations may be incorporated under this Ordinance.

(4) Any provision not inconsistent with law, which the incorporators elect to set forth in the Articles of Incorporation for the regulation of the internal affairs of the Corporation, including any provision restricting the transfer of shares and any provision, which under this Ordinance is required or permitted to be set forth in the bylaws.

(5) The address of its initial registered office and the name of its initial registered agent at such address.

(6) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors.

(7) The name and address of each incorporator.

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

(a) The number of shares which the corporation shall have authority to issue and a description of their classes if any and par value if any.

(b) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of the shares of each class.

(c) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences between series and a statement of the authority of the board of directors to designate such rights and preferences over time.

(d) If any preemptive right is to be granted to shareholders, the provisions therefore.

b. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Ordinance. Whenever a provision of the articles of incorporation is inconsistent with the bylaws, the articles shall be controlling.

c. If a corporation is to be owned and operated in whole or in part by the CIN, the EDB must approve the articles of incorporation by a majority vote of those voting with a quorum present.

d. Filing of Articles of Incorporation.

(1) Duplicate originals of the articles of incorporation shall be delivered to the EC Secretary. The EC has 30 days in which to review the articles of incorporation and take action on them. If the EC finds that the articles of incorporation conform to tribal law, the EC shall:

(a) Order endorsed on each duplicate original the word “filed” and the month, day, and year of the filing thereof.

(b) Register and maintain one duplicate original in the Tribal headquarters.

(c) Issue a Certificate of Incorporation to which the EC shall affix the other duplicate original and return to the incorporators.

(2) The EC’s issuance of a Certificate of Incorporation and registering of the same is conclusive proof that all conditions precedent to incorporation has been satisfied.

e. Effect of Issuance of Certificate of Incorporation. Unless a delayed effective date is specified, the corporate existence begins when the Certificate of Incorporation is registered.

f. Amending Articles of Incorporation.

(1) A corporation may amend its articles of incorporation by submitting executed articles of amendment with the EC. The articles of amendment shall be approved by the corporation’s shareholders and executed by its president or vice president and its Secretary. If a corporation is owned and operated in whole or in part by the CIN, the EC must approve the amendments by a majority of voting members with a quorum present.

(2) Duplicate originals of the executed articles of amendment shall be delivered to the EC Secretary. The EC has 30 days in which to review the articles of amendment and take action on them. If the EC determines that the articles of amendment conform to tribal law, the EC shall:

(a) Order endorsed on each duplicate original the word “filed” and the month, day, and year of such filing thereof.

(b) Register and maintain one such duplicate original in the Tribal Headquarters.

(c) Issue a certificate of amendment to which the EC shall affix the other duplicate original and return to the corporation.

(3) Upon the issuance of the certificate of amendment by the EC, the amendment shall become effective and is conclusive proof that all conditions precedent for amendment of the articles of incorporation have been satisfied.

8. Organization of Corporation.

a. After the articles of incorporation have been registered by the EC, the initial Directors shall hold an organization meeting. The meeting shall be called by its incorporator(s) or a majority of the named directors. The purpose of the meeting is to complete the corporation’s organization by selecting officers of the board of directors, appointing officers of the corporation, adopting bylaws, and carrying on any business brought before the meeting.

b. Bylaws.

(1) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

(2) The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or to adopt new bylaws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors.

9. Registered Office and Agent. Each corporation organized pursuant to this Ordinance shall maintain, on or near land held in trust for the Nation or its members

or other Indian land, a registered agent. The office may be, but need not be, the same as its place of business.

a. Change of Registered Office and Agent. A corporation may change its registered agent by delivering a statement in writing of such change to the EC Secretary.

b. Service on Corporation. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation. If the corporation fails to appoint or maintain an agent, then service may be made upon the EC Secretary who shall record receipt of service and forward it by registered mail to the last address of record of the corporation's principal office. The EC's record of service and mailing to the corporation shall be evidence of service.

c. Records.

(1) Each corporation shall keep at its registered office a record giving the name and addresses of those entitled to vote, correct and complete books and records of account, and correct minutes of all proceedings of shareholders, directors, and committees. Copies of minutes shall be filed with the EC.

(2) All relevant records may be inspected by shareholders, their agents or attorneys for any purpose at any reasonable time.

(3) Any corporation receiving grants, contracts, use of tribal property, or other benefits derived through or by the CIN shall file with the EC, quarterly financial statements and narratives of their actions and accomplishments of stated objectives and goals.

(4) The CIN reserves the right to inspect a corporation's books and records of accounts and reserves the right to perform audits to ensure compliance with applicable law. The CIN and its agents may conduct such inspections and audits to ensure compliance with applicable law.

10. Shares, Earnings and Ownership.

a. Corporations Owned and Operated by the CIN.

(1) In the event the CIN owns and operates a corporation, in whole or in part, the CIN's share of the corporation's net earnings may be transferred to the CIN. The net earnings shall be the sum remaining after provisions have been made

for payment of all debts, operating expenses, payment of amortized indebtedness, depreciation, contingencies and such costs as are necessary for managing and conducting business of the corporation.

(2) Corporations wholly owned and operated by the CIN shall not be required to issue shares for the purposes of delineating ownership in the corporation.

(3) The CIN EC shall exercise the powers authorized for shareholders under this Ordinance for corporations that it owns and operates, in whole or in part, whether or not shares are authorized.

b. Authorized Shares.

(1) Each corporation shall have the power to create and issue the number of shares stated in its articles of incorporation. Shares may be divided into one or more classes, any or all of which may consist of shares with or without par value, and with the designation, preferences, limitations, and relative rights stated in the articles of incorporation. The articles of incorporation may limit or deny voting rights or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this Ordinance.

(2) Without limiting the authority herein contained, a corporation whose articles of incorporation permit may issue shares of preferred or special classes that:

(a) Are subject to the right of the corporation to redeem the shares at the price fixed by the articles of incorporation.

(b) Entitle the holders to cumulative, non-cumulative, or partially cumulative dividends.

(c) Have preference over any other class of shares as to the payment of dividends.

(d) Have preference in the assets of the corporation over any other class of shares upon the liquidation of the corporation.

(e) Are convertible into shares of any other class or series, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation. Shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such values without par value is, at the time of conversion, at least

equal to the aggregate par value of the shares into which the shares without par value are to be converted or the amount of any such deficiency is transferred from surplus to stated capital.

c. Payment For Shares. Consideration for the issuance of shares may be paid, in whole or in part, in cash, in other property, tangible or intangible, or in labor or services actually performed for the corporation. Neither promissory notes nor future services shall constitute payment.

d. Certificates Representing Shares. The shares of a corporation shall be represented by certificates signed by the President or the Vice President and the Secretary of the corporation.

11. Board of Directors and Officers.

a. Board of Directors.

(1) The business and affairs of the corporation shall be managed by a board of directors, subject to any limitations set forth in the articles of incorporation. The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a member of the CIN unless the articles of incorporation or bylaws so prescribe.

(2) If a corporation is wholly or partially owned and operated by the CIN, at least one director shall be a member of the CIN General Council.

(3) Corporations wholly or partially owned and operated by the CIN and/or any corporation receiving grants, program contracts, use of tribal property, or other benefits derived through or by the CIN, shall have no more than two (2) members of the same immediate family on the board of directors. Immediate family shall include grandparents, parents, children, brothers and sisters, and grandchildren of the family.

b. Number and Election.

(1) A board of directors must consist of one or more individuals with the number established in the articles of incorporation or bylaws.

(2) If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of directors by the holders of authorized classes of shares.

(3) Initial directors shall be named in the articles of incorporation and thereafter directors shall be elected at the annual shareholders' meeting.

c. Terms. The terms of the initial directors expire at the first shareholders' meeting at which directors are elected. The terms of all subsequent directors expire at the next annual meeting following their election unless the articles of incorporation or bylaws provide for staggered terms. Directors appointed to fill a vacancy shall serve until the next shareholders' meeting at which directors are elected. Despite expiration of a director's term, a director continues to serve until the successor is elected and qualifies or until the board size is decreased.

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

e. Removal.

(1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only with cause.

(2) If a director is elected by a class of shareholders, the shareholders of that voting group may participate in the vote to remove the director.

(3) A director may be removed only at a meeting called for the purpose of removing the director(s) and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

f. Vacancies. Unless the articles of incorporation provide otherwise, a vacancy on the board may be filled by the board of directors, even though less than a quorum is present.

g. Compensation. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

h. Meetings.

(1) The board of directors may hold regular or special meetings and need not meet on or near land held in trust by the United States for the CIN or other Indian land.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board may permit any or all directors to conduct or participate in a meeting through

the use of any means of communication by which all directors may simultaneously hear each other during the meeting. A director so participating is deemed present.

(3) Notice.

(a) Unless the articles of incorporation or bylaws providing otherwise, regular meetings of the board may be held without notice of the date, time, place, or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a different period, special meetings of the board must be preceded by at least two (2) days' notice of the date, time, and place of the meeting.

(c) Waiver. A director may waive any required notice, and a director's attendance at participation in a meeting waives any required notice unless the director objects at the meeting's beginning and does not vote thereafter on actions at the meeting.

(4) Quorum and Voting.

(a) Unless the articles of incorporation or bylaws provide otherwise, a quorum consists of a majority of the number of directors, provided that in no event shall a quorum consist of fewer than one-third the number of directors. If at least one member of the CIN's General Council is a director, a quorum shall also require the member of the General Council. If at least one member of the Board of The Corporate Nation is a director, a quorum shall also require the member of the Board of The Corporate Nation.

(b) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number.

(c) Unless the articles of incorporation or bylaws provide otherwise, action by the board of directors may be taken without a meeting if all members take the action. Such action must be evidenced in writing, signed by each director, and included in the minutes or filed with the corporate records.

(5) Conflicts of Interest. A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any of the following is true.

(a) The material facts of the transaction and the director's interest were disclosed or known to a majority of the board of directors or a committee of the board of directors, excluding the interested director or directors, and a majority of the board of directors or committee authorized, approved, or ratified the transaction.

(b) The material facts of the transaction and the director's interests were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction.

(c) The transaction was fair to the corporation.

(6) Loans to Directors. A corporation may not lend money to nor guarantee the obligation of a director of the corporation unless the loan or guarantee benefits the corporation and either the shareholders or the board of directors approves the loan or guarantee.

(7) Officers.

(a) The board of directors shall elect a chairman and a secretary.

(b) The officers of the corporation shall consist of a president, vice president, secretary, treasurer, and such other officers which are described in the bylaws or are appointed by the board of directors in accordance with the bylaws. The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors and shareholder meetings and for authenticating records of the corporation.

(c) Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors. The same person may simultaneously hold more than one office in the corporation.

(d) Resignation and Removal. Any officer may resign at any time by delivering notice to the corporation. A board of directors may remove any officer at any time with or without cause.

(e) Contract Rights. The appointment of an officer does not itself create contract rights nor does the resignation or removal of an officer affect the contract rights, if any, of the officer or corporation.

(8) General Standards for Directors and Officers.

(a) Directors and officers shall discharge their duties in good faith with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner they reasonably believe to be in the best interests of the corporation.

(b) In discharging their duties, directors and officers are entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by one or more of the following:

1. One or more officers or employees of the corporation whom they reasonably believe to be reliable and competent in the matters presented.

2. Legal counsel, public accountants, or other persons as to matters they reasonably believe are within the person's professional or expert competence.

3. A committee of the board of directors, if they reasonably believe the committee merits confidence.

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

(9) Committees.

(a) The board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee must have two or more directors who serve at the pleasure of the board of directors.

(b) Each committee, to the extent provided by the board of directors or in the articles of incorporation or in the bylaws, may exercise the authority of the board of directors.

12. **Shareholders.**

a. Meetings.

(1) A corporation shall hold a meeting of shareholders annually in accordance with the bylaws. Annual meetings need not be held on or near lands held

in trust by the United States for the CIN or other Indian land. The failure to hold an annual meeting does not affect the validity of any corporate action.

(2) A corporation may hold a special meeting of shareholders at the call of its board of directors or at the request of ten percent (10%) of the shareholders entitled to vote.

(3) Unless the articles of incorporation or bylaws provide otherwise, action required to be taken at a shareholders meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote. Such action must be evidenced in writing, signed by each shareholder and delivered to the corporation for inclusion in the minutes and records.

(4) If a corporation is wholly owned and operated by the CIN, the CIN EDB shall conduct the annual meetings.

b. Notice of Shareholders Meetings. A corporation shall notify shareholders of the date, time and place of each annual or special shareholders meeting at least ten (10) days before the meeting. A shareholder may waive notice and a shareholder may be deemed to have waived notice if the shareholder attends the meeting unless the shareholder objects at the beginning of the meeting.

c. Voting Entitlement of Shares.

Unless the articles of incorporation provide otherwise, each outstanding share is entitled to one vote on each matter voted on at a shareholders meeting. A shareholder may vote a share in person or by proxy provided that shareholder has appointed a proxy by signing an appointment and filing the appointment with the corporation.

d. Voting Trusts and Agreements.

(1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the trust's provisions and transferring the shares to the trustee. When a voting trust agreement is signed, the trustee shall deliver to the corporation the names and address of all owners of beneficial interests in the trust, together with the number and class of shares transferred to the trust.

(2) Two or more shareholders may also provide for the manner in which they will vote their shares by signing an agreement for that purpose.

13. Liability.

a. A holder of shares of a corporation shall be under no obligation to the corporation or its creditors with respect to the shares other than the obligation to pay to the corporation the full consideration for which the shares were issued.

b. The CIN shall be under no obligation to a corporation or the creditors of any corporation which the CIN incorporates, owns or operates, in whole or in part, and the CIN shall not be deemed to have waived any of the CIN's privileges or immunities if the CIN incorporates, owns or operates a corporation, in whole or in part.

14. Challenges to Corporate Actions.

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

b. A corporation's power to act may be challenged in a proceeding before the Court by any of the following:

(1) Ten percent (10%) of the shareholders or a director against the corporation to enjoin the act.

(2) The corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation to enjoin the act.

(3) The EC of the CIN, to dissolve the corporation or to enjoin the corporation from performing unauthorized acts.

15. Voluntary Dissolution of Corporation.

a. Voluntary Dissolution by Incorporators. A corporation which has not commenced business and which has not issued any shares, may be voluntarily dissolved by its incorporators at any time in the following manner:

(1) Articles of dissolution shall be executed in duplicate by a majority of the incorporators, and verified by them, and shall set forth:

(a) The name of the corporation.

(b) The date of issuance of its certificate of incorporation.

(c) That none of its shares has been issued.

(d) If the corporation has not commenced business.

(e) That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.

(f) That no debts of the corporation remain unpaid.

(g) That a majority of the incorporators elect that the corporation be dissolved.

(2) Duplicate originals of the articles of dissolution shall be delivered to the EC Secretary. The EC has 30 days in which to review the articles of dissolution and take action on them. If the EC finds that the articles of dissolution conform to law, the EC shall:

(a) Endorse on each of such duplicate originals the word "filed" and the month, day and year of the filing thereof.

(b) File one of such duplicate originals in the Tribal headquarters.

(c) Issue a certificate of dissolution to which the EC shall affix the other duplicate original.

(3) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the EC, shall be returned to the incorporators or their representative. Upon the issuance of such certificate of dissolution by the EC, the existence of the corporation shall cease.

b. Voluntary Dissolution by Consent of Shareholders.

(1) A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

(2) Upon the execution of such written consent, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice

president and by its secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- (a) The name of the corporation.
- (b) The names and respective addresses of its officers.
- (c) The names and respective addresses of its directors.
- (d) A copy of the written consent signed by all shareholders of the corporation.
- (e) A statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

c. Voluntary Dissolution by Act of Corporation. A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of the dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder entitled to vote in the manner provided in this Ordinance for the giving of notice of meetings of shareholders, and shall state that the purpose of the meeting is to consider dissolving the corporation.

(3) At the meeting, shareholders entitled to vote shall vote on a resolution to dissolve the corporation. The resolution shall be adopted upon receiving the majority vote of the shareholders entitled to vote.

(4) Upon the adoption of the resolution, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president and by its secretary and verified by one of the officers signing such statement, and shall set forth:

- (a) The names of the corporation.
- (b) The names and respective addresses of its officers.

- (c) The names and respective addresses of its directors.
- (d) A copy of the resolution adopted by the shareholders.
- (e) The number of shares outstanding, and classes if any.
- (f) The number of shares voted for and against the resolution, and their class, if any.

d. Filing of Statement of Intent to Dissolve. Duplicate originals of the statement of intent to dissolve, shall be delivered to the EC Secretary. The EC has 30 days in which to review the statement of intent to dissolve and take action on it. If the EC finds that such statement conforms to law, the EC shall:

- (1) Endorse on each of such duplicate originals the word "filed" and the month, day and year of the filing thereof.
- (2) File one of such duplicate originals in the Tribal headquarters.
- (3) Return the other duplicate original to the corporation or its representative.

e. Effect of Statement of Intent to Dissolve. Upon the filing with the EC of the statement of intent to dissolve, the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof. Its corporate existence shall continue until a certificate of dissolution has been issued by the EC.

f. Procedure After Filing of Statement of Intent to Dissolve. After filing with the EC Secretary the statement of intent to dissolve, the corporation shall:

- (1) Immediately cause notice to be mailed to each known creditor of the corporation.
- (2) Proceed to collect its assets and convey and dispose of its properties as are not to be distributed to its shareholders or the CIN as provided in this Ordinance.

g. Distribution of Assets. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

- (1) All liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made therefore.

(2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements.

(3) Remaining assets shall be distributed, either in cash or in kind, among its shareholders according to their respective rights and interests, unless the corporation is owned and operated, in whole or in part, by the CIN or The Corporate Nation. In that event, the remainder of its assets shall be conveyed to the CIN or The Corporate Nation according to its respective rights and interest. Either shall hold them or their proceeds in trust for two (2) years or until the resolution of any legal action involving them, whichever shall be later. Under no circumstances shall the CIN or The Corporate Nation assume any liability not covered by the assets so held. Upon the trust's expiration, the CIN or The Corporate Nation may distribute the assets in accordance with federal and tribal law.

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distribution rights of shareholders or provide for distribution to others.

h. Plan of Distribution.

(1) A plan providing for the distribution of assets may be adopted by a corporation in the process of dissolution for the purpose of authorizing any transfer or conveyance of assets in the following manner:

(a) Where a corporation has issued shares of stock, the board of directors shall adopt a resolution recommending a plan of distribution and directing that the plan be submitted to a vote at a meeting of shareholders. Written notice setting forth the proposed plan of distribution shall be given to each shareholder entitled to vote as provided in this Ordinance. The plan of distribution shall be adopted upon receiving at least two-thirds of the votes entitled to be cast.

(2) Any plan of distribution adopted according to paragraph (1) above shall reflect the rights and preference of all outstanding shares.

i. Articles of Dissolution. When all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice president and by its secretary and

verified by one of the officers signing such statement, which statement shall set forth:

(1) The name of the corporation.

(2) That all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefore.

(3) That all remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests.

(4) That there are not suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

j. Filing Articles of Dissolution.

(1) Duplicate originals of such articles of dissolution shall be delivered to the EC Secretary. The EC has 30 days in which to review the articles of dissolution and take action on them. If the EC finds that such articles of dissolution conform to tribal law, the EC shall:

(a) Endorse on each of such duplicate originals the word "filed" and the month, day and year of the filing thereof.

(b) Maintain one of such duplicate originals in the Tribal headquarters.

(c) Issue a certificate of dissolution to which the EC shall affix the other duplicate original.

(2) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the EC, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers.

16. Involuntary Dissolution and Liquidation.

a. Involuntary Dissolution. A corporation may be dissolved involuntarily by the Court as provided in this Section.

(1) The Court may order the corporation to appear before it and show cause why it should not be dissolved when one or more of the following is established:

(a) The corporation procured its articles of incorporation through fraud.

(b) The corporation has continued to exceed or abuse the authority conferred upon it by law.

(c) The corporation has failed for thirty days to appoint and maintain a registered agent on or land held in trust for the CIN or other Indian land of the CIN.

(d) The corporation has failed for thirty (30) days after change of its registered officer or registered agent to file with the EC a statement of such change.

(e) The corporation is found by the Court to be in violation of this Ordinance or any other law of the CIN.

(2) Dissolution under this Section shall be initiated and prosecuted by a duly authorized agent of the CIN, in consultation with the Court.

b. Jurisdiction of Court to Liquidate Assets and Affairs of Corporation. The Court shall have full jurisdiction to liquidate the assets and affairs of a corporation:

(1) Upon petition of ten percent (10%) of the shareholders, if the petition or resolution establishes one or more of the following:

(a) That the directors are deadlocked in the management of the corporate affairs and shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(b) That the acts of the directors of those in control of the corporation are illegal, oppressive, or fraudulent.

(c) That the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors.

(d) That the corporate assets are being misapplied or wasted.

(e) That the corporation has consistently failed to use accepted accounting practices in the maintenance of its books and records.

(f) That the corporation does or omits any act which amounts to a surrender of its corporate rights, privileges, or franchises.

(2) Upon petition to the Court of a creditor, if the petition establishes one or more of the following:

(a) The claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent.

(b) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(3) Upon application by a corporation which has filed a statement of intent to dissolve.

c. Procedure in Involuntary Dissolution and Liquidation by the Court.

(1) Where there are grounds for issuing an order to show cause why a corporation shall not be dissolved or when the Court receives a petition for liquidation, the Court shall send an order to appear and show cause why the corporation should not be dissolved or liquidated to the president and secretary of the corporation. The hearing shall be scheduled by the Court no less than 30 days from the date of said order.

(2) If the Court finds that the officers of the corporation have not shown sufficient cause why the corporation should not be dissolved or liquidated, the decision of the Court shall be final, whichever is acting as authorized by this Ordinance.

(3) If the officers of the corporation fail to appear as ordered, or if, in the opinion of the Court, the officers have failed to show sufficient cause why the corporation should not be dissolved or liquidated, the Court may revoke the corporation's certificate of incorporation.

(4) If the Court revokes the corporation's certificate, it shall assume trusteeship over the corporation's assets and liquidate its assets in accordance with this Section.

(5) If prior to the revocation of the corporation's certificate, the corporation cures all defaults complained of and pays all penalties and costs, the action shall abate.

d. Liquidation of Corporation by the Court. If the Court revokes a corporation's certificate of incorporation, it shall proceed to liquidate the assets and business of a corporation as follows:

(1) The Court shall have power to issue injunctions, and to appoint a liquidating receiver with any powers and duties the Court may direct. The Court may also take any other actions necessary to preserve the corporate assets wherever situated, and carry on the business of the corporation until final dissolution.

(2) The liquidating receiver shall give notice to all parties in interest and creditors and allow each a proper hearing with sworn statements.

(3) The liquidating receiver shall then collect the assets of the corporation, and shall have authority to sell, convey and dispose of the assets of the corporation wherever situated, either at public or private sale.

(4) The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of the liquidation and to the payment of the liabilities and obligations of the corporation according to this Ordinance. Any remaining assets or proceeds shall be distributed according to this Ordinance.

(5) The Court shall have power to allow compensation to the receiver and any attorneys in the proceeding out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(6) A receiver of a corporation appointed under the provisions of this Section shall have authority to sue and defend in all courts in his own name as receiver of such corporation.

e. Order of Dissolution.

(1) The Court shall issue an order dissolving the corporation, when:

(a) The costs and expense of the liquidation have been satisfied.

(b) All debts, obligations and liabilities of the corporation have been paid and discharged.

(c) All of its remaining property and assets have been distributed. In case the corporation's property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, but all the property and assets have been applied so far as they will go to their payment, the Court shall issue an order dissolving the corporation.

(2) Upon of an order, the existence of the corporation shall cease.

f. Filing of Order of Dissolution. When the Court issues an order dissolving a corporation, it shall file a certified copy of the resolution with the EC Secretary.

17. Post Dissolution.

a. Deposit with the Court of Amount Due Certain Shareholders. Upon the voluntary or involuntary dissolution or liquidation of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the Court and shall be paid over to the creditor or shareholder or to his legal representative upon proof satisfactory to the Court of his rights thereto.

b. Survival of Remedy After Dissolution.

(1) The dissolution of a corporation by i) the issuance of a certificate of dissolution, ii) an order issued by the Court before the corporation's assets have been liquidated as provided in this Ordinance, or iii) upon expiration of its period of duration, shall not take away or impair any remedy available to or against a corporation, its directors, officers, or shareholders, for any right or claim existing or any liability incurred, prior to dissolution if an action or other proceeding is commenced within two years after the date of dissolution.

(2) Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name.

(3) The shareholders, directors, and officers shall have power to take corporate or other action as shall be appropriate to protect a remedy, right or claim. If a corporation was dissolved by the expiration of its period of duration, it may amend its articles of incorporation at any time during the period of two years so as to extend its period of duration.

18. Not for Profit Corporations. Any Corporation or Company duly organized under the laws of the CIN can have Not For Profit Status if it otherwise meets the requirements of a 501(c)(3) under federal law or the requirements for treatment as a state under Section 7871 of the Internal Revenue Code.

Legislative History:

[date] Enacted by CIN General Council Resolution [resolution number] .

CATAWBA INDIAN NATION CODE (CINC)

Title - BUSINESS AND FINANCE CODE

This Ordinance/Act is the first Business and Finance Code of the CIN and governs two sections of the business and finance code of the CIN: 1) business corporations and 2) limited liability companies.

Section - LIMITED LIABILITY COMPANY ORDINANCE/ACT

CITE AS: LLO-CINC § 3

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CHAPTER I - GENERAL PROVISIONS

1. **Authority.**

- a. The Constitution of the Catawba Indian Nation ("CIN" or the "Nation") empowers the General Council as the governing body of the CIN and gives them the power to make laws.
- b. The CIN is a federally recognized Indian tribe pursuant to the Federal Indian Reorganization Act, and it is hereby exempt from the terms of the CINC Business Finance Code except as specifically set forth herein.
- c. The Corporate Nation is a wholly owned tribal corporation of the CIN, formed under Section 17 of the Federal Indian Reorganization Act, and it is hereby exempt from the terms of the CINC Business Finance Code except as specifically set forth herein.

2. **Purpose.** This Ordinance establishes CIN law for the establishment and operation of Limited Liability Companies (LLC).

3. **Applicability.** The provisions of this Limited Liability Company Ordinance ("Ordinance") shall apply to all limited liability companies (LLC) organized under this Ordinance or which elect to accept the provisions of this Ordinance. Preexisting LLC's shall be deemed to be in valid existence and allowed a ninety (90) day grace period from the date of the adoption of this Ordinance to amend or conform their articles of organization in order to comply with the provisions herein if necessary.

4. **Rules of Construction.**

- a. It is the policy of this Ordinance to give maximum effect to the principle of freedom of contract and to the enforceability of articles of operation and other agreements.
- b. Unless displaced by particular provision of this Ordinance, the principles of law equity supplement this Ordinance.

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

- a. "Articles of Operation" means an agreement in writing among all of the members as to the conduct of the business of a limited liability company and its relationships with its members.
- b. "Articles of Organization" means the articles filed under Section 13 and those articles as amended or restated.
- c. "The Corporate Nation" is a wholly owned tribal corporation of the CIN, formed under Section 17 of the Federal Indian Reorganization Act, and it is hereby exempt from the terms of the CINC Business Finance Code as except as specifically set forth herein. It is not, however, exempt from the terms of the CINC Business Finance Code with respect with business entities it may apply to have formed.
- d. "Corporation" means a "domestic corporation" for profit or not-for-profit organized under the CIN's Business Corporation Ordinance/Act, when adopted, and a foreign corporation formed under the laws of any other jurisdiction.
- e. "Court" means the CIN Trial Court, however it shall eventually be named and established by the CIN. The CIN Economic Development Board shall act as the Court until such time as a CIN Trial Court is established for the purpose of handling civil commercial matters.
- f. "Distribution" means a direct or indirect transfer by a limited liability company of money or other property to or for the benefit of its members in respect of their interests.
- g. "Entity" means corporations, associations, trusts, estates, partnerships, limited liability companies, individuals, Indian tribes or Native groups, states, counties, municipalities, the United States, and foreign governments.
- h. "EDB" means the Economic Development Board of the Catawba Indian Nation.
- i. "EC" means the Executive Committee of the Catawba Indian Nation.
- j. "Foreign" refers to limited liability companies and limited partnerships organized under the laws of a jurisdiction other than the CIN.
- k. "General Council" means the CIN General Council.

- l. "Indian Land" means land held in trust by the United States for the benefit of the CIN or its members or otherwise subject to the jurisdiction and supervision of the CIN as if it were reservation or trust land.
- m. "Limited Liability Company" or "Domestic Limited Liability Company" means an organization formed under this Ordinance, except as provided for in paragraph 52.
- n. "Limited Liability Company Interest" or "Interest in the Limited Liability Company" or "Member's Interest" means a member's rights in the limited liability company, including rights to distributions, profits and losses, and to participate in management, as specified in the Articles of Operation.
- o. "LLC" means a limited liability company.
- p. "Majority in Interest" means members contributing more than fifty percent (50%) of the value of total capital contributions to the limited liability company excluding any interest which is not to be counted as voting on a matter as described elsewhere in this Ordinance.
- q. "Manager" or "Managers" means the entity or entities designated to manage the company and this is not necessarily determined by percentage of ownership in the company.
- r. "Member" means a person who has been admitted to membership in a limited liability company and who has not dissociated from the limited liability company.
- s. The "Nation" shall mean the CIN, which is the Catawba Indian Nation and any wholly owned entities of the Catawba Indian Nation, including The Corporate Nation.
- t. "Organizer(s)" means the entity(ies) which signs and delivers the articles of organization for filing to the EC.
- u. "State" includes a state, territory, or possession of the United States and the District of Columbia.

6. 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 9, below.
- b. The name of a domestic LLC shall be distinguishable from any LLC or corporation previously organized under the laws of CIN.

7. Registered Office and Registered Agent. A limited liability company’s registered agent is the company’s agent for service of process, notice, or demand required or permitted by law to be served on the company under the laws of the CIN.

- a. 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 officer of The Corporate Nation or the CIN rather than a specified person if The Corporate Nation or the CIN is a Member of the LLC of which officer is the appointed agent.
- b. An LLC may change its registered office or registered agent, or both, by including the name of its registered agent and the street address of its registered office, as changed, in articles of amendment to its articles of organization or in articles of merger.
- c. The registered agent of an LLC may resign as registered agent by delivering to the EC Secretary a written statement of resignation and the appointment by the LLC of another registered agent.

8. The Corporate Nation or the CIN as Member.

- a. The CIN shall form or become a member of an LLC formed under this Ordinance only upon approval of such action by resolution of the EDB.
- b. If The Corporate Nation is a member of any LLC formed under this Ordinance, any action which The Corporate Nation is required or permitted to take with respect to any vote, approval, consent, appointment, direction, or other matter shall be taken as stated by direction of the Board of The Corporate Nation.

- c. If The CIN is a member of any LLC formed under this Ordinance, any action which the CIN is required or permitted to take with respect to any vote, approval, consent, appointment, direction, or other matter shall be taken as stated by direction of the EC.
- d. In no event shall any manager not a member of an LLC in which The Corporate Nation or the CIN is a member, binds either The Corporate Nation or the CIN in any manner; provided that the interest as a member may be bound by manager or member actions as stated in this Ordinance and the Articles of Operation of the LLC.
- e. Nothing contained in this Ordinance shall be construed as creating any liability or waiving of sovereign immunity of The Corporate Nation or the CIN in any manner. In no event shall any action taken by the General Council 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 Corporate Nation or the CIN unless it expressly does so.
- f. If the only members of an LLC formed under this Ordinance are either The Corporate Nation, the CIN, or both, that LLC shall possess the CIN's sovereign immunity from suit except to the extent otherwise provided in its Articles of Operation.

9. Nature of Business. A limited liability company may be organized under this Ordinance for any lawful purpose. Unless otherwise provided in articles of operation, an LLC organized and existing under this Ordinance has the same powers as an individual to do all things necessary and convenient to carry out its business, including but not limited to all of the following:

- a. Sue and be sued, complain, and defend in its name; provided that if an LLC is wholly owned by either The Corporate Nation, the CIN, or both, it shall be entitled to and shall enjoy the CIN's sovereign immunity from suit unless the articles of organization otherwise provide. The CIN and The Corporate Nation hereby expressly preserve their immunity.
- b. 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.

- c. Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, or otherwise dispose of all or any part of its property.
- d. Lend money, property, and services to, and otherwise assist, its members and managers, if any.
- e. 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.
- f. 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.
- g. Lend money, invest and reinvest its funds, and receive and hold real or personal property as security for repayment.
- h. Conduct its business, locate offices, and exercise the powers granted by this Ordinance inside or outside of the CIN's Indian Lands.
- i. Be a promoter, incorporator, partner, member, associate, or manager of any enterprise or entity.
- j. Elect or appoint managers, agents, and employees, define their duties, and fix their compensation.
- k. Pay pensions and establish pension plans, pension trusts, profit-sharing plans, and benefit or incentive plans for any or all of its current or former members, managers, employees, and agents.
- l. Make donations to and otherwise devote its resources for the public welfare or for charitable, scientific, educational, humanitarian, philanthropic, or religious purposes.
- m. Indemnify a member, manager, employee, officer or agent, or any other person.
- n. Transact any lawful business that the members or the managers find to be in aid of governmental policy.

- o. Make payments or donations, or do any other act not prohibited by law, that furthers the business of the LLC.
- p. Provide benefits or payments to members, managers, employees, and agents of the LLC, and to their estates, families, dependents or beneficiaries in recognition of the past services of the members, managers, employees, and agents of the LLC.

10. Documents.

a. Execution of Documents.

(1) Except as otherwise provided in this Ordinance, any document required or permitted by this Ordinance to be delivered for filing to the CIN EC shall be executed by any of the following:

(a) Any manager, if management of the LLC is vested in a manager or managers, or by a member, if management of the LLC is reserved to the members.

(b) All organizers of the LLC if the LLC has not been organized. Name and address of each organizer shall be provided.

(c) The name of the drafter of the document.

(2) The person executing the document shall sign it and state beneath or opposite the signature the person's name and capacity in which the person signs.

(3) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the executing of the document need not be shown to nor filed with the CIN EC.

b. Filing.

(1) Upon receipt of a document for filing under this Ordinance, the CIN EC 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. The EC has 5 days in which to review any document filed under this Ordinance and take action on it, unless otherwise specifically set forth herein.

- (2) If the CIN EC refuses to file a request, the EC 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 CIN EC for filing, together with a brief written explanation of the reason for refusal.
 - (3) Any document accepted by the CIN EC 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 CIN EC is specified in the document.
 - (4) Fees. The CIN EC shall impose a \$25.00 filing fee for each document filed and an annual \$25.00 renewal fee during the life of the LLC.
- c. Certificate of Status. Any person may obtain from the CIN EC, upon request, a certificate of status for either a domestic or a foreign LLC.

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

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

CHAPTER II - ARTICLES OF ORGANIZATION AND DEALING WITH LLC

13. Articles of Organization.

- a. One or more persons may organize a limited liability company by signing and delivering articles of organization to the CIN EC Secretary for filing. The organizer(s) need not be members of the LLC at the time of organization or thereafter.
- b. A limited liability company shall have one or more members.

- c. The articles of organization shall contain all of and only the following information:
 - (1) A statement that the LLC is organized under this Ordinance.
 - (2) A name for the LLC that satisfies the provisions of this Ordinance.
 - (3) The street address of the registered office and the name of the registered agent at that office.
 - (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 wholly owned by the CIN or The Corporate Nation, or both.
 - (7) If wholly owned by the CIN, The Corporate Nation, or both, whether the LLC is to enjoy CIN's sovereign immunity and the scope of any waiver of that immunity.
- d. The CIN EC 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 fee filing fee, for filing to the CIN EC Secretary.
- f. Effect of Delivery or Filing.
 - (1) An LLC is formed when the articles of organization become effective under paragraph 10b.
 - (2) The CIN EC's filing of the articles of organization is conclusive proof that the LLC is organized and formed under this Ordinance.

14. Agency Power of Members and Managers.

- a. Except as provided in paragraph b or c, below:

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

15. Admissions of Members and Managers.

- a. Except as provided in paragraph b, below, an admission or representation made by any member concerning the business of an LLC within the scope of the member's actual authority, as provided in Section 14, 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 as provided under Section 14 may be used as evidence against the LLC in any legal proceeding.

- (2) The admission or representation of any member, acting solely in the member's capacity as a member, is not evidence against the LLC in any legal proceeding.

16. Knowledge of or Notice to Member or Manager.

- a. Except as provided in paragraph b, below, notice to any member of any matter relating to the business of an LLC, and the knowledge of a member acting in the particular matter, acquired while a member or known by the person at the time of becoming a member, and the knowledge of any member who reasonably could and should have communicated it to the acting member, operate as notice to or knowledge of the LLC.
- 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 member while the member is acting solely in the capacity of a member is not notice to or knowledge of the LLC.

17. Liability of Members 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 Act, a member or manager of an LLC is not personally liable for any debt, obligation, or liability of an LLC, as defined in the Articles of Operation.

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

- a. The object of the proceeding is to enforce a member's right against or liability to the LLC.
- b. The action is brought by a member under Section 19.

19. **Authority to Sue.** Unless otherwise provided in articles of operation an action on behalf of an LLC may be brought in the name of the LLC by:

- a. One or more members of the LLC, if authorized by a majority in interest of members, excluding the vote of any member who has an interest in the outcome of the action that is adverse to the interest of the LLC.
- b. 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 if members.

CHAPTER III - MEMBERS AND MANAGERS

20. Management.

- a. Unless the articles of organization vest management in one or more managers, management of the LLC shall be vested in the members subject to any provision in articles of operation or this Ordinance restricting or enlarging the management rights and duties of any member or group of members.
- b. 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 articles of operation or this Ordinance restricting or enlarging the management rights and duties of any manager or group of managers. Unless otherwise provided in articles of operation, the manager or managers:
 - (1) Shall be designated, appointed, elected, removed, or replaced by a vote of a majority in interest of the members.
 - (2) Need not be members of the LLC nor individuals.
 - (3) Unless earlier removed or earlier resigned, shall not hold office until a successor is elected and qualified.

21. Duties. Unless otherwise provided in articles of operation:

- a. No member or manager shall act or fail to act in a manner that constitutes any of the following:

- (1) A willful failure to deal fairly with the LLC or its members in connection with a matter in which the member or manager has a material conflict of interest.
 - (2) A violation of criminal law, unless the member or manager had reasonable cause to believe that the person's conduct was lawful or no reasonable cause to believe that the conduct was unlawful.
 - (3) A transaction from which the member or manager derived an improper personal profit.
 - (4) Willful misconduct.
- b. Every member and manager shall account to the LLC and hold as trustee for it any improper personal profit derived by that member or manager without the consent of a majority of the disinterested members or managers, or other persons participating in the management of the LLC, from any of the following:
- (1) A transaction connected with the organization, conduct, or winding up of the LLC.
 - (2) A use by a member 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 member or manager.
 - (3) Articles of operation may impose duties on its members and managers that are in addition to, but not in abrogation of, those provided in paragraph a, above.

22. Limitation of Liability and Indemnification. In this Section, "expenses" mean expenses of defending a lawsuit, including attorney's fees, and any civil judgment or penalty, or settlement payment in lieu thereof, paid in connection with a lawsuit against a member or manager in such capacity.

- a. An LLC shall indemnify or allow expenses to each member and each manager for all reasonable expenses incurred with respect to a proceeding if that member or manager was a party to the proceeding in the capacity of a member or manager.
- b. Articles of Operation may alter or provide additional rights to indemnification or allowance of expenses to members and managers.

- c. Notwithstanding paragraphs a and b, above, an LLC may not indemnify a member or manager unless it is determined that the member or manager did not breach or fail to perform a duty to the LLC as provided in Section 21.
- d. Unless otherwise provided in articles of operation:
 - (1) A member or manager shall be conclusively presumed not to have breached or failed to perform a duty to the LLC to the extent that the member or manager has been successful on the merits or otherwise in the defense of the proceeding.
 - (2) In situations not described in paragraph (1), above, the determination of whether member or manager has breached or failed to perform a duty to the LLC shall be made by the vote of a majority in interest of the members, excluding any member who is a party to the same or related proceeding unless all members are parties.

23. Voting.

- a. Unless otherwise provided in articles of operation or this Section, and subject to paragraph 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 members, an affirmative vote, approval, or consent by majority in interest of members.
 - (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 articles of operation or this Ordinance, the affirmative vote, approval, or consent of all members 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 articles of operation.
 - (4) Allow an LLC to accept any additional contribution from a member.

- (5) Allow a partial redemption of an interest in an LLC under Section 32.
 - (6) Value contributions of members under Section 27.
 - (7) Authorize a manager, member, or other person to do any act on behalf of the LLC that contravenes the articles of operation.
- c. Unless otherwise provided in articles of operation if any member is precluded from voting with respect to a given matter, the value of the contribution represented by the interest in the LLC with respect to which the member would otherwise have been entitled to vote shall be excluded from the total contributions made to the LLC for purposes of determining the fifty percent (50%) threshold under paragraph 5p for that matter.
 - d. Unless otherwise provided in articles of operation or this Section, if all or part of an interest in the LLC is assigned under Section 41 the assigning member shall be considered the owner of the assigned interest for purposes of determining the 50% threshold under paragraph 5p until the assignee of the interest in the LLC becomes a member under Section 43.

24. 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 member 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 record of all matters referred to in this Ordinance as maintained in such records which are not otherwise specified in the articles of operation.
- b. Upon reasonable request, a member may, at the member's own expense, inspect and copy during ordinary business hours any LLC record unless otherwise provided in articles of operation.
- c. Members or, if the management of the LLC is vested in one or more managers, managers shall provide true and full information of all things

affecting the members to any member or to the legal representative of any member upon reasonable request of the member or the legal representative.

- 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.

25. Admission of Members.

- a. In connection with the formation of an LLC, a person acquiring LLC interest is admitted as a member upon formation unless the articles of operation otherwise provides.
- b. After the formation of an LLC, a person acquiring an LLC interest is admitted as a member of the LLC as specified in the articles of operation or, if not so specified, by a majority in interest of members.

26. Dissociation.

- a. A person ceases to be a member of an LLC upon the occurrence of and at the same time of any of the following events:
 - (1) The member withdraws by voluntary act.
 - (2) The member is removed as a member in accordance with articles of operation or this Ordinance.
 - (3) Unless otherwise provided in articles of organization or by the written consent of all members at the time of the event, the member does any of the following:
 - (a) Makes an assignment for the benefit of the creditors.
 - (b) Files a voluntary petition in bankruptcy.
 - (c) Becomes the subject of an order for relief under the federal bankruptcy laws 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 articles of operation or by the written consent of all members, if the member is an individual:
 - (a) The member's death.
 - (b) The entry of an order by a court of competent jurisdiction adjudicating the member incompetent to manage the member's person or estate.
- (5) Unless otherwise provided in articles of operation or by written agreement or by the written consent of all members at the time, if the member is a trust, corporation, partnership, or limited liability company upon liquidation, dissolution, or termination.
- b. The members may provide in articles of operation for other events the occurrence of which result in a person ceasing to be a member of the LLC.
- c. Unless articles of operation provide that a member does not have the power to withdraw by voluntary act from an LLC, the member may do so at any time by giving written notice to the other members or as provided in articles of operation. If the member has the power to withdraw but the withdrawal is a breach of the articles of operation, the LLC may offset the damages against the amount otherwise distributable to the member, in addition to pursuing any remedies provided for in articles of operation or otherwise available under applicable law.

CHAPTER IV - FINANCE

27. Contributions.

- a. A member'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 a member's contribution shall be determined in the manner provided in articles of operation. If the articles of operation does not fix a value to a contribution, the value of a contribution shall be approved by a majority in interest of the members, shall be properly reflected in the records and information kept by the LLC under paragraph 24a. The value of

contributions so determined shall be binding and conclusive on the LLC and its members.

28. Liability for Contribution.

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

29. Allocation of Profits and Losses. The profits and losses of an LLC shall be allocated among the members in the manner provided in articles of operation. If the members do not enter into articles of operation or the articles of operation does not so provide, profits and losses shall be allocated on the basis of value of the contributions made by each member.

CHAPTER V - NON-LIQUIDATING DISTRIBUTIONS

30. Interim Distributions. Except as provided in this Chapter, a member is entitled to receive distributions from an LLC before the member's dissociation from the LLC and before its dissolution and winding up to the extent to the extent and at the times or upon the events specified in articles of organization, or to the extent and at the times determined by the members or managers.

31. Allocation of Distributions. Distributions of cash or other assets of an LLC shall be allocated among the members as provided in articles of operation, or if the articles of operation does not provide, on the basis of the value of the contributions made by each member.

32. Distribution Upon Partial Redemption. Except as provided in this Chapter, upon the distribution in partial liquidation of a member's interest, the redeeming member is entitled to receive the amount to which the member is entitled under articles of operation and, if not otherwise provided in articles of operation, the fair value of the redeemed interest based on the member's right to share in distributions from the LLC.

33. Distribution Upon Dissociation. Except as otherwise provided in this Chapter, upon an event of dissociation under Section 26 that does not cause dissolution of the LLC, a dissociating member is entitled to receive any distribution to which member is entitled under articles of operation and, if not otherwise provided in articles of operation the fair value of the member's interest in the LLC based on the member's rights to share in distributions from the LLC.

34. Distribution in Kind. Unless otherwise provided in articles of operation:

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

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

36. Limitations of Distributions.

- a. An LLC may not declare or make a distribution to any of its members, if after giving effect to the distribution, any of the following would occur:
 - (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 LLC's total assets would be less than the sum of its total liabilities plus, unless articles of operation provides otherwise, the amount that would be needed for the preferential rights upon dissolution of members, if any.
- b. An LLC may base a determination that a distribution is not prohibited by paragraph 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 LLC's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the LLC's indebtedness to its general unsecured creditors, except to the extent subordinated by written agreement. This Section does not affect the validity or priority of a security interest in an LLC's property that is created to secure the indebtedness to the member.

37. Liability for Wrongful Distribution.

- a. Except as provided in paragraph b, below, other than the CIN or The Corporate Nation, or EC, a manager who votes or assents to a distribution in violation of Section 36 or of the articles of operation is personally liable to the LLC for the amount of the excess distribution, subject to contribution from all other managers or members participating in such action.
- b. A proceeding under this Section is barred unless it is brought within two (2) years after the date on which the effect of the distribution was measured under Section 30.

CHAPTER VI - OWNERSHIP AND TRANSFER OF PROPERTY

38. Ownership of LLC Property.

- a. All property originally transferred to or acquired by an LLC is property of the LLC and not the members 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.

39. Transfer of Property. The property of an LLC may be transferred by an instrument of transfer executed by any member in the name of the LLC, unless management is vested in managers, in which case the document of transfer shall be

executed by a manager, subject to any limitation that may be imposed by the articles of operation.

40. **Nature of Interest.** An LLC interest is personal property.

41. **Assignment of LLC Interest.**

a. Unless otherwise provided in articles of operation:

(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 assignee would be entitled with respect to the assigned interest.

(3)An assignment or an LLC interest does not dissolve the LLC.

(4)Unless and until the assignee becomes a member of the LLC under Section 37, the assignment of an LLC interest does not entitle the assignee to participate in the management or exercise rights of a member.

(5)Unless and until the assignee of an LLC interest becomes and member of the LLC under Section 43, the assignor continues to be a member.

(6)The assignor of an LLC interest is not released from any personal liability arising under this Ordinance as a member of the LLC solely as a result of the assignment.

b. Unless otherwise provided in articles of operation, the granting of a security interest, lien, or other encumbrance in or against any or all of a member's LLC interest is not assignable and shall not cause the member to cease to have the power to exercise any rights or powers of a member.

42. **Rights of Judgment Creditor.** On application to a court of competent jurisdiction, including a court other than the CIN's Court having valid jurisdiction over the member by any judgment creditor of a member, the court may charge the LLC interest of any member other than The Corporate Nation or the CIN with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of an assignee of the member's LLC interest. This Section does not deprive any member of the benefit of any exemption laws applicable to the LLC interest. In no event shall the CIN's or The Corporate Nation's interest be attachable in abrogation of its sovereign immunity.

43. Right of Assignee to Become a Member.

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

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

CHAPTER VII - DISSOLUTION

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

- a. The occurrence of events specified in articles of operation.
- b. The written consent of all members.
- c. An event of dissociation of a member, unless otherwise provided in articles of operation or continuation is consented to by all remaining members.
- d. Entry of a decree of judicial dissolution under Section 46.

46. Judicial Dissolution. In a proceeding by or for a member, the Court may order dissolution of an LLC if any of the following is established:

- a. That it is not reasonably practicable to carry on the business of the LLC.

- b. That the LLC is not acting in conformity with articles of operation.
- c. That one or more managers are acting or will act in a manner that is illegal, oppressive, or fraudulent.
- d. That one or more members in control of the LLC are acting or will act in a manner that is illegal, oppressive, or fraudulent.
- e. That LLC assets are being misapplied or wasted.

47. **Winding Up.** 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.

- a. Unless otherwise provided in articles of operation:

- (1) The business of the LLC may be wound up by any of the following:

- (a) The members or managers who have authority to manage the LLC before dissolution.

- (b) In a judicial dissolution, the person(s) designated by the Court.

- (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 members any remaining assets of the LLC.

- b. 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 a member'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 a member.

48. **Distribution of Assets.** Upon the winding up an LLC, the assets shall be distributed in the following order:

- a. To creditors, including to the extent permitted by law, members, and former members in satisfaction of liabilities of the LLC.
- b. Unless otherwise provided in articles of operation, to members and former members in satisfaction of liabilities for distributions under Sections 30, 32, and 33.
- c. Unless otherwise provided in articles of operation, to members and former members first for the return of their contributions in proportion to their respective values and, thereafter, in proportion to their respective rights to share in distributions from the LLC before dissolution.

49. **Articles of Dissolution.** After the dissolution of an LLC under Section 45 , the LLC may file articles of dissolution with the EC that includes the following:

- a. The name of the LLC.
- b. The date of filing of its articles of organization.
- c. The statutory grounds under Section 45 for dissolution.
- d. The delayed effective date of the articles of dissolution under paragraph 10b(3) , if applicable.

50. 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 paragraph a, above, does not deliver the claim, in writing, to the LLC by the deadline specified in the notice.
 - (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.

51. Unknown or Contingent Claims. A claim not barred under Section 50 may be enforced:

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

CHAPTER VIII - MERGER

52. Merger.

- a. Unless the context required otherwise, in this Chapter, LLC includes a domestic LLC and a foreign LLC.
- b. Unless otherwise provided in articles of operation one or more LLC's may merge with or into one or more LLC's or one or more other foreign LLC's provided in the plan of merger.
- c. Interests 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 LLC.

53. Approval of Merger.

- a. Unless otherwise provided in articles of operation an LLC that is a party to a proposed merger shall approve the plan of merger by an affirmative vote of a majority in interest of members.
- b. Unless otherwise provided in articles of operation the manager or managers of an LLC may not approve a merger without also obtaining the approval of the LLC's members under paragraph a , above.
- c. Each foreign LLC that is a party to a proposed merger shall approve the merger in the manner and by the vote required by the laws applicable to the foreign LLC.
- d. Each LLC that is a party to the merger shall have any rights to abandon the merger that are provided for in the plan of merger or in the laws applicable to the LLC.
- e. Upon approval of a merger, the LLC shall notify each member of the approval and of the effective date of the merger.

54. Plan of Merger. Each LLC that is a party to a proposed merger shall enter into a written plan of merger to be approved under Section 53.

55. Articles of Merger.

- a. The surviving LLC shall deliver to the CIN EC articles of merger, executed by each party to the plan of merger, that include all of the following:
 - (1) The name and state or jurisdiction of organization for each LLC that is to merge.
 - (2) The plan of merger.
 - (3) The name of the surviving or resulting LLC.
 - (4) A statement as to whether the management of the surviving LLC will be reserved to its members or vested in one or more managers.

- (5) The delayed effective date of the merger under paragraph 10b(3), if applicable.
 - (6) A statement whether the CIN, The Corporate Nation, or both, are the sole members.
 - (7) If the CIN, The Corporate Nation, or both, are sole members, a statement as to whether the LLC enjoys CIN's sovereign immunity.
 - (8) A statement that the plan of merger was approved under Section 53.
- b. A merger takes effect upon the effective date of the articles of merger.

56. Effects of Merger. A merger has the following effects:

- a. The LLC's that are parties to the plan of merger become a single entity, which shall be the entity designated in the plan of merger as the surviving LLC.
- b. Each party to the plan of merger, except the surviving LLC, ceases to exist.
- c. The surviving LLC possesses all of the rights, privileges, immunities, and powers of each merged LLC and is subject to all of the restrictions, disabilities, and duties of each merged LLC.
- d. All property and all debts, including contributions, and each interest belonging to or owed to each of the parties to the merger are vested in the surviving LLC without further act.
- e. Title to all real estate and any interest in real estate, vested in any party to the merger, does not revert and is not in any way impaired because of the merger.
- f. The surviving LLC has all the liabilities and obligations of each of the parties to the plan of merger and any claim existing or action or proceedings pending by or against any merged LLC may be prosecuted as if the merger had not taken place, or the surviving LLC may be substituted in the action.
- g. The rights of creditors and any liens on the property of any party to the plan of merger survive the merger.
- h. The interests in an LLC that are to be converted or exchanged into interest, cash, obligations, or other property under the terms of the plan of merger are

converted and the former interest holders are entitled only to the rights provided in the plan of merger of the rights otherwise provided by law.

- i. The articles of organization of the surviving LLC are amended to the extent provided in the articles of merger.

57. **Right to Object.** Unless otherwise provided in articles of operation, upon receipt of the notice required by paragraph 53e, a member who did not vote in favor of the merger may, within twenty (20) days after the date of the notice, voluntarily disassociate from the LLC under paragraph 26c and receive fair value for the member's LLC interest under Section 33.

Legislative History:

[date] Enacted by CIN General Council Resolution [resolution number].