

**PONCA TRIBE OF NEBRASKA
TITLE XX
NONPROFIT ENTITIES**

**CHAPTER 1
GENERAL PROVISIONS**

Section 20-1-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Charitable purpose" means any educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, other benevolent purpose, or lessening the burdens of government.

2. "Foreign nonprofit entity" means an entity that is formed under the law of a jurisdiction other than the Tribe and that would be a nonprofit entity if the entity were formed under the laws of the Tribe.

3. "Manager" means a person that is responsible, alone or in concert with others, for the management of a nonprofit entity and includes a manager of an unincorporated business entity, the board of directors of a nonprofit corporation, and an individual director or officer of a nonprofit corporation.

4. "Member" means a person having membership rights in a nonprofit entity in accordance with the provisions of its organizational documents or governing principles.

5. "Membership" means the rights and any obligations of a member in a domestic or foreign nonprofit entity.

6. "Nonprofit entity" means, except when used in the phrase foreign nonprofit entity, a business entity organized under this Title or that is or becomes subject to this Title:

a. For a purpose not involving pecuniary gain to its members, other than to members that are nonprofit entities or commissions, boards, agencies, departments, divisions, instrumentalities, subdivisions, or units of the Tribe or another government; and

b. Where no part of the income of which is distributable, directly or indirectly, to its members, managers, directors, or officers, other than members that are

nonprofit entities or commissions, boards, agencies, departments, divisions, instrumentalities, subdivisions, or units of the Tribe or another government.

7. "Public purpose" means one or more positive effects or reduction of negative effects on one or more categories of persons, entities, communities, or interests other than owners of a business entity in their capacities as owners, including effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological nature and, in the case of a Tribal business entity, reducing unemployment in the territory of the Tribe, enhancing the Tribe's self-determination, self-government, or economic self-sufficiency, or otherwise serving and supporting the needs, priorities, goals, objectives, and/or policies of the Tribe.

8. Terms used in this Title and not defined herein, but defined in Title XIV of this Code have the meanings defined in Title XIV of this Code.

Section 20-1-2. Governing Laws.

1. Unless displaced by particular provisions of this Title, the relevant provisions of Title XIV of this Code supplement this Title and shall apply to all nonprofit entities.

2. This Title shall apply to all nonprofit entities to which Title XIV of this Code applies.

Section 20-1-3. Severability. If any chapter, section, or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections, and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 20-1-4. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees or as establishing or acknowledging any liability of the Tribe under any law.

CHAPTER 2
NONPROFIT CORPORATIONS

Section 20-2-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Act of the board of directors" means either:

a. An act of the majority of the directors present at a duly called meeting where a quorum is present, unless the act of a greater number is required by this Title, the articles of incorporation, or the bylaws; or

b. Action taken by written consent of the directors in accordance with this Chapter.

2. "Act of the members" means either:

a. An act adopted or rejected by a majority of the votes represented and voting at a duly held meeting where a quorum is present, unless a greater number of votes is required by this Title, the articles of incorporation, or the bylaws; or

b. An action taken by written consent of the members in accordance with this Chapter.

3. "Articles of incorporation" means the articles filed under this Chapter to organize and establish a corporation and includes the articles as amended or restated.

4. "Board of directors" means the group of persons vested with the management of the affairs of a domestic or foreign corporation irrespective of the name by which the group is designated.

5. "Bylaws" means the code of rules adopted for the regulation or management of the affairs of a domestic or foreign corporation irrespective of the name by which those rules are designated.

6. "Charitable corporation" means a nonprofit corporation that is operated primarily or exclusively for one or more charitable or public purposes.

7. "Delegate" means a person elected or appointed to vote in a representative assembly for the election of directors or on other matters.

8. "Designated body" means a person or group, other than a committee of the board of directors, that has been vested by the articles of incorporation or bylaws with powers that, if not vested by the articles of incorporation or bylaws in that person or group, would be required to be exercised by the board of directors or the members.

9. "Foreign nonprofit corporation" means an incorporated entity that is formed under the law of a jurisdiction other than the Tribe and that would be a nonprofit corporation if the incorporated entity were formed under the laws of the Tribe.

10. "Membership corporation" means a nonprofit corporation whose articles of incorporation or bylaws provide that it shall have members.

11. "Nonmembership corporation" means a nonprofit corporation whose articles of incorporation or bylaws provide that it shall not have members.

12. "Nonprofit corporation" means, except when used in the phrase foreign nonprofit corporation, a nonprofit entity organized as a corporation under this Chapter or that becomes subject to this Chapter.

13. "Voting group" means all memberships of one or more classes that under the articles of incorporation, bylaws, or this Title are entitled to vote and be counted together collectively on a matter at a meeting of members.

Section 20-2-2. Formation.

1. One or more persons at least the age of majority may act as incorporators to form a nonprofit corporation by delivering to the Office of the Secretary for filing the articles of incorporation. The incorporators of a nonprofit corporation need not be members at the time of formation or thereafter.

2. A nonprofit corporation is formed when the articles of incorporation become effective.

3. The Office of the Secretary's filing of the articles of incorporation of a nonprofit corporation is conclusive proof that the nonprofit corporation is organized and formed under this Title.

Section 20-2-3. Articles of Incorporation.

1. The articles of incorporation must state all of the following:

a. A statement that the nonprofit corporation is organized under this Chapter;

b. The name of the nonprofit corporation that complies with the laws of the Tribe;

c. The period of duration, which may be perpetual;

d. If applicable, a statement that the nonprofit corporation is a public benefit corporation, a mutual benefit corporation, or a religious corporation;

e. The purpose or purposes for which it is formed, which may include, but is not limited to, charitable or public purposes, but not a purpose involving pecuniary gain;

f. A statement that no part of the income of the nonprofit corporation is or will be distributable, directly or indirectly, to its members, managers, directors, or officers, provided that the articles may provide for distribution of the nonprofit corporation's income to members that are nonprofit entities or commissions, boards, agencies, departments, divisions, instrumentalities, subdivisions, or units of the Tribe or another government;

g. The principal address, which may be the same as the mailing address of the nonprofit corporation's registered agent;

h. The name and street and mailing addresses in the territory of the Tribe of the nonprofit corporation's registered agent;

i. The name and address of each incorporator;

j. Whether the nonprofit corporation is a Tribal business entity; and

k. If the nonprofit corporation is Tribal business entity, whether the nonprofit corporation enjoys the Tribe's sovereign immunity and the scope of any waiver of that immunity.

2. The articles of incorporation shall be signed by all incorporators.

3. The articles of incorporation may contain statements as to matters other than those required in this Section which are not inconsistent with the laws of the Tribe or not prohibited by the laws of the Tribe.

Section 20-2-4. Amendment of Articles.

1. Articles of incorporation may be amended or restated at any time. Except as provided in the articles of incorporation, a member of the nonprofit corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, purpose, or duration of the corporation.

2. If a membership corporation has not yet issued memberships, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

3. If a membership corporation has issued memberships, the following apply to amendments to the articles of incorporation:

a. A nonprofit corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the members and the board of directors may condition its submission of the proposed amendment on any basis;

b. If the articles of incorporation expressly permit, the members may propose one or more amendments to the articles of incorporation;

c. The nonprofit corporation shall provide notice to each member, whether or not entitled to vote, of the proposed members' meeting and the notice shall:

i. State that the proposed amendment will be considered at the meeting; and

ii. Contain or be accompanied by a copy or summary of the amendment; and

d. For the amendment to be adopted, the members must approve the amendment by a majority vote at a meeting where a quorum consisting of a majority of the votes entitled to vote is present and, if any voting group is entitled to vote on the amendment, the approval of each such voting group at a meeting where a quorum of the voting group exists consisting of a majority of the votes entitled to be cast on the amendment by that voting group.

4. Except as otherwise provided in the articles of incorporation, the board of directors of a nonmembership corporation may adopt amendments to the nonprofit corporation's articles of incorporation. An amendment adopted by the board under this subsection must also be approved:

a. By a designated body whose approval is required by the articles of incorporation or bylaws;

b. If the amendment changes or deletes a provision regarding the appointment of a director by persons other than the board, by those persons as if they constituted a voting group; and

c. If the amendment changes or deletes a provision regarding the designation of a director, by the individual designated at the time as that director.

5. To amend its articles of incorporation, a nonprofit corporation must deliver to the Office of the Secretary for filing an amendment stating:

a. The name of the nonprofit corporation;

b. The date of filing of its initial articles of incorporation;

c. The text of each amendment adopted;

d. The date of each amendment's adoption;

e. If an amendment was adopted by the incorporators or board of directors without member approval, a statement that the amendment was duly adopted by the incorporators or by the

board of directors, as the case may be, and that member approval was not required; and

f. If an amendment required approval of the members, a statement that the amendment was duly approved by the members in the manner required by this Chapter and the articles of incorporation.

6. The articles of incorporation shall be amended if there is a statement in the articles that was false or erroneous when it was made.

7. If a director of a nonprofit corporation knows that any information in a filed articles of incorporation was inaccurate when the articles were filed or has become inaccurate due to changed circumstances, the director shall promptly:

a. Cause the articles to be amended; or

b. If appropriate, deliver to the Office of the Secretary for filing a statement of change or a statement of correction.

Section 20-2-5. Restatement of Articles.

1. A nonprofit corporation's board of directors may restate its articles of incorporation at any time with or without member action.

2. If the restatement includes an amendment requiring member approval, it shall be adopted as provided in this Chapter for amendments to the articles of incorporation.

3. A nonprofit corporation that restates its articles of incorporation shall deliver to the Office of the Secretary for filing articles of restatement setting forth:

a. The name of the nonprofit corporation;

b. The date of filing of its initial articles of incorporation;

c. The text of the restated articles of incorporation;

d. A statement that the restated articles consolidate all amendments into a single document; and

e. If a new amendment is included in the restated articles, the statements required under this Chapter for an amendment to the articles of incorporation.

4. Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the articles of incorporation.

Section 20-2-6. Effect of Amendment of Articles.

1. Except as provided in this Section, an amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the nonprofit corporation, a proceeding to which the nonprofit corporation is a party, or the existing rights of persons other than members of the nonprofit corporation or persons referred to in the articles. An amendment changing a nonprofit corporation's name does not affect a proceeding brought by or against the nonprofit corporation in its former name.

2. Property held in trust by a nonprofit corporation or otherwise dedicated to a charitable purpose may not be diverted from its purpose by an amendment of its articles of incorporation.

3. A person that is a member or otherwise affiliated with a charitable corporation may not receive a direct or indirect financial benefit in connection with an amendment of the articles of incorporation unless the person is itself a charitable corporation or a nonprofit entity with a charitable or public purpose or a commission, board, agency, department, division, instrumentality, subdivision, or unit of the Tribe or another government. This subsection does not apply to the receipt of reasonable compensation for services rendered.

Section 20-2-7. Bylaws.

1. The incorporators or the board of directors of a nonprofit corporation shall adopt initial bylaws for the corporation.

2. The bylaws of a nonprofit corporation may contain any provision for managing the activities and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

3. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless:

a. The power to alter, amend, or repeal the bylaws is reserved to the members by the articles of incorporation;

b. The members in amending or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw; or

c. The provision to be amended includes a higher quorum or voting requirement for the board of directors, unless otherwise expressly provided in the bylaws or the provision was adopted by the board of directors.

4. Unless otherwise provided in the articles of incorporation, the bylaws of a nonprofit corporation shall be subject to repeal or change by act of the members even though the bylaws may also be amended or repealed by the board of directors.

Section 20-2-8. Members.

1. A nonprofit corporation may or may not have members.

2. If the articles of incorporation or bylaws of a nonprofit corporation do not provide that it shall have members or if a nonprofit corporation in fact has no members entitled to vote on a matter, any provision of this Title or any other law of the Tribe governing the nonprofit corporation requiring notice to, the presence of, or the vote, consent, or other action by members of the nonprofit corporation in connection with the matter shall be satisfied by notice to, the presence of, or the vote, consent, or other action by the board of directors or a body of the corporation otherwise designated in the articles of incorporation or bylaws.

3. If the articles of incorporation or bylaws of a nonprofit corporation provide that it shall have members, the following standards shall apply:

a. The articles of incorporation shall establish the criteria and procedures for admission of members;

b. A person may not be admitted as a member without the person's consent;

c. A member is not an agent of the nonprofit corporation solely by reason of being a member;

d. Each member shall have the same rights and obligations as every other member with respect to voting, dissolution, membership transfer, and all other matters unless the articles of incorporation or bylaws specifically establish classes of membership with different rights or obligations;

e. Except as provided in its articles of incorporation or bylaws, the nonprofit corporation may admit members for no consideration or for such consideration as is determined by the board of directors, which may consist of money or property transferred to, services performed for, or another benefit provided to the nonprofit corporation or an agreement to transfer money or property to, perform services for, or provide another benefit to the nonprofit corporation;

f. The nonprofit corporation may issue certificates evidencing membership therein;

g. Unless otherwise provided in the articles of incorporation or bylaws, a member may not transfer a membership or any right arising therefrom;

h. Where a member has the right to transfer a membership, a restriction on that right shall not be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the affected member;

i. The nonprofit corporation may levy dues, assessments, and fees on its members to the extent authorized in the articles of incorporation or bylaws and the articles of incorporation or bylaws may provide reasonable means, such as termination and reinstatement of membership, to enforce the collection of dues, assessments, and fees;

j. A member may resign at any time, but resignation of a member does not relieve the member from any obligations incurred or commitments made prior to resignation;

k. A membership may be terminated or suspended for the reasons and in the manner provided in the articles of incorporation or bylaws, but the termination or suspension of a member does not relieve the member from any obligations incurred or commitments made prior to the termination or suspension;

1. A nonprofit corporation that is not a charitable corporation may purchase any of its memberships or any right arising therefrom only to the extent provided in and in accordance with the articles of incorporation or bylaws, but a charitable corporation may not purchase any of its memberships or any right arising therefrom.

Section 20-2-9. Meetings of Members.

1. A nonprofit corporation with members shall hold a meeting of members annually at a time stated in or fixed in accordance with the bylaws. The failure to hold an annual meeting at the time stated in or fixed in accordance with a nonprofit corporation's bylaws does not affect the validity of any corporate action.

2. A membership corporation shall hold a special meeting of members:

a. On the call of its board of directors or the person authorized to do so by the articles of incorporation or bylaws;

b. On the call of the holders of not less than one-fifth (1/5) of all the memberships entitled to vote; or

c. When otherwise required in this Chapter.

3. Only business within the purpose or purposes described in the meeting notice may be conducted at a special members' meeting.

4. Members' meetings may be held in or out of the territory of the Tribe at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the nonprofit corporation's known place of business.

5. Unless the articles of incorporation provide otherwise, members may participate in any members' meeting by any means of communication by which all persons participating in the meeting can hear each other during the meeting. A member participating in a meeting by such means is deemed to be present in person at the meeting.

6. Unless otherwise provided in the articles of incorporation or bylaws, a majority of the votes entitled to be

cast on a matter constitutes a quorum for action on that matter, provided that in no event shall a quorum consist of less than one-third (1/3) of the outstanding memberships entitled to vote on the matter. Unless otherwise provided in the articles of incorporation or bylaws, once a membership is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting.

7. Unless the vote of a greater number is required by the articles of incorporation, bylaws, or this Title or other law of the Tribe applicable to the nonprofit corporation, if a quorum is present, the affirmative vote of the majority of the memberships represented at the meeting and entitled to vote on the matter shall be the act of the members.

8. If the articles of incorporation provide for voting by a single voting group on a matter, action on that matter is taken when voted on by that voting group. If the articles of incorporation provide for voting by two or more voting groups on a matter, action on that matter is taken when voted on by each of those voting groups counted separately. Voting by individual voting groups entitled to vote on a matter need not be simultaneous.

9. A membership corporation shall notify members of the date, time, and place of each annual and special members' meeting at least ten (10) but not more than sixty (60) days before the meeting date. Notice may be given by mail, personal delivery, or electronic transmission. Notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called. Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

10. A member may waive any notice before or after the date and time of the members' meeting that is the subject of such notice. The waiver must be in writing, signed by the member entitled to the notice, and delivered to the nonprofit corporation for inclusion in the minutes or filing with the corporate records, except that a member's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

11. Unless the member objects to considering the matter when it is presented, a member waives objection to consideration of a

particular matter at a meeting that is not within the purpose or purposes described in the meeting notice.

Section 20-2-10. Member Action Without Meeting.

1. Action required or permitted by this Title or other law of the Tribe governing the nonprofit corporation to be taken at a members' meeting may be taken without a meeting or a vote if there is written consent by at least the minimum number of memberships entitled to vote on the action which would be necessary to authorize or take the action at a meeting.

2. An action taken by members without a members' meeting must be taken by all members and must be evidenced by written consent of all members of the nonprofit corporation if:

a. The action involves the election or removal of one or more directors; or

b. The articles of incorporation or bylaws require that the action must be taken by all members if taken without a members' meeting.

3. Action taken by the written consent of the members must be evidenced by one or more written consents describing the action taken and signed by holders of at least the minimum number of memberships necessary to authorize or take the action. The written consents to the action must be delivered to the nonprofit corporation for inclusion in the minutes or filing with the corporate records.

4. Unless the written member consent specifies a later effective date, action taken under this Section is effective when consents sufficient to authorize taking the action have been delivered to the nonprofit corporation.

5. A member may revoke the member's consent by delivering a signed revocation of the consent to the president or secretary of the board of directors before the date that the consents have been delivered to the nonprofit corporation.

6. A consent signed under this Section has the effect of a meeting vote and may be described as such in any document, except that, if the action requires the filing of a certificate under this Title or other law of the Tribe applicable to the nonprofit corporation, the certificate so filed shall state, in lieu of any

statement concerning a vote of members, that written consent has been obtained in accordance with this Section.

7. Notice of the taking of a corporate action without a meeting must be given within thirty (30) days after the effective date of the corporate action to:

a. Each member entitled to take the action who did not consent to the action in writing; and

b. Each member who, if the action had been taken at a meeting, would have been entitled to notice of the meeting.

Section 20-2-11. Voting of Members.

1. Unless otherwise provided in the articles of incorporation, each member shall be entitled to one (1) vote on each matter submitted to a vote at a meeting of members.

2. A member may vote either in person or by proxy executed in writing by the member or by the member's duly authorized attorney-in-fact. No proxy shall be valid after twelve (12) months from the date of its execution unless otherwise provided in the proxy.

3. Every proxy shall be revocable at the pleasure of the person executing it or his or her personal representatives or assignee, but the parties to a valid pledge or to an executory contract of transfer may agree in writing as to which of them shall vote the membership pledged or transferred until the contract of pledge or transfer is fully executed.

4. In all elections for directors, every member entitled to vote shall have the right to vote, in person or by proxy, for as many persons as there are directors to be elected.

5. If so provided in the articles of incorporation, members may cumulate votes by multiplying the number of memberships they are entitled to cast by the number of directors to be elected and to cast the product for a single candidate or distribute the product among two (2) or more candidates.

Section 20-2-12. Voting Trusts and Agreements.

1. If and to the extent a membership is transferable as provided in this Chapter, and unless otherwise provided in the articles of incorporation or bylaws, one or more members may create

a voting trust, conferring on one or more trustees the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust and transferring their memberships to the trustee or trustees. The agreement may contain any lawful provision not inconsistent with the purposes of the trust.

2. Two or more members may provide for the manner in which they will vote their memberships by signing an agreement for that purpose. Unless otherwise provided in the voting agreement, a voting agreement is specifically enforceable.

Section 20-2-13. Member Agreements.

1. An agreement among the members of a membership corporation is effective among the members and the membership corporation even though it is inconsistent with one or more other provisions of this Title if it complies with this Section and meets any of the following conditions:

a. Restricts the discretion or powers of the board of directors;

b. Governs the authorization or making of distributions whether or not in proportion to ownership of memberships, subject to the limitations in this Title;

c. Establishes who shall be directors or officers of the membership corporation, their terms and conditions of office or employment, or their manner of selection or removal;

d. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the members and directors or by or among any of them, including use of weighted voting rights or director proxies;

e. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the membership corporation and any member, director, officer, or employee of the membership corporation or among any of them;

f. Transfers to one or more members or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the membership corporation, including the resolution of any issue where there is a deadlock among directors or members;

g. Requires dissolution of the membership corporation at the request of one or more of the members or on the occurrence of a specified event or contingency;

h. Establishes the terms and conditions of employment of members;

i. Addresses the use of arbitration or other forms of dispute resolution to resolve disputes among members;

j. Restricts the transfer of memberships; or

k. Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the membership corporation, its liquidation and dissolution, or the relationship among the members, the directors, and the membership corporation, or among any of them.

2. An agreement authorized by this section shall be:

a. Set forth either:

i. In the articles of incorporation or bylaws and approved by all persons who are members at the time of the agreement; or

ii. In a written agreement that is signed by all persons who are members at the time of the agreement and that is filed with the membership corporation;

b. Subject to amendment or termination only by all persons who are members at the time of the amendment, unless the agreement provides otherwise; and

c. Valid for the duration of the membership corporation's existence, unless the agreement provides otherwise.

3. An agreement authorized by this Section is enforceable by any party to the agreement against any other party to the agreement. The existence of an agreement authorized by this Section shall be noted conspicuously in an information statement provided to any person who becomes a member and who was not a signatory of the agreement. The failure to note the existence of the agreement in the information statement does not affect the validity of the agreement or any action taken pursuant to it. Any transferee of a membership who at the time of transfer did not

have knowledge of the existence of the agreement is entitled to rescission of the membership. A transferee shall be deemed to have knowledge of the existence of the agreement if its existence is noted in the information statement in compliance with this subsection and the information is delivered to the transferee at or before the time of transfer of the membership or the transferee has actual notice of the existence of the agreement at the time of transfer. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety (90) days after discovery of the existence of the agreement or two (2) years after the time of the transfer of the membership.

4. If an agreement authorized by this Section ceases to be effective for any reason and the agreement is contained or referred to in the membership corporation's articles of incorporation or bylaws, the board of directors may adopt an amendment to the articles of incorporation or bylaws without member action to delete the agreement and any references to it.

5. An agreement that is authorized by this Section and that limits the discretion or powers of the board of directors relieves the directors of liability for acts or omissions imposed by law on directors with respect to the discretion or powers limited by the agreement and imposes such liability on the persons in whom such discretion or powers are vested.

6. The existence or performance of an agreement authorized by this Section is not a ground for imposing personal liability on any member for the acts or debts of the membership corporation even if the agreement or its performance treats the membership corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

7. Incorporators may act as members with respect to an agreement authorized by this Section if no memberships have been issued when the agreement is made.

8. This Section does not apply to, limit, or invalidate agreements that are otherwise valid or authorized without regard to this Section, including, without limitation, member agreements between or among some or all of the members or agreements between or among the membership corporation and one or more members. The procedure set forth in this Section is not the exclusive method of agreement among members or among members and the membership corporation with respect to any of the matters described in this Section.

Section 20-2-14. Derivative Actions.

1. A derivative action may be brought by:
 - a. A member or members having five percent (5%) or more of the voting power or fifty (50) members, whichever is less;
 - b. A member or members that can fairly and adequately represent the interests of the nonprofit corporation in enforcing the rights of the corporation; or
 - c. Any director or member of a designated body.
2. A person may maintain a derivative action to enforce a right of a nonprofit corporation if:
 - a. Unless such a demand would be futile, the person first makes a demand on the board of directors requesting that they cause the nonprofit corporation to bring an action to enforce the right; and
 - b. The board of directors do not bring the action within a reasonable time.
3. In a derivative action, the complaint must state with particularity:
 - a. The date and content of plaintiff's demand and the response to the demand by the board of directors; or
 - b. Why demand should be excused as futile.
4. A derivative action to enforce a right of a nonprofit corporation may be maintained only by a person that is a member, director, or member of a designated body at the time the action is commenced and:
 - a. Was a member, director, or member of a designated body when the conduct giving rise to the action occurred; or
 - b. Who became a member, director, or member of a designated body through transfer by operation of law from one who was a member, director, or member of a designated body at the time of the conduct.

5. If the nonprofit corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative action for such period as the court deems appropriate.

6. The court may appoint a panel of one or more independent persons on motion by the nonprofit corporation to determine whether the maintenance of the derivative action is in the best interests of the nonprofit corporation. If the court appoints such a panel, on motion by the nonprofit corporation, the court shall, except for good cause shown, stay discovery for the time reasonably necessary to permit the panel to make its determination. This subsection does not prevent the court from:

a. Enforcing a person's right to information under this Title; or

b. Granting a temporary restraining order or preliminary injunction.

7. After appropriate investigation, a panel appointed by the court under this Section may determine that it is in the best interests of the nonprofit corporation that the proceeding:

a. Continue under the control of the plaintiff;

b. Continue under the control of the nonprofit corporation;

c. Be settled on terms approved by the nonprofit corporation; or

d. Be dismissed.

8. After making a determination how to proceed, a panel appointed by the court under this Section shall file with the court a statement of its determination and its report supporting its determination. The panel shall serve each party with a copy of the determination and report. If the court finds the panel has proven that the members of the panel were disinterested and independent and that the panel acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the panel. Otherwise, the court shall dissolve any stay entered pursuant to this Section and allow the action to continue under the control of the plaintiff. A person appointed to a panel by the court under this Section is not liable whatsoever for a determination made pursuant to this Section.

9. A derivative action on behalf of a nonprofit corporation may not be voluntarily dismissed or settled without the court's approval. If the court determines that a proposed dismissal or settlement will substantially affect the interests of the nonprofit corporation's members or a class of members, the court shall direct that notice be given to the members affected.

10. Subject to the award of expenses provided in this Section:

a. Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the nonprofit corporation and not to the plaintiff; and

b. If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the nonprofit corporation.

11. Unless the nonprofit corporation is a Tribal business entity and the plaintiff is not the Tribe or a Tribal business entity, if a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable legal counsel's fees and costs, from the recovery of the nonprofit corporation.

12. In any derivative action brought to enforce the right of a foreign nonprofit corporation, the matters covered by this Section shall be governed by the laws of the jurisdiction of formation of the foreign nonprofit corporation except for the provision in this Section governing stays, discontinuance, settlement, and payment of expenses.

13. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe or waiving the sovereign immunity of any Tribal business entity.

Section 20-2-15. Delegates.

1. A nonprofit corporation with members may provide in its articles of incorporation or bylaws for delegates.

2. The articles of incorporation or bylaws may set forth provisions relating to:

a. The characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal;

b. Calling, noticing, holding, and conducting meetings of delegates; and

c. Carrying on corporate activities during and between meetings of delegates.

3. An assembly or other organized group of delegates constitutes a designated body.

Section 20-2-16. Financial Statements.

1. On written demand from a member, a nonprofit corporation shall furnish that member with financial statements for its latest completed fiscal year within a reasonable time after receipt of the demand. The financial statements may be consolidated or combined statements of the nonprofit corporation and one or more of its subsidiaries, as appropriate, and that include a balance sheet as of the end of the fiscal year and a statement of operations for the year. If financial statements are prepared for the nonprofit corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

2. If the annual financial statements are reported on by a certified public accountant, that report shall accompany them. If not, the statements shall be accompanied by a statement of the person responsible for the nonprofit corporation's accounting records both:

a. Stating that person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

b. Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

3. If a nonprofit corporation indemnifies or advances expenses to a director or officer with respect to a proceeding where the director or officer was a party, the nonprofit corporation shall report the indemnification or advance in writing

to the members. Failure to report under this subsection does not invalidate otherwise valid indemnification.

Section 20-2-17. Board of Directors.

1. A nonprofit corporation must have a board of directors which shall manage the affairs of the nonprofit corporation, subject to any limitations in this Title, the articles of incorporation, or bylaws.

2. Unless the articles of incorporation or bylaws so provide, directors need not be members of the nonprofit corporation.

3. The articles of incorporation or bylaws may prescribe qualifications for directors.

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

5. Initial directors may be named in the articles of incorporation, elected by the members, or elected by the incorporators. Thereafter:

a. The directors of a membership corporation shall be elected at the annual meeting of the members, unless the articles or bylaws provide some other time or method of election, or provide that some or all of the directors are appointed by some other person or designated in some other manner;

b. The directors of a nonmembership corporation shall be elected, appointed, or designated as provided in the articles or bylaws, but if no method of designation or appointment is set forth in the articles or bylaws, the directors shall be elected by the board of directors.

6. Unless otherwise provided in the articles of incorporation, directors of a membership corporation are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting where a quorum is present and those receiving the greatest number of votes shall be deemed elected even though not receiving a majority. At each election for directors, members are entitled to cumulate their votes by multiplying the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and casting

the product for a single candidate or distributing the product among two or more candidates.

7. Unless otherwise provided in the articles of incorporation, each director shall hold office for the term for which he or she is elected or appointed and until his successor shall have been elected or appointed and qualified.

8. Unless the articles of incorporation require cause for removing a director, a director of a membership corporation may be removed from office with or without cause at a meeting of the members called expressly for that purpose by such vote as would suffice for the director's election. Unless the articles of incorporation require cause for removing a director, a director of a nonmembership corporation may be removed from office with or without cause by majority vote of the board of directors present at a meeting of the board of directors where a quorum is present, excluding the director to be removed. The articles of incorporation may provide additional procedures for removing a director.

9. A director may resign at any time by delivering written notice thereof to the board of directors or its chairperson.

10. Unless the articles of incorporation or bylaws provide otherwise, a vacancy on the board of directors may be filled by the board of directors in office even if they constitute less than a quorum. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his or her predecessor in office.

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

12. Unless a law applicable to the nonprofit corporation or the articles of incorporation or bylaws provide otherwise generally or for any particular act of the board of directors, a majority of the number of directors shall constitute a quorum for the transaction of business, provided that in no event shall a quorum consist of fewer than one third (1/3) of the number of directors.

13. Unless a law applicable to the nonprofit corporation or the articles of incorporation or bylaws provide for a greater number generally or for any particular act of the board of directors, the act of the majority of the directors present at a

meeting where a quorum is present shall be the act of the board of directors.

14. A director may waive any notice required by this Title, the articles of incorporation, or the bylaws before or after the date and time stated in the notice. A director's attendance at or participation in a meeting waives any required notice to the director of the meeting, unless the director at the beginning of the meeting, or promptly upon arrival, objects to holding the meeting or transacting business at the meeting and does not, after objecting, vote for or assent to action taken at the meeting.

15. Unless the articles of incorporation or bylaws provide otherwise, action to be taken at a meeting of the board of directors may be taken without a meeting or a vote if there is written consent by at least a majority of the directors. The written consent to the action must be included in the minutes or filed with the corporate records.

Section 20-2-18. Board Committees.

1. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee shall have one or more members, and each member of a committee shall serve at the pleasure of the board of directors.

2. Unless the articles of incorporation or bylaws require a greater number, the creation of a committee and appointment of members of the board of directors to it must be approved by a majority of all the directors in office when the action is taken.

3. The provisions of this Chapter governing meetings, action without meetings, notice, waiver of notice, quorum, and voting requirements of the board of directors also apply to committees and their members.

4. Subject to the limitations set forth in this Section, each committee of the board of directors may exercise the authority of the board of directors under this Chapter to the extent specified by the board of directors or in the articles of incorporation or bylaws.

5. A committee shall not take any of the following actions:

- a. Authorize distributions;

b. Approve or recommend to members any action that requires the members' approval under this Title;

c. Fill vacancies on the board of directors or on any of its committees;

d. Adopt, amend, or repeal articles of incorporation or bylaws; or

e. Fix the compensation of directors for serving on the board of directors or any committee of the board of directors.

6. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in this Chapter.

7. The board of directors may designate one or more directors as alternate members of any committee who may replace any absent member at any meeting of the committee.

Section 20-2-19. Designated Body.

1. Some, but less than all, of the powers, authority, or functions of the board of directors of a nonprofit corporation may be vested by the articles of incorporation or bylaws in a designated body. If such a designated body is created:

a. The provisions of this Chapter and other provisions of law applicable to the nonprofit corporation on the rights, duties, liabilities, and indemnification of the board of directors or directors individually also apply to the designated body and to the members of the designated body individually;

b. In the absence of an applicable rule in the articles of incorporation, bylaws, or internal operating rules of the designated body, the provisions of this Chapter and other provisions of law applicable to the nonprofit corporation on meetings, notice, and the manner of acting of the board of directors also apply to the designated body; and

c. To the extent the powers, authority, or functions of the board of directors have been vested in the designated body, the directors are relieved from their duties and liabilities with respect to those powers, authority, and functions.

2. Some, but less than all, of the rights or obligations of the members of a membership corporation may be vested by the articles of incorporation or bylaws in a designated body. If such a designated body is created:

a. The provisions of this Chapter and other provisions of law applicable to the membership corporation on the rights and obligations of members also apply to the designated body and to the members of the designated body individually;

b. In the absence of an applicable rule in the articles of incorporation, bylaws, or internal operating rules of the designated body, the provisions of this Chapter and other provisions of law applicable to the membership corporation on meetings, notice, and the manner of acting of members also apply to the designated body; and

c. To the extent the rights or obligations of the members have been vested in the designated body, the members are relieved from responsibility with respect to those rights and obligations.

3. The articles of incorporation or bylaws may prescribe qualifications for members of a designated body. Unless otherwise provided by the articles of incorporation or bylaws, a member of a designated body does not need to be:

a. An individual;

b. A director, officer, or member of the nonprofit corporation; or

c. A resident of the territory of the Tribe.

Section 20-2-20. Officers.

1. A nonprofit corporation has the officers set forth in its articles of incorporation or bylaws or appointed by the board of directors. Each officer has the authority and shall perform the duties set forth in the articles of incorporation or bylaws or, to the extent consistent with the articles of incorporation and bylaws, prescribed by the board of directors.

2. The articles of incorporation shall delegate to one of the officers the responsibility for preparing minutes of meetings

of the directors and the members and for authenticating records of the nonprofit corporation.

3. Unless the articles of incorporation or bylaws provided otherwise, the same individual may simultaneously hold more than one office in the nonprofit corporation.

4. The appointment of an officer does not by itself create any contractual or property right. Nor does the removal of an officer affect the contractual or property rights, if any, of the officer or nonprofit corporation.

5. The board of directors may remove an officer at any time with or without cause.

6. An officer may resign at any time by delivering written notice thereof to the nonprofit corporation.

Section 20-2-21. Duties of Directors and Officers.

1. All directors and officers owe fiduciary duties to the nonprofit corporation and the members.

2. The fiduciary duties of a director or officer include:

a. To act in a manner the director or officer reasonably believes to be in the best interests of the nonprofit corporation;

b. To discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances;

c. To disclose, or cause to be disclosed, to the other directors or officers information not already known by them but known by the director or officer to be material to the discharge of the decision-making or oversight functions of the directors, unless disclosure would violate another duty imposed under applicable law, a legally enforceable obligation of confidentiality, or a professional ethics rule;

d. To account to the nonprofit corporation and hold as trustee for it any property, money, or benefit derived by the director or officer:

i. In the conduct or winding up of the nonprofit corporation's activities and affairs;

ii. From a use by the director or officer of the nonprofit corporation's property; or

iii. From the appropriation of a nonprofit corporation opportunity;

e. To refrain from dealing with the nonprofit corporation in the conduct or winding up of the nonprofit corporation's activities and affairs as or on behalf of a person having an interest adverse to the nonprofit corporation;

f. To refrain from competing with the nonprofit corporation in the conduct of the nonprofit corporation's activities and affairs before the dissolution of the nonprofit corporation;

g. To refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, a violation of any law involving moral turpitude, or knowing violation of other applicable law;

h. To refrain from a willful failure to deal fairly with the nonprofit corporation or its members in connection with a matter in which the director or officer has a material conflict of interest; and

i. To refrain from a transaction from which the director or officer may derive an improper personal profit.

3. All directors and officers shall discharge their duties and obligations and exercise any rights under this Title, any other law of the Tribe applicable to the nonprofit corporation, or the articles of incorporation or bylaws consistently with the contractual obligation of good faith and fair dealing.

4. In discharging the director's or officer's duties, unless the director or officer has knowledge that would make reliance unwarranted, a director or officer is entitled to rely on:

a. One or more other directors, officers, or employees of the nonprofit corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented;

b. Legal counsel, public accountants, or other persons retained by the nonprofit corporation as to matters involving skills or expertise the director or officer reasonably believes are within the person's professional or expert competence; or

c. A committee of the board of which the director or officer is not a member if the director or officer reasonably believes the committee merits confidence.

5. The members of a membership corporation may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the fiduciary duties in this Section.

6. Every director and officer shall account to the nonprofit corporation and hold as trustee for it any improper personal profit derived by that director or officer without the consent of a majority of the disinterested directors from:

a. A transaction connected with the organization, conduct, or dissolution and winding up of the nonprofit corporation; and

b. A use by a director or officer of the property of the nonprofit corporation, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as a director or officer.

7. A nonprofit corporation's articles of incorporation or bylaws may impose duties on its directors and officers that are in addition to, but not in abrogation of, those provided in this Section.

Section 20-2-22. Conflicts of Interest.

1. A director or officer shall not vote or participate in any discussion or action of the board of directors concerning a matter where the director or officer or any of their immediate family has a business or personal interest which conflicts with the interests of the nonprofit corporation.

2. A transaction with the nonprofit corporation in which a director has an interest is voidable by the nonprofit corporation solely because of the director's interest in the transaction unless:

a. The material facts of the transaction and the director's interest in the transaction were disclosed to or known by the board of directors at the time of approval of the transaction and a majority of the directors approved or ratified the transaction, provided that any director with an interest in the transaction does not vote on the approval or ratification and is not counted toward the minimum number of directors required to constitute a quorum;

b. In the case of a membership corporation, the material facts of the transaction and the director's interest in the transaction were disclosed to or known by the members entitled to vote and the members authorized, approved, or ratified the transaction by a majority vote of the members entitled to vote, excluding any membership of a member who has an interest in the transaction; or

c. The transaction was fair to the nonprofit corporation at the time it was approved.

3. A nonprofit corporation shall not lend any money to or guarantee the personal debts or obligations of any director or officer of the nonprofit corporation, provided the fact that a loan or guarantee is made in violation of this subsection does not affect the borrower's liability on the loan. This subsection does not apply to:

a. An advance to pay reimbursable expenses reasonably expected to be incurred by a director or officer;

b. An advance to pay premiums on life insurance if the advance is secured by the cash value of the policy;

c. Advances for indemnification and expenses permitted or required under the laws of the Tribe applicable to the nonprofit corporation, the articles of incorporation, or bylaws; or

d. Loans or advances pursuant to employee benefit plans.

Section 20-2-23. Representations of Directors and Officers. An admission or representation made by a director or officer concerning the affairs of a nonprofit corporation within the scope of the director's or officer's authority may be used as evidence against the nonprofit corporation in any legal proceeding.

Section 20-2-24. Knowledge of Directors and Officers. The following operates as notice to or knowledge of a nonprofit corporation:

1. Notice to any director or officer of any matter relating to the business of the nonprofit corporation;

2. Knowledge of the director or officer acting in the particular matter acquired while a director or officer or known by the person at the time of becoming a director or officer; and

3. Knowledge of any other director or officer who reasonably could and should have communicated it to the acting director or officer.

CHAPTER 3 UNINCORPORATED NONPROFITS

Section 20-3-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Established practices" means the practices used by an unincorporated nonprofit association without material change during the most recent five (5) years of its existence, or if it has existed for less than five (5) years, during its entire existence.

2. "Governing principles" means:

a. The organizational documents of an unincorporated nonprofit association;

b. In the absence of organizational documents, the agreements, whether oral, in writing, or implied from its established practices, or any combination thereof, which govern the purpose or operation of an unincorporated nonprofit association and the rights and obligations of its members and managers; and

c. Includes the governing principles as amended or restated.

3. "Manager-managed unincorporated nonprofit association" means an unincorporated nonprofit association where management is vested in a manager.

4. "Member-managed unincorporated nonprofit association" means an unincorporated nonprofit association where management is vested in the members and not in any manager.

5. "Unincorporated nonprofit association" means a nonprofit entity organized under this Chapter, organized under another title of this Code governing the business entity and whose organizational documents state that it is a nonprofit, or that otherwise becomes subject to this Chapter, but does not include:

a. The Tribe or any other government or subdivision thereof, provided that the Tribe or another government or subdivision thereof may be a member of an unincorporated nonprofit association;

b. A trust;

c. A marriage, domestic partnership, common law domestic relationship, civil union, or other domestic living arrangement;

d. A nonprofit corporation formed under this Title or under the law of a jurisdiction other than the Tribe that would be a nonprofit corporation if the incorporated entity were formed under the laws of the Tribe;

e. A corporation formed under Title XIX of this Code or formed under the law of a jurisdiction other than the Tribe that would be a corporation if the incorporated entity were formed under the laws of the Tribe;

f. A joint tenancy, tenancy in common, or tenancy by the entirety even if the co-owners share use of the property for a nonprofit purpose;

g. A relationship under a written agreement that expressly provides that the relationship between the parties does not create an unincorporated nonprofit association; or

h. An organization or entity which is not a nonprofit entity.

Section 20-3-2. Formation.

1. An unincorporated nonprofit association may be formed by two (2) or more persons who are members of the association and join under an agreement that is oral, written, or implied from conduct for one or more common purposes which may include, but is not limited to, charitable or public purposes, but not a purpose involving pecuniary gain.

2. An unincorporated nonprofit association may also be formed as any other type of business entity permitted under the laws of the Tribe, other than a corporation, not inconsistent with its nonprofit status or this Title. If an unincorporated nonprofit association is formed as another type of business entity, the provisions of the laws of the Tribe governing the type of business entity shall govern the unincorporated nonprofit association to the extent not inconsistent with this Title, its nonprofit status, or its purpose.

3. An unincorporated nonprofit association is formed when its governing principles become effective.

4. If the form of an unincorporated nonprofit association permits or requires the filing of its governing principles with the Office of the Secretary, the Office of the Secretary's filing of the governing principles of an unincorporated nonprofit association is conclusive proof that the unincorporated nonprofit association is organized and formed under this Chapter.

Section 20-3-3. Governing Principles.

1. In addition to any other requirements for its public organizational documents under the laws of the Tribe applicable to the unincorporated nonprofit association, an unincorporated nonprofit association which is formed as any other type of business entity permitted under the laws of the Tribe must state in its public organizational documents all of the following:

a. A statement that the unincorporated nonprofit association is nonprofit;

b. The purpose or purposes for which it is formed, which may include, but is not limited to, charitable or public purposes, but not a purpose involving pecuniary gain; and

c. A statement that no part of the income of the unincorporated nonprofit association is or will be

distributable, directly or indirectly, to its members, managers, directors, or officers, provided that the governing principles may provide for distribution of the unincorporated nonprofit association's income to members that are nonprofit entities or commissions, boards, agencies, departments, divisions, instrumentalities, subdivisions, or units of the Tribe or another government.

2. The organizational documents of an unincorporated nonprofit association may be amended or restated:

a. If the unincorporated nonprofit association is formed as a type of business entity permitted under another law of the Tribe as permitted in this Chapter, as provided in such law of the Tribe under which the unincorporated nonprofit association is formed, to the extent not inconsistent with this Title; or

b. As provided in this Chapter for governing principles.

Section 20-3-4. Restatement of Governing Principles.

1. A manager-managed unincorporated nonprofit association may restate its governing principles at any time by action of the managers with or without member action.

2. A member-managed unincorporated nonprofit association may restate its governing principles at any time by action of the members.

3. If a restatement includes an amendment requiring member approval, it shall be adopted as provided in this Chapter for amendments to the governing principles.

4. If the form of an unincorporated nonprofit association permits or requires the filing of its governing principles with the Office of the Secretary, an unincorporated nonprofit association that restates its governing principles shall deliver to the Office of the Secretary for filing restated governing principles setting forth:

a. The name of the unincorporated nonprofit association;

b. The date of filing of its initial governing principles;

- c. The text of the restated governing principles;
- d. A statement that the restated governing principles consolidate all amendments into a single document; and
- e. Anything else in the laws of the Tribe governing the unincorporated nonprofit association required for an amendment of its organizational documents.

5. Duly adopted restated governing principles supersede the original governing principles and all amendments to the governing principles.

Section 20-3-5. Appointment of Registered Agent.

1. An unincorporated nonprofit association which is not otherwise required under the laws of the Tribe to maintain a registered agent may deliver to the Office of the Secretary for filing a statement appointing a registered agent for purposes provided under the laws of the Tribe governing registered agents of business entities.

2. A statement appointing a registered agent under this Section must state:

a. The name of the unincorporated nonprofit association; and

b. The name and street and mailing addresses in the territory of the Tribe of the registered agent.

3. A statement appointing a registered agent under this Section must be signed by a person authorized to manage the affairs of the unincorporated nonprofit association. The signing of the statement is an affirmation of fact that the person is authorized to manage the affairs of the unincorporated nonprofit association and that the agent has consented to serve.

4. The duties of, changes to, resignations of, and other matters involving a registered agent appointed under this Section shall be in the same manner as registered agents of other business entities.

Section 20-3-6. Members.

1. Upon formation of an unincorporated nonprofit association, a person becomes a member as agreed upon the formation of the unincorporated nonprofit association.

2. After the formation of an unincorporated nonprofit association, a person becomes a member and may be suspended, dismissed, or expelled:

a. As provided in the governing principles;

b. As the result of a merger, interest exchange, conversion, or domestication; or

c. With the affirmative vote or consent of the members.

3. A person may not be admitted as a member of an unincorporated nonprofit association without the person's consent.

4. Each member of an unincorporated nonprofit association shall have the same rights and obligations as every other member with respect to voting, dissolution, membership transfer, and all other matters unless the governing principles specifically establish classes of membership with different rights or obligations.

5. Unless otherwise provided in the governing principles, an unincorporated nonprofit association may admit members for no consideration or for such consideration as is determined by the members or managers, which may consist of money or property transferred to, services performed for, or another benefit provided to the unincorporated nonprofit association or an agreement to transfer money or property to, perform services for, or provide another benefit to the unincorporated nonprofit association.

6. An unincorporated nonprofit association may issue certificates evidencing membership therein.

7. Unless otherwise provided in the governing principles, a member may not transfer a membership or any right arising therefrom. Where a member has the right to transfer a membership, a restriction on that right shall not be binding with respect to a member holding a membership issued prior to the adoption of the

restriction unless the restriction is approved by the affected member.

8. The unincorporated nonprofit association may levy dues, assessments, and fees on its members to the extent authorized in the governing principles and the governing principles may provide reasonable means, such as termination and reinstatement of membership, to enforce the collection of dues, assessments, and fees.

9. An unincorporated nonprofit association may purchase any of its memberships or any right arising therefrom only to the extent provided in and in accordance with the governing principles.

10. Unless the governing principles provide otherwise, the resignation, suspension, dismissal, or expulsion of a member does not relieve the member from any obligations incurred or commitments made by the member before the resignation, suspension, dismissal, or expulsion.

Section 20-3-7. Meetings of Members.

1. An unincorporated nonprofit association shall hold a meeting of members:

- a. As provided in the governing principles;
- b. On the call of its managers or other person authorized to do so by the governing principles;
- c. On the call of the holders of not less than one-fifth (1/5) of all the memberships entitled to vote; or
- d. When otherwise required in this Chapter.

2. Members' meetings may be held in or out of the territory of the Tribe at the place stated in or fixed in accordance with the governing principles. If no place is stated in or fixed in accordance with the governing principles, meetings shall be held at the unincorporated nonprofit association's known place of business.

3. Unless the governing principles provide otherwise, members may participate in any members' meeting by any means of communication by which all persons participating in the meeting can hear each other during the meeting. A member participating in

a meeting by such means is deemed to be present in person at the meeting.

4. Unless otherwise provided in the governing principles, a majority of the votes entitled to be cast on a matter constitutes a quorum for action on that matter, provided that in no event shall a quorum consist of less than one-third (1/3) of the outstanding memberships entitled to vote on the matter. Unless otherwise provided in the governing principles, once a membership is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting.

5. Unless the vote of a greater number is required by the governing principles, this Title, or other law of the Tribe applicable to the unincorporated nonprofit association, if a quorum is present, the affirmative vote of a majority of the votes cast at the meeting shall be the act of the members.

6. If the governing principles provide for voting by a single voting group on a matter, action on that matter is taken when voted on by that voting group. If the governing principles provide for voting by two or more voting groups on a matter, action on that matter is taken when voted on by each of those voting groups counted separately. Voting by individual voting groups entitled to vote on a matter need not be simultaneous.

7. An unincorporated nonprofit association shall notify members of the date, time, and place of each members' meeting at least ten (10) but not more than sixty (60) days before the meeting date. Notice may be given by mail, personal delivery, or electronic transmission. Notice of a meeting need not include a description of the purpose or purposes for which the meeting is called.

8. A member may waive any notice before or after the date and time of the members' meeting that is the subject of such notice. The waiver must be in writing, signed by the member entitled to the notice, and delivered to the unincorporated nonprofit association for inclusion in the minutes or filing with the association's records, except that a member's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

9. Unless the member objects to considering the matter when it is presented, a member waives objection to consideration of a particular matter at a meeting that is not within the purpose or purposes described in the meeting notice.

Section 20-3-8. Member Action Without a Meeting.

1. Unless the governing principles require that action be taken only at a members' meeting, any action that may be taken by the members may be taken without a meeting if each member entitled to vote on the action consents in writing to the action.

2. A member may revoke the member's consent by delivering a signed revocation of the consent to the managers before the date that the consents have been delivered to the unincorporated nonprofit association.

3. Unless the written member consent specifies a later effective date, action taken under this Section is effective when consents sufficient to authorize taking the action have been delivered to the unincorporated nonprofit association.

4. A consent signed under this Section has the effect of a meeting vote and may be described as such in any document, except that, if the action requires the filing of a certificate under this Title or other law of the Tribe applicable to the unincorporated nonprofit association, the certificate so filed shall state, in lieu of any statement concerning a vote of members, that written consent has been obtained in accordance with this Section.

Section 20-3-9. Voting of Members.

1. Unless otherwise provided in the governing principles, each member shall be entitled to one (1) vote on each matter submitted to a vote at a meeting of members.

2. A member may vote either in person or by proxy executed in writing by the member or by the member's duly authorized attorney-in-fact. No proxy shall be valid after twelve (12) months from the date of its execution unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it or his or her personal representatives or assignee, but the parties to a valid pledge or to an executory contract of transfer may agree in writing as to which of them shall vote the membership pledged or transferred until the contract of pledge or transfer is fully executed.

3. Unless otherwise provided in the governing principles, this Title, or other law of the Tribe applicable to the unincorporated nonprofit association, the affirmative vote, approval, or consent of the members shall be required to do any of the following:

- a. Admit, suspend, dismiss, or expel a member;
- b. Select or dismiss a manager;
- c. Adopt, amend, or repeal the governing principles;
- d. Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the association's property, with or without the association's goodwill, outside the ordinary course of its activities;
- e. Dissolve the association or merge the association with another entity;
- f. Undertake any other act outside the ordinary course of the association's activities;
- g. Determine the policy and purposes of the association; or
- h. Do any other act or exercise a right that the governing principles require to be approved by the members.

4. In all elections for managers, every member entitled to vote shall have the right to vote, in person or by proxy, for as many persons as there are managers to be elected. If so provided in the governing principles, members may cumulate votes by multiplying the number of memberships they are entitled to cast by the number of managers to be elected and to cast the product for a single candidate or distribute the product among two (2) or more candidates.

Section 20-3-10. Voting Agreements. Two or more members may provide for the manner in which they will vote their memberships by signing an agreement for that purpose. Unless otherwise provided in the voting agreement, a voting agreement is specifically enforceable.

Section 20-3-11. Derivative Actions.

1. A member may maintain a derivative action to enforce a right of an unincorporated nonprofit association if:

a. Unless such a demand would be futile, the member first makes a demand on the other members or managers requesting that they cause the unincorporated nonprofit association to bring an action to enforce the right; and

b. The members or managers do not bring the action within a reasonable time.

2. In a derivative action, the complaint must state with particularity:

a. The date and content of plaintiff's demand and the response to the demand by the members or managers; or

b. Why demand should be excused as futile.

3. A derivative action to enforce a right of an unincorporated nonprofit association may be maintained only by a person that is a member at the time the action is commenced and:

a. Was a member when the conduct giving rise to the action occurred; or

b. Who became a member through transfer by operation of law from one who was a member at the time of the conduct.

4. If an unincorporated nonprofit association is named as or made a party in a derivative proceeding, the unincorporated nonprofit association may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the unincorporated nonprofit association. If the unincorporated nonprofit association appoints a special litigation committee, on motion by the committee made in the name of the unincorporated nonprofit association, the court shall, except for good cause shown, stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from:

a. Enforcing a person's right to information under this Chapter; or

b. Granting a temporary restraining order or preliminary injunction.

5. A special litigation committee must be composed of one or more disinterested and independent individuals, who may be members. A special litigation committee may be appointed by the affirmative vote or consent of a majority of the members or managers not named as parties in the proceeding or, if all members or managers are named as parties, a majority of all the members or managers.

6. After appropriate investigation, a special litigation committee may determine that it is in the best interests of the unincorporated nonprofit association that the proceeding:

- a. Continue under the control of the plaintiff;
- b. Continue under the control of the committee;
- c. Be settled on terms approved by the committee; or
- d. Be dismissed.

7. After making a determination how to proceed, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination. The special litigation committee shall serve each party with a copy of the determination and report. If the court finds the committee has proven that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve any stay entered pursuant to this Section and allow the action to continue under the control of the plaintiff.

8. A derivative action on behalf of an unincorporated nonprofit association may not be voluntarily dismissed or settled without the court's approval.

9. Subject to the award of expenses provided in this Section:

- a. Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the unincorporated nonprofit association and not to the plaintiff; and

b. If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the unincorporated nonprofit association.

10. Unless the unincorporated nonprofit association is a Tribal business entity and the plaintiff is not the Tribe or a Tribal business entity, if a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable legal counsel's fees and costs, from the recovery of the unincorporated nonprofit association.

11. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe or waiving the sovereign immunity of any Tribal business entity.

Section 20-3-12. Managers.

1. If no managers are selected or the governing principles so provide, an unincorporated nonprofit association is a member-managed unincorporated nonprofit association. If managers are selected, an unincorporated nonprofit association is a manager-managed unincorporated nonprofit association.

2. Subject to the provisions of this Title and the governing principles, in a member-managed unincorporated nonprofit association, the following rules apply:

a. All the members are the managers;

b. Each member has equal rights in the management and conduct of the activities of the unincorporated nonprofit association; and

c. A member ceases being a manager once no longer a member of the unincorporated nonprofit association.

3. Subject to the provisions of this Title and the governing principles, in a manager-managed unincorporated nonprofit association, the following rules apply:

a. Only the members may select the managers;

b. Managers need not be members of the unincorporated nonprofit association;

c. The governing principles may prescribe qualifications for managers;

d. Each manager shall hold office for the term for which he or she is selected and until his successor shall have been selected and qualified;

e. Unless the governing principles require cause for removing a manager, a manager may be removed from office with or without cause at a meeting of the members called expressly for that purpose by such vote as would suffice for the manager's selection;

f. A manager may resign at any time by delivering written notice thereof to the other managers or the members;

g. Except for matters reserved for approval by the members in this Title or the governing principles, all matters relating to the unincorporated nonprofit association's activities are decided by its managers;

h. Each manager has equal rights in the management and conduct of the activities of the unincorporated nonprofit association;

i. The affirmative vote or consent of all members is required to undertake an act outside the ordinary course of the association's activities and affairs; and

j. A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the unincorporated nonprofit association or members which the person incurred while a manager.

4. Unless the governing principles or other law of the Tribe governing the unincorporated nonprofit association provide otherwise, the managers may fix the compensation of managers.

5. A manager may waive any notice required by this Title or the governing principles before or after the date and time stated in the notice. A manager's attendance at or participation in a meeting waives any required notice to the manager of the meeting, unless the manager at the beginning of the meeting, or promptly upon arrival, objects to holding the meeting or transacting business at the meeting and does not, after objecting, vote for or assent to action taken at the meeting.

Section 20-3-13. Duties of Members and Managers.

1. A member does not have any fiduciary duty to an unincorporated nonprofit association or to another member solely by reason of being a member, but a member shall discharge the duties to the unincorporated nonprofit association and the other members and exercise any rights under this Title or other law of the Tribe governing the association consistent with the governing principles and the contractual obligation of good faith and fair dealing.

2. All managers owe fiduciary duties to the unincorporated nonprofit association and the members.

3. The fiduciary duties of a manager include:

a. To act in a manner the manager reasonably believes to be in the best interests of the unincorporated nonprofit association;

b. To discharge his or her duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances;

c. To disclose, or cause to be disclosed, to the other managers information not already known by them but known by the manager to be material to the discharge of the decision-making or oversight functions of the manager, unless disclosure would violate another duty imposed under applicable law, a legally enforceable obligation of confidentiality, or a professional ethics rule;

d. To account to the unincorporated nonprofit association and hold as trustee for it any property, money, or benefit derived by the manager:

i. In the conduct or winding up of the unincorporated nonprofit association's activities and affairs;

ii. From a use by the manager of the unincorporated nonprofit association's property; or

iii. From the appropriation of an association opportunity;

e. To refrain from dealing with the unincorporated nonprofit association in the conduct or winding up of the association's activities and affairs as or on behalf of a person having an interest adverse to the unincorporated nonprofit association;

f. To refrain from competing with the unincorporated nonprofit association in the conduct of the unincorporated nonprofit association's activities and affairs before the dissolution of the unincorporated nonprofit association;

g. To refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, a violation of any law involving moral turpitude, or knowing violation of other applicable law;

h. To refrain from a willful failure to deal fairly with the unincorporated nonprofit association or its members in connection with a matter in which the manager has a material conflict of interest; and

i. To refrain from a transaction from which the manager may derive an improper personal profit.

4. All managers shall discharge their duties and obligations and exercise any rights under this Title, any other law of the Tribe applicable to the unincorporated nonprofit association, or the governing principles consistently with the contractual obligation of good faith and fair dealing.

5. In discharging the manager's duties, unless the manager has knowledge that would make reliance unwarranted, a manager is entitled to rely on:

a. One or more other managers or employees of the unincorporated nonprofit association whom the manager reasonably believes to be reliable and competent in the matters presented; or

b. Legal counsel, public accountants, or other persons retained by the unincorporated nonprofit association as to matters involving skills or expertise the manager reasonably believes are within the person's professional or expert competence.

6. The members of an unincorporated nonprofit association may authorize or ratify, after full disclosure of all material

facts, a specific act or transaction that otherwise would violate the fiduciary duties in this Section.

7. Every manager shall account to the unincorporated nonprofit association and hold as trustee for it any improper personal profit derived by that manager without the consent of a majority of the disinterested managers from:

a. A transaction connected with the organization, conduct, or dissolution and winding up of the unincorporated nonprofit association; and

b. A use by a manager of the property of the unincorporated nonprofit association, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as a manager.

8. An unincorporated nonprofit association's governing principles may impose duties on its managers that are in addition to, but not in abrogation of, those provided in this Section.

Section 20-3-14. Conflicts of Interests.

1. A manager shall not vote or participate in any discussion or action of the managers concerning a matter where the manager or any of his or her immediate family has a business or personal interest which conflicts with the interests of the unincorporated nonprofit association.

2. A transaction with the unincorporated nonprofit association in which a manager has an interest is voidable by the unincorporated nonprofit association solely because of the manager's interest in the transaction unless:

a. The material facts of the transaction and the manager's interest in the transaction were disclosed to or known by the managers at the time of approval of the transaction and a majority of the managers approved or ratified the transaction, provided that any manager with an interest in the transaction does not vote on the approval or ratification and is not counted toward the minimum number of managers required to constitute a quorum;

b. The material facts of the transaction and the manager's interest in the transaction were disclosed to or known by the members entitled to vote and the members authorized, approved, or ratified the transaction by a

majority vote of the members entitled to vote, excluding any membership of a member who has an interest in the transaction; or

c. The transaction was fair to the unincorporated nonprofit association at the time it was approved.

3. An unincorporated nonprofit association shall not lend any money to or guarantee the personal debts or obligations of any manager of the unincorporated nonprofit association, provided the fact that a loan or guarantee is made in violation of this subsection does not affect the borrower's liability on the loan. This subsection does not apply to:

a. An advance to pay reimbursable expenses reasonably expected to be incurred by a manager;

b. An advance to pay premiums on life insurance if the advance is secured by the cash value of the policy;

c. Advances for indemnification and expenses permitted or required under the laws of the Tribe applicable to the unincorporated nonprofit association or the governing principles; or

d. Loans or advances pursuant to employee benefit plans.

Section 20-3-15. Member or Manager as Agent.

1. In a member-managed unincorporated nonprofit association:

a. Each member is an agent of the unincorporated nonprofit association for the purpose of its business, but not of any of the other members; and

b. The act of any member, including the execution in the name of the unincorporated nonprofit association of an instrument for apparently carrying on the ordinary course of business of the unincorporated nonprofit association, binds the unincorporated nonprofit association in the particular matter unless the person with whom the member is dealing knows or should know that the member has no authority to act in the matter.

2. If the Tribe is a member of an unincorporated nonprofit association, the Tribe's authority shall be exercised pursuant to Chapter 4 of Title XIV.

3. In a manager-managed unincorporated nonprofit association:

a. No member, solely by being a member, is an agent of the unincorporated nonprofit association or of the other members; and

b. Each manager is an agent of the unincorporated nonprofit association for the purpose of its business, but not for the members; and

c. The act of any manager, including the execution in the name of the unincorporated nonprofit association of an instrument for apparently carrying on the ordinary course of business of the unincorporated nonprofit association, binds the unincorporated nonprofit association in the particular matter unless:

i. The manager in fact has no authority to act for the unincorporated nonprofit association in the matter; and

ii. The person with whom the manager is dealing knows or should know that the manager has no authority to act in the matter.

4. No act of a member or manager that is not apparently authorized for carrying on the ordinary course of business of the unincorporated nonprofit association shall bind the unincorporated nonprofit association unless the act is in fact authorized at the time of the transaction or ratified thereafter.

Section 20-3-16. Representations of Members and Managers.

1. In a member-managed unincorporated nonprofit association, an admission or representation made by a member concerning the business of the unincorporated nonprofit association within the scope of the member's actual authority may be used as evidence against the unincorporated nonprofit association in any legal proceeding.

2. In a manager-managed unincorporated nonprofit association:

a. An admission or representation made by a manager concerning the business of the unincorporated nonprofit association within the scope of the manager's authority may be used as evidence against the unincorporated nonprofit association in any legal proceeding; and

b. The admission or representation of any member, acting solely in the member's capacity as a member, is not evidence against the unincorporated nonprofit association in any legal proceeding.

Section 20-3-17. Knowledge of Member or Manager.

1. In a member-managed unincorporated nonprofit association, the following operates as notice to or knowledge of the unincorporated nonprofit association:

a. Notice to any member of any matter relating to the business of the unincorporated nonprofit association;

b. Knowledge of any member acting in the particular matter acquired while a member or known by the person at the time of becoming a member; and

c. Knowledge of any member who reasonably could and should have communicated it to an acting member.

2. In a manager-managed unincorporated nonprofit association:

a. The following operates as notice to or knowledge of the unincorporated nonprofit association:

i. Notice to any manager of any matter relating to the business of the unincorporated nonprofit association;

ii. 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

iii. Knowledge of any other manager who reasonably could and should have communicated it to the acting manager; and

b. 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 unincorporated nonprofit association.

CHAPTER 4
DEALING WITH NONPROFIT ENTITIES

Section 20-4-1. Nature of Nonprofit Entity. A nonprofit entity is an entity distinct from its members and managers. A nonprofit entity may engage in profit-making activities but profits from any activities must be used or set aside for the entity's nonprofit purposes.

Section 20-4-2. Property of Nonprofit Entity.

1. A nonprofit entity may acquire, hold, or transfer in its name an interest in property.

2. A nonprofit entity may be a beneficiary of a trust or contract, a legatee, or a devisee.

3. All property originally transferred to or acquired by a nonprofit entity is property of the nonprofit entity and not the members.

4. Property acquired with funds of a nonprofit entity is presumed to be property of the nonprofit entity.

5. Property may be acquired, held, and conveyed in the name of a nonprofit entity.

6. Subject to any limitations in its organizational documents or this Title, the property of a nonprofit entity may be transferred by an instrument executed by a manager in the name of the nonprofit entity.

Section 20-4-3. Liability to Third Parties.

1. A debt, obligation, or other liability of a nonprofit entity, whether arising in contract, tort, or otherwise, is solely the debt, obligation, or other liability of the nonprofit entity. This subsection applies regardless of the dissolution of the nonprofit entity.

2. A member or manager of a nonprofit entity is not personally liable, directly or indirectly, for an act, debt, obligation or other liability of the nonprofit entity solely by reason of being or acting as a member or manager. This subsection applies regardless of the dissolution of the nonprofit entity.

3. A person's status as a member or manager does not prevent or restrict law other than this Title from imposing liability on the person or the entity because of the person's conduct.

4. The failure of a nonprofit entity to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a member or manager for an act, debt, obligation, or other liability of the entity.

Section 20-4-4. Parties to Actions. A member of a nonprofit entity is not a proper party to a proceeding by or against a nonprofit entity solely by reason of being a member, except if:

1. The object of the proceeding is to enforce a member's right against or liability to the nonprofit entity; or

2. The action is brought by a member under this Title.

Section 20-4-5. Authority to Sue.

1. Unless otherwise provided in its organizational documents, an action on behalf of a domestic or foreign nonprofit entity may be brought in the name of the nonprofit entity by:

a. One or more members as a derivative action in accordance with this Title; or

b. One or more managers, if authorized by the managers, unless otherwise directed by a majority vote of the memberships entitled to vote, excluding any memberships of any member who has an interest in the outcome of the action that is adverse to the interests of the nonprofit entity.

2. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as a member or otherwise.

Section 20-4-6. Records.

1. A nonprofit entity shall keep at its principal place of business all of the following:

a. Unless the nonprofit entity's organizational documents provides that it shall not have members, a record of its members in a form that permits preparation of a list of the names and addresses of all members in alphabetical order by class of membership;

b. A list of the names and business addresses of its current managers;

c. A copy of its public organizational documents and all amendments thereto and restatements thereof together with executed copies of any powers of attorney under which any public organizational documents were executed;

d. A copy of its most recent annual report delivered to the Office of the Secretary;

e. A copy of all other organizational documents of the nonprofit entity, documents filed with the Office of the Secretary, and all amendments thereto and restatements thereof;

f. A copy of its bylaws or other private organizational documents and all amendments thereto and restatements thereof;

g. Any notices to members on which a document filed with the Office of the Secretary is dependent;

h. Resolutions adopted by its managers;

i. All written communications within the past three (3) years to its members;

j. Minutes of all meetings of its members and managers, a record of all actions taken by the members, managers, or a designated body without a meeting, and a record of all actions taken by a committee of the managers in place of the managers;

k. All annual financial statements prepared for the entity for its last three (3) fiscal years and any audit or other reports with respect to such financial statements; and

1. A record of all matters referred to in this Title or other law of the Tribe applicable to the nonprofit entity as maintained in such records which are not otherwise specified in its organizational documents.

2. A nonprofit entity shall maintain accounting records in a form that permits preparation of its financial statements.

3. Failure of a nonprofit entity to keep or maintain any of the records required under this Section shall not be grounds for imposing liability on any person for the debts and obligations of the nonprofit entity.

Section 20-4-7. Rights to Information and Records.

1. On reasonable request, a member or manager is entitled to inspect and copy, during regular business hours at the nonprofit entity's principal place of business, any of the records of the nonprofit entity required under this Chapter or other law of the Tribe applicable to the nonprofit entity to be maintained at such principal place of business.

2. The nonprofit entity shall furnish to each member and manager, on reasonable and good faith demand, any other true and full information concerning the nonprofit entity's activities, affairs, financial condition, and other circumstances.

3. A former member or manager is entitled to information to which the member or manager was entitled while a member or manager if the information pertains to the period during which the person was a member or manager, the former member or manager seeks the information in good faith, and the former member or manager satisfies the requirements of this Section.

4. The nonprofit entity may impose reasonable restrictions on the confidentiality, use, or distribution of records subject to inspection and copying by members and managers under this Section.

5. The right of inspection granted by this Section may not be abolished or limited by a nonprofit entity's organizational documents.

6. A member's or manager's agent or legal representative has the same inspection and copying rights as the member or manager it represents.

7. If a nonprofit entity does not allow within a reasonable time a member or manager to inspect and copy any record subject to inspection and copying under this Section, on application of the member or manager, the Tribal Court may summarily order inspection and copying of the records demanded at the nonprofit entity's expense.

8. If the Tribal Court orders inspection and copying of the records demanded, it shall also order the nonprofit entity to pay the member's or manager's costs, including reasonable legal counsel fees, incurred to obtain the order, unless the nonprofit entity proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member or manager to inspect the records demanded. The Tribal Court may order a member or manager to pay all or a portion of the nonprofit entity's costs, including reasonable legal counsel fees, if the demand to inspect is denied in whole or in material part.

9. If the Tribal Court orders inspection and copying of records pursuant to this Section, it may impose reasonable restrictions on the use or distribution of the records by the member or manager.

10. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereign immunity of the Tribe, including a nonprofit entity that is a Tribal business entity.

CHAPTER 5 OWNERSHIP AND DISTRIBUTIONS

Section 20-5-1. Ownership and Distributions Prohibited.

1. A nonprofit entity shall not have or issue shares of stock or other ownership interests. Any reference to shares of stock or other ownership interests in a nonprofit entity in its organizational documents or otherwise shall be deemed membership interests only. Any reference to shareholders or owners of any kind of a nonprofit entity shall be deemed to members only.

2. A nonprofit entity shall not pay dividends or make distributions of any part of its assets, income, or profits, and no part of the income of a nonprofit entity shall be paid, to its

members, managers, or members of a designated body, provided that a nonprofit entity may make distributions to members that are nonprofit entities or commissions, boards, agencies, departments, divisions, instrumentalities, subdivisions, or units of the Tribe or another government.

3. A nonprofit entity may pay reasonable compensation or reimburse reasonable expenses to members, managers, or members of a designated body for services rendered.

4. A nonprofit entity may confer benefits upon or make contributions to members or nonmembers in conformity with its purposes, purchase its memberships to the extent provided in this Title, or repay capital contributions, except when:

a. The nonprofit entity is currently insolvent or would thereby be made insolvent or rendered unable to carry on its purposes; or

b. The fair value of the assets of the nonprofit entity remaining after the conferring of benefits, contribution, repurchase, or repayment would be insufficient to meet its liabilities.

5. A nonprofit entity may make distributions of cash or property to members upon dissolution or final liquidation only as permitted by the laws of the Tribe governing dissolution of business entities.

Section 20-5-2. Liability for Unlawful Distributions.

1. A manager who votes for or assents to a distribution made in violation of this Chapter is personally liable to the nonprofit entity for the amount of the distribution that exceeds what could have been distributed without violating this Chapter if it is established that the manager's duties were not performed in compliance with this Title.

2. A manager of a nonprofit entity who is present at a meeting of its managers at which action on any distribution in violation of this Chapter is taken is presumed to have assented to the action taken unless his or her dissent is entered in the minutes of the meeting, the manager files his or her written dissent to the action with the secretary of the meeting before the adjournment of the meeting, or the manager forwards the dissent by registered or certified mail to the secretary of the nonprofit entity before close of business on the next business day after the

adjournment of the meeting. The right to dissent does not apply to a manager who voted in favor of the action.

3. A manager who is held liable under this Section for an unlawful distribution is entitled to contribution from:

a. Every other manager who could be held liable under this Section for the unlawful distribution; and

b. Each person of the pro-rata portion of the amount of the unlawful distribution the person received, whether or not the person knew the distribution was made in violation of this Chapter.

4. An action to recover under this Section may be brought in the Tribal Court. An action under this Section is barred unless commenced no later than four (4) years after the date of the distribution.

5. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereign immunity of the Tribe, including an entity that is a Tribal business entity.

Approved 7/26/22

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