

**POKAGON BAND OF POTAWATOMI INDIANS
LIMITED LIABILITY COMPANY CODE**

**CHAPTER 1
GENERAL PROVISIONS**

Section 1.1 Short Title.

This Code shall be known as the “Pokagon Band of Potawatomi Indians Limited Liability Company Code.”

Section 1.2 Authority; Purposes; Sovereign Immunity.

- (A) The Tribal Council enacts the Pokagon Band of Potawatomi Indians Limited Liability Company Code pursuant to the legislative powers of the Tribal Council as enumerated in Article IX, subsections 2(a) and 2(j) and in accordance with the duties the Tribal Council stated in Article IX, subsections 1(a) and 1(c) of the Constitution of the Pokagon Band of Potawatomi Indians.
- (B) The purpose of this Code is to provide for economic development of the Pokagon Band of Potawatomi Indians (“the Band”) and its Citizens by:
 - 1. Providing the legal framework for organizing individually-owned business entities in order to expand the private business sector on the Reservation; and
 - 2. Authorizing the formation of wholly-owned Tribal business entities for managing the Band’s non-gaming economic activities separate from the general affairs of its Tribal Council, with the ability to enter into legally-binding contracts and commercial relationships without the need for formal Tribal Council action.
- (C) By the adoption of this Code, the Band does not waive its sovereign immunity or consent to suit in any court, federal, tribal or state, and neither the adoption of this Code, nor the incorporation of any limited liability company hereunder, shall be construed to be a waiver of the sovereign immunity of the Band or a consent to suit against the Band in any court.

Section 1.3 Scope.

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

Section 1.4 Applicable Law.

The companies organized and created under this Code shall be subject to this Code, and all other laws of the Band. By organizing and creating a company under this Code, the company and its Members shall be considered to have entered into a consensual relationship with the Band and agree to be subject to the full extent of the Band's legislative, regulatory and adjudicatory jurisdiction. To the extent not inconsistent with this Code, in its interpretation and application this Code may be supplemented by principles of law and equity.

Section 1.5 Definitions.

Terms used in this Code have the following meaning:

- (A) "Articles of Organization" means the articles filed under Section 2.1 and those articles as amended or restated.
- (B) "Band" means the Pokagon Band of Potawatomi Indians.
- (C) "Citizen" means an enrolled member of the Pokagon Band of Potawatomi Indians.
- (D) "Corporation" means a domestic corporation for profit organized under the laws of the Band or a foreign corporation formed under the laws of any other jurisdiction.
- (E) "Distribution" means a direct or indirect transfer by a limited liability company of money or other property to or for the benefit of its Members in respect of their interests.
- (F) "Entity" includes an individual, a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation or any other legal or commercial entity.

- (G) “Foreign” refers to limited liability companies, corporations and limited partnerships organized under the laws of a jurisdiction other than the Band.
- (H) “Limited Liability Company”, “Domestic Limited Liability Company”, or “Domestic LLC” means an organization formed under this Code, except as provided for in Section 8.1(A).
- (I) “Limited Liability Company Interest” or “Interest in the Limited Liability Company” or “Member’s Interest” means a Member’s rights in the limited liability company, including rights to distributions, profits and losses, and to participate in management, as specified in the Operating Agreement.
- (J) “LLC” means a limited liability company.
- (K) “Majority in Interest” means a Member or Members holding more than fifty percent (50%) of the total voting interests in the limited liability company excluding any interest which is not to be counted as voting on a matter as described elsewhere in this Code.
- (L) “Manager” or “Managers” means the person(s) or entity(ies) designated to manage the LLC pursuant to the Articles of Organization and Operating Agreement.
- (M) “Office of the Secretary” and “Secretary” mean the Office of the Secretary of the Tribal Council as provided by the Tribal Constitution, notwithstanding any delegation by the Secretary to other officials, employees, or agents of specific duties and responsibilities assigned to the Secretary under this Code.
- (N) “Operating Agreement” means an agreement in writing among all of the Members as to the conduct of the business of a limited liability company and its relationships with its Members.
- (O) “Organizer(s)” means the person(s) or entity(ies) which signs and delivers the Articles of Organization for filing to the Office of the Secretary.

- (P) “Member” means a Person that is a member of a limited liability company or has membership interest in a limited liability company. The term does not include a person that has dissociated as a member under Section 3.7.
- (Q) “Person” includes a natural person, Tribal Entity and an organization such as a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, or a corporation.
- (R) “Reservation” means pursuant to 25 U.S.C. § 1300j-5 or other applicable federal law, (i) all lands, the title to which is held in trust by the United States for the benefit of the Pokagon Band of Potawatomi Indians; and (ii) all lands proclaimed by the Secretary of the U.S. Department of the Interior to be part of the Tribe’s reservation. The term Reservation includes any rights-of-way running through the Reservation.
- (S) “Section 17 Corporation” means a federally-chartered corporation pursuant to Section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. § 477 *et seq.*
- (T) “State” includes a state, territory, or possession of the United States and the District of Columbia.
- (U) “Tribal Constitution” means the Constitution of the Pokagon Band of Potawatomi Indians.
- (V) “Tribal Corporation” means a corporation wholly-owned by the Band and duly formed pursuant to the laws or actions of the Band, and a Section 17 Corporation wholly owned by the Band.
- (W) “Tribal Council” means the Tribal Council as established by the Tribal Constitution as the governing body of the Band.
- (X) “Tribal Court” means the Tribal Court as established by Article XII of the Tribal Constitution.

- (Y) “Tribal Entity” includes the Band, the Tribal Council, a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, including a Section 17 corporation, a program, a department, an administrative agency or any other legal, commercial or governmental entity of the Band.
- (Z) “Tribally-Owned LLC” means a limited liability company wholly owned by the Band with the Band as its sole Member.
- (AA) “Tribally–Owned Second Tier Subsidiary LLC” means a limited liability company wholly owned by a Tribally-Owned Subsidiary LLC.
- (BB) “Tribally–Owned Subsidiary LLC” means a limited liability company wholly owned by a Tribally-owned LLC.
- (CC) “Trust Land” means land held in trust by the United States for the benefit of the Band or its Citizens.

Section 1.6 Name.

- (A) The name of a limited liability company as set forth in its Articles of Organization must contain the words “limited liability company” or end with the abbreviation “L.L.C.” or “LLC.” The name may not contain language stating or implying that the limited liability company is organized for any purpose other than that permitted under Section 1.9 below.
- (B) The name of a domestic LLC shall be distinguishable from any LLC or corporation previously organized under the laws of the Band.

Section 1.7 Registered Office and Registered Agent.

- (A) A limited liability company’s registered agent is the company’s agent for receiving service of process, notice, or demand required or permitted by law to be served on the company under the laws of the Band.

- (B) Each LLC shall continuously maintain a registered office and a registered agent. The registered office may, but need not, be the same as any of its places of business. The agent may be the same person then serving in a designated office of the Band rather than a specified person if the Band is a Member in the LLC of which the Band's officer is the appointed agent.
- (C) An LLC may change its registered office or registered agent, or both, by filing a written notice of change containing the name of its registered agent and the street address of its registered office, as changed, with the Office of the Secretary and paying the filing fee.
- (D) The registered agent of an LLC may resign as a registered agent by delivering to the Office of the Secretary for filing a written statement of resignation and the appointment by the LLC of another registered agent.

Section 1.8 Band as Member.

- (A) The Band may form a Tribally-Owned LLC under this Code only upon approval of such action by the Tribal Council.
- (B) If the Band or a Tribal Entity is a Member of an LLC formed under this Code, any action which the Band is required or permitted to take with respect to any vote, approval, consent, appointment, direction, or other matter shall be taken as specified in Section 9.4(A) of this Code or, as to actions related to the managers of a manager-managed LLC, as stated in the LLC's Operating Agreement.
- (C) If the Band is the sole Member of an LLC formed under this Code, such Tribally-owned LLC shall be deemed to possess all of the privileges and immunities of the Band, including the Band's sovereign immunity from suit, except to the extent otherwise provided in its Operating Agreement.
- (D) If a Tribally-owned LLC, in which the Band or a Tribal Entity is the sole Member, forms a Tribally-Owned Subsidiary LLC, to which the Tribally-Owned LLC is the sole Member, such Tribally-Owned Subsidiary LLC shall possess all of the privileges and immunities of

the Band, including the Band's sovereign immunity from suit except to the extent otherwise provided in its Operating Agreement.

- (E) If a Subsidiary Tribally-Owned LLC, to which the Tribally-Owned LLC is the sole Member, forms a Tribally-Owned Second Tier Subsidiary LLC, such Tribally-Owned Second Tier Subsidiary LLC shall possess all of the privileges and immunities of the Band, including the Band's sovereign immunity from suit, except to the extent otherwise provided in its Operating Agreement.
- (F) If the Band or a Tribal Entity is a Member with a Majority in Interest in an LLC formed under this Code, such LLC shall be deemed to possess the privileges and immunities of the Band, including sovereign immunity from suit, to the extent allowed by federal law, this Code or its Operating Agreement, except to the extent otherwise provided in its Operating Agreement.
- (G) In no event shall any Manager of an LLC in which the Band is a Member, bind the Band's interest as a Member in any manner; provided that the Band's interest as a Member may be bound by Manager or Member actions as stated in this Code and the Operating Agreement of the LLC.
- (H) Nothing contained in this Code shall be construed as creating any liability or waiving of sovereign immunity of the Band in any manner; provided that the assets of the LLC in which the Band holds an interest may be subject to liabilities and claims unless otherwise provided herein. In no event shall any action taken by the Band as Member concerning the exercise of any right or privilege or discharge of any duty with respect to an interest in an LLC be construed as a waiver of immunity or creation of a liability on the part of the Band separate and apart from its interests as a Member of the LLC.
- (I) For all Tribally-owned limited liability companies and Tribally-owned Subsidiary limited liability companies, the additional provisions of Part 9 of this Code shall apply.

Section 1.9 Nature of Business.

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

- (A) Consent to be sued, complain and defend in its name; provided, however, that if an LLC is Tribally-owned, or wholly-owned by another entity which itself is wholly-owned by the Band, it shall be entitled to and shall enjoy the Band's sovereign immunity from suit unless the Operating Agreement otherwise provides.
- (B) Purchase, take, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal in or with real, or personal property or any legal or equitable interest in real or personal property, wherever situated.
- (C) Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, or otherwise dispose of all or any part of its property.
- (D) Lend money, property, and services to, and otherwise assist, its Members and Managers, if any.
- (E) Purchase, take, receive, subscribe for, or otherwise acquire and own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in, or obligations of, any other enterprise or entity.
- (F) Make contracts and guarantees; incur liabilities; borrow money; issue notes, bonds, and other obligations; and secure any of its obligations by mortgage or pledge of all or part of its property, franchises, and income.
- (G) Lend money, invest and reinvest its funds, and receive and hold real or personal property as security for repayment.
- (H) Conduct its business, locate offices, and exercise the powers granted by this Code inside or outside of the Reservation.

- (I) Be a promoter, incorporator, partner, Member, associate, or Manager of any enterprise or entity.
- (J) Elect or appoint Managers, agents, and employees, define their duties, and fix their compensation.
- (K) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, and benefit or incentive plans for any or all of its current or former Members, Managers, employees, and agents.
- (L) Make donations to and otherwise devote its resources for the public welfare or for charitable, scientific, educational, humanitarian, philanthropic, or religious purposes.
- (M) Indemnify a Member, Manager, employee, officer or agent, or any other person.
- (N) Provide benefits or payments to Members, Managers, employees, and agents of the LLC, and to their estates, families, dependents or beneficiaries in recognition of the past services of the Members, Managers, employees, and agents of the LLC.
- (O) Make payments, or do any other act not prohibited by law, that furthers the business of the LLC.
- (P) Transact any lawful business that the Members or the Managers find to be appropriate to promote and further the business and affairs of the limited liability company.

Section 1.10 Execution of Documents.

- (A) Except as otherwise provided in this Code, any document required or permitted by this Code to be delivered for filing in accordance with Section 1.11 shall be executed by any of the following:
 - (1) Any Manager, if management of the LLC is vested in a Manager or Managers, or by a Member, if management of the LLC is reserved to the Members.

- (2) All Organizers of the LLC if the LLC has not been organized. The name and address of each Organizer shall be provided.
- (3) The name of the drafter of the document.
- (B) The person executing the document shall sign it and state beneath or opposite the signature the person's name and capacity in which the person signs.
- (C) The person executing the document may do so as an attorney-in-fact. Powers-of-attorney relating to the executing of the document need not be shown to nor filed with the Office of the Secretary.

Section 1.11 Filing.

- (A) The Office of the Secretary shall receive all filings required under this Code and maintain the records of such filings pursuant to this Section, including but not limited to the Articles of Organization, amended or restated articles, annual reports, names and addresses of registered offices and agents, and, in the case of Tribally-owned LLC's, the Operating Agreement and amendments thereto, and other reports required by this Code.
- (B) Upon receipt of a document for filing under this Code, the Office of the Secretary shall ensure it meets the requirements herein and then shall stamp or otherwise endorse the date and time of receipt of the original, the duplicate copy, and, upon request, any additional copy received.
- (C) If the Office of the Secretary refuses to file a request, the Office shall return it to the person tendering the document for filing within five (5) business days after the date on which the document is received by the Office for filing, together with a specific written explanation of the reason for refusal.
- (D) Any document accepted by the Office of the Secretary shall be effective at the time of receipt unless a delayed effective date and/or time not more than ninety (90) days after receipt by the Office of the Secretary is specified in the document.

- (E) Fees. The Office of the Secretary shall impose a reasonable filing fee for each document filed, initially not to exceed the sum of \$100.00, and an annual renewal fee initially not to exceed the sum of \$25.00 during the life of the LLC, subject to any uniform schedule of fees as may hereafter be adopted by the Office of the Secretary from time to time.

Section 1.12 Certificate of Status.

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

Section 1.13 Execution by Judicial Act.

Any person who is adversely affected by the failure or refusal of any person to execute and file any Articles or other document to be filed under this Code may petition the Tribal Court to direct the execution and filing of the Articles or other document. Nothing in this Code, however, serves to waive any aspect of the Band's sovereign immunity..

Section 1.14 Interstate Application.

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

**CHAPTER 2
OPERATING AGREEMENT AND DEALING WITH LLC**

Section 2.1 Articles of Organization.

- (A) One or more Citizens may organize a limited liability company by signing and delivering the Articles of Organization to the Office of the Secretary for filing. The Organizer(s) need not be Members of the LLC at the time of organization or thereafter.
- (B) A limited liability company shall have one or more Members.
- (C) The Articles of Organization shall contain all of the following information:

- (1) A statement that the LLC is organized under this Code.
 - (2) A name for the LLC that satisfies the provisions of this Code.
 - (3) The street address of the registered office and the name of the registered agent at that office. For all LLC's formed pursuant to this Code such office and agent shall be located within the exterior boundaries of the Reservation or other trust lands.
 - (4) If management of the LLC is vested in one or more Managers, a statement to that effect.
 - (5) The name and address of each person organizing the LLC.
 - (6) Whether the LLC is Tribally-owned.
 - (7) If Tribally-owned, whether the LLC is to enjoy Tribal sovereign immunity and the scope of any waiver of that immunity.
- (D) The Office of the Secretary shall assign each Article of Organization an identification number.
- (E) Amendment. An LLC may amend its Articles of Organization at any time by delivering an amendment, with filing fee, for filing to the Office of the Secretary.
- (F) Effect of Delivery or Filing.
- (1) An LLC is formed when the Articles of Organization become effective under Section 1.11(D).
 - (2) The Office of the Secretary's filing of the Articles of Organization is conclusive proof that the LLC is organized and formed under this Code.

Section 2.2 Agency Power of Members and Managers.

- (A) Except as provided in subsection (B), below:

- (1) Each Member is an agent of the LLC, but not of any of the other Members, for the purpose of its business.
 - (2) The act of any Member, including the execution in the name of the LLC of any instrument for apparently carrying on in the ordinary course of business of the LLC, binds the LLC in the particular matter, unless the person with whom the Member is dealing has knowledge that the Member has no authority to act in this matter.
 - (3) If the Band is a Member, the Band's authority shall be exercised pursuant to Section 9.4(A).
- (B) If management of the LLC is vested in one or more Managers:
- (1) No Member, solely by being a Member, is an agent of the LLC or of the other Members.
 - (2) Each Manager is an agent of the LLC, but not for the other Members, for the purpose of its business. The act of any Manager, including the execution in the name of the LLC of any instrument for apparently carrying on the ordinary course of business of the LLC, binds the LLC unless the Manager has, in fact, no authority to act for the LLC in the particular matter, and the person with whom the Manager is dealing has knowledge that the Manager has no authority to act in the matter.
- (C) No act of a Member or, if management of the LLC is vested in one or more Managers, of a Manager that is not apparently authorized for the carrying on in the ordinary course of business the business of the LLC, shall bind the LLC unless in fact authorized at the time of the transaction or at any other time.

Section 2.3 Admissions of Members and Managers.

- (A) Except as provided in Section 2.3(B)(2) an admission or representation made by any Member concerning the business of an LLC within the

scope of the Member's actual authority may be used as evidence against the LLC in any legal proceeding.

- (B) If management of the LLC is vested in one or more Managers:
 - (1) An admission or representation made by a Manager concerning the business of an LLC within the scope of the Manager's authority may be used as evidence against the LLC in any legal proceeding.
 - (2) The admission or representation of any Member, acting solely in the Member's capacity as a Member, is not evidence against the LLC in any legal proceeding.

Section 2.4 Knowledge of or Notice to Member or Manager.

- (A) Except as provided in Section 2.4(B)(2) notice to any Member of any matter relating to the business of an LLC, and the knowledge of a Member acting in the particular matter, acquired while a Member or known by the person at the time of becoming a Member, and the knowledge of any Member who reasonably could and should have communicated it to the acting Member, operate as notice to or knowledge of the LLC.
- (B) If management of the LLC is vested in one or more Managers:
 - (1) Notice to any Manager of any matter relating to the business of the LLC, and the knowledge of the Manager acting in the particular matter acquired while a Manager or known by the person at the time of becoming a Manager and the knowledge of any other Manager who reasonably could and should have communicated it to the acting Manager, operate as notice to or knowledge of the LLC.
 - (2) Notice to or knowledge of any Member while the Member is acting solely in the capacity of a Member is not notice to or knowledge of the LLC.

Section 2.5 Liability of Members to Third Parties.

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

Section 2.6 Parties to Action.

A Member of an LLC is not a proper party to a proceeding by or against an LLC solely by reason of being a Member of the LLC, except if any of the following exist:

- (A) The object of the proceeding is to enforce a Member's right against or liability to the LLC.
- (B) The action is brought by a Member under Section 2.7.

Section 2.7 Authority to Sue.

Unless otherwise provided in the Operating Agreement, an action on behalf of an LLC may be brought in the name of the LLC by:

- (A) One or more Members of the LLC, if authorized by a Majority in Interest of Members, excluding the vote of any Member who has an interest in the outcome of the action that is adverse to the interest of the LLC.
- (B) One or more Managers of an LLC if the management of the LLC is vested in one or more Managers, or if the Managers are authorized to sue by a Majority in Interest of Members.

Nothing contained herein shall be construed as authorizing actions of any kind whatsoever against the Band as Member unless otherwise provided in the Operating Agreement.

CHAPTER 3 MEMBERS AND MANAGERS

Section 3.1 MANAGEMENT.

- (A) Unless the Articles of Organization vest management in one or more Managers, management of the LLC shall be vested in the Members subject to any provision in the Operating Agreement or this Code restricting or enlarging the management rights and duties of any Member or group of Members.

In a Member-managed liability company, the following rules shall apply, unless otherwise provided in the Operating Agreement or this Code:

- (1) A difference arising among Members as to a matter in the ordinary course of the activities of the LLC may be decided by a majority in membership interests. .
- (2) An act outside the ordinary course of activities of a limited liability company may be undertaken only with the consent of all the Members.

- (B) If the Articles of Organization vest management in one or more Managers, management of the business or affairs of the LLC shall be vested in the Manager or Managers subject to any provisions in the Operating Agreement or this Code restricting or enlarging the management rights and duties of any Manager or group of Managers. Unless otherwise provided in the Operating Agreement, the Manager or Managers:

- (1) Shall be designated, appointed, elected, removed, or replaced by a vote of a Majority in Interest of the Members.
- (2) Need not be Members of the LLC nor individuals.
- (3) Unless earlier removed or earlier resigned, shall hold office until a successor is elected and qualified.

Section 3.2 Duties.

Unless otherwise provided in the Operating Agreement:

- (A) No Member or Manager shall act or fail to act in a manner that constitutes any of the following:
 - (1) A willful failure to deal fairly with the LLC or its Members in connection with a matter in which the Member or Manager has a material conflict of interest.
 - (2) A violation of criminal law involving moral turpitude or affecting the interests of the LLC.
 - (3) A transaction from which the Member or Manager derived an improper personal profit.
 - (4) Willful misconduct.

- (B) Every Member and Manager shall account to the LLC and hold as trustee for it any improper personal profit derived by that Member or Manager without the consent of a Majority in Interest of the disinterested Members or Managers, or other persons participating in the management of the LLC, from any of the following:
 - (1) A transaction connected with the organization, conduct, or winding up of the LLC.
 - (2) A use by a Member or Manager of the property of an LLC, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as Member or Manager.
 - (3) Operating Agreement may impose duties on its Members and Managers that are in addition to, but not in abrogation of, those provided in subsection (A) above.

Section 3.3 Limitation of Liability and Indemnification.

- (A) In this Section, "expenses" mean expenses of defending a lawsuit, including attorney's fees, and any civil judgment or penalty, or

settlement payment in lieu thereof, paid in connection with a lawsuit against a Member or Manager in such capacity.

- (B) An LLC shall indemnify or allow expenses to each Member and each Manager for all reasonable expenses incurred with respect to a proceeding if that Member or Manager was a party to the proceeding in the capacity of a Member or Manager.
- (C) The Operating Agreement may alter or provide additional rights to indemnification or allowance of expenses to Members and Managers.
- (D) Notwithstanding subsections (B) and (C) above, an LLC may not act to indemnify a Member or Manager unless it is determined that the Member or Manager did not breach or fail to perform a duty to the LLC as provided in Section 3.
- (E) Unless otherwise provided in the Operating Agreement:
 - (1) A Member or Manager shall be conclusively presumed not to have breached or failed to perform a duty to the LLC to the extent that the Member or Manager has been successful on the merits or otherwise in the defense of the proceeding.
 - (2) In situations not described in paragraph (a), above, the determination of whether Member or Manager has breached or failed to perform a duty to the LLC shall be made by the vote of a Majority in Interest of the Members, excluding any Member who is a party to the same or related proceeding unless all Members are parties.

Section 3.4 Voting.

- (A) Unless otherwise provided in the Operating Agreement or this Section, and subject to subsection (B) below, an affirmative vote, approval, or consent as follows shall be required to decide any matter connected with the business of an LLC.

- (1) If management of an LLC is reserved to the Members, an affirmative vote, approval, or consent by a Majority in Interest of Members.
 - (2) If the management of an LLC is vested in one or more Managers, the affirmative vote, consent, or approval of more than fifty percent (50%) of the Managers.
- (B) Unless otherwise provided in the Operating Agreement or this Code, the affirmative vote, approval, or consent of all Members shall be required to do any of the following:
- (1) Amend the Articles of Organization.
 - (2) Issue an interest in an LLC to any person.
 - (3) Adopt, amend, or revoke Operating Agreement.
 - (4) Allow an LLC to accept any additional contribution from a Member.
 - (5) Allow a partial redemption of an interest in an LLC under Section 5.3.
 - (6) Value contributions of Members under Section 4.1.
 - (7) Authorize a Manager, Member, or other person to do any act on behalf of the LLC that contravenes the Operating Agreement.
- (C) Unless otherwise provided in the Operating Agreement, if any Member is precluded from voting with respect to a given matter, the value of the contribution represented by the interest in the LLC with respect to which the Member would otherwise have been entitled to vote shall be excluded from the total contributions made to the LLC for purposes of determining the fifty percent (50%) threshold under Section 1.5(I) for that matter.
- (D) Unless otherwise provided in Operating Agreement or this Section, if all or part of an interest in the LLC is assigned under Section 6.4, the

assigning Member shall be considered the Member of the assigned interest for purposes of determining the 50% threshold under Section 1.5(I) until the assignee of the interest in the LLC becomes a Member under Section 6.6.

Section 3.5 Records and Information.

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

Section 3.6 Admission of Members.

- (A) In connection with the formation of an LLC, a person acquiring an LLC interest is admitted as a Member upon formation unless the Operating Agreement otherwise provides.
- (B) After the formation of an LLC, a person acquiring an LLC interest is admitted as a Member of the LLC as specified in the Operating Agreement or, if not so specified, by consent of all the other Members, or, if the person is an assignee of another person's LLC interest, only pursuant to Section 6.6.

Section 3.7 Dissociation.

- (A) A person ceases to be a Member of an LLC upon the simultaneous occurrence of and at the same time of any of the following events:
 - (1) The Member withdraws by voluntary act.
 - (2) The Member is removed as a Member in accordance with the Operating Agreement or this Code.
 - (3) Unless otherwise provided in the Operating Agreement or by the written consent of all Members at the time of the event, the Member does any of the following:
 - (a) Makes an assignment for the benefit of the creditors.
 - (b) Files a petition in bankruptcy.
 - (c) Becomes the subject of an order for relief under the federal bankruptcy laws or state or Tribal insolvency laws.
 - (d) Fails to gain dismissal of any federal bankruptcy or state or Tribal insolvency proceeding within 120 days of commencement of an involuntary proceeding.

- (4) Unless provided in the Operating Agreement or by the written consent of all Members, if the Member is an individual, either of the following occurs:
 - (a) The Member's death.
 - (b) The entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's person or estate.
- (5) Unless otherwise provided in the Operating Agreement or by written agreement or by the written consent of all Members at the time, if the Member is a trust, corporation, partnership, or limited liability company upon liquidation, dissolution, or termination.
- (B) The Members may provide in the Operating Agreement for other events the occurrence of which result in a person ceasing to be a Member of the LLC.
- (C) Unless the Operating Agreement provides that a Member does not have the power to withdraw by voluntary act from an LLC, the Member may do so at any time by giving written notice to the other Members or as provided in the Operating Agreement. If the Member has the power to withdraw but the withdrawal is a breach of the Operating Agreement, the LLC may offset the damages against the amount otherwise distributable to the Member, in addition to pursuing any remedies provided for in the Operating Agreement or otherwise available under applicable law.

CHAPTER 4 FINANCE

Section 4.1 Contributions.

- (A) A Member's contributions to an LLC may consist of cash, property, or services rendered, or promissory notes or other written obligations to provide cash or property or to perform services.

- (B) The value of a Member's contribution shall be determined in the manner provided in the Operating Agreement. If the Operating Agreement does not fix a value to a contribution, the value of a contribution shall be approved by a Majority in Interest of the Members, shall be properly reflected in the records and information kept by the LLC under Section 3.5(A). The value of contributions so determined shall be binding and conclusive on the LLC and its Members.

Section 4.2 Liability for Contribution.

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

Section 4.3 Allocation of Profits and Losses.

The profits and losses of an LLC shall be allocated among the Members in the manner provided in the Operating Agreement. If the Members do not enter into an Operating Agreement or the Operating Agreement does not provide otherwise, profits and losses shall be allocated on the basis of value of the contributions made by each Member.

CHAPTER 5 NON-LIQUIDATING DISTRIBUTIONS

Section 5.1 Interim Distributions.

Except as provided in this Part, a Member is entitled to receive distributions from an LLC before the Member's dissociation from the LLC and before its dissolution and winding up to the extent and at the times or upon the events specified in the Operating Agreement, or to the extent and at the times determined by the Members or Managers.

Section 5.2 Allocation of Distributions.

Distributions of cash or other assets of an LLC shall be allocated among the Members as provided in Operating Agreement, or if the Operating Agreement does not so provide, on the basis of the value of the contributions made by each Member.

Section 5.3 Distribution Upon Partial Redemption.

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

Section 5.4 Distribution Upon Dissociation.

Except as otherwise provided in this Part, upon an event of dissociation under Section 3.7 that does not cause dissolution of the LLC, a dissociating Member is entitled to receive any distribution to which Member is entitled under the Operating Agreement and, if not otherwise provided in the Operating Agreement, the fair market value of the Member's interest in the LLC based on the Member's rights to share in distributions from the LLC.

Section 5.5 Distribution in Kind.

Unless otherwise provided in the Operating Agreement:

- (A) A Member may not demand and receive any distribution from an LLC in any form other than cash.

- (B) A Member may not be compelled to accept a distribution of any asset in kind except for a liquidating distribution made proportionately.

Section 5.6 Right to Distribution.

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

Section 5.7 Limitations of Distributions.

- (A) An LLC may not declare or make a distribution to any of its Members, if after giving effect to the distribution, any of the following would occur:
 - (1) The LLC would be unable to pay its debts as they become due in the usual course of business.
 - (2) The fair market value of the LLC's total assets would be less than the sum of its total liabilities plus, unless the Operating Agreement provides otherwise, the amount that would be needed for the preferential rights upon dissolution of Members, if any.
- (B) An LLC may base a determination that a distribution is not prohibited by subsection (A), above, on any of the following:
 - (1) Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable under the circumstances.
 - (2) A fair market valuation or other method that is reasonable under the circumstances.
- (C) An LLC's indebtedness to a Member incurred by reason of a distribution made in accordance with this Section is at parity with the LLC's indebtedness to its general unsecured creditors, except to the

extent subordinated by written agreement. This Section does not affect the validity or priority of a security interest in an LLC's property that is created to secure the indebtedness to the Member.

Section 5.8 Liability for Wrongful Distribution.

- (A) Except as provided in subsection (B) below, a Member (other than the Band or Tribal Entity) or Manager who votes or assents to a distribution in violation of Section 5.7 or of the Operating Agreement is personally liable to the LLC for the amount of the excess distribution, subject to contribution from all other Managers or Members participating in such action.
- (B) An action to recover under this Section may be brought in the Tribal Court; however, a proceeding under this Section is barred unless it is brought within two (2) years after the date of the distribution.
- (C) Nothing in this Code serves to waive any aspect of the Band's sovereign immunity, and any waiver thereof must be provided explicitly in the LLC's Operating Agreement.

CHAPTER 6 MEMBERSHIP AND TRANSFER OF PROPERTY

Section 6.1 Membership of LLC Property.

- (A) All property originally transferred to or acquired by an LLC is property of the LLC and not the Members individually.
- (B) Property acquired with LLC funds is presumed to be LLC property.
- (C) Property may be acquired, held, and conveyed in the name of the LLC.

Section 6.2 Transfer of Property.

The property of an LLC may be transferred by an instrument of transfer executed by any Member in the name of the LLC, unless management is vested in Managers, in which case the document of transfer shall be executed by a Manager, subject to any limitation that may be imposed by the Operating Agreement.

Section 6.3 Nature of Interest.

An LLC interest is personal property.

Section 6.4 Assignment of LLC Interest.

- (A) Unless otherwise provided in the Operating Agreement:
- (1) An LLC interest is assignable in whole or in part.
 - (2) An assignment of an LLC interest entitles the assignee to receive only the distributions and to share in the allocations of profits and losses to which the assignee would be entitled with respect to the assigned interest.
 - (3) An assignment of an LLC interest does not dissolve the LLC.
 - (4) Unless and until the assignee becomes a Member of the LLC under Section 6.6, the assignment of an LLC interest does not entitle the assignee to participate in the management or exercise rights of a Member.
 - (5) Unless and until the assignee of an LLC interest becomes a Member of the LLC under Section 6.6, the assignor continues to be a Member.
 - (6) The assignor of an LLC interest is not released from any personal liability arising under this Code as a Member of the LLC solely as a result of the assignment.
- (B) Unless otherwise provided in the Operating Agreement, the granting of a security interest, lien, or other encumbrance in or against any or all of a Member's LLC interest is not assignable and shall not cause the Member to cease to have the power to exercise any rights or powers of a Member.

Section 6.5 Rights of Judgment Creditor.

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

Section 6.6 Right of Assignee to Become a Member.

- (A) Unless otherwise provided in the Operating Agreement, an assignee of an LLC interest may become a Member only if the other Members unanimously consent.
- (B) An assignee of an LLC interest who becomes a Member has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of the assignor under the Operating Agreement and this Code.
- (C) Unless otherwise provided in the Operating Agreement, an assignor of an LLC interest is not released from any liability to the LLC without the written consent of all the Members, whether or not the assignee becomes a Member.

Section 6.7 Powers of Legal Representative.

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

CHAPTER 7 DISSOLUTION

Section 7.1 Dissolution.

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

- (A) The occurrence of events specified in the Operating Agreement.
- (B) The written consent of all Members.
- (C) An event of dissociation of a Member, unless otherwise provided in the Operating Agreement or continuation is consented to by all remaining Members.
- (D) Entry of a decree of judicial dissolution under Section 7.2.

Section 7.2 Judicial Dissolution.

- (A) In a proceeding by or for a Member, the Tribal Court or court of competent jurisdiction may order dissolution of an LLC if any of the following is established:
 - (1) That it is not reasonably practicable to carry on the business of the LLC.
 - (2) That the LLC is not acting in conformity with its Operating Agreement.
 - (3) That one or more Managers are acting or will act in a manner that is illegal, oppressive, or fraudulent.
 - (4) That one or more Members in control of the LLC are acting or will act in a manner that is illegal, oppressive, or fraudulent.
 - (5) That LLC assets are being misapplied or wasted.
- (B) If the Band is a Member of the LLC, any action under this Section must be brought in the Tribal Court, unless explicitly otherwise

provided in the Operating Agreement. Nothing in this Section may be construed as a waiver of the Band's sovereign immunity from suit, and any waiver thereof must be provided explicitly in the LLC's Operating Agreement.

Section 7.3 Winding Up.

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

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

Section 7.4 Distribution of Assets.

Upon the winding up of an LLC, the assets shall be distributed in the following order:

- (A) To creditors, including to the extent permitted by law, Members, and former Members in satisfaction of liabilities of the LLC.
- (B) Unless otherwise provided in the Operating Agreement, to Members and former Members in satisfaction of liabilities for distributions under Sections 5.1, 5.3, and 5.4.
- (C) Unless otherwise provided in the Operating Agreement, to Members and former Members first for the return of their contributions in proportion to their respective values and, thereafter, in proportion to their respective rights to share in distributions from the LLC before dissolution.

Section 7.5 Articles of Dissolution.

After the dissolution of an LLC under Section 7.1, the LLC may file Articles of Dissolution with the Office of the Secretary that include the following:

- (A) The name of the LLC.
- (B) The date of filing of its Articles of Organization.
- (C) The statutory grounds under Section 7.1 for dissolution.
- (D) The delayed effective date of the Articles of Dissolution under Section 1.11(C), if applicable.

Section 7.6 Known Claims Against Dissolved LLC.

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

Section 7.7 Unknown or Contingent Claims.

A claim not barred under Section 7.6 may be enforced:

- (A) Against the dissolved LLC, to the extent of its undistributed assets.
- (B) If the dissolved LLC's assets have been distributed in liquidation, against a Member of the LLC, other than the Band, to the extent of the Member's proportionate share of the claim or of the assets of the LLC distributed to the Member in liquidation, whichever is less, but a

Member's total liability for all claims under this Section may not exceed the total value of assets at the time distributed to the Member.

CHAPTER 8 MERGER AND CONVERSION

Section 8.1 Definitions.

- (A) "Business Entity" in this Part means a Domestic business entity and a foreign business entity.
- (B) "Domestic business entity" means a Corporation, incorporated under the laws of the Pokagon Band of the Potawatomi Indians; a Domestic LLC, organized under this Code; a tribally- chartered entity of the Band, an unincorporated cooperative of the Band; a Section 17 Corporation owned by the Band; or other tribally-formed entity, that is party to the merger.
- (C) "Foreign business entity" means a Foreign Limited Liability Company, a Foreign limited partnership, or a Foreign Corporation.
- (D) Unless the context requires otherwise, in this Article "LLC" includes a Domestic LLC and a Foreign LLC.
- (E) "Organizational Documents" include Articles of Organization, Operating Agreements, Articles of Incorporation, Bylaws, partnership agreements, agreements of trust and declarations of trust, and any other basic records that create a Business Entity's organization and determine its internal governance and relations among persons that own it, have an interest in it, or are Members of it.

Section 8.2 Merger.

- (A) Unless otherwise provided in its Operating Agreement, one or more LLCs may merge with or into one or more other Business Entities if the action of merger is a process permitted under the applicable laws of the jurisdiction that governs each such other Business Entity and each such Business Entity approves the plan of merger in accordance with its Organizational Documents.

- (B) Interests or shares in an LLC that is a party to a merger may be exchanged for or converted into cash, property, obligations, or interest in the surviving Business Entity.

Section 8.3 Approval of Merger.

- (A) Unless otherwise provided in the Operating Agreement, a Domestic LLC that is a party to a proposed merger shall approve the plan of merger by an affirmative vote by all of the Members.
- (B) Unless otherwise provided in the Operating Agreement, the manager or managers of a Domestic LLC may not approve a merger without also obtaining the approval of the LLC's Members under subsection (1), above.
- (C) Each Business Entity, other than a Domestic LLC, that is a party to a proposed merger shall approve the merger in the manner and by the vote required by the laws applicable to the Business Entity and in accordance with their respective Organizational Documents.
- (D) Each Business Organization that is a party to the merger shall have any rights to abandon the merger as provided for in the plan of merger or in the laws applicable to the Business Entity or in accordance with its Organizational Documents.
- (E) Upon approval of a merger, the LLC shall notify its Members of the approval and of the effective date of the merger.
- (F) After a merger is authorized, and at any time before the Articles of Merger are filed with the Office of the Secretary, the planned merger may be abandoned, subject to any contractual rights, without further action on the part of the shareholders or other Members, in accordance with the procedures set forth in the plan of merger or, if none is set forth, in the manner determined by the governing body of any Business Entity that is a party to the merger.

Section 8.4 Plan of Merger. The plan of merger shall include all of the following:

- (A) The name, form of Business Entity, and identity of the jurisdiction governing each Business Entity that is a party to the merger and the name, form of business entity, and identity of the jurisdiction of the surviving business entity with, or into, which each other business entity proposes to merge.
- (B) The terms and conditions of the proposed merger.
- (C) The manner and basis of converting the interests in each business entity that is a party to the merger into shares, interests, obligations, or other securities of the surviving Business Entity or into cash or other property in whole or in part.
- (D) Amendments to the Articles of Organization or other similar governing document of the surviving Business Entity.
- (E) Other necessary or desirable provisions relating to the proposed merger.

Section 8.5 Articles of Merger.

- (A) The surviving Business Entity shall deliver to the Office of the Secretary Articles of Merger, executed by each party to the plan of merger, that include all of the following:
 - (1) The plan of merger.
 - (2) The name of the surviving or resulting LLC.
 - (3) The effective date and time of the merger.
 - (4) A statement as to whether the surviving Business Entity is Tribally-Owned.
 - (5) If Tribally-Owned, a statement as to whether the surviving Business Entity enjoys the Band's sovereign immunity.

- (6) A statement that the plan of merger was approved by each Domestic LLC that is a party to the merger in accordance with Section 8.3.
- (B) A merger takes effect upon the effective date of the Articles of Merger.

Section 8.6 Effects of Merger. A merger has the following effects:

- (A) The Business Organization must become a single Entity, which shall be the Entity designated in the plan of merger as the surviving LLC.
- (B) Each Business Organization, except the surviving LLC, ceases to exist.
- (C) The surviving LLC possesses all of the rights, privileges, immunities, and powers of each merged Business Organization and is subject to all of the restrictions, disabilities, and duties of each merged Business Organization.
- (D) All property and all debts, including contributions, and each interest belonging to or owed to each of the Business Organizations are vested in the surviving LLC without further act.
- (E) Title to all real estate and any interest in real estate, vested in any Business Organization, does not revert, and is not in any way impaired because of the merger.
- (F) The surviving LLC has all the liabilities and obligations of each of the Business Organizations and any claim existing or action or proceedings pending by or against any merged Business Organization may be prosecuted as if the merger had not taken place, or the surviving LLC may be substituted in the action.
- (G) The rights of creditors and any liens on the property of any Business Organization survive the merger.
- (H) The interests in a Business Organization that are to be converted or exchanged into interest, cash, obligations, or other property under the terms of the plan of merger are converted and the former interest

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

- (I) The Articles of Organization of the surviving LLC is amended to the extent provided in the Articles of Merger.

Section 8.7 Right to Object.

Unless otherwise provided in the Operating Agreement, upon receipt of the notice required by Section 8.3(E), a Member who did not vote in favor of the merger may, within twenty (20) days after the date of the notice, voluntarily dissociate from the LLC under Section 3.7(C) and receive fair value for the Member's LLC interest under Section 5.4.

Section 8.8 Conversion.

- (A) Unless otherwise provided in its Organizational Documents, a Domestic LLC may convert to another form of Business Entity if it:
 - (1) Satisfies the requirements under this Chapter relating to conversions; and
 - (2) If the conversion is permitted under the applicable law of the jurisdiction that governs the organization of the Business Entity into which the Domestic LLC is converting.
- (B) Unless otherwise provided in its Organizational Documents, a Business Entity other than a Domestic LLC may convert into a Domestic LLC if it:
 - (1) Satisfies the requirements under this Chapter relating to conversions; and
 - (2) If the conversion is permitted under the applicable law of the jurisdiction that governs the Business Entity.
- (C) The filing requirements of Section 1.11 apply to conversions under this Chapter.

- (D) Notwithstanding its prior approval, a plan of conversion under this Chapter may be amended before the conversion takes effect if the amendment is approved by the members of the converting Domestic LLC or Business Entity in the same manner as was required for the approval of the original plan of conversion.

Section 8.9 Conversion of Domestic LLC into Another Business Entity.

A Domestic LLC may convert into another Business Entity if all of the requirements of Section 8.10 and Section 8.11 are satisfied.

Section 8.10 Plan of Conversion for Domestic LLC into Another Business Entity.

- (A) Unless subsection (3) applies, the Domestic LLC proposing to convert shall adopt a plan of conversion that includes all of the following:
 - (1) The name of the Domestic LLC, the name of the Business Entity into which the Domestic LLC is converting, the type of Business Entity into which the Domestic LLC is converting, identification of the statute that will govern the internal affairs of the surviving Business Entity, the street address of the surviving Business Entity, the street address of the Domestic LLC if different from the street address of the surviving Business Entity, and the principal place of business of the surviving Business Entity.
 - (2) The terms and conditions of the proposed conversion, including the manner and basis of converting the membership interest of the Domestic LLC into Membership interests or obligations of the surviving Business Entity, into cash, into other consideration that may include Membership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.
 - (3) The terms and conditions of the Organizational Documents that are to govern the surviving Business Entity.

- (4) Any other provisions with respect to the proposed conversion that the Domestic LLC considers as necessary or desirable.
- (B) A vote of the members of the Domestic LLC is required to adopt a plan of conversion under subsection (A). A unanimous vote of the members entitled to vote is required to approve a plan of conversion unless its Organizational Documents provide otherwise.
- (C) If the Domestic LLC has not commenced business; has not issued any membership interests; has no debts or other liabilities; and has not received any payments, or has returned any payments it has received after deducting any amount disbursed for payment of expenses, for subscriptions for its membership interests, subsections (A) and (B) do not apply and the Members of the Domestic LLC, may approve of the conversion of the Domestic LLC into another Business Entity by majority vote. To effect the conversion, a majority of the Members must execute and file a certificate of conversion under Section 8.11.

Section 8.11 Filing of Certificate of Conversion for Domestic LLC.

- (A) If the plan of conversion is approved under Section 8.10(B), the Domestic LLC shall file any formation documents required to be filed under the laws governing the internal affairs of the surviving Business Entity, in the manner prescribed by those laws, and shall file a certificate of conversion with the Office of the Secretary. The certificate of conversion shall include all of the following:
 - (1) Unless Section 8.10(C) applies a copy of the plan of conversion.
 - (2) The name of the Domestic LLC that is converting into another business entity.
 - (3) The type of business entity the Domestic LLC is converting into and the jurisdiction under which the surviving Business Entity shall be governed.
 - (4) A statement that the members of the Domestic LLC have adopted the plan of conversion under Section 8.10(B), or that the

Members of the Domestic LLC have approved of the conversion under Section 8.10(C), as applicable.

- (5) A statement that the surviving Business Entity will furnish a copy of the plan of conversion, on request and without cost, to any Member of the Domestic LLC.
- (6) The registered agent and registered office, of the Domestic LLC before and after conversion.
- (7) A Statement whether the Domestic LLC is Tribally-Owned.

Section 8.12 Effect of Conversion of Domestic LLC into Another Business Entity.

When a conversion under this Section takes effect, all of the following apply:

- (A) The Domestic LLC converts into the surviving Business Entity, and the Organizational Documents of the Domestic LLC are canceled.
- (B) Except as otherwise provided in this Code, the surviving Business Entity is organized under and subject to the organizational laws of the jurisdiction of the surviving Business Entity as stated in the Certificate of Conversion.
- (C) The surviving Business Entity has all of the liabilities of the Domestic LLC. The conversion of the Domestic LLC into a Business Entity under this Section shall not be considered to affect any obligations or liabilities of the Domestic LLC incurred before the conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the Domestic LLC with respect to matters arising before the conversion.
- (D) The title to all real estate and other property and rights owned by the Domestic LLC remain vested in the surviving Business Entity without reversion or impairment.

- (E) The surviving Business Entity is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the Domestic LLC was originally organized.
- (F) The membership interests of the Domestic LLC that were to be converted into Membership interest or obligations of the surviving Business Entity or into cash or other property are converted.
- (G) Unless otherwise provided in the plan of conversion, the Domestic LLC is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute a dissolution of the Domestic LLC.
- (H) The Organizational Documents of the surviving Business Entity are as provided in the plan of conversion.
- (I) All other provisions of the plan of conversion apply.

Section 8.13 Conversion of Business Entity into Domestic LLC.

A Business Entity may convert into a Domestic LLC if all of the requirements of Section 8.14 and 8.15 are satisfied.

Section 8.14 Plan of Conversion Business Entity into a Domestic LLC.

- (A) The Business Entity proposing to convert into a Domestic LLC adopts a plan of conversion that includes all of the following:
 - (1) The name of the Business Entity, the type of Business Entity that is converting, identification of the statute that governs the internal affairs of the Business Entity, the name of the surviving Domestic LLC into which the Business Entity is converting, the street address of the surviving Domestic LLC company, the street address of the Business Entity if different from the street address of the surviving Domestic LLC, and the principal place of business of the surviving Domestic LLC.
 - (2) The terms and conditions of the proposed conversion, including the manner and basis of converting the Membership interests of

the Business Entity into membership interests of the surviving Domestic LLC, into cash, into other consideration that may include Membership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.

- (3) The terms and conditions of the Organizational Documents that are to govern the surviving Domestic LLC.
 - (4) Any other provisions with respect to the proposed conversion that the Business Entity considers necessary or desirable.
- (B) If a plan of conversion is adopted by the Business Entity under subsection (A), the plan of conversion is submitted for approval in the manner required by the law governing the internal affairs of that Business Entity.
- (C) If the plan of conversion is approved under subsections (A) and (B), the Business Entity shall file a Certificate of Conversion with the Office of the Secretary. The Certificate of Conversion shall include all of the following:
- (1) A copy of the plan of conversion.
 - (2) A statement that the Business Entity has obtained approval of the plan of conversion under subsection (B).
 - (3) A statement that the surviving Domestic LLC will furnish a copy of the plan of conversion, on request and without cost, to any Member of the Business Entity.
 - (4) The registered agent and registered office, record agent and record office, or other similar agent and office of the surviving Domestic LLC before and after conversion.
 - (5) The type of Business Entity and the date and location of jurisdiction where the Business Entity was formed prior to converting into a Domestic LLC.

- (6) A statement whether the surviving Domestic LLC is Tribally-Owned.
- (7) Submission of Articles of Organization for the surviving Domestic LLC that meet all of the requirements of this Code.

Section 8.15 Effect of Conversion of Business Entity into Domestic LLC.

When a conversion under this Article takes effect, all of the following apply:

- (A) The Business Entity converts into the surviving Domestic LLC. Except as otherwise provided in this Section, the surviving Domestic LLC is organized under and subject to this Code.
- (B) The surviving Domestic LLC has all of the liabilities of the Business Entity. The conversion of the Business Entity into a Domestic LLC under this Section shall not be considered to affect any obligations or liabilities of the Business Entity incurred before the conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the Business Entity with respect to matters arising before conversion.
- (C) The title to all real estate and other property and rights owned by the Business Entity remains vested in the surviving Domestic LLC without reversion or impairment.
- (D) A proceeding pending against the Business Entity may be continued as if the conversion had not occurred, or the surviving Domestic LLC may be substituted in the pending proceeding for the Business Entity.
- (E) The surviving Domestic LLC is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the Business Entity was originally organized.
- (F) The Membership interests of the Business Entity that were to be converted into membership interests or obligations of the surviving Domestic LLC or into cash or other property are converted.

- (G) Unless otherwise provided in a plan of conversion, the Business Entity is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute a dissolution of the Business Entity.
- (H) The Organizational Documents of the Domestic LLC are as provided in the plan of conversion.
- (I) All other provisions of the plan of conversion apply.

CHAPTER 9 LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE BAND

Section 9.1 General Provisions for Tribally-Owned LLC's

- (A) *Tribally-Owned Companies.* There are hereby authorized to be created Limited Liability Companies wholly-owned by the Band, with the Band as the sole Member. Tribally-Owned Limited Liability Companies shall be created by a duly adopted resolution of the Tribal Council. The organizer shall file in accordance with Section 1.11. When the organizer files the Articles of Organization and the Operating Agreement of a Tribally-Owned LLC, a certified copy of the resolution authorizing the formation of the LLC and approving the articles shall be included. Tribally-Owned LLC's shall be considered to be instrumentalities of the Band.
- (B) *Tribally-Owned Subsidiary Companies.* There are hereby authorized to be created by resolution of the Board of Directors of a Tribally-Owned LLC or of a Tribal Corporation or of a tribally-chartered unincorporated instrumentality of the Band, or of a wholly-owned subsidiary of such a Tribally-Owned LLC or Tribal Corporation or tribally chartered unincorporated instrumentality of the Band, subsidiary LLC's to be wholly-owned by the parent Tribally-Owned LLC or parent Tribal Corporation or parent tribally-chartered unincorporated instrumentality of the Band, which shall be instrumentalities of the Band. The organizer of such a Tribally-Owned Subsidiary LLC shall file in accordance with Section 1.11. When the organizer files the Articles of Organization and the Operating

Agreement of the Tribally-Owned Subsidiary LLC, a certified copy of a resolution of the Board of Directors of the parent Tribally-owned LLC or parent Tribal Corporation or tribally-chartered unincorporated instrumentality of the Band authorizing the formation of the subsidiary LLC and approving the articles shall be included.

(C) *Privileges and Immunities.* The Limited Liability Companies established under Sections 9.1(A) and 9.1(B) shall be considered to be instrumentalities of the Band, and their officers and employees considered officers and employees of the Band, created for the purpose of carrying out authorities and responsibilities of the Tribal Council for economic development of the Band and the advancement of its Citizens. Such LLC's, their directors, officers, managers and employees shall, therefore, be entitled to all of the privileges and immunities enjoyed by the Band, including but not limited to immunities from suit in Federal, State and Tribal courts and from Federal, State, and local taxation or regulation.

(D) *Membership.*

(1) No Membership interest in any LLC in which the Band is a Member may be alienated unless approved by the Tribal Council. Further, no Membership interest in any Tribally-Owned Subsidiary LLC may be alienated unless approved by a duly adopted resolution of the Board of Directors of the parent Tribally-Owned LLC or parent Tribal Corporation.

(2) All interests in any Tribally-Owned LLC shall be held by and for a Band, or in the case of a wholly-owned subsidiary LLC, by the parent Tribally-Owned LLC or parent Tribal Corporation or parent tribally chartered unincorporated instrumentality of the Band. No individual member of the Band shall have any personal ownership interest in any LLC organized under this Part, whether by virtue of such person's status as a member of a Band, as an officer of a Band's Government, or otherwise.

(E) *Project Companies with Non-Tribal members.* Any LLC created pursuant to this Article, including subsidiary LLC's, may form or own interests or shares in partnerships, Corporations, or other Limited

Liability Companies with other governmental or non-governmental entities or persons under the laws of the Band or any other jurisdiction (“Project Companies”); provided, however, that the partial Membership interest in such Project Companies shall not diminish or affect the privileges and immunities of the Tribally-Owned LLC’s or Tribally-Owned Subsidiary LLC’s created pursuant to this Article.

- (F) *Purpose of Tribally-Owned LLC’s.* All Tribally-Owned LLC’s, whether directly or indirectly owned, shall state in their Operating Agreement the purpose of the LLC that relates to the overall needs, priorities, goals, and objectives of the Band’s government, including how the LLC will contribute to tribal economic policy and further the goals of self-determination and economic self-sufficiency.

- (G) *Waiver of Sovereign Immunity.* The Limited Liability Companies established under Sections 9.1(A) and 9.1(B) may only waive the privileges and immunities granted under Section 9.1(C) in the following manner:
 - (1) The LLC may specifically grant limited waivers of its immunity from suit and consent to be sued in Tribal Court or another court of competent jurisdiction or consent to binding arbitration pursuant to the procedures and authorities set forth in the LLC’s Operating Agreement; provided, however, that:
 - (a) Any such waiver or consent to suit granted pursuant to the LLC’s Operating Agreement shall include written language in any contract or agreement explicitly limiting said waiver to the specific dollar amount of the agreement;
 - (b) Any contract or agreement with such waiver or consent to suit language shall be submitted for review to an attorney representing the Band or the Tribally-Owned LLC prior to contract execution;
 - (c) Any such waiver or consent to suit granted pursuant to the LLC’s Operating Agreement shall in no way extend to any action against the Band, nor shall it in any way be

deemed a waiver of any of the rights, privileges and immunities of the Band;

- (d) Any recovery against the LLC shall be limited to the assets of the LLC (or such portion of the LLC's assets as further limited by the waiver or consent) and the Band shall not be liable for the payment or performance of any of the obligations of the LLC, and no recourse shall be had against any assets or revenues of the Band in order to satisfy the obligations of the LLC; including assets of the Band leased, loaned, or assigned to the LLC for its use, without transfer of title, and
 - (e) Any waiver of the LLC's immunities granted pursuant to the LLC's Operating Agreement shall be further limited or conditioned by the terms of such waiver.
- (2) The sovereign immunity of the LLC shall not extend to actions against the LLC by the Band acting as Member, or, in the case of a subsidiary LLC created pursuant to this Article, by the parent LLC acting as Member, pursuant to Section 9.1(A).
 - (3) The LLC must follow the method mandated by Section 9.2(B).
 - (4) Notwithstanding subsection (G)(1) above, the LLC may also specifically grant a limited waiver of its immunity from suit for participation in the United States Small Business Administration ("SBA") 8a Program in the manner required by federal regulations governing the program.

Section 9.2 Special Requirements for Tribally Owned LLC's

(A) *Formation.*

- (1) Tribally-Owned LLC's. Except as may be provided otherwise in the resolution authorizing the creation of the Tribally-Owned LLC, the Chairperson of the Tribal Council shall be the organizer of any Tribally-Owned Limited Liability Company.

(2) Subsidiaries of Tribally-Owned LLC's. A Board Member of the parent Tribally-Owned LLC or parent Tribal Corporation shall be the organizer of any Tribally-Owned Subsidiary LLC. If practicable, such Board Member shall also be a member of the Band. The C.E.O. of the parent Tribally-Owned LLC or Manager of a Tribally-Owned Subsidiary LLC shall be the organizer of any Tribally-Owned Second Tier Subsidiary LLC.

(3) Unless a delayed effective date is specified:

(a) The existence of a Tribally-owned LLC begins when the Articles of Organization have been approved by resolution of the Tribal Council in accordance with Section 9.1(A) and have been filed with the Office of the Secretary in accordance with Section 1.11.

(b) The existence of a subsidiary LLC owned by a Tribally-Owned LLC or Tribal Corporation begins when the Articles of Organization have been approved by a resolution of the Directors of the parent Tribally-Owned LLC or Tribal Corporation and have been filed with the Office of the Secretary in accordance with Section 1.11.

(c) The existence of a Tribally-Owned Second Tier Subsidiary LLC owned by a Tribally-Owned Subsidiary begins when the Articles of Organization have been approved by the C.E.O. or Manager of the Tribally-Owned Subsidiary or C.E.O. of the parent Tribally-Owned LLC.

(d) The Articles of Organization of any Tribally-owned LLC or subsidiary thereof, and any amendments thereto, shall be filed with the Office of the Secretary in accordance with Section 1.11, and shall state at a minimum the items set forth in Section 9.2(B) below.

(B) *Additional Requirements for the Articles of Organization.* As set forth in Section 9.1(G), Tribally-Owned LLC's established under Sections 9.1(A) and 9.1(B) may grant a limited waiver of sovereign immunity in order to promote economic development through commercial

transactions for which such a waiver is necessary and beneficial to the Band. The method for granting a limited waiver of sovereign immunity through the above mentioned entities is as follows:

- (1) The sovereign immunity of a Tribally-Owned LLC may be waived only by:
 - (a) A resolution adopted by the Board of Directors of the Tribally-Owned LLC for the specific purpose of granting a waiver, or in the case of Member-managed Tribally-Owned Subsidiary LLC, by the Member's Board of Directors; and
 - (b) The language of the waiver must be explicit and state that said waiver be specifically limited to the dollar amount of the agreement; and
 - (c) The waiver must be contained in a written contract or commercial document to which the LLC is a party.
- (2) Waivers of the sovereign immunity of a Tribally-Owned LLC granted by resolution of the Tribal Council may be granted only when necessary to secure a substantial advantage or benefit to the Tribally-Owned LLC. Waivers of sovereign immunity by resolution may not be general but must be specific and limited as to duration, grantee, transaction, property, court having jurisdiction, applicable law, and shall be specifically limited to the dollar amount of the agreement.

Section 9.3 Management of Tribally-Owned LLC's.

(A) *Management.*

- (1) All Tribally-Owned LLC's formed pursuant to Section 9.1(A) of this Code shall be managed by a Board of Directors in the manner described in the Company's Operating Agreement. The qualifications, number, terms and method for selecting and removing Directors of any Tribally-Owned LLC shall be specified in the LLC's Operating Agreement.

- (2) All Tribally-Owned Subsidiary LLC's formed pursuant to Section 9.2(B) of this Code, including Tribally-Owned Second Tier Subsidiary LLC's, may be Member managed or Manager managed. If Manager managed, the Company's Operating Agreement shall set forth the qualifications, number, terms, and method for selecting and removing such managers. If Member managed, the LLC shall have one or more persons exercising the functions of Chief Executive Officer.

(B) *Board of Directors*

- (1) Appointment of directors. The Tribal Council shall retain the power to appoint the Board of Directors for LLC's wholly-owned by the Band. The Board of Directors of a parent LLC shall have the power to appoint the Board of Directors of any Tribally-Owned Subsidiary LLC's. For all such subsidiary LLC's, the Board Members shall comprised of members of the Tribal Council, Tribal members, and/or individuals experiences in business and Tribal government.
- (2) Removal of directors. A director of an LLC wholly-owned by the Band may be removed with or without cause by the Tribal Council; or as specified in the LLC's Operating Agreement. A director of any Tribally-Owned Subsidiary LLC may be removed as specified in the LLC's Operating Agreement.
- (3) Loans to directors. A LLC wholly-owned, directly or indirectly, by the Band may not lend money to or guarantee the personal obligation of a director, officer, or employee of the Corporation under any circumstances.

Section 9.4 Decisions and Voting for Tribally-Owned and Tribally-Owned Subsidiary LLC's.

(A) *Voting.*

- (1) The Membership interests in all Tribally-Owned LLC's shall be voted in the accordance with the Tribal Council's procedures for voting and passing Tribal resolutions.
- (2) The Membership interests in a Tribally-Owned Subsidiary LLC, including Tribally-Owned Second Tier Subsidiary LLC's, shall be voted as provided in the Company's Operating Agreement.

Section 9.5 Distributions for Tribally-Owned LLC's

(A) Distributions of Income.

- (1) Subject to the Band's ultimate ownership right to all income generated by its Tribally-Owned LLC's, a Tribally-Owned LLC shall distribute the net income of the LLC to the Band as set forth in a dividend plan adopted in accordance with the Operating Agreement and duly approved by the Tribal Council, except that a Tribally-Owned LLC may retain reserves necessary to carry on the LLC's business in a reasonably prudent manner and as recommended by the Board of Directors, subject to further limitations set forth in Section 5.7 and in the Operating Agreement.
- (2) Subject to the parent Tribally-Owned LLC's or parent Tribal Corporation's ultimate ownership right to all income generated by its subsidiary LLCs, a subsidiary LLC created pursuant to Section 9.1(B) shall distribute the net income of the LLC to the parent Tribally-owned LLC or parent Tribal Corporation as set forth in a dividend plan adopted in accordance with the Operating Agreement and duly approved by its Board of Directors, except that a Tribally-Owned LLC may retain reserves necessary to carry on the LLC's business in a reasonably prudent manner and as recommended by the Board of Directors, subject to further limitations set forth in Section 5.7 and in the Operating Agreement.

Section 9.6 Additional Reports and Audits.

- (A) *Audit.* In addition to any Member inspection rights provided in the Operating Agreement of a Tribally-owned LLC, the Tribal Council may at any time, by process in the manner required to be provided in the Operating Agreement, require that any LLC wholly-owned by the Band, whether directly or indirectly, or an LLC in which the Band owns the majority interest, be audited by an independent auditor hired by the Band who shall have the absolute right to require access to all of the LLC's records and documents necessary for such an audit.
- (B) *Financial, Business, and Planning Information.* In addition to any reports to the Member required by the Operating Agreement, the Board of Directors of each Tribally-owned LLC, whether owned directly or indirectly, shall submit the following information to the Business Council:
- (1) Copies of any periodic financial statements (including monthly or quarterly balance sheets, profit and loss statements, and cash flow statements) as may be prepared in the ordinary course of business, promptly after such statements are furnished to the LLC's Board of Directors;
 - (2) A full report of the business activities of the company within 120 days after the close of each fiscal year; and
 - (3) A proposed annual plan for the following year, including any proposed funding from the Band or anticipated distributions to the Band.

Section 9.7 Actions Against Tribally-Owned LLC's

- (A) *Court Actions By the Band Authorized.* The Band, as Member of any Tribally-Owned Limited Liability Company organized pursuant to this Code, or in the case of a subsidiary LLC created pursuant to this Article, the parent Tribally-Owned LLC or Tribal Corporation acting as Member, may bring a civil action against the LLC to:
- (1) Enjoin temporarily or permanently any action of the LLC that is an ultra vires act outside the authority of the LLC and that is either:

- (a) Unlawful; or
 - (b) Has or could cause material harm to the assets of the LLC or the Band if no immediate action is taken.
 - (2) Require the distribution of the LLC's surplus net income, to the extent permitted by Section 5.7.
 - (3) An action against an LLC pursuant to this Section by the Band or by a parent LLC or Corporation, acting as Member,, shall not act as a waiver of the Band's, or the parent LLC or parent Corporation's, sovereign immunity from suit of any kind, including a countersuit by the Tribally-Owned LLC, its Board of Directors or its officers.
 - (4) In accordance with Section 9.1(C), the sovereign immunity of the LLC shall not extend to actions against the LLC by a Band acting as Member, or, in the case of a subsidiary LLC created pursuant to this Article, by the parent LLC acting as Member.
 - (5) Nothing contained herein shall be construed as authorizing actions of any kind whatsoever against the Band.
- (B) *Tribal Approval Required.* The filing of any court action against a Tribally-Owned LLC pursuant to this Article must be authorized by the Band as Member in the same manner as required in Section 9.4(A) for voting on any item properly coming before the Band as Member. The request for consideration of the proposed court action may be made by any member of the Tribal Council.
- (C) *Relief Available.* In any action brought under this Article, the Tribal Court may, based on clear and convincing evidence set forth in its findings of fact and conclusions of law:
- (1) Issue a temporary restraining order, preliminary injunction, and permanent injunctive relief pursuant to the procedures and standards applicable in the Tribal Court, except that no bond need be posted for any preliminary injunctive relief; or

- (2) Order that funds of the LLC be distributed to a Band to the extent permitted by the Operating Agreement and Section 5.7 of this Code.

CHAPTER 10

[RESERVED]

CHAPTER 11

EFFECTIVE DATE AND AUTHORITY

Section 11.1 Severability; Effect of Invalidity of Part of this Code

If the Tribal Court shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, article or part of this Code, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Code, but the effect thereof shall be confined to the clause, sentence, paragraph, section, article or Chapter of this Code as adjudged to be invalid or unconstitutional.

Section 11.2 Effective Date.

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

Section 11.3 Fees for Filing Documents and Issuing Certificates. The Office of the Secretary is authorized to establish reasonable fees for services consistent with the requirements of this Code.

Section 11.4 Certificates and Certified Copies to be Received into Evidence.

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

Section 11.5 Forms to be Furnished by the Tribal Secretary.

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

Legislative History

The “Pokagon Band of Potawatomi Indians Limited Liability Company Code” was enacted by the Tribal Council on October 10, 2011 by adoption of Resolution No. 11-10-10-03.