

PONCA TRIBE OF NEBRASKA
TRIBAL COUNCIL

RESOLUTION 23- 58

WHEREAS: The Ponca Tribe of Nebraska is a federally recognized Indian Tribe (P. L. 101-484) whose business affairs are conducted by the Ponca Tribal Council as defined in the Constitution approved July 22, 1994 by the Acting Deputy Commissioner of Indian Affairs; and

WHEREAS: Pursuant to the Constitution of the Ponca Tribe of Nebraska, the Ponca Tribal Council exercises legislative powers to enact and promulgate resolutions and ordinances subject to all express restrictions upon such powers contained in the constitution; and

WHEREAS: The Ponca Tribe of Nebraska established OSNI Ponca, LLC in March 2012 as a subordinate economic enterprise of the Ponca Tribe of Nebraska; and

WHEREAS: The Ponca Tribe of Nebraska Tribal Council has determined that the Operating Agreement of OSNI Ponca, LLC requires certain amendments to update the provisions of the Operating Agreement and the management of OSNI Ponca, LLC; and

WHEREAS: The OSNI Ponca, LLC Amended and Restated Operating Agreement will have a delayed effective date of September 1, 2023 in accordance with Ponca Tribe of Nebraska Code § 14-3-5; and

WHEREAS: The Ponca Tribe of Nebraska Tribal Council has reviewed the OSNI Ponca, LLC Amended and Restated Operating Agreement; and

WHEREAS: The purpose of OSNI Ponca, LLC and the Amended and Restated Operating Agreement is to engage in economic development activities for the benefit of the Tribe and its members.

THEREFORE, BE IT RESOLVED that the Ponca Tribe of Nebraska Tribal Council hereby adopts the Operating Agreement for OSNI Ponca, LLC with a delayed effective date of September 1, 2023.

CERTIFICATION

THIS IS TO CERTIFY AND AFFIRM that the above and foregoing resolution was duly authorized and passed by the Tribal Council of the Ponca Tribe of Nebraska at a duly called meeting held via Lifesize on the 22 day of August, 2023 by a vote of 7 Ayes; 1 Nays; 0 Abstained; 0 Absent. Chairperson _____ voting not voting. A Quorum of 9 was present.

ATTEST



Candace Schmidt, Chairwoman
Ponca Tribe of Nebraska



Susan Baker, Secretary
Ponca Tribe of Nebraska

OSNI PONCA, LLC

AMENDED AND RESTATED OPERATING AGREEMENT

ARTICLE I

DEFINITIONS

1.1 **Definitions.** The following terms used in this Operating Agreement shall have all the following meanings (unless otherwise expressly provided herein);

- (a) “Adjusted Capital Account” with respect to the Owner, shall mean the Owner’s Capital Account as adjusted by the items described in Sections 1.704-2 and 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.
- (b) “Board” shall mean the Board of Directors of the Company, as established pursuant to the Tribal Limited Liability Company Code and this Operating Agreement.
- (c) “Capital Account” as of any given date shall mean the Capital Contribution to the Company by the Owner as adjusted up to the date in question pursuant to Article VIII.
- (d) “Capital Contribution” shall mean any contribution to the capital of the Company in cash or property by the Owner whenever made.
- (e) “Code” shall mean the Ponca Tribe of Nebraska Law and Order Code.
- (f) “Company” shall refer to OSNI PONCA, LLC.
- (g) “Distributable Cash” shall mean all cash, receipts and funds received by the Company from Company operations, less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (ii) all cash expenditures incurred incident to the normal operation of the Company’s business; and (iii) such cash reserves as the Owner deems reasonably necessary to the proper operation of the Company’s business.
- (h) “Entity” shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association.
- (i) “Fiscal Year” shall mean the Company’s fiscal year, which shall be the calendar year.
- (j) “Initial Capital Contribution” shall mean the initial contribution to the Capital of the Company pursuant to this Operating Agreement.

- (k) “Interest” shall mean the proportion that the Owner’s Units bear to the aggregate outstanding Units of the Company.
- (l) “IRC” shall mean the U.S. Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.
- (m) “Net Losses” shall mean, for each Fiscal Year, the losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the accrual method of accounting and as reported, separately or in the aggregate, as appropriate, on the Company’s information tax return filed for federal income tax purposes, plus any expenditures not deductible in computing its taxable income and not properly chargeable to capital account under the IRC.
- (n) “Net Profits” shall mean, for each Fiscal Year, the income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the accrual method of accounting and as reported, separately or in the aggregate, as appropriate, on the Company’s information tax return filed for federal income tax purposes, plus any income exempt from federal income tax under the IRC.
- (o) “Operating Agreement” shall mean this Operating Agreement as originally executed and as amended from time to time.
- (p) “Organization Expenses” shall mean those expenses incurred in connection with the formation of the Company.
- (q) “Owner” shall mean the Ponca Tribe of Nebraska.
- (r) “Owner’s Representatives” means the members of the Tribal Council acting on behalf of the Owner.
- (s) “Person” shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such “Person” where the context so admits.
- (t) “Regulatory Allocations” shall mean the allocations pursuant to Sections 11.1(b), (c), (d) and (e) of this Agreement.
- (u) “Reserves” shall mean, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in amounts deemed sufficient by the Manager for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the Ownership or operation of the Company’s business.

- (v) “Treasury Regulations” shall mean the Income Tax Regulations, including temporary regulations, promulgated under the IRC, as amended from time to time.
- (w) “Tribal Court” shall mean the Ponca Tribe of Nebraska Tribal Court as established by Article VI of the Tribal Constitution.
- (x) “Tribal Council” shall mean the duly elected body of the Tribe established pursuant to Article IV of the Tribal Constitution with the authority to carry out the business of the Tribe.
- (y) “Tribal Limited Liability Company Code” shall mean Title 15 of the Code or such other corresponding titles or provisions of any subsequent superseding Code that govern or apply to the Company as a limited liability company.
- (z) “Tribal Secretary” shall mean the Secretary of the Tribal Council as provided by Article IV, Section 2 of the Tribal Constitution, or that individual’s designee under the Tribal Limited Liability Company Code.
- (aa) “Tribe” shall mean the Ponca Tribe of Nebraska.
- (bb) “Units” shall mean the capital units issued by the Company to the Owner, in exchange for contributions, which represent the Owner’s interest in the Company.
- (cc) “Tribal Lands” means lands owned by or under the jurisdiction, exclusive or non-exclusive, of the Tribe; lands owned by the United States of America in trust for the Tribe; and such other lands as may hereafter be added thereto under any law of the United States of America.

ARTICLE II

FORMATION OF COMPANY

- 2.1 **Formation.** On March 5, 2012, Rebecca White, Chairwoman of the Tribal Council, organized the Company under and pursuant to the Tribal Limited Liability Company Code pursuant to Resolution No. 12-17 of the Tribal Council.
- 2.2 **Name.** The name of the Company is OSNI Ponca, LLC.
- 2.3 **Principal Office.** The Company shall be a resident of and maintain its corporate headquarters on Tribal Lands, but may conduct its business activities any place in or outside of the United States. The company may have such other offices, either on or outside of Tribal Lands as the business of the company may require from time to time.

2.4 **Registered Office and Registered Agent.** The Company's registered office shall be 1701 E Street, Lincoln, NE 68508, and its registered agent at such address shall be the individual who is duly elected to the office of Chair of the Tribal Council.

2.5 **Term.** The term of the Company shall be perpetual, unless the Company is earlier dissolved in accordance with either the provisions of this Operating Agreement or the Tribal Limited Liability Company Code.

2.6 **General Purpose.** The purpose of the Company shall be to engage in any lawful business or businesses and to engage in all other activities necessary, customary, convenient, or incident thereto.

ARTICLE III

OWNER

3.1 **Owner.** The Company is wholly owned by the Ponca Tribe of Nebraska as its sole owner.

ARTICLE IV

PURPOSES OF THE COMPANY

4.1 **Purposes.** The purposes of the Company shall be:

- (a) To create and stimulate the economy of the Tribe and to create employment opportunities for Tribal members;
- (b) To generate profits to promote the growth and continuity of the Company and for distribution to the Tribal government;
- (c) To generate tax and other revenue for the use by the Tribal government in providing services to members of the Tribe;
- (d) To increase the economic well-being of the members of the Tribe in accordance with the economic development policies and plans of the Tribe as adopted by the Tribal Council; and
- (e) To engage in any lawful business or other activities necessary, customary, convenient, or incident thereto for which companies may be organized under the Tribal Limited Liability Company Code.

ARTICLE V

PRIVILEGES AND IMMUNITIES

5.1 **Privileges and Immunities.** Pursuant to Sections 15-1-8(3) and 15-9-13 of the Code and Article IX of the Articles of Organization, the Company shall be an instrumentality of the Tribe and possesses all of the rights, privileges and immunities enjoyed by the Tribe, including but not limited to, immunities from federal, state, and local taxes, regulation, and jurisdiction, to the same extent that the Tribe would have such rights, privileges, and immunities, if it engaged in the activities undertaken by the Company.

ARTICLE VI

SOVEREIGN IMMUNITY

6.1 **Sovereign Immunity Conferred.** Pursuant to Sections 15-1-8(3), 15-9-13, 15-9-17, and 15-9-22 of the Code and Articles IX and X of the Articles of Organization, the Tribe confers upon the Company and the Company possesses sovereign immunity from suit to the same extent that the Tribe would have such sovereign immunity if it engaged in the activities undertaken by the Company.

6.2 **Limited Waivers.** The Company shall have the power to sue, and it may specifically grant limited waivers of its immunity from suit and consent to be sued in the Tribal Court or another court of competent jurisdiction and consent to participate in arbitration; provided, however, that:

- (a) Such waiver or consent to suit or arbitration granted pursuant to this Operating Agreement shall in no way extend to any action against the Tribe, nor shall it in any way be deemed a waiver of any of the rights, privileges, and immunities of the Tribe;
- (b) Any recovery against the Company shall be limited to the assets of the Company (or such portion of the Company's assets as further limited by the waiver or consent), and the Tribe shall not be liable for the payment or performance of any of the obligations of the Company, and no recourse shall be had against any assets or revenues of the Tribe in order to satisfy the obligations of the Company; including assets of the Tribe leased, loaned, or assigned to the Company for its use, without transfer of title;
- (c) Any waiver of the Company's immunities granted pursuant to the Company's Articles of Organization shall be further limited or conditioned by the terms of such waiver;
- (d) Any waiver may be granted only (1) by a resolution adopted by the Board of the Company for the specific purpose of granting a waiver, (2) if the language of the waiver is explicit, and (3) if the waiver is contained in a written contract or commercial document to which the Company is a party;
- (e) Waivers of sovereign immunity may be granted only when necessary to secure a substantial advantage or benefit to the Company;

(f) Waivers of sovereign immunity shall permit recourse and enforcement only against the assets of the Company (or such portion of the Company's assets provided in the waiver) and shall prohibit any recourse against any assets, revenues, or activities of the Tribe, including assets of the Tribe or property of the Tribe leased, loaned, or assigned to the Company for its use, without transfer of title;

(g) Waivers of sovereign immunity must be specific and limited as to duration, grantee, transaction, property or funds of the Company subject to the waiver, court and/or arbitration body having jurisdiction and applicable law; and

(h) The sovereign immunity of the Company shall not extend to actions against the Company by the Tribe.

ARTICLE VII

RIGHTS AND DUTIES OF THE BOARD OF DIRECTORS

7.1 **Performance & Management.** The business and affairs of the Company shall be managed under the direction of its Board of Directors. Each Director shall participate in the direction, management and control of the business of the Company to the best of his or her ability. Each Director shall be responsible for discharging his or her duties in good faith, in a manner the Director believes to be in the best interest of the Company, and with the care an ordinary prudent person in a like position would exercise under similar circumstances. The Board shall in all cases act as a group, with a majority vote or consent of the Board required to take action. The Board may adopt such rules and regulations for the conduct of their meetings and the management of the Company as is not inconsistent with this Operating Agreement and the Tribal Limited Liability Company Code.

7.2 Board, Number, Appointment, Qualifications and Tenure.

(a) The Owner may designate that the Directors shall be the then serving members of the Tribal Council and each shall have a vote on matters before the Board.

(b) Directors need not be residents living on Tribal Lands.

(c) The Owner may provide that the Board of Directors will be composed of individuals appointed by the Owner through the action of the Owner's Representatives. If the Owner provides for the appointment of Directors, the following rules shall apply:

(i) The initial number of Directors shall be five (5) and each shall have a vote on matters before the Board. The number may be changed from time to time by the affirmative vote of the Owner, but in no instance shall there be less than three (3) Directors.

(ii) Directors must meet the following requirements:

(A) Be at least twenty-five (25) years of age;

(B) Either (1) possess a Bachelor's Degree in business or a related field, or (2) possess a high school diploma (or a General Equivalency Diploma) and have at least five (5) years of business, financial, legal, government contracting, tribal government or industry experience;

(C) Have no felony convictions; and

(D) Submit to a background investigation which yields no results showing convictions involving tax evasion, tax fraud, embezzlement or moral turpitude.

(iii) A majority of the Directors shall be enrolled members of the Tribe; provided, however, that this requirement shall not apply if a vacancy occurs resulting in the majority of the Directors not being enrolled members of the Tribe so long as such vacancy is filled by a Tribal member within a timely manner. Directors who are not members of the Tribe shall have substantial business, legal, financial, government contracting, or industry experience.

(iv) Upon the selection of initial appointed Directors, the Board shall choose, by lot, a majority of appointees who will serve an initial term of three (3) years with the remaining appointees serving an initial term of two (2) years. Thereafter, the term of each appointee shall be for three (3) years and each Director shall hold office until his or her successor shall have been appointed and qualified.

7.3 **Certain Powers of the Board.** Without limiting the generality of Section 7.1, the Board shall have power and authority, as a group, on behalf of the Company:

(a) To acquire property from any Person or Entity as the Board may determine. The fact that the Owner is directly or indirectly affiliated or connected with any such Person or Entity shall not prohibit the Board from dealing with that Person or Entity;

(b) To borrow money for the Company from banks, other lending institutions, the Owner, or affiliates of the Owner on such terms as they deem appropriate, and in connection therewith, to mortgage, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums (and no such action shall require a vote of the Owner except as otherwise provided in this Operating Agreement);

(c) To purchase liability and other insurance to protect the Company's property and business;

- (d) To hold and own any Company real and/or personal properties in the name of the Company;
- (e) To invest any Company funds temporarily (by way of example but not limitation) in time deposits, short-term governmental obligations, commercial paper or other investments and otherwise conduct or direct the Company's banking activities;
- (f) To sell or otherwise dispose of assets of the Company, provided that such assets do not constitute all or substantially all of the assets of the Company.
- (g) To execute on behalf of the Company all instruments and documents, including, without limitation, checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, documents providing for the acquisition, mortgage or disposition of the Company's property, assignments, bills of sale, leases, partnership agreements, and any other instruments or documents necessary, in the opinion of the Board, for the business of the Company;
- (h) To employ accountants, legal counsel, managing agents, human resources directors, or other experts to perform services for the Company and to compensate them from Company funds, provided no such compensation exceeds the amounts for such services set forth in the annual budget approved by the Owner or an amendment or supplement thereto approved by the Owner without the approval of the Owner;
- (i) To enter into any and all other contracts or agreements on behalf of the Company to carry out the purposes of the Company, with any other Person or Entity for any purpose, in such forms as the Board may approve;
- (j) To declare and pay distributions to the Owner as described in Section 11.2 hereof;
- (k) To form and organize subsidiary entities under tribal or state law, or become a member, owner, or shareholder in other business entities formed under tribal or state law;
- (l) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business, and not inconsistent with applicable law, the Articles of Organization, or this Operating Agreement; and
- (m) To consent to waive the sovereign immunity of the Company, provided that it is done within the procedures described within the Articles of Organization for the Company, this Operating Agreement, and the Tribal Limited Liability Company Code.

Unless authorized to do so by this Operating Agreement, no individual Director, agent, or employee of the Company shall have any power or authority to bind the Company in any way, to pledge its credit, to waive its sovereign immunity or to render it liable for any purpose. Authorization shall be only by a majority of the Board or by the Owner.

7.4 **Liability for Certain Acts.** Each Director shall exercise his or her business judgment in participating in the management of the business, operations, and affairs of the Company. The Board does not, in any way, guarantee the return of the Owner's Capital Contributions or a profit for the Owner from the operations of the Company.

7.5 **Board has no Exclusive Duty to Company.** A Director shall not be required to manage the Company as his or her sole and exclusive function and he or she (or any Director) may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor the Owner shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of the Director or to the income or proceeds derived therefrom.

7.6 **Indemnity of the Board.** The Directors shall be indemnified by the Company to the extent provided in the Tribal Limited Liability Company Code.

7.7 **Resignation.** Any Director may resign at any time by giving written notice to the Secretary or the Chairperson of the Tribal Council. The resignation of any Director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. While the members of the Tribal Council serve as Directors, a Director may only resign from the Board upon his or her concurrent resignation from the Tribal Council, but resignation from the Tribal Council shall result in automatic removal from the Board.

7.8 **Removal.** While the members of the Tribal Council serve as Directors, a Director may be removed only if they are concurrently removed as a member of the Tribal Council in accordance with the laws of the Tribe. If the Owner appoints Directors, all or any lesser number of Directors may be removed at any time, with or without cause, by the Owner at a meeting called expressly for that purpose. An Owners' Representative who also serves as a Director and is subject to removal by the Owner shall abstain from voting on the subject of his or her removal. "Cause" is not limited to, but shall mean any the following:

- (a) Breach of fiduciary duty;
- (b) Conviction of a felony;
- (c) Conviction of misdemeanor which, in the determination of the Owner, adversely affects the Company or such Director's ability to perform his or her duties;
- (d) Adjudication as incompetent by a Court of competent jurisdiction;
- (e) Misappropriation of corporate funds or other acts of dishonesty with respect to the Company; or
- (f) Gross negligence, fraud, deceit or intentional misconduct that had a material adverse effect on the Company.

7.9 **Vacancies.** While the members of the Tribal Council serve as Directors, any vacancy occurring on the Board shall be filled automatically as such vacancies are filled for the Tribal Council. If the Owner appoints Directors, any vacancy occurring for any reason in the number of Directors may be filled by appointment by the Owner. A Director appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor in office and shall hold office until the expiration of such term and until his successor shall be appointed and shall qualify or until his earlier death, resignation or removal. The existence of a vacancy on the Board shall not affect the ability of the Board to conduct business or take actions.

7.10 **Compensation.** The compensation of the Board shall be fixed from time to time by the Board, subject to the approval of the Owner. All Directors, including Owner's Representative's or Tribal Council members serving on the Board, shall be entitled to reimbursement of expenses incurred in course of performing Board duties in accordance with Company policy.

7.11 **Officers.** The Board may appoint officers of the Company which may include, but shall not be limited to: (1) president; (2) one or more vice-presidents; (3) secretary; (4) treasurer; and (5) such other officers and assistant officers and agents as may be deemed necessary by the Board. Individuals may hold multiple offices, but the offices of president and vice-president may not be jointly held. The Board shall delegate the day-to-day management responsibilities to a Chief Executive Officer ("CEO") and other such officers, as determined by the Board from time to time. Such officers shall have the authority to contract for, negotiate on behalf of, and otherwise represent the interests of the Company as so authorized by the Board. Any chief financial officer, controller, or similar officer or employee of the Company charged with managing the finances of the Company hired or appointed by the Board shall be under the direct supervision of and report directly to the Board and work directly with any treasurer appointed by the Board. Unless the Board decides otherwise, if the title is one commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation to such Person of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made hereto. The compensation of the CEO shall be fixed from time to time by the Board. The Board may authorize and empower the CEO or any other officer to fix the salaries of other officers and employees of the Company.

7.12 **Chairperson of the Board.** A Chairperson of the Board shall be elected by the Board. He or she shall, when present, preside at all meetings of the Board and shall perform such duties as shall be prescribed by the Board.

7.13 **Books of Account and Records.** Proper and complete records and books of account shall be kept or shall be caused to be kept by the Board in which shall be entered fully and accurately all transactions and other matters relating to the Company's business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. Such books and records shall be maintained in accordance with generally accepted accounting principles as provided in Section 11.4. The books and records shall at all times be maintained at the principal executive office of the Company and shall be open to the reasonable inspection and examination of the Owner or its duly authorized representatives during reasonable business

hours. The Board, in conjunction with the CEO, shall also provide and present, or cause to be provided and presented, to the Owner regular annual and quarterly reports and plans, including the following:

- (a) Copies of any periodic financial statements (including monthly or quarterly balance sheets, profit and loss statements, and cash flow statements) as may be prepared in the ordinary course of business, promptly after such statements are furnished to the Company management;
- (b) Annual audit statements;
- (c) A full report of the business activities of the Company describing progress against Company goals in the past year within one hundred twenty (120) days after the close of each fiscal year; and
- (d) A proposed annual operating plan for the following Tribal fiscal year, including budgets and any proposed funding from the Tribe or anticipated distributions to the Tribe; and
- (e) Such other reports as reasonably requested by the Owner.

ARTICLE VIII

RIGHTS AND OBLIGATIONS OF THE OWNER

8.1 **Limitation of Liability.** The Owner shall not be liable for any debts or losses of the Company beyond its respective Capital Contribution, except as provided in Section 11.2 herein.

8.2 **Company Books.** The Board shall maintain and preserve at the principal office of the Company relevant Company documents including, but not limited to (a) a current list of the full name and last known business address of the Owner and Directors, (b) a copy of the Articles of Organization and all Articles of Amendment thereto, (c) copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent years, (d) copies of this Operating Agreement and financial statements for the three most recent years, and (e) any other documents required by the Tribal Limited Liability Company Code. Upon reasonable request, the Owner shall have the right, during ordinary business hours, to inspect and copy such Company documents at the Owner's expense.

8.3 **Investment and Return of Capital.** The Tribe, as the sole Owner of the Company, shall allocate such funds as to allow the Company to fulfill the long term goals of the Tribe and the Company. The Company will distribute the Net Profits in accordance with a Dividend Policy approved by the Tribe, as sole Owner.

8.4 **Withdrawal of the Owner.** The Owner does not have the power or right to withdraw from the Company.

8.5 **Action Requiring Owner Approval.** The Company shall not take any of the actions described below without the affirmative vote of the Owner:

- (a) The waiver or purported waiver of the sovereign immunity of the Tribe;
- (b) The pledging as security for any debt or other obligation any revenues or assets of the Tribe;
- (c) The binding or creation of any obligation or liability of the Tribe;
- (d) The authorization, issuance, or exchange of, or obligation to authorize or issue or exchange, any equity securities or ownership interest in the Company to any Person other than the Tribe;
- (e) The expenditure of any amount in excess of the amounts provided in the annual budget approved by the Owner or an amendment or supplement thereto approved by the Owner;
- (f) The sale, exchange or other disposition (other than the mortgage, pledge or other grant as security interest) of all or substantially all of the assets of the Company;
- (g) The merger of the Company with another entity;
- (h) The conversion or division of the Company;
- (i) The domestication of the Company in any jurisdiction other than the Tribe;
- (j) The voluntary dissolution or winding up of the Company;
- (k) The amendment of the Articles of Organization or this Operating Agreement subject, however, to Section 15.5 hereof;
- (l) Any other act requiring the approval of the Owner under the Tribal Limited Liability Company Code; or
- (m) If the Owner provides for the appointment of Directors:
 - (i) The purchase or acquisition of any businesses or other entity;
 - (ii) The spending or other expenditure of any amount greater than \$50,000.00 in a single transaction, under any contract, or as annual employment compensation;

(iii) The borrowing of or incurring of any indebtedness in any amount greater than \$25,000.00;

(iv) The payment of stipends or any other compensation to Directors for Board meetings based on the length of the meeting, provided that the Directors may receive a single amount for meeting times greater than zero hours but less than or equal to two hours, an additional amount for meeting times greater than two hours and less than or equal to four hours, an additional amount for meeting times greater than four hours and less than or equal to six hours, and an additional amount for meeting times longer than six hours;

(v) The payment of any additional stipend or other compensation to Directors based on the meeting involving the operation or management of multiple entities owned, operated, or managed by the Company, including its subsidiaries;

(vi) The payment of any stipend or other compensation to Directors for Board meetings which involve the business or management of an entity (other than Company or any of its subsidiaries) managed or operated by the Directors or upon the board of directors of which the Directors are appointed;

(vii) The payment of any compensation to Directors for work other than meetings except as follows:

(A) All Directors shall be compensated in an amount equal to two (2) days of work each month without any requirement to submit additional documentation of work performed in order to conduct their duties as Directors, including:

(a) Conducting business at various office sites of Company and/or telephone contact with clients, staff of Company or the Tribe, and their constituents; and

(b) Conducting research for Company businesses, such as vendors, computer research, planning, preparing for action items, reviewing materials, and preparation for Board meetings, committee meetings, or work assignments;

(B) Any compensation for work other than meetings which may be provided in annual budgets of the Company in addition to the two (2) days per month for the Chairperson and any Vice-Chairperson and Treasurer of the Board shall require usual and customary documentation detailing the work performed and be compensated at the hourly rate set forth in such annual budget; and

(C) Any other compensation for work other than meetings shall be compensated in a manner which provides a single amount for actual work performed greater than zero hours but less than or equal to two hours, an additional amount for actual work performed greater than two hours and less than or equal to four hours, an additional amount for actual work performed greater than four hours and less than or equal to six hours, and an additional amount for actual work performed longer than six hours;

In addition, the Owner shall vote to elect the Board as provided in this Operating Agreement, to approve compensation to the Board as provided in Section 7.10 hereof and as otherwise required by law or by this Operating Agreement. The Owner shall also have the responsibility of approving the implementation plan and annual operating plans of the Company.

ARTICLE IX

MEETINGS OF THE OWNER

9.1 Meetings.

(a) An annual meeting of the Owner shall be held at the Company's principal office, or at such other place designated by the Owner, on the first Monday of May each year for the purpose of approving the annual plan, receiving financial reports, election of the Board, if required, and for the transaction of such other business as may properly come before the meeting.

(b) Special meetings of the Owner, for any purpose or purposes, unless otherwise prescribed by applicable law, may be called by the Board or by the Chairperson of the Tribal Council on three (3) business days notice to the other members of the Tribal Council, as Owners's Representatives.

9.2 Place of Meetings. The Owner may designate any place, either on or outside of Tribal Lands, as the place of meeting for any meeting of the Owner. If no designation is made, the place of meeting shall be the principal office of the Company.

9.3 Notice of Meetings. Except as provided in Sections 9.1 and 9.5, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the Board or person calling the meeting, to each Owner's Representative entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered as provided in Section 15.1.

9.4 Consent to Meeting of Owner. If a majority of the Owner's Representatives shall meet at any time and place, either on or outside of Tribal Lands, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

9.5 **Record Date.** For the purpose of determining Owner's Representatives entitled to notice of or to vote at any meeting of the Owner or any adjournment thereof or in order to make a determination of Owner's Representatives for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Owner's Representatives. When a determination of representatives entitled to vote at any meeting of the Owner has been made as provided in this Section, such determination shall apply to any adjournment thereof.

9.6 **Quorum.** A majority of the Owner's Representatives shall constitute a quorum at any meeting of the Owner. In the absence of a quorum at any such meeting, a majority of those present may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Owner's Representative of record entitled to vote at the meeting.

At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Owner's Representatives present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of representatives whose absence would cause less than a quorum.

9.7 **Manner of Acting.** Subject to the requirements of Section 9.8 herein, if a quorum is present, the affirmative vote of a majority of the Owner's Representatives entitled to vote on the subject matter shall be the act of the Owner, unless the vote of a greater or lesser proportion or number is otherwise required by the Tribal Limited Liability Company Code, the Articles of Organization, or this Operating Agreement.

9.8 **Owner Voting.** Pursuant to Section 15-9-41 of the Tribal Limited Liability Company Code, the Tribe's voting interest as Owner shall be voted in accordance with the Tribal Council's procedures for voting and passing Tribal resolutions.

9.9 **Proxies.** At all meetings of the Owner, Owner's Representatives entitled to vote the Company's interests must vote in person. No proxy voting shall be allowed.

9.10 **Action by the Owner without a Meeting; Telephonic Meetings.** Action required or permitted to be taken at a meeting of the Owner may be taken without a meeting only if established procedures of the Owner permit such action without a meeting. Owner's Representatives may participate in and hold a meeting through conference call or similar audio or video communications by means of which all Persons participating in the meeting can hear each other, and participation in such meeting shall constitute attendance and presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

9.11 **Waiver of Notice.** When any notice is required to be given to any Owner's Representative, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

ARTICLE X

CONTRIBUTIONS TO THE COMPANY; CAPITAL UNITS; CAPITAL ACCOUNTS

10.1 **Capital Contributions.** The Owner shall contribute such amount as is set forth in Schedule A hereto as its Capital Contribution. No subsequent Capital Contributions shall be required of the Owner.

10.2 **Capital Units.** The Owner's Interest in the capital of the Company shall be represented by Units of ownership interests. The number of Units authorized is nine (9). Such Units are hereby issued to the Owner and shall be voted by the Owner's Representatives. The Tribe, as sole Owner, shall receive one hundred percent (100%) of the Units.

10.3 **Capital Accounts.**

(a) A separate Capital Account will be maintained for the Owner. The Owner's Capital Account will be increased by (1) the amount of money contributed by the Owner to the Company; (2) the fair market value of property contributed by the Owner to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the IRC); and (3) the amount of Net Profits allocated to the Owner. The Owner's Capital Account will be decreased by (1) the amount of money distributed to the Owner by the Company; (2) the fair market value of property distributed to the Owner by the Company (net of liabilities secured by such distributed property that the Owner is considered to assume or take subject to under Section 752 of the IRC); and (3) the amount of Net Losses allocated to the Owner.

(b) In the event of a permitted sale or exchange of an Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred interest.

(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 10.3 is intended, and shall be construed so as, to comply with the requirements of Section 704(b) of the IRC and the Treasury Regulations promulgated thereunder, or in the event there exists any inconsistency, the IRC and Treasury Regulations shall control.

(d) Upon liquidation of the Company (or the Owner's interest), liquidating distributions will be made in accordance with the positive Capital Account balance of the Owner, as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs. Liquidation proceeds will

be paid within sixty days of the end of the taxable year (or, if later, within ninety (90) days after the date of the liquidation.)

10.4 **No Demand of Owner Capital.** The Owner shall not be entitled to demand or receive from the Company the liquidation of its interest in the Company until Company is dissolved in accordance with the provisions hereof or other applicable provisions of the Tribal Limited Liability Company Code.

ARTICLE XI

ALLOCATIONS AND INCOME TAX

11.1 **Allocations of Profits and Losses from Operations.**

(a) Except as may be required by Section 704 (c) of the IRC, the Net Profits and Net Losses of the Company for each Fiscal Year shall be allocated to the Owner in proportion to its Interests in the Company. Any credit available for income tax purposes shall be allocated to the Owner in like fashion.

(b) Notwithstanding paragraph (a) above, no loss shall be allocated to the Owner if such allocation would cause the Owner's Adjusted Capital Account to become negative or to increase the negative balance thereof.

(c) In the event the Owner unexpectedly receives any adjustments, allocations or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of Company income and gain shall be specially allocated to the Owner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit balance of the Adjusted Capital Account of the Owner as possible, provided that an allocation pursuant to this Section 11.1(c) shall only be made if and to the extent such Owner would have a deficit balance in its Adjusted Capital Account after all other allocations provided for in this Section 11.1 have been made as if this Section 11.1(c) were not in the Agreement.

(d) In the event the Owner has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (i) the amount such Owner is obligated to restore pursuant to any provision of this Agreement, if any, and (ii) the amount such Owner is deemed to be obligated to restore pursuant to Treasury Regulations Section 1.704-2, each such Owner shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 11.1(d) shall be made only if and to the extent that such Owner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Section 11.1 have been made as if Section 11.1 (c) hereof and this Section 11.1(d) were not in the Agreement.

(e) To the extent an adjustment to the adjusted tax basis of any Company asset purchase made pursuant to IRC Section 734(b) or IRC Section 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Owner in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Treasury Regulations.

(f) Notwithstanding any other provision of this Agreement, the Regulatory Allocations shall be taken into account in allocating items of income, gain, loss and deduction to the Owner so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to the Owner shall be equal to the net amount that would have been allocated to the Owner if the Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence, allocations pursuant to this Section 11.1(f) shall only be made with respect to allocations pursuant to Section 11.1(e) hereof to the extent the Manager reasonably determines that such allocations will otherwise be inconsistent with the economic agreement among the parties to this Agreement.

(g) The Board, as Manager, shall have reasonable discretion, with respect to each Fiscal Year, to (i) apply the provisions of Section 11.1(f) hereof in whatever order is likely to minimize the economic distortions that might otherwise result from the Regulatory Allocations, and (ii) divide all allocations pursuant to Section 11.1(f) hereof to the Owner in a manner that is likely to minimize such economic distortions.

11.2 **Distributions.** All distributions of cash or other property shall be made to the Tribe, as the sole Owner, on the record date of such distribution. Except as provided in Section 11.3, all distributions of Distributable Cash and property shall be made in such amounts and at such times as determined by the Board, in accordance with a Dividend Plan approved by the Tribe. All amounts withheld pursuant to the IRC or any applicable provisions of state or local tax law with respect to any payment or distribution to the Owner from the Company shall be treated as amounts distributed to the relevant Owner pursuant to this Section 11.2.

11.3 **Limitation Upon Distributions.** No distribution shall be declared and paid if, after the distribution is made: (1) the Company would be unable to pay its debts as they become due in the usual course of business, or (2) the Company's total assets would be less than the sum of its total liabilities, or (3) the Company would be in violation of the Dividend Plan approved pursuant to Section 8.3.

11.4 **Accounting Principles.** The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis under the accrual method of accounting.

11.5 **Interest on and Return of Capital Contributions.** The Owner shall not be entitled to interest on its Capital Contribution or to return of its Capital Contribution, except as otherwise specifically provided for herein.

11.6 **Loans to Company.** Nothing in this Agreement shall prevent the Owner from making secured or unsecured loans to the Company by agreement with the Company.

11.7 **Tax Returns and other Elections.** The Board shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code or the IRC and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Owner within a reasonable time after the end of the Company's fiscal year.

11.8 **Tax Matters Owner.** The Tribe is hereby designated the Tax Matters Owner of the Company for purposes of Chapter 63 of the IRC and the Treasury Regulations thereunder.

11.9 **Tax Elections.** All elections permitted to be made by the Company under federal or state laws shall be made by the Board in its discretion.

ARTICLE XII

TRANSFERABILITY

12.1 **Assignment of Interest.** No ownership Interest in the Company may be assigned, in whole or in part, without the express approval as set forth in a duly adopted resolution of the Owner's Representatives. An assignment does not entitle the assignee to participate in the management and affairs of the Company or to become or to exercise any rights of an Owner. Such an assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled.

The pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of the Interest of the Tribe shall not cause the Tribe to cease to be the Owner and not deprive the Tribe of the power to exercise any rights or powers as Owner.

12.2 **Right of Assignee to Become an Owner.** An assignee of an Interest may not become an owner or Owner of the Company.

ARTICLE XIII

ADDITIONAL AND SUBSTITUTE OWNERS

13.1 **Admission of New Owners.** The Company shall not allow any additional new owners.

ARTICLE XIV

DISSOLUTION AND TERMINATION

14.1 **Dissolution.** The Company shall be dissolved upon the occurrence of any of the following events:

- (a) When the period fixed for the duration of the Company shall expire;
- (b) Upon affirmative vote of the Owner; or
- (c) Upon the withdrawal, expulsion, bankruptcy, or dissolution of the Owner; the occurrence of any other event, except assignment of ownership Interest voluntarily or by operation of law, that terminates the continued ownership of the Owner in the Company; or other event requiring dissolution under the Tribal Limited Liability Company Code (a "Dissolution Event").

14.2 **Distribution of Assets Upon Dissolution.** In settling accounts after dissolution, the liabilities of the Company shall be entitled to payment in the following order:

- (a) To those creditors, in the order of priority as provided by law, except to the Owner of the Company on account of its Capital Contribution; and
- (b) To the Owner with respect to its Capital Account in accordance with Section 10.3(d).

14.3 **Articles of Dissolution.** When all debts, liabilities, and obligations have been paid and discharged, or adequate provisions have been made therefor, and all of the remaining property and assets have been distributed to the Owner, articles of dissolution shall be executed and filed with the Office of the Secretary in accordance with the Tribal Limited Liability Company Code. Thereafter, the existence of the Company shall cease, except for the purpose of suits, other proceedings, and appropriate action as provided in the Tribal Limited Liability Company Code. The Board shall thereafter be trustee of the Owner and creditors of the Company and as such shall have authority to distribute any Company property discovered after dissolution, convey real estate, and take such other action as may be necessary on behalf of and in the name of the Company.

14.4 **Winding Up.** Except as provided by law, upon dissolution, the Owner shall look solely to the assets of the Company for the return of its Capital Contribution. The winding up of the affairs of the Company and the distribution of its assets shall be conducted exclusively by the Board, who are hereby authorized to take all actions necessary to accomplish such distribution, including without limitation, selling any Company assets the Board deems necessary or appropriate to sell.

ARTICLE XV

MISCELLANEOUS PROVISIONS

15.1 **Notices.** Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the party or to an executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Owner, Owner's Representatives, and/or Company's address as it appears in the Company's records, as appropriate. Except as otherwise provided herein, any such notice shall be deemed to be given three business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid.

15.2 **Human Resources Department.** The Company may create a human resources department that serves the needs of the Company and that is separate from the Owner, and shall have the authority and power to promulgate its own personnel and employment policies.

15.3 **Application of Tribal Law.** This Agreement and the application and interpretation hereof shall be governed exclusively by its terms and by the laws of the Tribe, and specifically the Tribal Limited Liability Company Code.

15.4 **Execution of Additional Instruments.** The Owner hereby agrees to execute such other and further statements of interest and holding, designations, powers of attorney, and other instruments necessary to comply with any applicable laws, rules or regulations.

15.5 **Amendments.** Any amendment to this Operating Agreement may be proposed to the Owner by a majority of the Board or any Owner's Representative. A vote on an amendment to this Operating Agreement shall be taken within thirty (30) days after notice thereof has been given to the Owner unless such period is otherwise extended by applicable laws, regulations, or agreement of the Owner. A proposed amendment shall become effective at such time as it has been approved by the Owner.

15.6 **Construction.** Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neutral genders and vice versa.

15.7 **Headings.** The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

15.8 **Waivers.** The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of any original violation.

15.9 **Rights and Remedies Cumulative.** The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude

or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

15.10 **Severability.** If any provision of the Operating Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

15.11 **Successors and Assigns.** Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the Owner and, to the extent permitted by this Operating Agreement, its successors and assigns.

15.12 **Creditors.** None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company.

CERTIFICATE

The undersigned hereby agrees, acknowledges and certifies that the foregoing Amended and Restated Operating Agreement together with Schedule A constitutes the Operating Agreement of ONSI PONCA, LLC adopted by Resolution No. 23-58 of the Tribal Council of the Ponca Tribe of Nebraska as of the 22 day of August, 2023 with a delayed effective date of September 1, 2023.



Candace Schmidt, Chairwoman
Ponca Tribe of Nebraska

Date Filed: 8/24/2023

Identification Number: 12-01-LLC

Signed: Susan Baker
Susan Baker, Tribal Council Secretary

Schedule A

OSNI PONCA, LLC

Capital Contribution and Capital Units

Owner Name & Address	Initial Capital Contribution	Percentage Interest	Capital Units
Ponca Tribe of Nebraska P.O. Box 288 Niobrara, NE 68760	\$100,000	100%	9