

**SISSETON-WAHPETON OYATE OF THE LAKE TRAVERSE RESERVATION
CHAPTER 80A
BUSINESS CORPORATION ORDINANCE**

Enacted by the Tribal Council:

*This Ordinance supersedes Chapter 8, the Sisseton-Wahpeton
Sioux Tribe Business Corporation Ordinance enacted May 4, 1982.*

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SISSETON-WAHPETON OYATE

CHAPTER 80A BUSINESS CORPORATION ORDINANCE

PART 1 GENERAL

80A-1-1. Citation.

This Chapter shall be known as the Sisseton-Wahpeton Oyate Business Corporation Ordinance.

80A-1-2. Definitions.

For the purpose of this Ordinance, unless the language or context clearly indicates that a different meaning is intended, the words, terms and phrases (and their plurals) defined in this Section have the meanings given to them herein.

- (A) **Acquiring Corporation.** "Acquiring corporation" means the tribal or foreign corporation that acquired the shares of a corporation in an exchange.
- (B) **Address.** "Address" means mailing address, including a zip code. In the case of a registered office or principal executive office, the term means the mailing address and the actual office location which shall not be a post office box.
- (C) **Articles.** "Articles" means, in the case of a corporation incorporated under or governed by this Ordinance, Articles of Incorporation, Articles of Amendment, a resolution of election to become governed by this Ordinance, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, Articles of Merger, Articles of Abandonment, and Articles of Dissolution. In the case of a foreign corporation, the term includes all documents served using a similar function required to be filed with the Tribal Vice Chairman or other officer of the Tribe.
- (D) **Board.** "Board" means the Board of Directors of a corporation.
- (E) **Certificated Security.** "Certificated Security" means a security that is represented by a certificate.
- (F) **Class.** "Class," when used with reference to shares, means a category of shares that differs in designation or one (1) or more rights or preferences from another category of shares of the corporation.

- (G) **Closely Held Corporation.** “Closely held corporation” means a corporation which does not have more than thirty-five (35) shareholders.
- (H) **Constituent Corporation.** “Constituent Corporation” means a tribal or foreign corporation that is a party to a merger or exchange.
- (I) **Corporation.** “Corporation” means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this Code.
- (J) **Director.** “Director” means a member of the Board.
- (K) **Distribution.** “Distribution” means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares. A distribution may be in the form of a dividend or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.
- (L) **Filed with the Tribal Vice Chairman.** “Filed with the Tribal Vice Chairman” means that an original of a document meeting the applicable requirements of this Code, signed and accompanied by a filing fee, has been delivered to the Tribal Vice Chairman of the Tribe on the Reservation. The Tribal Vice Chairman shall endorse on the original the word “Filed” and the month, day, year, and time of filing, record the document in the office of the Tribal Vice Chairman, and return the document to the person who delivered it for filing.
- (M) **Foreign Corporation.** “Foreign Corporation” means a corporation organized for profit that is incorporated under laws other than the laws of the Tribe.
- (N) **Good Faith.** “Good faith” means honesty in fact in the conduct of the act or transaction concerned.
- (O) **Intentionally.** “Intentionally” means that the person referred to either: (1) has a purpose to do or fails to do the act or cause the result specified, or (2) believes that the act or failure to act, if successful, will cause that result. A person “intentionally” violates a law if the person intentionally does the act or causes the result prohibited by the law, or if the person intentionally fails to do the act or cause the result required by the law, even though the person may not know of the existence or constitutionality of the law or the scope or meaning of the terms used in the law.
- (P) **Know; Knowledge.** A person “knows” or has “knowledge” of a fact when the person has actual knowledge of it. A person does not “know” or “have knowledge” of a fact merely because the person has reason to know of the fact.
- (Q) **Legal Representative.** “Legal representative” means a person empowered to act for another person, including, but not limited to, an agent, officer, partner, or associate of, an

organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and/or a receiver, guardian, custodian, or conservator of the person or estate of a person.

- (R) **Notice.** “Notice” is given by a shareholder of a corporation to the corporation or an Officer of the corporation when in writing and mailed or delivered to the corporation or the Officer at the registered office or principal executive office of the corporation. In all other cases, “notice” is given to a person when mailed to the person at an address designated by the person or at the last known address of the person, or when communicated to the person orally, or when handed to the person, or when left at the office of the person with a clerk or other person in charge of the office, or if there is no one in charge, when left in a conspicuous place in the office, or if the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein. Notice by mail is given when deposited in the United States mail with sufficient postage affixed. Notice is deemed received when it is given.
- (S) **Officer.** “Officer” means a person elected, appointed, or otherwise designated as an officer by the Board, and any other person deemed elected as an Officer pursuant to Section 80A-7-4.
- (T) **Organization.** “Organization” means a tribal or foreign corporation, foreign limited liability company, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.
- (U) **Outstanding Shares.** “Outstanding shares” means all shares duly issued and not reacquired by a corporation.
- (V) **Parent.** “Parent” of a specified corporation means a corporation that directly, or indirectly through related corporations, owns more than fifty percent (50%) of the voting power of the shares entitled to vote for Directors of the specified corporation.
- (W) **Person.** “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
- (X) **Principal Executive Office.** “Principal executive office” means an office where the elected or appointed chief executive officer of a corporation has an office. If the corporation has no elected or appointed chief executive officer, “principal executive office” means the registered office of the corporation.
- (Y) **Registered Office.** “Registered office” means the place designated in the Articles of a corporation as the registered office of the corporation.

- (Z) **Related Corporation.** “Related corporation” of a specified corporation means a parent or subsidiary of the specified corporation or another subsidiary of a parent of the specified corporation.
- (AA) **Reservation; Tribal Lands.** “Reservation” or “Tribal Fee Lands” means all lands under the jurisdiction of the Tribe pursuant to the Revised Constitution and Bylaws of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation (the “Tribal Constitution”), individual tribal member allotments, and all lands held in trust by the United States of America for the benefit of the Tribe or its members.

(“Fee” inserted between Tribal and Lands from Public Forum on Oct. 25, 2016)

- (BB) **Security.** “Security” means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing agreement; collateral trust certificate; pre-organization certificate or subscription; transferable shares; investment contract; investment metal contract or investment gem contract; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining right, title or lease or payments out of production under the right, title or lease; or in general, any interest or instrument commonly known as security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. “Security” does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period.
- (CC) **Series.** “Series” means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to its Articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one (1) or more rights and preferences from another category of shares within that class.
- (DD) **Share.** “Share” means one (1) of the units, however designated, into which the shareholder’s proprietary interests in a corporation are divided.
- (EE) **Shareholder.** “Shareholder” means a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of whole or fractional shares of the corporation.
- (FF) **Signed.** “Signed” means that the signature of a person has been written on a document and, with respect to a document required by this Ordinance to be filed with the Tribal Vice Chairman, means that the document has been signed by a person authorized to do so by this Ordinance, the Articles or By-laws, or a resolution approved by the affirmative vote of the required proportion or number of the Directors or the holders of the required proportion or number of the voting power of the shares present and entitled to vote. A signature on a document not required by this Ordinance to be filed with the Tribal Vice Chairman may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

- (GG) **Subsidiary.** “Subsidiary” of a specified corporation means a corporation having more than fifty percent (50%) of the voting power of its shares entitled to vote for Directors owned directly or indirectly through related corporations, by the specified corporation.
- (HH) **Surviving Corporation.** “Surviving corporation” means the tribal or foreign corporation resulting from a merger.
- (II) **Transaction Statement.** “Transaction Statement” means an initial transaction statement which documents (a) the transfer of an Uncertificated Security from the issuer to a new registered owner and if the security has been transferred subject to a registered pledge, to the registered pledgee; or (b) the pledge of an Uncertificated Security; or (c) the release of a pledge of an Uncertificated Security. The written statement shall contain: a description of the issue of which the Uncertificated Security is a part; the number of shares transferred, pledged or released; the name and address of any taxpayer identification number of any new registered owner or registered pledge; the notation of any liens and restrictions of the issuer or adverse claims, or a statement indicating there are no such liens, restriction or adverse claims; and the date the transfer, pledge, or release was registered.
- (JJ) **Tribal Corporation.** “Tribal Corporation” means a Corporation wholly owned by the Tribe and duly formed pursuant to a Section 17 Charter under the Indian Reorganization Act, a Tribal Resolution, the Business Corporation Code adopted by the Tribe, or other law.
- (KK) **Tribal Council.** “Tribal Council” means the Tribal Council as established by Article III, Section 1 of the Tribal Constitution as the governing body of the Tribe.
- (LL) **Tribal Court.** “Tribal Court” means the Sisseton Wahpeton Oyate Tribal Court as established by Article III, Section 5 of the Tribal Constitution.
- (MM) **Tribal Vice Chairman.** “Tribal Vice Chairman” means the Tribal Vice Chairman of the Tribal Council as established by Article III, Section 1 of the Tribal Constitution, and Article I, Section 3(f) of the By-Laws. The Tribal Vice Chairman may delegate any responsibilities and/or duties designated under this Code to an officer of the Tribe, or any other tribal office as determined by the Tribal Vice Chairman.
- (NN) **Tribe.** “Tribe” means the Sisseton Wahpeton Oyate including any of its political subdivisions, or any of its departments, agencies, instrumentalities, governmental entities, or commercial entities.
- (OO) **Trust Land.** “Trust land” means land held in trust by the United States government for the benefit of the Tribe or its members.
- (PP) **Uncertificated Security.** “Uncertificated Security” or “Uncertificated Shares” means a security or shares that are not represented by a certificate.

(QQ) Written Action. “Written action” means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the persons signing it, and all the counterparts, taken together, constitute one (1) written action by all of the persons signing them.

PART 2 APPLICATION

80A-2-1 Reservation of Right.

The Tribe reserves the right to amend or repeal the provisions of this Ordinance. A corporation incorporated under or governed by this Ordinance is subject to this reserved right.

80A-2-2 Corporations Wholly Owned by the Tribe or the Tribe’s Economic Development Authority.

The provisions of Part 16 of this Ordinance shall apply to all corporations incorporated under this Ordinance and wholly owned, directly or indirectly, by the Tribe or the Tribe’s Economic Development Authority. In the case of Tribal corporations wholly owned, directly or indirectly, by the Tribe or the Tribe’s Economic Development Authority, Part 16 of this Ordinance shall override and take precedence over any other provisions in this Ordinance.

80A-2-3 Sovereign Immunity of the Tribe Not Waived.

By the adoption of this Ordinance, the Tribe does not waive its sovereign immunity or consent to suit in any court, whether the court is federal, tribal or state, and neither the adoption of this Ordinance, nor the incorporation of any corporation hereunder, shall be construed to be a waiver of the sovereign immunity of the Tribe or a consent to suit against the Tribe in any court.

80A-2-4 Organized Under Constitution and Laws of Tribe.

All corporations incorporated pursuant to this Ordinance shall be considered organized under the Tribal Constitution and laws of the Tribe.

PART 3 INCORPORATION; ARTICLES

80A-3-1 Purposes.

A corporation may be incorporated under this Ordinance for any business purpose or purposes, except for banking or insurance, unless some other Chapter of the Tribal Codes of Law requires incorporation for any of those purposes under a different law. Unless otherwise provided in its Articles, a corporation has general business purposes.

80A-3-2 Incorporators.

One (1) or more persons may act as incorporators of a corporation by filing Articles of Incorporation for the corporation with the Tribal Vice Chairman.

80A-3-3 Articles.

(A) Articles; Required Provisions. The Articles of Incorporation shall contain:

- (1) The name of the corporation;
- (2) The address of the registered office of the corporation and the name of its registered agent, if any, at that address;
- (3) The aggregate number of shares that the corporation has authority to issue; and
- (4) The name and address of each incorporator.

(B) Provisions that May be Modified Only in Articles. The following provisions govern a corporation unless modified in the Articles:

- (1) A corporation has general business purposes;
- (2) A corporation has perpetual existence and certain powers;
- (3) The power to adopt, amend, or repeal the By-laws is vested in the Board;
- (4) A corporation must allow cumulative voting for Directors;
- (5) The affirmative vote of a majority of Directors present is required for an action of the Board;
- (6) A written action by the Board taken without a meeting must be signed by all Directors;
- (7) The Board may authorize the issuance of securities and rights to purchase securities;
- (8) All shares are common shares entitled to vote and are of one (1) class and one (1) series;
- (9) All shares have equal rights and preferences in all matters not otherwise provided for by the Board;
- (10) The par value of shares is fixed at one (\$0.01) cent per share for certain purposes and may be fixed by the Board for certain other purposes;

- (11) The Board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits, divisions, or combinations, and determine the value of non-monetary consideration;
 - (12) Shares of a class or series must not be issued to holders of shares of another class or series to effectuate share dividends or splits, divisions, or combinations, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued;
 - (13) A corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the Board;
 - (14) A shareholder has no preemptive rights, unless otherwise provided by the Board;
 - (15) The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except where this Code requires the affirmative vote of a majority of the voting power of all shares entitled to vote;
 - (16) Shares of a corporation acquired by the corporation may be reissued;
 - (17) Each share has one (1) vote unless otherwise provided in the terms of the share;
 - (18) A corporation may issue shares for a consideration less than the par value, if any, of the shares; and
 - (19) The Board may affect share dividends, divisions, and combinations under certain circumstances without shareholder approval (Section 80A-8-2).
- (C) **Provisions that May be modified either in Articles or in By-laws.** The following provisions govern a corporation unless modified either in the Articles or in the By-laws:
- (1) Directors serve for an indefinite term that expires at the next regular meeting of shareholders (Section 80A-6-4);
 - (2) The compensation of Directors is fixed by the Board (Section 80A-6-6);
 - (3) A certain method must be used for removal of Directors (Section 80A-6-10);
 - (4) A certain method must be used for filling Board vacancies (Section 80A-6-11);
 - (5) If the Board fails to select a place for a Board meeting, it must be held at the principal executive office (Section 80A-6-12 (A));
 - (6) The notice of a Board meeting need not state the purpose of the meeting (Section 80A-6-12 (C));

- (7) A majority of the Board is a quorum for a Board meeting (Section 80A-6-14);
 - (8) A committee shall consist of one (1) or more persons, who need not be Directors, appointed by affirmative vote of a majority of the Directors present (Section 80A-6-17 (B));
 - (9) The Board may establish a special litigation committee (Section 80A-6-17);
 - (10) The chief executive officer and chief financial officer have specified duties, until the Board determines otherwise (Section 80A-7-2);
 - (11) Officers may delegate some or all of their duties and powers, if not prohibited by the Board from doing so (Section 80A-7-7);
 - (12) The Board may establish Uncertificated Shares (Section 80A-8-6 (G));
 - (13) Regular meetings of shareholders need not be held, unless demanded by shareholders holding at least ten percent (10%) of the voting power under certain conditions (Section 80A-8-11);
 - (14) In all instances where a specific minimum notice period has not otherwise been fixed by law, not less than ten (10) days' notice is required for a meeting of shareholders (Section 80A-8-13 (B));
 - (15) The number of shares required for a quorum at a shareholders meeting is a majority of the voting power of the shares entitled to vote at the meeting (Section 80A-8-17);
 - (16) The Board may fix a date up to sixty (60) days before the date of a shareholders meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting (Section 80A-8-18 (A));
 - (17) Indemnification of certain persons is required (Section 80A-9-3); and
 - (18) The Board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement (Section 80A-9-4 (A)).
- (D) **Optional Provisions - Specific Subjects.** The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the Articles or in the By-laws, except for naming members of the first Board, fixing a greater than majority Director or shareholder vote, or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the Articles, or eliminating or limiting a director's personal liability, which may only be in the Articles.:

- (1) The members of the first Board may be named in the Articles (Section 80A-6-1 (A));
- (2) A manner for increasing or decreasing the number of Directors may be provided (Section 80A-6-2);
- (3) Additional qualifications for Directors may be imposed (Section 80A-6-3);
- (4) Directors may be classified (Section 80A-6-7);
- (5) The day or date, time, and place of Board meetings may be fixed (Section 80A-6-12 (A));
- (6) Absent Directors may be permitted to give written consent or opposition to a proposal (Section 80A-6-13);
- (7) A larger than majority vote may be required for Board action (Section 80A-6-15);
- (8) Authority to sign and deliver certain documents may be delegated to an Officer or agent of the corporation other than the chief executive officer (Section 80A-7-2 (B));
- (9) Additional Officers may be designated (Section 80A-7-3);
- (10) Additional powers, rights, duties, and responsibilities may be given to Officers (Section 80A-7-7);
- (11) A method for filling vacant offices may be specified (Section 80A-7-6 (C));
- (12) A certain Officer or agent may be authorized to sign share certificates (Section 80A-8-6 (B));
- (13) The transfer or registration of transfer of securities may be restricted (Section 80A-8-10);
- (14) The day or date, time, and place of regular shareholder meetings may be fixed (Section 80A-8-11 (C));
- (15) Certain persons may be authorized to call special meetings of shareholders (Section 80A-8-12 (A));
- (16) Notices of shareholder meetings may be required to contain certain information (Section 80A-8-13 (C));
- (17) A larger than majority vote may be required for shareholder action (Section 80A-8-15);

- (18) Voting rights may be granted in or pursuant to the Articles to persons who are not shareholders (Section 80A-8-18 (D));
 - (19) Corporate actions giving rise to dissenter rights may be designated (Section 80A-8-27 (A));
 - (20) The rights and priorities of persons to receive distributions may be established (Section 80A-9-4); and
 - (21) A Director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a Director may be eliminated or limited in the Articles (Section 80A-6-18 (E)).
- (E) **Optional Provisions; Generally.** The Articles may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the corporation.
- (F) **Powers Need Not Be Stated.** It is not necessary to set forth in the Articles any of the corporate powers granted by this Ordinance.

80A-3-4 Corporate Name.

- (A) **Requirements; Prohibitions.** The corporate name:
- (1) Shall be in the Dakota or English language or in any other language expressed in English letters or characters;
 - (2) Shall contain the word "corporation," "incorporated," or "limited," or shall contain an abbreviation of one (1) or more of these words, or the word "company" or the abbreviation "Co." if that word or abbreviation is not immediately preceded by the word "and" or the character "&"
 - (3) Shall not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal business purpose;
 - (4) Shall be distinguishable upon the records in the office of the Tribal Vice Chairman from the name of a tribal corporation or other legal entity, whether tribal or foreign, authorized or registered to do business on the Reservation or, whether or not authorized or registered to do business on the Reservation, is well known on the Reservation, whether for profit or nonprofit, or a name the right to which is, at the time of incorporation, reserved or provided for in Section 80A-3-5, unless there is filed with the Articles one of the following:
 - (a) The written consent of the Tribal corporation or other legal entity authorized or registered to do business on the Reservation or the holder of

a reserved name or a name filed by or registered with the Tribal Vice Chairman having a name that is not distinguishable;

- (b) A certified copy of a final decree of the Tribal Court establishing the prior right of the applicant to the use of the name on the Reservation, or establishing that the corporation or other legal entity with the name that is not distinguishable has been incorporated or on file with the Tribal Vice Chairman for at least three (3) years prior thereto, and has been totally inactive, provided notice of a hearing on the matter has been given to such corporation or entity, if possible.
- (B) **Names Continued.** Section 80A-3-4 (A), paragraph (4) does not affect the right of a tribal corporation existing on the effective date of this Ordinance, or a foreign corporation authorized to do business on the Reservation on that date, to continue the use of its name.
- (C) **Determination.** The Tribal Vice Chairman shall determine whether a name is distinguishable from another name for purposes of this Section and Section 80A-3-5.
- (D) **Other Laws Affectingly Use of Names.** This Section and Section 80A-3-5 do not abrogate or limit any law of unfair competition or unfair practices, nor any Trademark Code, nor the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks, or other rights to the exclusive use of names or symbols, nor derogate the common law or the principles of equity.
- (E) **Use of Name by Successor Corporation.** A corporation that is merged with another tribal or foreign corporation, or that is incorporated by the reorganization of one (1) or more tribal or foreign corporations, or that acquires by sale, lease, or other disposition to or exchange with a tribal corporation all or substantially all of the assets of another tribal or foreign corporation including its name, may have the same name as that used on the Reservation by any of the other corporations, if the other corporation was incorporated under the laws of the Tribe, or is authorized to transact business on the Reservation.
- (F) **Injunction.** The use of a name by a corporation in violation of this Section does not affect or vitiate its corporate existence, but the Tribal Court may, upon application of the Tribe or of a person interested or affected, enjoin the corporation from doing business under a name assumed in violation of this Section, although its Articles may have been filed with the Tribal Vice Chairman and a certificate of incorporation issued.

80A-3-5 Reserved Name.

- (A) **Who May Reserve.** The exclusive right to the use of a corporate name otherwise permitted by Section 80A-3-4 may be reserved by:
- (1) A person doing business on the Reservation under that name;

- (2) A person intending to incorporate under this Ordinance;
 - (3) A tribal corporation intending to change its name;
 - (4) A foreign corporation intending to make application for a certificate of authority to transact business on the Reservation;
 - (5) A foreign corporation authorized to transact business on the Reservation and intending to change its name;
 - (6) A person intending to incorporate a foreign corporation and intending to have the foreign corporation apply for a certificate of authority to transact business on the Reservation; or
 - (7) A foreign corporation doing business under that name or a name deceptively similar to that name in one (1) or more states of the United States and not described in paragraph (4), (5), or (6).
- (B) **Method of Reservation.** The reservation shall be made by filing a request with the Tribal Vice Chairman that the name be reserved. If the name is available for use by the applicant, the Tribal Vice Chairman shall reserve the name for the exclusive use of the applicant for a period of twelve (12) months. The reservation may be renewed for successive twelve (12) month periods.
- (C) **Transfer of Reservation.** The right to the exclusive use of a corporate name reserved pursuant to this Section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the Tribal Vice Chairman a notice of the transfer and specifying the name and address of the transferee.

80A-3-6 Registered Office; Registered Agent.

- (A) **Registered Office.** Every corporation shall have and maintain on the Reservation a registered office, which may, but need not be, the same as its place of business. Whenever the term “principal place of business” or the “principal executive office,” or other term of like import, is or has been used in a corporation’s certificate of incorporation or charter, or in any other document, or in any tribal law, it shall be deemed to mean and refer to, unless the context indicates otherwise, the corporation’s registered office required by this Section; and it shall not be necessary for any corporation to amend its certificate of incorporation, charter, or any other document to comply with this Section.
- (B) **Registered Reservation Agent.** A corporation may designate in its Articles a registered agent. The registered agent may be a natural person residing on the Reservation, or a tribal corporation located on the Reservation. Every registered agent shall:
- (1) If an entity, maintain a business office on the Reservation which is generally open, or if an individual, be generally present at a designated location on the

Reservation, at sufficiently frequent times to accept service of process and otherwise perform the functions of a registered agent; and

- (2) Accept service of process and other communications directed to the corporations for which it serves as registered agent and forward the same to the corporation to which the service or communication is directed.
- (C) **Communications Contact.** Every corporation formed under this Ordinance shall provide to its registered agent, and update from time to time as necessary, the name, business address and business telephone number of a natural person who is an Officer, Director, employee, or designated agent of the corporation, who is then authorized to receive communications from the registered agent. Such person shall be deemed the communications contact for the corporation. Every registered agent shall retain (in paper or electronic form) the above information concerning the current communications contact for each corporation for which he, she, or it serves as a registered agent. If the corporation fails to provide the registered agent with a current communications contact, the registered agent may resign as the registered agent for such corporation.
- (D) **Agent Listing.** The Tribal Vice Chairman is authorized to make a list of registered agents available to the public and to establish such qualifications and issue such rules and regulations with respect to such listing as the Tribal Vice Chairman deems necessary or appropriate.

80A-3-7 Change of Registered Office or Registered Agent; Change of Name of Registered Agent.

- (A) **Statement.** A corporation may change its registered office, designate or change its registered agent, or state a change in the name of its registered agent, by filing with the Tribal Vice Chairman a statement containing:
- (1) The name of the corporation;
 - (2) If the address of its registered office is to be changed, the new address of its registered office;
 - (3) If its registered agent is to be designated or changed, the name of its new registered agent;
 - (4) If the name of its registered agent is to be changed, the name of its registered agent as changed;
 - (5) A statement that the address of its registered office and the address of the office of its registered agent, as changed, will be identical; and

- (6) A statement that the change of registered office or registered agent was authorized by resolution approved by the affirmative vote of a majority of the Directors present.
- (B) **Resignation of Agent.** A registered agent of a corporation may resign by filing with the Tribal Vice Chairman a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its principal executive office or to a legal representative of the corporation. The appointment of the agent terminates thirty (30) days after the notice is filed with the Tribal Vice Chairman.
- (C) **Change of business Address or Name of Agent.** If the office address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each corporation represented by that agent by filing with the Tribal Vice Chairman a statement as required in Section 80A-3-7 (A), except that it need be signed only by the registered agent, need not be responsive to paragraph (5) or (6), and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.

80A-3-8 Amendment of Articles.

The Articles of a corporation may be amended at any time to include or modify any provision that is required or permitted to appear in the Articles or to omit any provision not required to be included in the Articles, except that when Articles are amended to restate them, the name and address of each incorporator may be omitted. Unless otherwise provided in this Ordinance, the Articles may be amended or modified only in accordance with Sections 80A-3-9 to 80A-3-12. An amendment which merely restates the then-existing Articles of Incorporation, as amended, is not an amendment for the purposes of Section 80A-6-8 (B), or Section 80A-8-5 (I).

80A-3-9 Procedure for Amendment before Issuance of Shares.

Before the issuance of shares by a corporation, the Articles may be amended by the incorporators or by the Board. The Articles may be amended by the Board to alter Section 80A-8-1, subdivisions, establishing or fixing the rights and preferences of a class or series of shares before the issuance of any shares of that class or series.

80A-3-10 Procedure for Amendment after Issuance of Shares.

- (A) **Manner of Amendment.** After the issuance of shares by the corporation, the Articles may be amended in the manner set forth in this Section.
- (B) **Submission to Shareholders.** A resolution approved by the affirmative vote of a majority of the Directors present, or proposed by a shareholder or shareholders holding three percent (3%) or more of the voting power of the shares entitled to vote, that sets forth the proposed amendment shall be submitted to a vote at the next regular or special meeting of the shareholders upon proper notice. Any number of amendments may be

submitted to the shareholders and voted upon at one meeting, but the same or substantially the same amendment proposed by a shareholder or shareholders need not be submitted to the shareholders or be voted upon at more than one meeting during a fifteen (15) month period. The resolution may amend the Articles in their entirety to restate and supersede the original Articles and all amendments to them. The provisions of this subdivision regarding shareholder-proposed amendments do not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated there under, in which case the federal securities laws or rules promulgated there under shall govern.

(C) **Notice.** Written notice of the shareholders meeting setting forth the substance of the proposed amendment shall be given to each shareholder in the manner provided in Section 80A-8-13 for the giving of notice of meetings of shareholders.

(D) **Approval by Shareholders.**

(1) The proposed amendment is adopted when approved by the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote, except as provided in paragraphs (2) and (3) herein and Section 80A-3-10 (E).

(2) For a closely held corporation, if the Articles provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the Articles to provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the Articles is the larger of:

(a) The specified proportion or number or, in the absence of a specific provision, the affirmative vote necessary to transact the type of business described in the proposed amendment at a meeting immediately before the effectiveness of the proposed amendment; or

(b) The specified proportion or number that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.

(3) For corporations other than closely held corporations, if the Articles provide for a larger proportion or number to transact a specified type of business at a meeting, the affirmative vote of that larger proportion or number is necessary to amend the Articles to decrease the proportion or number necessary to transact the business.

(E) **Certain Restatements.** An amendment that merely restates the existing Articles, as amended, may be authorized by a resolution approved by the Board and may, but need

not, be submitted to and approved by the shareholders as provided in Sections 80A-3-10 (B) to 80A-3-10 (D).

80A-3-11 Class or Series Voting on Amendments.

The holders of the outstanding shares of a class or series are entitled to vote as a class or series upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the Articles, if the amendment would:

- (A) Increase or decrease the aggregate number of authorized shares of the class or series;
- (B) Effect an exchange, reclassification, or cancellation of all or part of the shares of the class or series;
- (C) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class or series for the shares of the class or series;
- (D) Change the rights or preferences of the shares of the class or series;
- (E) Change the shares of the class or series, whether with or without par value, in the same or a different number of shares, either with or without par value, of the same or another class or series;
- (F) Create a new class or series of shares having rights and preferences prior and superior to the shares of that class or series, or increase the rights and preferences or the number of authorized shares, of a class or series having rights and preferences prior or superior to the shares of that class or series;
- (G) Divide the shares of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the shares of each series, or authorize the Board to do so;
- (H) Limit or deny any existing preemptive rights of the shares of the class or series; or
- (I) Cancel or otherwise affect distributions on the shares of the class or series that have accrued but have not been declared.

80A-3-12 Articles of Amendment.

When an amendment has been adopted, Articles of Amendment shall be prepared that contain:

- (A) The name of the corporation;
- (B) The amendment adopted;

- (C) With respect to an amendment restating the Articles, a statement that the amendment restating the Articles correctly sets forth without change the corresponding provisions of the Articles as previously amended if the amendment was approved only by the Board;
- (D) If the amendment provides for but does not establish the manner for effecting an exchange, reclassification, division, combination, or cancellation of issued shares, a statement of the manner in which it will be effected; and
- (E) A statement that the amendment has been adopted pursuant to this Ordinance.

80A-3-13 Effect of Amendment.

- (A) **Effect on Cause of Action.** An amendment does not affect an existing cause of action in favor of or against the corporation, nor a pending suit to which the corporation is a party, nor the existing rights of persons other than shareholders.
- (B) **Effect of Change of Name.** If the corporate name is changed by the amendment, a suit brought by or against the corporation under its former name does not abate for that reason.
- (C) **Effect of Amendments Restating Articles.** When effective under Section 80A-3-15, an amendment restating the Articles in their entirety supersedes the original Articles and all amendments to the original Articles.

80A-3-14 Filing Articles.

The Articles of Incorporation shall be filed in duplicate originals with the Tribal Vice Chairman. If the Articles of Incorporation are adequate under this Chapter and when all the fees have been paid as described in this Chapter, then the Tribal Vice Chairman shall:

- (A) Endorse on each of such originals the word "Filed," and the effective date of the filing;
- (B) File one of the originals;
- (C) Assign each filed Articles of Incorporation an identification number;
- (D) Issue a Certificate of Incorporation to which the other original shall be affixed; and
- (E) Return the Certificate of Incorporation together with the original of the Articles of Incorporation affixed thereto to the incorporators or their representative.

80A-3-15 Effective Date of Articles.

Articles of Incorporation are effective and corporate existence begins when the Articles of Incorporation are filed with the Tribal Vice Chairman accompanied by a payment of \$ 150.00. Articles of amendment are effective when filed with the Tribal Vice Chairman or at another time within thirty (30) days after filing if the Articles of amendment so provide.

80A-3-16 Presumption; Certificate of Incorporation.

When the Articles of Incorporation have been filed with the Tribal Vice Chairman and the required fee has been paid to the Tribal Vice Chairman, it is presumed that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated, and the Tribal Vice Chairman shall issue a certificate of incorporation to the corporation, but this presumption does not apply against the Tribe in a proceeding to cancel or revoke the certificate of incorporation or to compel the involuntary dissolution of the corporation.

80A-3-17 Revocation.

The Tribal Council retains the authority to revoke any Articles of Incorporation issued pursuant to this Chapter or revoke the right to conduct business within the Reservation. Revocation shall only be for cause, which shall require a finding by the Tribal Council that the corporation has engaged in conduct, operations or activities that violate this Ordinance, the Articles of Incorporation of the corporation, or that involve financial impropriety by or on behalf of the corporation. Revocation of the Articles of Incorporation of a corporation shall be by resolution and approved by an affirmative vote of at least two-thirds (2/3) of the Tribal Council.

**PART 4
POWERS**

80A-4-1 Powers.

- (A) **Generally, Limitations.** A corporation has the powers set forth in this Section, subject to any limitations provided in any other law of the Tribe or in its Articles.
- (B) **Duration.** A corporation has perpetual duration, unless otherwise specified in the Articles.
- (C) **Legal Capacity.** A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.
- (D) **Property Ownership.** A corporation may purchase, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

- (E) **Property Disposition.** A corporation may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest therein, wherever situated.
- (F) **Trading In Securities; Obligations.** A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of and otherwise use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any tribal or foreign government or instrumentality thereof.
- (G) **Contracts; Mortgages.** A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises and income.
- (H) **Investment.** A corporation may invest and reinvest its funds.
- (I) **Holding Property as Security.** A corporation may take and hold real and personal property, whether or not a kind sold or otherwise dealt in by the corporation, as security for the payment of money loaned, advanced, or invested.
- (J) **Location.** A corporation may conduct its business, carry on its operations, have offices, and exercise the powers granted by this Ordinance anywhere in the universe.
- (K) **Donations.** A corporation may make donations, irrespective of corporate benefit, for the public welfare; for social, community, charitable, religious, educational, scientific, civic, literary, and for similar or related purposes.
- (L) **Pensions; Benefits.** A corporation may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the corporation, employee or incentive benefit plans, trusts, and provisions to or for the benefit of, and or all of its and its related corporation Officers, Directors, employees, and agents and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.
- (M) **Participating in Management.** A corporation may participate in any capacity in the promotion, organization, ownership, management, and operation of an organization or in any transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control with or to others.
- (N) **Insurance.** A corporation may provide for its benefit life insurance and other insurance with respect to the services of any or all of its Officers, Directors, employees, and agents, or on the life of a shareholder for the purpose of acquiring at the death of the shareholder any or all shares in the corporation owned by the shareholder.

- (O) **Corporate Seal.** A corporation may have, alter at pleasure, and use a corporate seal as provided in Section 80A-4-2.
- (P) **By-laws.** A corporation may adopt, amend, and repeal By-laws relating to the management of the business or the regulation of the affairs of the corporation as provided in Section 80A-5-2.
- (Q) **Committees.** A corporation may establish committees of the Board of Directors, elect or appoint persons to the committees, and define their duties as provided in Section 80A-6-17 and fix their compensation.
- (R) **Officers; Employees; Agents.** A corporation may elect or appoint Officers, employees, and agents of the corporation, and define their duties as provided in Sections 80A-7-1 to 80A-7-8 and fix their compensation.
- (S) **Securities.** A corporation may issue securities and rights to purchase securities as provided in Sections 80A-8-1 to 80A-8-9.
- (T) **Loans; Guarantees; Sureties.** A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in Section 80A-9-1.
- (U) **Advances.** A corporation may make advances to its Directors, Officers and employees and those of its subsidiaries as provided in Section 80A-9-2.
- (V) **Indemnification.** A corporation shall indemnify those persons identified in Section 80A-9-3(B) against certain expenses and liabilities only as provided in Section 80A-9-3 and may indemnify other persons.
- (W) **Assumed Names.** A corporation may conduct all or part of its business under one (1) or more assumed names, provided each assumed name is registered with the Tribal Vice Chairman.
- (X) **Other Powers.** A corporation may have and exercise all other powers necessary or convenient to affect any or all of the business purposes for which the corporation is incorporated.
- (Y) **Trust Land.** Any corporation which holds an interest in trust land may not encumber that interest without the prior approval of the Tribal Council and the appropriate official of the Bureau of Indian Affairs, if such federal approval is required by federal law.
- (Z) **Sovereign Immunity of the Tribe.** Consent to suit by a corporation shall in no way extend to the Tribe, nor shall consent to suit by a corporation in any way be deemed a waiver of any of the rights, privileges, and immunities of the Tribe.

80A-4-2 **Corporate seal.**

- (A) **Seal Not Required.** A corporation may, but need not, have a corporate seal, and the use or nonuse of a corporate seal does not affect the validity, recordability, or enforceability of a document or act. If a corporation has a corporate seal, the use of the seal by the corporation on a document is not necessary.
- (B) **Required Words; Use.** If a corporation has a corporate seal, the seal may consist of a mechanical imprinting device, or a rubber stamp with a facsimile of the seal affixed thereon, or a facsimile or reproduction of either. The seal need include only the word "Seal" but it may also include a part or all of the name of the corporation and a combination, derivation, or abbreviation of either or both of the phrases "Tribal Corporation," "Sisseton Wahpeton Oyate" and "Corporate Seal." If a corporate seal is used, it or a facsimile of it may be affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on any document.

80A-4-3 Effect of Lack of Power; Ultra Vires.

The doing, continuing, or performing by a corporation of an act, or an executed or wholly or partially executory contract, conveyance, or transfer to or by the corporation, if otherwise lawful, is not invalid because the corporation was without the power to do, continue, or perform the act, contract, conveyance, or transfer, unless the lack of power is established by the Tribal Court:

- (A) In a proceeding by a shareholder against the corporation to enjoin the doing, continuing, or performing of the act, contract, conveyance, or transfer. If the unauthorized act, continuation, or performance sought to be enjoined is being, or will be, performed or made pursuant to a contract to which the corporation is a party, the Tribal Court may, if just and reasonable in the circumstances, set aside and enjoin the performance of the contract and in so doing may allow to the corporation or to the other parties to the contract compensation for the loss or damage sustained as a result of the action of the Tribal Court in setting aside and enjoining the performance of the contract;
- (B) In a proceeding by or in the name of the corporation, whether acting directly or through a legal representative, or through shareholders in a representative or derivative suit, against the incumbent or former Officers or Directors of the corporation for exceeding or otherwise violating their authority, or against a person having actual knowledge of the lack of power; or
- (C) In a proceeding by the Tribal Vice Chairman, as provided in Section 80A-12-13, to dissolve the corporation, or in a proceeding by the Tribal Vice Chairman to enjoin the corporation from the transaction of unauthorized acts.

PART 5

ORGANIZATION; BY-LAWS

80A-5-1 Organization.

- (A) **Role of Incorporators.** If the first Board is not named in the Articles, the incorporators may elect the first Board or may act as Directors with all of the powers, rights, duties, and liabilities of Directors until Directors are elected or until shares are issued, whichever occurs first.
- (B) **Meeting.** After the issuance of the certificate of incorporation, the incorporators or the Directors named in the Articles shall either hold an organizational meeting at the call of a majority of the incorporators or of the Directors named in the Articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the corporation, including, without limitations amending the Articles, electing Directors, adopting By-laws, electing Officers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a corporate seal, approving forms of certificates or Transaction Statements for shares of the corporation, adopting a fiscal year for the corporation, accepting subscriptions for and issuing shares of the corporation, and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each incorporator or Director named, stating the date, time, and place of the meeting.

80A-5-2 By-laws.

- (A) **Generally.** A corporation may, but need not, have By-laws. By-laws may contain any provision relating to the management of the business or the regulation of the affairs of the corporation not inconsistent with law or the Articles.
- (B) **Power of Board.** Initial By-laws may be adopted pursuant to Section 80A-5-1 by the incorporators or by the first Board. Unless reserved by the Articles to the shareholders, the power to adopt, amend, or repeal the By-laws is vested in the Board. The power of the Board is subject to the power of the shareholders, exercisable in the manner provided in Section 80A-5-2 (C), to adopt, amend, or repeal By-laws adopted, amended, or repealed by the Board. After the adoption of the initial By-laws, the Board shall not adopt, amend, or repeal a By-law fixing a quorum for meetings of shareholders, prescribing procedures for removing Directors or filling vacancies in the Board, or fixing the number of Directors or their classifications, qualifications, or terms of office, but may adopt or amend a By-law to increase the number of Directors.
- (C) **Power of Shareholders; Procedure.** If a shareholder or shareholders holding three percent or more of the voting power of the shares entitled to vote propose a resolution for action by the shareholders to adopt, amend, or repeal By-laws adopted, amended, or repealed by the Board, and the resolution sets forth the provision or provisions proposed for adoption, amendment, or repeal, the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in Sections 80A-3-10

(B) to 80A-3-10 (D), for amendment of the Articles. The provisions of this subdivision regarding shareholder proposed amendments shall not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated there under, in which case the federal securities laws or rules promulgated there under shall govern.

PART 6 BOARD

80A-6-1 Board.

- (A) **Board to Manage.** The business and affairs of a corporation shall be managed by or under the direction of a Board, subject to the provisions of Section 80A-6-1 (B) and Section 80A-8-23. The members of the first Board may be named in the Articles or elected by the incorporators pursuant to Section 80A-5-1.
- (B) **Shareholder Management.** The holders of the shares entitled to vote for Directors of the corporation may, by unanimous affirmative vote, take any action that this Ordinance requires or permits the Board to take. As to an action taken by the shareholders in that manner:
- (1) The Directors have no duties, liabilities, or responsibilities as Directors under this Ordinance with respect to or arising from the action;
 - (2) The shareholders collectively and individually have all of the duties, liabilities, and responsibilities of Directors under this Ordinance with respect to and arising from the action;
 - (3) If the action relates to a matter required or permitted by this Ordinance or by any other law to be approved or adopted by the Board, either with or without approval or adoption by the shareholders, the action is deemed to have been approved or adopted by the Board; and
 - (4) A requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the Board is satisfied by a statement that the shareholders have taken the action under this subdivision.

80A-6-2 Number.

The Board shall consist of one (1) or more Directors. The number of Directors shall be fixed by or in the manner provided in the Articles or By-laws. The number of Directors may be increased or, subject to Section 80A-6-10, decreased at any time by amendment to or in the manner provided in the Articles or By-laws.

80A-6-3 Qualifications; Election.

Directors shall be natural persons. The method of election and any additional qualifications for Directors may be imposed by or in the manner provided in the Articles or By-laws. A Director need not be a member of the Tribe unless the Articles of Incorporation or By-laws so prescribe.

80A-6-4 Terms.

Unless fixed terms are provided for in the Articles or By-laws, a Director serves for an indefinite term that expires at the next regular meeting of the shareholders. A fixed term of a Director shall not exceed five (5) years. Directors may serve an indefinite number of terms if appointed or re-elected. A Director holds office for the term for which the Director was elected and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the Director.

80A-6-5 Acts Not Void or Voidable.

The expiration of a Director's term with or without the election of a qualified successor does not make prior or subsequent acts of the Officers or the Board void or voidable.

80A-6-6 Compensation.

Subject to any limitations in the Articles or By-laws, the Board may fix the compensation of Directors.

80A-6-7 Classification of Directors.

Directors may be divided into classes as provided in the Articles or By-laws.

80A-6-8 Cumulative Voting for Directors.

(A) **Voting Rights.** Unless the Articles provide that there shall be no cumulative voting, and except as provided in Section 80A-6-10 (E), each shareholder entitled to vote for Directors has the right to cumulate those votes in the election of Directors by giving written notice of intent to cumulate those votes to any Officer of the corporation before the meeting, or to the presiding Officer at the meeting at which the election is to occur at any time before the election of Directors at the meeting, in which case:

- (1) The presiding Officer at the meeting shall announce, before the election of Directors, that shareholders shall cumulate their votes; and
- (2) Each shareholder shall cumulate those votes either by casting for one candidate the number of votes equal to the number of Directors to be elected multiplied by the number of votes represented by the shares, or by distributing all of those votes on the same principle among any number of candidates.

- (B) **Modification.** No amendment to the Articles or By-laws which has the effect of denying, limiting, or modifying the right to cumulative voting for Directors provided in this Section shall be adopted if the votes of a proportion of the voting power sufficient to elect a Director at an election of the entire Board under cumulative voting, are cast against the amendment.

80A-6-9 Resignation.

A Director may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective time is specified in the notice.

80A-6-10 Removal of Directors.

- (A) **Modification.** The provisions of this Section apply unless modified by the Articles, the By-laws, or an agreement described in Section 80A-8-23.
- (B) **Removal by Directors.** A Director may be removed at any time, with or without cause by the Board if:
- (1) The Director was named by the Board to fill a vacancy;
 - (2) The shareholders have not elected Directors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and
 - (3) A majority of the remaining Directors present affirmatively vote to remove the Director.
- (C) **Removal by Shareholders.** One (1) or all of the Directors may be removed at any time, with or without cause, by the affirmative vote of the holders of the proportion or number of the voting power of the shares of the classes or series the Director represents sufficient to elect them, except as provided in Section 80A-6-10 (D).
- (D) **Exception for Corporation with Cumulative Voting.** In a corporation having cumulative voting, unless the entire Board is removed simultaneously, a Director is not removed from the Board if there are votes cast against removal of the same Director equaling the same proportion of the voting power sufficient to elect the Director at an election of the entire Board under cumulative voting.
- (E) **Election of Replacements.** New Directors may be elected at a meeting at which Directors are removed. If the corporation allows cumulative voting and a shareholder notifies the presiding Officer at any time prior to the election of new Directors of intent to cumulate the votes of the shareholder, the presiding Officer shall announce before the election that cumulative voting is in effect, and shareholders shall cumulate their votes as provided in Section 80A-6-8 (A)(2).

80A-6-11 Vacancies.

Unless different rules for filling vacancies are provided for in the Articles or By-laws, vacancies on the Board resulting from the death, resignation, removal, or disqualification of a Director may be filled by the affirmative vote of a majority of the remaining Directors, even though less than a quorum. Vacancies on the Board resulting from newly created directorships may be filled by the affirmative vote of a majority of Directors serving at the time of the increase. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

80A-6-12 Board Meetings.

(A) **Time; place.** Meetings of the Board may be held from time to time as provided in the Articles or By-laws at any place within or without the Reservation that the Board may select or by any means described in Section 80A-6-12 (B). If the Board fails to select a place for a meeting, the meeting shall be held at the principal executive office, unless the Articles or By-laws provide otherwise.

(B) **Electronic Communications.**

(1) A conference among Directors by any means of communication through which the Directors may simultaneously hear each other during the conference constitutes a Board meeting, if the same notice is given of the conference as would be required by Section 80A-6-12 (C) for a meeting, and if the number of Directors participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

(2) Unless otherwise prescribed by the Articles or By-laws, A Director may participate in a Board meeting not described in paragraph (1) above by any means of communication through which the Director, other Directors so participating, and all Directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

(C) **Call, Meetings Notice.** In the absence of a provision in the Articles of Incorporation or By-Laws specifying a different period of notice, written or printed notice stating the place, day, and hour of the meeting, and, in case of a special meeting, the purpose for which the meeting is called, shall be delivered not less than five (5) or more than fifty (50) days before the date of the meeting, either personally or by U.S. mail, or email to each Director entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Director at his address as it appears on the records of the corporation, with postage thereon prepaid.

(D) **Previously Scheduled Meetings.** If the day or date, time, and place of a Board meeting have been provided in the Articles or By-laws, or announced at a previous meeting of the

Board, no notice is required. Notice of an adjourned meeting may not be given other than by announcement at the meeting at which adjournment is taken.

- (E) **Waiver of Notice.** A Director may waive notice of a meeting of the Board. A waiver of notice by a Director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a Director at a meeting is a waiver of notice of that meeting, except where the Director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting.

80A-6-13 Absent Directors.

If the Articles or By-laws so provide, a Director may give advance written consent or opposition to a proposal to be acted on a Board meeting. If the Director is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition shall be counted as a vote in favor of or against the proposal and shall be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the Director has consented or objected.

80A-6-14 Quorum.

Unless otherwise provided in the Articles of Incorporation, or the By-Laws, a majority of the number of Directors fixed by the By-Laws or the number stated in the Articles of Incorporation shall constitute a quorum for the transaction of business by the Board of Directors. In the absence of a quorum, a majority of the Directors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the Directors present may continue to transact business until adjournment, even though the withdrawal of a number of Directors originally present leaves less than the proportion or number otherwise required for a quorum.

80A-6-15 Act of the Board.

The Board shall take action by the affirmative vote of a majority of Directors present at a duly held meeting, except where this Ordinance or the Articles require the affirmative vote of a larger proportion or number. If the Articles require a larger proportion or number than is required by this Ordinance for a particular action, the Articles shall control.

80A-6-16 Action by Directors without a Meeting.

- (A) **Method.** Unless otherwise provided for in the Articles of Incorporation or By-laws, an action required or permitted to be taken at a Board meeting may be taken by written action signed by all of the Directors. Such consent shall have the same effect as a unanimous vote.
- (B) **Effective Time.** The written action is effective when signed by the all of Directors, unless a different effective time is provided in the written action.

80A-6-17 Committees.

- (A) **Generally.** Unless otherwise provided in the Articles or By-laws, a resolution approved by the affirmative vote of a majority of the Board may establish committees having the authority of the Board in the management of the business of the corporation only to the extent provided in the resolution, but no such Committee shall have the authority of the Board to amend the articles or By-laws, recommend to the shareholders the sale, lease, exchange or other disposition of all or substantially all the property and assets of the Corporation. Committees may include a special litigation committee consisting of one (1) or more independent Directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the Board.
- (B) **Membership.** Committee members shall be natural persons. Unless the Articles or By-laws provide for a different membership or manner of appointment, a committee shall consist of one (1) or more persons, who need not be Directors, appointed by affirmative vote of a majority of the Directors present.
- (C) **Minutes.** Minutes, if any, of committee meetings shall be made available upon request to members of the committee and to any Director.
- (D) **Standard of Conduct.** The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a Director with the standard of conduct set forth in Section 80A-6-18.
- (E) **Committee Members Deemed Directors.** Committee members are deemed to be Directors for purposes of Sections 80A-6-18, 80A-6-19, and 80A-9-3.

80A-6-18 Standard of Conduct.

- (A) **Standard; Liability.** A Director shall discharge the duties of the position of Director in good faith, in a manner the Director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a Director of the corporation.
- (B) **Reliance.** A Director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:
 - (1) One (1) or more Officers or employees of the corporation whom the Director reasonably believes to be reliable and competent in the matters presented;

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- (2) Legal counsel, public accountants, or other persons as to matters that the Director reasonably believes are within the person's professional or expert competence; or
 - (3) A committee of the Board upon which the Director does not serve, duly established in accordance with Section 80A-6-17, as to matters within its designated authority, if the Director reasonably believes the committee to merit confidence.
- (C) **Unwarranted Reliance.** Section 80A-6-18 (B)(1) does not apply to a Director who has knowledge concerning the matter in question that makes the reliance otherwise permitted by paragraph (1) unwarranted.
- (D) **Presumption of Assent; Dissent.** A Director who is present at a meeting of the Board when an action is approved by the affirmative vote of a majority of the Directors present is presumed to have assented to the action approved, unless the Director:
- (1) Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting, in which case the Director shall not be considered to be present at the meeting for any purpose of this Ordinance;
 - (2) Votes against the action at the meeting; or
 - (3) Is prohibited by Section 80A-6-19 from voting on the action.
- (E) **Elimination or Limitation of Liability.** A Director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a Director may be eliminated or limited in the Articles; except that the Articles shall not eliminate or limit the liability of a Director:
- (1) For any breach of the Director's duty of loyalty to the corporation or its shareholders;
 - (2) For acts or emissions not in good faith or that involve intentional misconduct or a knowing violation of law;
 - (3) Under Section 80A-9-7;
 - (4) For any transaction from which the Director derived an improper personal benefit; or
 - (5) For any act or omission occurring prior to the date when the provision in the Articles eliminating or limiting liability becomes effective.

80A-6-19 Director Conflicts of Interest.

(A) **Conflict; Procedure When Conflict Arises.** A contract or other transaction between a corporation and one (1) or more of its Directors, or between a corporation and an organization in or of which one (1) or more of its Directors are directors, officers, or legal representatives or have a material financial interest, is not void or voidable because the Director or Directors or the other organizations are parties or because the Director or Directors are present at the meeting of the shareholders or the Board or a committee at which the contract or transaction is authorized, approved, or ratified, if:

- (1) The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;
- (2) The material facts as to the contract or transaction and as to the Director or Directors' interest are fully disclosed or known to the shareholders and the contract or transaction is approved in good faith by 1) the holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested Director or Directors, or 2) the unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote;
- (3) The material facts as to the contract or transaction and as to the Director or Directors' interest are fully disclosed or known to the Board or a committee, and the Board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the Board or committee, but the interested Director or Directors shall not be counted in determining the presence of a quorum and shall not vote; or
- (4) The contract or transaction is a distribution described in Section 80A-9-4 (A), or merger or exchange described in Sections 80A-10-1 (A), or 80A-10-1 (B).

(B) **Material Financial Interest.** For purposes of this Section:

- (1) A Director does not have a material financial interest in a resolution fixing the compensation of the Director or fixing, the compensation of another Director as a Director, Officer, employee, or agent of the corporation, even though the first Director is also receiving compensation from the corporation; and
- (2) A Director has a material financial interest in each organization in which the Director, or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters of the Director, or any combination of them have a material financial interest.

(C) **Compensation Agreements.** During any tender offer or request or invitation for tenders of any class or series of shares of a publicly held corporation, other than an offer, request,

or invitation by the publicly held corporation, the publicly held corporation shall not enter into or amend, directly or indirectly, agreements containing provisions, whether or not dependent on the occurrence of any event or contingency, that increase, directly or indirectly, the current or future compensation of any Officer or Director of the publicly held corporation. This subdivision does not prohibit routine increases in compensation, or other routine compensation agreements, undertaken in the ordinary course of the publicly held corporations business.

PART 7 OFFICERS

80A-7-1 Officers Required.

A corporation shall have one (1) or more natural persons exercising the functions of the offices, however designated, of chief executive officer and chief financial officer.

80A-7-2 Duties of Required Officers.

(A) **Presumption; modifications.** Unless the Articles, the By-laws, or a resolution adopted by the Board and not inconsistent with the Articles or By-laws, provide otherwise, the chief executive officer and chief financial officer have the duties specified in this Section.

(B) **Chief Executive Officer.** The chief executive officer shall:

- (1) Have general active management of the business of the corporation;
- (2) When present, preside at all meetings of the Board and of the shareholders;
- (3) See that all orders and resolutions of the Board are carried into effect;
- (4) Sign and deliver in the name of the corporation any deeds, mortgages, bonds, contracts or other instruments pertaining to the business of the corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the Articles or By-laws or by the Board to some other Officer or agent of the corporation;
- (5) Maintain records of and whenever necessary, certify all proceedings of the Board and the shareholders; and
- (6) Perform other duties prescribed by the Board.

(C) **Chief Financial Officer.** The chief financial officer shall:

- (1) Keep accurate financial records for the corporation;

- (2) Deposit all money, drafts, and checks in the name of and to the credit of the corporation in the banks and depositories designated by the Board;
- (3) Endorse for deposit all notes, checks, and drafts received by the corporation as ordered by the Board, making proper vouchers therefore;
- (4) Disburse corporate funds and issue checks and drafts in the name of the corporation, as ordered by the Board;
- (5) Render to the chief executive officer and the Board, whenever requested, an account of all transactions by the chief financial officer and of the financial condition of the corporation; and
- (6) Perform other duties prescribed by the Board or by the chief executive officer.

80A-7-3 Other Officers.

- (A) Other officers of a corporation may consist of a President, a Secretary, and a Treasurer, and may include one or more Vice-Presidents, each of whom shall be elected or appointed at such time and in such manner and for such terms as may be prescribed in the Articles of Incorporation or the By-Laws. In the absence of any such provision, all officers shall be elected or appointed annually by the Board of Directors. If the By-Laws so provide, any two or more offices may be held by the same person, except the offices of President and Secretary.
- (B) The Articles of Incorporation or the By-Laws may provide that any one or more officers of the corporation or other organizations shall be ex officio members of the Board of Directors.
- (C) The officers of a corporation may be designated by such other titles as may be provided in the Articles of Incorporation or the By-Laws.
- (D) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be determined by resolution of the Board of Directors not inconsistent with the By-Laws.

80A-7-4 Officers Deemed Elected.

Unless otherwise specified in the Articles or By-laws, in the absence of an election or appointment of Officers by the Board, the person or persons exercising the principal functions of the chief executive officer or the chief financial officer are deemed to have been elected to those offices, except for the purpose of determining the location of the principal executive office, which in that case is the registered office of the corporation.

80A-7-5 Contract Rights.

The election or appointment of a person as an Officer or agent does not, of itself, create contract rights. A corporation may enter into a contract with an Officer or agent for a period of time if, in the Board's judgment, the contract would be in the best interests of the corporation. The fact that the contract may be for a term longer than the terms of the Directors who authorized or approved the contract does not make the contract void or voidable.

80A-7-6 Resignation; Removal; Vacancies.

- (A) **Resignation.** An Officer may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective date is specified in the notice.
- (B) **Removal.** An Officer may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the directors present, subject to the provisions of a shareholder control agreement. The removal is without prejudice to any contractual rights of the Officer.
- (C) **Vacancy.** A vacancy in an office because of death, resignation, removal, disqualification, or other cause may, or in the case of a vacancy in the office of chief executive officer or chief financial officer shall, be filled for the unexpired portion of the term in the manner provided in the Articles or By-laws, or determined by the Board, or pursuant to Section 80A-7-4.

80A-7-7 Delegation.

Unless prohibited by the Articles or By-laws or by a resolution approved by the affirmative vote of a majority of the Directors presents an Officer elected or appointed by the Board may, without the approval of the Board, delegate some or all of the duties and powers of an office to other persons. An Officer who delegates the duties or powers of office remains subject to the standard of conduct for an Officer with respect to the discharge of all duties and powers so delegated.

80A-7-8 Standard of Conduct.

An Officer shall discharge the duties of an office in good faith, in a manner the Officer reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to Section 80A-7-7 is deemed an Officer for purposes of this Section and Sections 80A-8-26 and 80A-9-3.

**PART 8
SHARES; SHAREHOLDERS**

80A-8-1 Authorized Shares.

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- (A) **Board May Authorize.** Subject to any restrictions in the Articles, a corporation may issue shares and rights to purchase shares only when authorized by the Board.
- (B) **Terms of Shares.** All the shares of a corporation:
- (1) Shall be of one (1) class and one (1) series, unless the Articles establish, or authorize the Board to establish, more than one (1) class or series;
 - (2) Shall be common shares entitled to vote and shall have equal rights and preferences in all matters not otherwise provided for by the Board, unless and to the extent that the Articles have fixed the relative rights and preferences of different classes and series; and
 - (3) Shall have, unless a different par value is specified in the Articles, a par value of one cent (\$0.01) per share, solely for the purpose of a law, statute or rule imposing a tax or fee based upon the capitalization of a corporation and a par value fixed by the Board for the purpose of a statute or rule requiring the shares of the corporation to have a par value.
- (C) **Procedure for Fixing Terms.**
- (1) Subject to any restrictions in the Articles, the power granted in Section 80A-8-1 (B) may be exercised by a resolution or resolutions approved by the affirmative vote of a majority of the Directors present establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series. Any of the rights and preferences of a class or series:
 - (a) may be made, dependent upon facts ascertainable outside the Articles, or outside the resolution or resolutions establishing the class or series, provided that the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the Articles or in the resolution or resolutions establishing the class or series; and
 - (b) may incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the issuing corporation in connection with the establishment of the class or series if the corporation retains at its principal executive office a copy of the agreements, contracts or other arrangements or the portions incorporated by reference.
 - (2) A statement setting forth the name of the corporation and the text of the resolution, and certifying the adoption of the resolution and the date of adoption, shall be filed with the Tribal Vice Chairman before the issuance of any shares for which the resolution creates rights or preferences not set forth in the Articles;

provided, however, where the shareholders have received notice of the creation of shares with rights or preferences not set forth in the Articles before the issuance of the shares, the statement may be filed any time within one (1) year after the issuance of the shares. The resolution is effective when the statement has been filed with the Tribal Vice Chairman; or, if it is not required to be filed with the Tribal Vice Chairman before the issuance of shares, on the date of its adoption by the Board.

- (3) A statement filed with the Tribal Vice Chairman in accordance with Section 80A-8-1 (C)(2) is not considered an amendment of the Articles for purposes of Sections 80A-3-11 and 80A-8-27.

(D) **Specific Terms.** Without limiting the authority granted in this Section, a corporation may issue shares of a class or series:

- (1) Subject to the right of the corporation to redeem any of those shares at the price fixed for their redemption by the Articles; or if not specified in the Articles, by the Board; or at a price determined in the manner specified by the Articles or by the Board as applicable;
- (2) Entitling the shareholders to cumulative, partially cumulative, or non-cumulative distributions in the amounts fixed by the Articles; or if not specified in the Articles, by the Board; or in amounts determined in the manner specified by the Articles or by the Board as applicable;
- (3) Having preference over any class or series of shares for the payment of distributions of any kinds;
- (4) Convertible into shares of any other class or any series of the same or another class on the terms fixed by the Articles; or if not specified in the Articles, by the Board; or on terms determined in the manner specified by the Articles or by the Board as applicable; or
- (5) Having full, partial, or no voting rights, except as provided in Section 80A-3-11.

(A)

80A-8-2 Regular Meetings of Shareholders.

(A) **Frequency.** Regular meetings of shareholders may be held on an annual or other less frequent periodic basis, but need not be held unless required by the Articles or By-laws or by Section 80A-8-11 (B).

(B) **Demand by Shareholder.** If a regular meeting of shareholders has not been held during the immediately preceding fifteen (15) months, shareholders holding at least ten percent (10%) of the voting power of all shares entitled to vote may demand a regular meeting of

shareholders by written notice of demand given to the chief executive officer or the chief financial officer of the corporation. Within thirty (30) days after receipt of the demand by one of those Officers, the Board shall cause a regular meeting of shareholders to be called and held on notice no later than ninety (90) days after receipt of the demand, all at the expense of the corporation. If the Board fails to cause a regular meeting to be called and held as required by this subdivision, the shareholder or shareholders making the demand may call the regular meeting by giving notice as required by Section 80A-8-13, all at the expense of the corporation.

- (C) **Time; Place.** A regular meeting, if any, shall be held on the day or date and at the time and place fixed by, or in a manner authorized by, the Articles or By-laws, except that a meeting called by or at the demand of a shareholder to Section 80A-8-11 (B) shall be held on the Reservation.
- (D) **Elections Required; Other Business.** At each regular meeting of shareholders there shall be an election of qualified successors for Directors who serve for an indefinite term or whose terms have expired or are due to expire within six (6) months after the date of the meeting. No other particular business is required to be transacted at a regular meeting. Any business appropriate for action by the shareholders may be transacted at a regular meeting.

80A-8-3 Special Meetings of Shareholders.

- (A) **Who May Call.** Special meetings of the shareholders may be called for any purpose or purposes at any time by:
- (1) The chief executive officer;
 - (2) The chief financial officer;
 - (3) Two (2) or more Directors;
 - (4) A person authorized in the Articles or By-laws to call special meetings; or
 - (5) A shareholder or shareholders holding, ten percent (10%) or more of the voting power of all shares entitled to vote, except that a special meeting for the purpose of considering any action to directly or indirectly facilitate or effect a business combination, including any action to change or otherwise affect the composition of the Board of Directors for that purpose, must be called by twenty-five (25%) percent or more of the voting power of all shares entitled to vote.
- (B) **Demand by Shareholders.** A shareholder or shareholders holding the voting power specified in Section 80A-8-12 (A), paragraph (5), may demand a special meeting of shareholders by written notice of demand giving notice to chief executive officer or chief financial officer of the corporation and containing the purposes of the meeting. Within thirty (30) days after receipt of the demand by one of those Officers, the Board shall

cause a special meeting of shareholders to be called and held on notice not later than ninety (90) days after receipt of the demand, all at the expense of the corporation. If the Board fails to cause a special meeting to be called and held as required by this subdivision, the shareholder or shareholders making the demand may call the meeting by giving notice as required by Section 80A-8-13, all at the expense of the corporation.

- (C) **Time; Place.** Special meetings shall be held on the date and at the time and place fixed by the chief executive officer, the chief financial officer, the Board, or a person authorized by the Articles or By-laws to call a meeting, except that a special meeting called by or at the demand of a shareholder or shareholders pursuant to Section 80A-8-12 (B) shall be held on the Reservation.
- (D) **Business Limited.** The business transacted at a special meeting is limited to the purposes stated in the notice of the meeting. Any business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the corporation, unless all of the shareholders have waived notice of the meeting, in accordance with Section 80A-8-13 (D).

80A-8-4 Notice.

- (A) **To Whom Given.** Except as otherwise provided in this Code, notice of all meetings of shareholders shall be given to every holder of shares entitled to vote, unless:
 - (1) The meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment; or
 - (2) The following have been mailed by first class mail to a shareholder at the address in the corporate records and returned undeliverable:
 - (a) Two (2) consecutive annual meeting notices and notices of any special meetings held during the period between the two annual meetings; or
 - (b) All payments of dividends sent during a twelve (12) month period, provided there are at least two (2) sent during the twelve (12) month period. An action or meeting, which is taken or held without notice under paragraph (b) has the same force and effect as if notice was given. If the shareholder delivers a written notice of the shareholder's current address to the corporation, the notice requirement is reinstated.
- (B) **When Given.** In all instances where a specific minimum notice period has not otherwise been fixed by law, the notice shall be given at least ten (10) days before the date of the meeting, or a shorter time provided in the Articles or By-laws, and not more than sixty (60) days before the date of the meeting.
- (C) **Contents.** The notice shall contain the date, time, and place of the meeting, and any other information required by this Code. In the case of a special meeting, the notice shall

contain a statement of the purposes of the meeting. The notice may also contain any other information required by the Articles or By-laws or deemed necessary or desirable by the Board or by any other person or persons calling the meeting.

- (D) **Waiver, Objections.** A shareholder may waive notice of a meeting of shareholders. A waiver of notice by shareholder entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a shareholder at a meeting is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

80A-8-5 Electronic Communications.

- (A) **Electronic Conferences.** If and to the extent authorized in the By-laws or by the Board of a closely held corporation, a conference among shareholders by any means of communication through which the shareholders may simultaneously hear each other during the conference constitutes a regular or special meeting of shareholders, if the same notice is given of the conference to every holder of shares entitled to vote as would be required by this Ordinance for a meeting, and if the number of shares held by the shareholders participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a conference, by that means constitutes presence at the meeting in person or by proxy if all the other requirements of Section 80A-8-20 are met.
- (B) **Participation in Electronic Means.** If and to the extent authorized in the By-laws or by the Board of a closely held corporation, a shareholder may participate in a regular or special meeting of shareholders not described in subdivision 1 by any means of communication through which the shareholder, other shareholders so participating, and all shareholders physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of Section 80A-8-20 are met.
- (C) **Waiver.** Waiver of notice of a meeting by means of communication described in Sections 80A-8-14 (A) and 80A-8-14 (B) may be given in the provided in Section 80A-8-13 (D). Participation in a meeting by means of communication described in Sections 80A-8-14 (A) and 80A-8-14 (B) is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because, the item may not be lawfully be considered at the meeting and does not participate in the consideration of the item at the meeting.

80A-8-6 Act of the Shareholders.

- (A) **Majority Required.** The shareholders shall take action by the affirmative vote of the holders of the greater of: (1) a majority of the voting power of the shares present and

entitled to vote on that item of business, or (2) a majority of the voting power of the minimum number of the shares entitled to vote that would constitute a quorum for the transaction of business at the meeting, except where this Code or the Articles require a larger proportion or number. If the Articles require a larger proportion or number than is required by this Code for a particular action, the Articles control.

- (B) **Voting by Class.** In any case where a class or series of shares is entitled by this Ordinance, the Articles, the By-laws, or the terms of the shares to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the holders of the same proportion of the shares present of that class or series, or of the total outstanding shares of that class or series, as the proportion required pursuant to Section 80A-8-15 (A), unless the Articles require a larger proportion. Unless otherwise stated in the Articles or By-laws in the case of voting as a class, the minimum percentage of the total number of shares of the class or series which must be present shall be equal to the minimum percentage of all outstanding shares entitled to vote required to be present under Section 80A-8-17.

80A-8-7 Action without a Meeting.

An action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting by written action signed by all of the shareholders entitled to vote on that action. The written action is effective when it has been signed by all of those shareholders, unless a different effective time is provided in the written action.

80A-8-8 Quorum.

The holders of a majority of the voting power of the shares entitled to vote at a meeting are a quorum for the transaction of business, unless a larger or smaller proportion or number is provided in the Articles or By-laws. If a quorum is present when a duly called or held meeting is convened, the shareholders present may continue to transact business until adjournment, even though the withdrawal of a number of shareholders originally present leaves less than the proportion or number otherwise required for a quorum.

**PART 9
LOANS; OBLIGATIONS; DISTRIBUTIONS**

80A-9-1. Loans; Guarantees; Suretyship.

- (A) **Prerequisites.** A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the Directors present and:

- (1) Is in the usual and regular course of business of the corporation;

- (2) Is with, or for the benefit of, a related corporation, an organization in which the corporation has a financial interest, an organization with which the corporation has a business relationship, or an organization to which the corporation has the power to make donations;
 - (3) Is with, or for the benefit of, an Officer or other employee of the corporation or a subsidiary, including an Officer or employee who is a Director of the corporation or a subsidiary, and may reasonably be expected, in the judgment of the Board, to benefit the corporation; or
 - (4) Has been approved by:
 - (a) The holders of two-thirds (2/3) of the voting power of the shares entitled to vote which are owned by persons other than the interested person or persons, or
 - (b) The unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote.
- (B) **Interest; Security.** A loan, guarantee, surety contract, or other financial assistance under subdivision 1 may be with or without interest and may be unsecured or may be secured in any manner, including, without limitation, a grant of a security interest in shares of the corporation.
- (C) **Banking Authority Not Granted.** This Section does not grant any authority to act as a bank or to carry on the business of banking.

80A-9-2. Advances.

A corporation may, without a vote of the Directors, advance money to its Directors, Officers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

80A-9-3. Indemnification.

(A) **Definitions.**

- (1) For purposes of this Section, the terms defined in this subdivision have the meanings given them.
- (2) "Corporation" includes a Tribal or foreign corporation that was the predecessor of the corporation referred to in this Section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

- (3) "Official capacity" means (a) with respect to a Director, the position of Director in a corporation, (b) with respect to a person other than a Director, the elective or appointive office or position held by an Officer, member of a committee of the Board, or the employment relationship undertaken by an employee of the corporation, and (c) with respect to a Director, Officer, or employee of the corporation who, while a Director, Officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a Director, Officer, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a Director, Officer, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.
- (4) "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.
- (5) "Special legal counsel" means counsel who has not represented the corporation or a related corporation, or a Director, Officer, member of a committee of the Board, or employee, whose indemnification is in issue.

(B) Indemnification Mandatory; Standard.

- (1) Subject to the provisions of Section 80A-9-3 (D), a corporation shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:
- (a) Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions;
- (b) Acted in good faith;
- (c) Received no improper personal benefit and Section 80A-6-19, if applicable, has been satisfied;
- (d) In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and

- (e) In the case of acts or omissions occurring in the official capacity described in Section 80A-9-3 (A)(3)(a) or (b), reasonably believed that the conduct was in the best interests of the corporation, or in the case of acts or omissions occurring in the official capacity described in Section 80A-9-3 (A)(3)(c), reasonably believed that the conduct was not opposed to the best interests of the corporation. If the person's acts or omissions complained of in the proceeding relate to conduct as a Director, Officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the corporation if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.
- (2) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in this subdivision.
- (C) **Advances.** Subject to the provisions of Section 80A-9-3 (D), if a person is made or threatened to be made a party to a proceeding the person is entitled, upon written request to the corporation, to payment or reimbursement by the corporation of reasonable expenses, including attorney's fees and disbursements, incurred by the person in advance of the final disposition of the proceeding (a) upon receipt by the corporation of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in Section 80A-9-3 (B) have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the corporation, if it is ultimately decided that the criteria for indemnification have not been satisfied, and (b) after a determination that the facts then known to those making the determination would not preclude indemnification under this Section. The written undertaking required by paragraph (a) *infra*, is an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.
- (D) **Prohibition or Limit on Indemnification or Advances.** The Articles or By-laws either may prohibit indemnification or advances of expenses otherwise required by this Section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in Section 80A-9-3 (B) and Section 80A-9-3 (C) including, without limitation, monetary limits on indemnification or advances of expenses, if the conditions apply equally to all persons or to persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring prior to the effective date of a provision in the Articles or the date of adoption of a provision in the By-laws establishing the prohibition or limit on indemnification or advances.
- (E) **Reimbursement to Witnesses.** This Section does not require, or limit the ability of, a corporation to reimburse expenses, including attorney's fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

(F) Determination of Eligibility.

- (1) All determinations of whether indemnification of a person is required because the criteria set forth in Section 80A-9-3 (B) have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in Section 80A-9-3 (C) shall be made:
- (a) By the Board by a majority of a quorum; Directors who are at the time parties to the proceeding shall not be counted for determining either a majority or the presence of a quorum;
 - (b) If a quorum under clause (a) cannot be obtained, by a majority of a committee of the Board, consisting solely of two (2) or more Directors not at the time parties to the proceeding duly designated to act in the matter by a majority of the full Board including Directors who are parties;
 - (c) If a determination is not made under clause (a) or (b), by special legal counsel, selected either by a majority of the Board or a committee by vote pursuant to clause (a) or (b) or, if the requisite quorum of the full Board cannot be obtained and the committee cannot be established, by a majority of the full Board including Directors who are parties;
 - (d) If a determination is not made under clauses (a) to (c), by the shareholders, excluding the votes of shares held by parties to the proceeding; or
 - (e) If an adverse determination is made under clauses (a) to (d) or under paragraph (2), or if no determination is made under clauses (a) to (d) or under paragraph (2) within sixty (60) days after (1) the later to occur of the termination of a proceeding or a written request for indemnification to the corporation or (2) a written request for an advance of expenses, as the case may be, by a court or entity of competent jurisdiction, which may be the same court or entity in which the proceeding involving the persons liability took place, upon application of the person and any notice the court or entity requires. The person seeking indemnification or payment or reimbursement of expenses pursuant to this clause has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.
- (2) With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a Director, Officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, the determination whether indemnification of this person is required because the criteria set forth in Section 80A-9-3 (B) have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as

provided in Section 80A-9-3 (C) may be made by an annually appointed committee of the Board, having at least one member who is a Director. The committee shall report at least annually to the Board concerning its actions.

- (G) **Insurance.** A corporation may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the corporation would have been required to indemnify the person against the liability under the provisions of this section.
- (H) **Disclosure.** A corporation that indemnities or advances expenses to a person in accordance with this Section in connection with a proceeding by or on behalf of the corporation shall report to the shareholders in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of shareholders.
- (I) **Indemnification of Other Persons.** Nothing in this Section shall be construed to limit the power of the corporation to indemnify other persons by contract or otherwise.

80A-9-4. Distributions.

- (A) **When Permitted.** The Board may authorize and cause the corporation to make a distribution only if the Board determines, in accordance with Section 80A-9-4 (B), that the corporation will be able to pay its debts in the ordinary course of business after making the distribution and the Board does not know before the distribution is made that the determination was or has become erroneous, and the corporation may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution. The effect of a distribution on the ability of the corporation to pay its debts in the ordinary course of business after making the distribution shall be measured in accordance with Section 80A-9-4 (C). The right of the Board to authorize, and the corporation to make, distributions may be prohibited, limited, or restricted by or the rights and priorities of persons to receive distributions may be established by, the Articles or By-laws or an agreement.
- (B) **Determination Presumed Proper.** A determination that the corporation will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in Section 80A-6-18 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. No liability under Section 80A-6-18 or Section 80A-9-7 will accrue if the requirements of this subdivision have been met.
- (C) **Effect Measured.**
 - (1) In the case of a distribution made by a corporation in connection with a purchase, redemption, or other acquisition of its shares, the effect of the distribution shall be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the corporation,

or as of the date on which the shareholder ceases to be a shareholder of the corporation with respect to the shares, whichever is the earliest.

- (2) The effect of any other distribution shall be measured as of the date of its authorization if payment occurs one hundred and twenty (120) days or less following the date of authorization or as of the date of payment if payment occurs more than one hundred and twenty (120) days following the date of authorization.
- (3) Indebtedness of a corporation incurred or issued in a distribution in accordance with this Section to a shareholder who as a result of the transaction is no longer a shareholder is on a parity with the indebtedness of the corporation to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the corporation or a related corporation, or subject to any other agreement between the corporation and the shareholder.
- (4) Sections 80A-9-4 to 80A-9-7 supersede all other laws of the Tribe with respect to distributions of tribal corporations.

(D) Restrictions.

- (1) A distribution may be made to the holders of a class or series of shares only if:
 - (a) All amounts payable to the holders of shares having a preference for the payment of that kind of distribution, other than those holders who give notice to the corporation of their agreement to waive their rights to that payment, are paid; and
 - (b) The payment of the distribution does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights, unless the distribution is made to those shareholders in the order and to the extent of their respective priorities or the holders of shares who do not receive distributions in that order give notice to the corporation of their agreement to waive their rights to that distribution. A determination that the payment of the distribution does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights is presumed to be proper if the determination is made in compliance with the standard of conduct provided in Section 80A-6-18 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation, or other methods, reasonable in the circumstances. Liability under Section 80A-6-18 or Section 80A-9-7 will not arise if the requirements of this paragraph are met.
- (2) If the money or property available for distribution is insufficient to satisfy all preferences, the distributions shall be made pro-rata according to the order of

priority of preferences by classes and by series within those classes unless those holders who do not receive distributions in that order give notice to the corporation of their agreement to waive their rights to that distribution.

80A-9-4. Powers to Acquire Shares.

(A) **When Permitted; Status of Shares.** A corporation may acquire its own shares, subject to Section 80A-9-4 and Section 80A-9-5 (C). If the corporation pledges the shares to secure payment of the redemption price thereof, then the corporation shall not be deemed to have acquired the shares for the purposes of this subdivision until the pledge is released. Shares acquired by a corporation constitute authorized but unissued shares of the corporation, unless the Articles provide that they shall not be reissued, in which case the number of authorized shares is reduced by the number of shares acquired.

(B) **Statement of Cancellation.** If the number of authorized shares of a corporation is reduced by an acquisition of its shares, the corporation shall, no later than the time it makes its next annual report to shareholders or, if no report is made, no later than three months after the end of the fiscal year in which the acquisition occurs, file with the Tribal Vice Chairman a statement of cancellation showing the reduction in the authorized shares. The statement shall contain:

- (1) The name of the corporation;
- (2) The number of acquired shares canceled, itemized by classes and series; and
- (3) The aggregate number of authorized shares itemized by classes and series, after giving effect to the cancellation.

(C) **Limitation on Share Purchases.** A publicly-held corporation shall not, directly or indirectly, purchase or agree to purchase any shares entitled to vote from a person (or two or more persons who act as a partnership, limited partnership, syndicate, or other group pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise for the purpose of acquiring, owning, or voting shares of the publicly-held corporation) who beneficially owns more than five percent (5%) of the voting power of the publicly-held corporation for more than the market value thereof if the shares have been beneficially owned by the person for less than two (2) years, unless the purchase or agreement to purchase is approved at a meeting of shareholders by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote or the publicly-held corporation makes an offer, of at least equal value per share, to all holders of shares of the class or series and to all holders of any class or series into which the securities may be converted. For purposes of determining the period that shares have been beneficially owned by a person:

- (1) Shares acquired by the person by gift from a donor are deemed to have first become beneficially owned by the person when the shares were acquired by the donor;

- (2) Shares acquired by a trust from the settlor of the trust, or shares acquired from the trust by a beneficiary of the trust, are deemed to have first become beneficially owned by the trust or the beneficiary when the shares were acquired by the settlor; and
- (3) Shares acquired by an estate or personal representative as a result of the death or incapacity of a person, or shares acquired from the estate or personal representative by an heir, devisee, or beneficiary of the deceased or incapacitated person, are deemed to have first become beneficially owned by the estate, personal representative, heir, devisee, or beneficiary when the shares were acquired by the deceased or incapacitated person.

80A-9-5. Liability of Shareholders for Illegal Distributions.

- (A) **Liability.** A shareholder who receives a distribution made in violation of the provisions of Section 80A-9-4 is liable to the corporation, its receiver or other person winding up its affairs, or a Director under Section 80A-9-7 (B) but only to the extent that the distribution received by the shareholder exceeded the amount that properly could have been paid under Section 80A-9-4.
- (B) **Statute of Limitations.** An action shall not be commenced under this Section more than two (2) years from the date of the dissolution.

80A-9-6. Liability of Directors for Illegal Distributions.

- (A) **Liability.** In addition to any other liabilities, a Director who is present at a meeting and fails to vote against, or who consents in writing to, a distribution made in violation of Section 80A-9-4 or a restriction contained in the Articles or By-laws or an agreement, and who fails to comply with the standard of conduct provided in Section 80A-6-18, is liable to the corporation jointly and severally with all other Directors so liable and to other Directors under Section 80A-9-7 (C), but only to the extent that the distribution exceeded the amount that properly could have been paid under Section 80A-9-4.
- (B) **Contribution from Shareholders.** A Director against whom an action is brought under this Section with respect to a distribution may implead in that action all shareholders who received the distribution and may compel pro-rata contribution from them in that action to the extent provided in Section 80A-9-6 (A).
- (C) **Impleader, Contribution from Directors.** A Director against whom an action is brought under this section with respect to a distribution may implead in that action all other Directors who voted for or consented in writing to the distribution and may compel pro-rata contribution from them in that action.
- (D) **Statute of Limitations.** An action shall not be commenced under this Section more than two (2) years from the date of the distribution.

PART 10 DISSOLUTION

80A-10-1 Methods of Dissolution.

A corporation may be dissolved:

- (A) By the incorporators pursuant to Section 80A-12-2;
- (B) By the shareholders pursuant to Sections 80A-12-3 to 80A-12-6; or
- (C) By order of the Tribal Court pursuant to Section 80A-12-9 to Section 80A-12-17.

80A-10-2 Voluntary Dissolution by Incorporators.

- (A) **Manner.** A corporation that has not issued shares may be dissolved by the incorporators in the manner set forth in this section.
- (B) **Articles of Dissolution.** The Articles of Dissolution shall be filed with the Tribal Vice Chairman. A majority of the incorporators shall sign Articles of Dissolution containing:
 - (1) The name of the corporation;
 - (2) The date of incorporation;
 - (3) A written statement that shares have not been issued;
 - (4) A written statement setting forth the date of the meeting at which the action to dissolve the corporation was passed by an affirmative vote;
 - (5) A written statement that all consideration received from subscribers for shares to be issued, less expenses incurred in the organization of the corporation, has been returned to the subscribers;
 - (6) A written statement that no debts remain unpaid;
 - (7) A written statement that all remaining property and assets of the corporation have been distributed in accordance with this Chapter; and
 - (8) A written statement that there are no pending legal, administrative, or arbitration proceedings by or against the corporation or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against the corporation in any such proceedings.

- (C) **Certificate.** The Tribal Vice Chairman shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:
- (1) The name of the corporation;
 - (2) The date and time the Articles of Dissolution were filed with the Tribal Vice Chairman; and
 - (3) A statement that the corporation is dissolved.
- (D) **Effective Date.** Upon the issuance of such Certificate of Dissolution by the Tribal Vice Chairman, the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by members and officers as provided for in this Chapter for winding up the corporation.

80A-10-3 Voluntary Dissolution by Shareholders.

- (A) **Manner.** A corporation may be dissolved by the shareholders when authorized in the manner set forth in this Section.
- (B) **Notice; Approval.**
- (1) Written notice shall be given to each shareholder, whether or not entitled to vote at a meeting of shareholders, within the time and in the manner provided in Section 80A-8-13 for notice of meetings of shareholders and whether the meeting is a regular or a special meeting shall state that a purpose of the meeting is to consider dissolving the corporation.
 - (2) The proposed dissolution shall be submitted for approval at a meeting of shareholders. If the proposed dissolution is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution shall be commenced.

80A-10-4 Filing Notice of Intent to Dissolve; Effect.

- (A) **Contents.** If dissolution of the corporation is approved pursuant to Section 80A-12-3 (B) the corporation shall file with the Tribal Vice Chairman a notice of intent to dissolve. The notice shall contain:
- (1) The name of the corporation;
 - (2) The date and place of the meeting at which the resolution was approved pursuant to Section 80A-12-3 (B); and
 - (3) A statement that the requisite vote of the shareholders was received, or that all shareholders entitled to vote signed a written action.

- (B) **Winding Up.** When the notice of intent to dissolve has been filed with the Tribal Vice Chairman, and subject to Section 80A-12-7, the corporation shall cease to carry on its business, except to the extent necessary for the winding up of the corporation. The shareholders shall retain the right to revoke the dissolution proceedings in accordance with Section 80A-12-7 and the right to remove Directors or fill vacancies on the Board. The corporate existence continues to the extent necessary to wind up the affairs of the corporation until the dissolution proceedings are revoked or Articles of Dissolution are filed with the Tribal Vice Chairman.
- (C) **Remedies Continued.** The filing with the Tribal Vice Chairman of a notice of intent to dissolve does not affect any remedy in favor of the corporation or any remedy against it or its Directors, Officers, or shareholders in those capacities, except as provided in Sections 80A-12-5, 80A-12-6, and 80A-12-9.

80A-10-5 Dissolution Procedure for Corporations that Give Notice to Creditors and Claimants.

- (A) **When Permitted; How Given.** When a notice of intent to dissolve has been filed with the Tribal Vice Chairman, the corporation may give notice of the filing to each creditor of and claimant against the corporation known or unknown, present or future, and contingent or non-contingent. If notice to creditors and claimants is given, it must be given by publishing the notice once each week for four (4) successive weeks in a legal newspaper on the Reservation and by giving written notice to known creditors and claimants.
- (B) **Contents. The Notice to Creditors and Claimants Shall Contain:**
- (1) A statement that the corporation is in the process of dissolving;
 - (2) A statement that the corporation has filed with the Tribal Vice Chairman a notice of intent to dissolve;
 - (3) The date of filing the notice of intent to dissolve;
 - (4) The address of the office to which written claims against the corporation must be presented; and
 - (5) The date by which all the claims must be received, which shall be the later of ninety (90) days after published notice or, with respect to a particular known creditor or claimant, ninety (90) days after the date on which written notice was given to that creditor or claimant. Published notice is deemed given on the date of first publication for the purpose of determining this date.
- (C) **Claims against Corporations that Give Notice.**

- (1) A corporation that gives notice to creditors and claimants has thirty (30) days from the receipt of each claim filed according to the procedures set forth by the corporation on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it. A claim not expressly rejected in this manner is deemed accepted.
 - (2) A creditor or claimant to whom notice is given and whose claim is rejected by the corporation has sixty (60) days from the date of rejection, one hundred and eighty (180) days from the date the corporation filed with the Tribal Vice Chairman the notice of intent to dissolve, or ninety (90) days after the date on which notice was given to the creditor or claimant, whichever is longer, to pursue any other remedies with respect to the claim.
 - (3) A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is barred from suing or that claim or otherwise realizing upon or enforcing it, except as provided in Section 80A-12-19.
 - (4) A creditor or claimant whose claim is rejected by the corporation under paragraph (b) is barred from suing on that claim or otherwise realizing upon or enforcing it, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in paragraph (b).
- (D) Articles of Dissolution; When Filed.** Articles of Dissolution for a corporation that has given notice to creditors and claimants under this Section must be filed with the Tribal Vice Chairman after:
- (1) The ninety (90) day period in Section 80A-12-5 (B)(5) has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or
 - (2) The longest of the periods described in Section 80A-12-5 (C)(2) has expired and there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in Section 80A-12-5 (C)(2).
- (E) Contents of Articles.** The Articles of Dissolution must state:
- (a) The last date on which the notice was given and;
 - (b) That the payment of all creditors and claimants filing a claim within the ninety (90) day period in Section 80A-12-5 (B)(5) has been made or provided for; or
 - (c) The date on which the longest of the periods described in Section 80A-12-5 (C)(2) expired;

- (1) That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with Section 80A-9-4 (D), or that adequate provision has been made for that distribution; and
- (2) That there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in Section 80A-12-5 (C)(2) or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

80A-10-6 Dissolution Procedure for Corporations that Do Not Give Notice.

(A) **Articles of Dissolution When Filed.** Articles of Dissolution for a corporation that has not given notice to creditors and claimants in the manner provided in Section 80A-12-5 must be filed with the Tribal Vice Chairman after:

- (1) The payment of claims of all known creditors and claimants has been made or provided for; or
- (2) At least two (2) years have elapsed from the date of filing the notice of intent to dissolve.

(B) **Contents of Articles.** The Articles of Dissolution must state:

- (1) If Articles of Dissolution are being filed pursuant to Section 80A-12-6 (A)(1) that all known debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made for payment or discharge;
- (2) That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with Section 80A-9-4 (D), or that adequate provision has been made for that distribution; and
- (3) That there are no pending legal, administrative, or arbitration proceedings by or against the corporation, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

(C) **Claims against Corporations that Do Not Give Notice.**

- (1) If the corporation has paid or provided for all known creditors or claimants at the time Articles of Dissolution are filed. A creditor or claimant who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two (2) years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it.

- (2) If the corporation has not paid or provided for all known creditors and claimants at the time Articles of Dissolution are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two (2) years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in Section 80A-12-19.

80A-10-6 Revocation of Dissolution Proceedings.

- (A) **Generally.** Dissolution proceedings commenced pursuant to Section 80A-12-3 may be revoked prior to filing of Articles of Dissolution.
- (B) **Notice to Shareholders; Approval.** Written notice shall be given to every shareholder entitled to vote at shareholders' meeting within the time and in the manner provided in Section 80A-8-13 for notice of meetings of shareholders and shall state that a purpose of the meeting is to consider the advisability of revoking the dissolution proceedings. The proposed revocation shall be submitted to the shareholders at the meeting. If the proposed revocation is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution proceedings are revoked.
- (C) **Effective Date; Effect.** Revocation of dissolution proceedings is effective when a notice of revocation is filed with the Tribal Vice Chairman. The corporation may thereafter resume business.

80A-10-7 Effective Date of Dissolution; Certificate.

- (A) **Effective Date.** When the Articles of Dissolution have been filed with the Tribal Vice Chairman, the corporation is dissolved.
- (B) **Certificate.** The Tribal Vice Chairman shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:
- (1) The name of the corporation;
 - (2) The date and time the Articles of Dissolution were filed with the Tribal Vice Chairman; and
 - (3) A statement that the corporation is dissolved.

80A-10-8 Supervised Voluntary Dissolution.

After the notice of intent to dissolve has been filed with the Tribal Vice Chairman and before a certificate of dissolution has been issued, the corporation or, for good cause shown, a shareholder or creditor may apply to the Tribal Court to have the dissolution conducted or

continued under the supervision of the Tribal Court as provided in Sections 80A-12-10 to 80A-12-19.

80A-10-9 Judicial Intervention; Equitable Remedies or Dissolution.

(A) **When Permitted.** The Tribal Court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:

- (1) In a supervised voluntary dissolution pursuant to Section 80A-12-9;
- (2) In an action by a shareholder when it is established that:
 - (a) The Directors or the persons having the authority otherwise vested in the Board are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock;
 - (b) The Directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one (1) or more shareholders in their capacities as shareholders, Directors, or Officers, or as employees of a closely held corporation;
 - (c) The shareholders of the corporation are so divided in voting power that, for a period that includes the time when two (2) consecutive regular meetings were held, they have failed to elect successors to Directors whose terms have expired or would have expired upon the election and qualification of their successors;
 - (d) The corporate assets are being misapplied or wasted; or
 - (e) The period of duration as provided in the Articles has expired and has not been extended as provided in Section 80A-13-1;
- (3) In an action by a creditor when:
 - (a) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or
 - (b) The corporation has admitted in writing that the corporation is unable to pay its debts in the ordinary course of business; or
- (4) In an action by the Tribal Court to dissolve the corporation in accordance with Section 80A-12-13 when it is established that a decree of dissolution is appropriate.

(B) **Buy-out on Motion.**

- (1) In an action under Section 80A-12-10 (A)(2) involving a closely held corporation at the time the action is commenced and in which one (1) or more of the circumstances described in that clause is established, the Tribal Court may, upon motion of a corporation or a shareholder or beneficial owner of shares of the corporation, order the sale by a plaintiff or a defendant of all shares of the corporation held by the plaintiff or defendant to either the corporation or the moving shareholders, whichever is specified in the motion, if the Tribal Court determines in its discretion that an order would be fair and equitable to all parties under all of the circumstances of the case.
 - (2) The purchase price of any shares so sold shall be the fair value of the shares as of the date of the commencement of the action or as of another date found equitable by the court, provided that, if the shares in question are then subject to sale and purchase pursuant to the By-laws of the corporation, a shareholder control agreement, the terms of the shares, or otherwise, the court shall order the sale for the price and on the terms set forth in them, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.
 - (3) Within five (5) days after the entry of the order, the corporation shall provide each selling shareholder or beneficial owner with the information it is required to provide under Section 80A-8-28 (E)(1).
 - (4) If the parties are unable to agree on fair value within forty (40) days of entry of the order, the Tribal Court shall determine the fair value of the shares under the provisions of Section 80A-8-28 (G), and may allow interest or costs as provided in Sections 80A-8-28 (A) and 80A-8-28 (I).
 - (5) The purchase price shall be paid in one (1) or more installments as agreed on by the parties, or, if no agreement can be reached within forty (40) days of entry of the order, as ordered by the Tribal Court. Upon entry of an order for the sale of shares under this subdivision and provided that the corporation or the moving shareholders post a bond in adequate amount with sufficient sureties or otherwise satisfy the Tribal Court that the full purchase price of the shares, plus such additional costs, expenses, and fees as may be awarded will be paid when due and payable, the selling shareholders shall no longer have any rights or status as shareholders, Officers, or Directors, except the right to receive the fair value of their shares plus such other amounts as might be awarded.
- (C) **Condition of Corporation.** In determining whether to order equitable relief, dissolution, or a buy-out, the Tribal Court shall take into consideration the financial condition of the corporation but shall not refuse to order equitable relief, dissolution, or a buy-out solely on the ground that the corporation has accumulated or has current operating profits.
- (D) **Considerations in Granting Relief Involving Closely Held Corporations.** In determining whether to order equitable relief, dissolution, or a buy-out, the Tribal Court

shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other.

- (E) **Dissolution as Remedy.** In deciding whether to order dissolution, the Tribal Court shall consider whether lesser relief suggested by one (1) or more parties, such as any form of equitable relief, a buy-out, or a partial liquidation, would be adequate to permanently relieve the circumstances established under Section 80A-12-10 (A)(2) or (3). Lesser relief may be ordered in any case where it would be appropriate under all the facts and circumstances of the case.
- (F) **Expenses.** If the Tribal Court finds that a party to a proceeding brought under this Section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.
- (G) **Venue; Parties.** Proceedings under this Section shall be brought before the Tribal Court. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally.

80A-10-10 Procedure in Involuntary or Supervised Voluntary Dissolution.

- (A) **Action before Hearing.** In dissolution proceedings the Tribal Court may issue injunctions, appoint receivers with all powers and duties the Tribal Court directs, take other actions required to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be held.
- (B) **Action after Hearing.** After a full hearing has been held, upon whatever notice the Tribal Court directs to be given to all parties to the proceedings and to any other parties in interest designated by the Tribal Court, the Tribal Court may appoint a receiver to collect the corporate assets, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. A receiver has authority, subject to the order of the Tribal Court, to continue the business of the corporation and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the corporation either at public or private sale.
- (C) **Discharge of Obligations.** The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the following order of priority to the payment and discharge or:
- (1) The costs and expenses of the proceedings, including attorney's fees and disbursements;

- (2) Debts, taxes, and assessments due the Tribe, its subdivisions, the United States, states and their subdivisions, and other tribes and their subdivisions, in that order;
 - (3) Claims duly proved and allowed to employees under the provisions of any applicable workers compensation act; provided, that claims under this clause shall not be allowed if the corporation carried workers' compensation insurance, as provided by law, at the time the injury was sustained;
 - (4) Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and
 - (5) Other claims duly proved and allowed.
- (D) **Remainder to Shareholders.** After payment of the expenses of receivership and claims of creditors duly proved, the remaining assets, if any, shall be distributed to the shareholders in accordance with Section 80A-9-4 (D).

80A-10-11 Qualifications of Receivers; Powers.

- (A) **Qualifications.** A receiver shall be a natural person or a tribal corporation or a foreign corporation authorized to transact business on the Reservation. A receiver shall give bond as directed by the Tribal Court with the sureties required by the Tribal Court.
- (B) **Powers.** A receiver may sue in and defend the Tribal Court as receiver of the corporation. The Tribal Court appointing the receiver has exclusive jurisdiction of the corporation and its property.

80A-10-12 Action by Tribal Vice Chairman.

- (A) **When Permitted.** A corporation may be dissolved involuntarily in an action filed by the Tribal Vice Chairman when it is established that:
- (1) The Articles and certificate of incorporation were procured through fraud;
 - (2) The corporation was incorporated for a purpose not permitted by Section 80A-3-1;
 - (3) The corporation failed to comply with the requirements of Sections 80A-2-1 to 80A-3-16 essential to incorporation under or election to become governed by this Ordinance;
 - (4) The corporation has flagrantly violated a provision of this Ordinance, or has violated a provision of this Ordinance more than once, or has violated more than one provision of this Ordinance; or

(5) The corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate franchise, privileges, or enterprise.

(B) **Notice to Corporation; Correction.** An action shall not be commenced under this section until thirty (30) days after notice to the corporation by the Tribal Council of the reason for the filing of the action. If the reason for filing the action is an act that the corporation has done, or omitted to do, and the act or omission may be corrected by an amendment of the Articles or By-laws or by performance of or abstention from the act, the Tribal Council shall give the corporation thirty (30) additional days in which to effect the correction before filing the action.

80A-10-13 Filing Claims in Proceedings to Dissolve.

(A) In proceedings referred to in Section 80A-12-10 to dissolve a corporation, the Tribal Court may require all creditors and claimants of the corporation to file their claims under oath with the Tribal Vice Chairman or with the receiver in a form prescribed by the Tribal Court.

(B) If the Tribal Court requires the filing of claims, it shall fix a date, which shall be not less than one hundred and twenty (120) days from the date of the order, as the last day for the filing of claims, and shall prescribe the notice of the fixed date that shall be given to creditors and claimants. Before the fixed date, the Tribal Court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of the Tribal Court, from claiming an interest in or receiving payment out of the property or assets of the corporation

80A-10-14 Discontinuance of Dissolution Proceedings.

The involuntary or supervised voluntary dissolution of a corporation shall be discontinued any time during the dissolution proceedings when it is established that cause for dissolution no longer exists. When this is established, the Tribal Court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the corporation all its remaining property and assets.

80A-10-15 Decree of Dissolution.

(A) **When Entered.** In an involuntary or supervised voluntary dissolution after the costs and expenses of the proceeding and all debts, obligations, and liabilities of the corporation have been paid or discharged and all of its remaining property and assets have been distributed to its shareholders or, if its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts, obligations, and liabilities, when all the property and assets have been applied so far as they will go to their payment according to the priorities set forth in Section 80A-12-11, the Tribal Court shall enter a decree dissolving the corporation.

- (B) **Effective Date.** When the decree dissolving the corporation has been entered, the corporation is dissolved.

80A-10-16 Filing Decree.

After the Tribal Court enters a decree dissolving a corporation, the Tribal Vice Chairman shall file a certified copy of the decree in his office. The Tribal Vice Chairman shall not charge a fee for filing the decree.

80A-10-17 Deposit with Tribal Vice Chairman of Amount due Certain Shareholders.

Upon dissolution of a corporation, the portion of the assets distributable to a shareholder who is unknown or cannot be found, or who is under disability, if there is no person legally competent to receive the distributive portion, shall be reduced to money and deposited with the Tribal Vice Chairman at the direction of the Tribal Vice Chairman. The amount deposited may be appropriated to the Tribal Vice Chairman and shall be paid over to the shareholder or a legal representative, upon proof satisfactory to the Tribal Vice Chairman of a right to payment.

80A-10-18 Claims Barred; Exceptions.

- (A) **Claims Barred.** Except as provided in this section, a creditor or claimant whose claims are barred under Section 80A-12-5, 80A-12-6, or 80A-12-14 includes a person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, and all those claiming through or under the creditor or claimant.
- (B) **Claims Reopened.** At any time within one (1) year after Articles of Dissolution have been filed with the Tribal Vice Chairman pursuant to Section 80A-12-5 or 80A-12-6 (A)(2) or a decree of dissolution has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to the Tribal Court to allow a claim:
- (1) Against the corporation to the extent of undistributed assets; or
 - (2) If the undistributed assets are not sufficient to satisfy the claim, against a shareholder, whose liability shall be limited to a portion of the claim that is equal to the portion of the distributions to shareholders in liquidation or dissolution received by the shareholder, but in no event may a shareholder's liability exceed the amount which that shareholder actually received in the dissolution.
- (C) **Obligations incurred during dissolution proceedings.** All known contractual debts, obligations, and liabilities incurred in the course of winding up the corporation's affairs shall be paid or provided for by the corporation before the distribution of assets to a shareholder. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy before the expiration of the applicable statute of limitations against the Officers and Directors of the corporation who are responsible for, but who fail to cause the corporation to pay or make provision for payment of the debts, obligations, and liabilities or against shareholders to the extent permitted under Section 80A-9-7.

This subdivision does not apply to dissolution under the supervision or order of the Tribal Court.

80A-10-19 Right to Sue or Defend After Dissolution.

After a corporation has been dissolved, any of its former Officers, Directors, or shareholders may assert or defend, in the name of the corporation, any claim by or against the corporation.

80A-10-20 Omitted Assets.

Title to assets remaining after payment of all debts, obligations, or liabilities and after distributions to shareholders may be transferred by the Tribal Court to any person entitled to those assets.

**PART 11
EXTENSION**

80A-11-1. Extension After Duration Expired.

- (A) **Extension by Amendment.** A corporation whose period of duration as provided in the Articles has expired and which has continued to do business despite that expiration may reinstate its Articles and extend the period of corporate duration, including making the duration perpetual, at any time after the date of expiration by filing an amendment to the Articles as set forth in this section.
- (B) **Contents of Amendment.** An amendment to the Articles shall be approved by the affirmative vote of a majority of the Directors present and shall include:
- (1) The date the period of duration expired under the Articles;
 - (2) A statement that the period of duration will be perpetual or, if some shorter period is to be provided, the date to which the period of duration is extended; and
 - (3) A statement that the corporation has been in continuous operation since before the date of expiration of its original period of duration.
- (C) **Approval by Shareholders.** The amendment to the Articles shall be presented, after notice, to a meeting of the shareholders. The amendment is adopted when approved by the shareholders pursuant to Section 80A-3-10.
- (D) **Filing.** Articles of Amendment conforming to Section 80A-3-12 shall be filed with the Tribal Vice Chairman.

80A-11-2. Effect of Extension.

Filing with the Tribal Vice Chairman of Articles of Amendment extending the period of duration of a corporation:

- (A) Relates back to the date of expiration of the original period of duration of the corporation as provided in the Articles;
- (B) Validates contracts or other acts within the authority of the Articles, and the corporation is liable for those contracts or acts; and
- (C) Restores to the corporation all the assets and rights of the corporation to the extent they were held by the corporation before expiration of its original period of duration, except those sold or otherwise distributed after that time.

PART 12 CORPORATE REGISTRATION

80A-12-1.

- (A) **Information Required.** A tribal corporation shall once each calendar year file with the Tribal Vice Chairman a registration containing:
 - (1) The name of the corporation;
 - (2) The address of its principal executive office, if different from the registered office address;
 - (3) The address of its registered office;
 - (4) The name of its registered agent;
 - (5) The name and business address of the Officer or other person exercising the principal functions of the chief executive Officer of the corporation; and
 - (6) The signature of a person authorized to sign the registration on behalf of the corporation.
- (B) **Information Public.** The information required by Section 80A-14-1 (A) is public data.
- (C) **Loss of Good Standing.** A corporation that fails to file a registration pursuant to the requirements of Section 80A-14-1 (A) loses its good standing. The corporation may regain its good standing by filing a single annual registration and paying a \$____ fee.
- (D) **Notice of Repeated Violation.** If a corporation fails for three (3) consecutive years to file a registration pursuant to the requirements of Section 80A-14-1 (A), the Tribal Vice Chairman shall give notice by first class mail to the corporation at its registered office that it has violated this Section and is subject to dissolution by the office of the Tribal

Vice Chairman if the delinquent registration is not filed pursuant to Section 80A-14-1 (A) and the \$_____ fee paid within sixty (60) days after the mailing of the notice. For purposes of this subdivision, delinquent registrations mean a single annual registration.

(E) Penalty.

- (1) A corporation that has failed for three (3) consecutive years to file a registration pursuant to the requirements of subdivision 1, has been notified of the failure pursuant to subdivision 4, and has failed to file the delinquent registration during the sixty (60) day period described in Section 80A-14-1 (D), shall be dissolved by the Tribal Vice Chairman as described in paragraph (2).
- (2) Immediately after the expiration of the sixty (60) day period described in paragraph (a), if the corporation has not filed the delinquent registration, the Tribal Vice Chairman shall issue a certificate of involuntary dissolution, and a copy of the certificate shall be filed in the office of the Tribal Vice Chairman. The original certificate shall be sent to the registered office of the corporation. The Tribal Vice Chairman shall annually inform the Tribal Council of the names of corporations dissolved under this section during the preceding year. A corporation dissolved in this manner is not entitled to the benefits of Section 80A-12-19. The liability, if any, of the shareholders of a corporation dissolved in this manner shall be determined and limited in accordance with Section 80A-9-6, except that the shareholders shall have no liability to any Director of the corporation under Section 80A-9-7 (B).

(F) Reinstatement. A corporation may retroactively reinstate its corporate existence after statutory dissolution by filing a single annual registration and paying a \$_____ fee. Filing the annual registration with the Tribal Vice Chairman:

- (1) Returns the corporation to active status as of the date of the statutory dissolution;
- (2) Validates contracts or other acts within the authority of the Articles, and the corporation is liable for those contracts or acts; and
- (3) Restores to the corporation all assets and rights of the corporation and its shareholders to the extent they were held by the corporation and its shareholders before the statutory dissolution occurred, except to the extent that assets or rights were affected by acts occurring after the dissolution or sold or otherwise distributed after that time.

**PART 13
ACTIONS AGAINST CORPORATIONS**

80A-13-1. Service of Process on Corporation.

- (A) **Who May be served.** A process, notice, or demand required or permitted by law to be served upon a corporation may be served either upon the registered agent, if any, of the corporation named in the Articles, or upon an Officer of the corporation, or upon the Tribal Vice Chairman as provided in this Section.
- (B) **Service on Tribal Vice Chairman When Permitted.** If a corporation has appointed and maintained a registered agent on the Reservation but neither its registered agent nor an Officer of the corporation can be found at the registered office, or if a corporation fails to appoint or maintain a registered agent on the Reservation and an Officer of the corporation cannot be found at the registered office, then the Tribal Vice Chairman is the agent of the corporation upon whom the process, notice, or demand may be served. The return of a licensed law enforcement official, or the affidavit of a person not a party, that no registered agent or Officer can be found at the registered office on the Reservation is conclusive evidence that the corporation has no registered agent or Officer at its registered office. Service on the Tribal Vice Chairman of any process, notice, or demand is deemed personal service upon the corporation and shall be made by filing with the Tribal Vice Chairman duplicate copies of the process, notice or demand. The Tribal Vice Chairman shall immediately forward, by certified mail addressed to the corporation at its registered office, a copy of the process, notice, or demand. Service on the Tribal Vice Chairman is returnable in not less than thirty (30) days notwithstanding a shorter period specified in the process, notice, or demand.
- (C) **Record of Service.** There shall be maintained in the office of the Tribal Vice Chairman a record of all processes, notices, and demands served upon the Tribal Vice Chairman under this Section, including the date and time of service and the action taken with reference to it.
- (D) **Other Methods of Service.** Nothing in this Section limits the right of a person to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

80A-13-2. Tribal Court Action; Remedies and Penalties.

The Tribal Court shall have the authority to determine, apply and enforce appropriate remedies and penalties, including, but not limited to, civil fines, for violations of this Code, or of the Articles of Incorporation or By-laws of any corporation formed pursuant to this Code. The remedies available to corporations and their shareholders, shall include declaratory and injunctive relief, and special writs of mandamus, to compel actions necessary to secure the rights, obligations or privileges of such parties, whether or not those rights, obligations or privileges arise under this Ordinance. A prevailing plaintiff in any action shall be awarded costs and reasonable attorneys' fees.

**PART 14
CORPORATIONS WHOLLY OWNED BY THE TRIBE**

80A-14-1. Scope.

Sections 80A-16-1 through 80A-16-9 apply to all tribal corporations wholly owned by the Tribe or the Tribe's Economic Development Authority, whether directly or as a subsidiary of another tribal corporation wholly owned by the Tribe or the Tribe's Economic Development Authority, as provided in Section 80A-16-2.

80A-14-2. Application.

- (A) **Corporations Directly Owned by the Tribe or the Tribe's Economic Development Authority.** The consent of the Tribal Council or the Board of Directors of the Tribe's Economic Development Authority shall be required prior to the incorporation under this Ordinance of any corporation to be wholly owned by the Tribe or the Tribe's Economic Development Authority. For this purpose, the incorporator shall file with the Tribal Vice Chairman, when the incorporator files the Articles of Incorporation of a corporation to be wholly owned by the Tribe or the Tribe's Economic Development Authority, a certified copy of a resolution of the Tribal Council or of the Board of Directors of the Tribe's Economic Development Authority authorizing the formation of the corporation.
- (B) **Corporations Indirectly Owned by the Tribe or the Tribe's Economic Development Authority.** The consent of the Board of Directors of the corporation wholly owned by the Tribe or the Tribe's Economic Development Authority shall be required prior to the incorporation under this Ordinance of a subsidiary corporation to be wholly owned by a parent corporation that is wholly owned by the Tribe, the Tribe's Economic Development Authority, or wholly owned by a tribal entity, including a resolution based tribal entity. For this purpose, the incorporator shall file with the Tribal Vice Chairman, when the incorporator files the Articles of Incorporation of a subsidiary corporation to be wholly owned by a parent corporation that is wholly owned by the Tribe or the Tribe's Economic Development Authority, a certified copy of a resolution of the Board of the parent corporation authorizing the formation of the subsidiary corporation.
- (C) **Designation in Articles.** The Articles of a corporation wholly owned, directly or indirectly, by the Tribe or the Tribe's Economic Development Authority and subject to the provisions of Sections 80A-16-1 to 80A-16-9 shall expressly so state and when accepting the Articles for filing, the Tribal Vice Chairman shall note that the corporation is governed by the provisions of this Ordinance applicable to wholly-owned tribal corporations.
- (D) **Purpose of Corporations Directly and Indirectly Owned by the Tribe or the Tribe's Economic Development Authority.** Articles of Incorporation for a corporation to be wholly owned, directly or indirectly, by the Tribe or the Tribe's Economic Development Authority shall state the purpose of the corporation that relates to the overall needs, priorities, goals, and objectives of the Tribe and the Tribal government, including how the corporation will contribute to tribal economic policy and further the Tribal goals of self-determination and/or economic self-sufficiency.

80A-14-3. Special Powers, Privileges and Immunities of Corporations Wholly Owned by the Tribe or the Tribe's Economic Development Authority.

- (A) **Scope.** The Corporations established under this Section shall be considered to be governmental instrumentalities of the Tribe; and their Officers and employees considered Officers and employees of the Tribe carrying out responsibilities imposed upon the Tribal Council for the economic advancement of the Tribe and its members by the Tribal Constitution. Such corporations, their Officers and employees shall, therefore, be entitled to all of the privileges and immunities enjoyed by the Tribe; including but not limited to, immunities from suit in federal and state courts, and federal and state taxation, or regulation, except as specifically set out in any Articles of Incorporation filed pursuant to Section 80A-16-2. The special powers, privileges and immunities described in this section shall be available only to a corporation wholly owned, directly or indirectly, by the Tribe or the Tribe's Economic Development Authority.
- (B) **Privileges and Immunities.** All of the rights, privileges and immunities of the Tribe are hereby conferred on all tribal corporations wholly owned, directly or indirectly, by the Tribe or the Tribe's Economic Development Authority to the same extent that the Tribe would have such rights, privileges and immunities if it engaged in the activities undertaken by the corporation. Such tribal corporations shall be considered to be instrumentalities of the Tribe, and their Officers and employees considered Officers and employees of the Tribe, created for the purpose of carrying out authorities and responsibilities of the Tribal Council for economic development of the Tribe and the advancement of its Tribal members. Such tribal corporations, their Directors, Officers, managers and employees shall, therefore, be entitled to all of the privileges and immunities enjoyed by the Tribe, including but not limited to immunities from suit in federal, state, and tribal courts and from federal, state, and local taxation or regulation.
- (C) **Sovereign Immunity.** The sovereign immunity of the Tribe is hereby conferred on all tribal corporations wholly owned, directly or indirectly, by the Tribe or the Tribe's Economic Development Authority. A corporation wholly owned, directly or indirectly, by the Tribe or the Tribe's Economic Development Authority shall have the power to sue and is authorized to consent to be sued before the Tribal Court, and in all other courts of competent jurisdiction, provided, however, that:
- (1) No such consent to suit shall be effective against the corporation unless such consent is:
 - (a) Explicit and includes written language in any contract or agreement explicitly limiting said waiver to a specific dollar amount not to exceed the dollar amount of the agreement or to other specific, limited non-monetary relief; and
 - (b) Contained in a written contract or commercial document to which the corporation is a party; and

- (c) Specifically approved by resolution of the Board of Directors of the corporation.
- (2) Any recovery against such corporation shall be limited to the assets of the corporation and shall specifically exclude the assets of the Tribe. Any consent to suit may be limited as to courts in which suit may be brought, to the matters that may be made the subject of the suit, to the time in which suit may be brought, to the assets or revenues of the corporation against which any judgment may be executed, and to other dispute resolution procedures or provisions.
- (3) The sovereign immunity of the corporation or any of its officials or employees shall not extend to actions against the Corporation, its officials or employees by the Tribe, the Tribe's Economic Development Authority, or parent tribal entity if indirectly owned by the Tribe or the Tribe's Economic Development Authority.
- (4) Any such waiver or consent to suit granted 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.
- (5) Notwithstanding subsection (1) above, the corporation may also specifically grant a limited waiver of its immunity from suit for participation in the Small Business Administration 8a program in the manner required by federal regulations governing the program, if the corporation receives authorization to do so from the Tribal Council or the Board of Directors of the Tribe's Economic Development Authority.

80A-14-4. Board.

- (A) **Appointment of Directors.** The Tribal Council and the Board of Directors of the Tribe's Economic Development Authority shall retain the power to appoint the Board of Directors for corporations wholly owned by the Tribe and the Tribe's Economic Development Authority. For all such corporations, including subsidiary tribal corporations, the Board of Directors shall be compromised of members of the Tribal Council, tribal members, or individuals experienced in business and tribal government.
- (B) **Removal of Directors.** A Director of a corporation wholly owned, directly or indirectly, by the Tribe or the Tribe's Economic Development Authority may be removed with or without cause by the Tribal Council or the Board of Directors of the Tribe's Economic Development Authority, unless otherwise provided for in the Articles.
- (C) **Loans to Directors.** A corporation wholly owned, directly or indirectly, by the Tribe or the Tribe's Economic Development Authority may not lend money to or guarantee the personal obligation of a Director, Officer or employee of the corporation under any circumstances.

80A-14-5. Shares in Corporations Wholly Owned by the Tribe; Shareholders; Voting.

- (A) **Shares in Wholly Owned Corporations.** Share certificates (or transaction statements for uncertificated shares) of corporations wholly owned, directly, by the Tribe or the Tribe's Economic Development Authority shall be issued in the name of the Tribe or the Tribe's Economic Development Authority, and all such shares shall be held by and for the Tribe or the Tribe's Economic Development Authority. No member of the Tribe shall have any personal ownership interest in any corporation wholly owned, directly or indirectly, by the Tribe or the Tribe's Economic Development Authority, whether by virtue of such person's status as a member of the Tribe or otherwise.
- (B) **Shares.** A corporation wholly owned, directly, by the Tribe or the Tribe's Economic Development Authority may not issue preferred or special shares.
- (C) **Voting.** A member of the Tribal Council or the Board of Directors of the Tribe's Economic Development Authority shall be authorized to vote shares of the corporation owned by the Tribe or the Tribe's Economic Development Authority, as contemplated by Section 80A-8-18 (D) of this Ordinance, in accordance with the Tribal Council's procedure for voting and passing Tribal Resolutions, or as set forth in the Economic Development Authority Ordinance or the procedures thereunder. In voting the shares of a corporation wholly owned by the Tribe or the Tribe's Economic Development Authority, the members of the Tribal Council and the Board of Directors of the Tribe's Economic Development Authority are acting not in a personal capacity but in a representative capacity on behalf of the Tribe itself.
- (D) **Proxies Illegal.** Section 80A-8-20 shall not apply to any corporation wholly owned, directly or indirectly, by the Tribe or the Tribe's Economic Development Authority. Any proxy given for the voting of shares in a corporation wholly owned, directly or indirectly, by the Tribe or the Tribe's Economic Development Authority shall be void and unenforceable.
- (E) **Voting Trusts Illegal.** Section 80A-8-21 shall not apply to any corporation wholly owned, directly or indirectly, by the Tribe or the Tribe's Economic Development Authority. Any voting trust agreement for any interest held in a corporation wholly owned by the Tribe or the Tribe's Economic Development Authority shall be void and unenforceable.
- (F) **Shareholder Control Agreements Illegal.** Section 80A-8-23 shall not apply to any corporation wholly owned, directly or indirectly, by the Tribe or the Tribe's Economic Development Authority. Any shareholder control agreement for any interest held in a corporation wholly owned, directly or indirectly, by the Tribe or the Tribe's Economic Development Authority shall be void and unenforceable.
- (G) **No Cumulative Voting.** Section 80A-6-8 shall not apply to any corporation wholly owned, directly or indirectly, by the Tribe or the Tribe's Economic Development Authority.

80A-14-6. Liability of Tribe or the Tribal Economic Development Authority as Shareholder.

Neither the Tribe nor any member of the Tribal Council or of the Board of Directors of the Tribe's Economic Development Authority shall be under any obligation to a corporation wholly owned, directly or indirectly, by the Tribe or the Tribe's Economic Development Authority, or to the creditors of any such corporation and the Tribe shall not be deemed to have waived any of the Tribe's privileges or immunities if the Tribe incorporates, owns or operates a corporation, directly or indirectly.

80A-14-7. Shareholder Meetings.

- (A) **Annual Meeting.** Annual meetings of the Tribal Council or the Board of Directors of the Tribe's Economic Development Authority, in their capacity as the shareholders of a corporation wholly owned, directly, by the Tribe or the Tribe's Economic Development Authority, shall be held at such time and at such place on the Reservation as the Board of Directors shall determine. If the Board of Directors fails to set the time and date of meeting, it shall be held on the second Tuesday in January of each year. At such annual meeting, the Tribal Council or the Board of Directors of the Economic Development Authority, in their capacity as the shareholders of the corporation, shall transact such business as may properly be brought before the meeting. Such meetings may be called and held in the same manner as applicable law provides for meetings of the Tribal Council or of the Board of Directors of the Tribe's Economic Development Authority.
- (B) **Special Meetings.** Special meetings of the Tribal Council or of the Board of Directors of the Tribe's Economic Development Authority, in their capacity as the shareholders of the corporation, may be called and held for any purpose in the manner provided for the call and holding of special meetings of the Tribal Council or of the Board of Directors of the Tribe's Economic Development Authority.
- (C) **Notice of Meetings.** The Board of Directors shall notify the Tribal Council or the Board of Directors of the date, time and place of the annual meeting of shareholders at least ten (10) days before the meeting and of any special meeting of the shareholders at least five days before the meeting. Notices shall be deemed to be effective if placed in the U.S. Mail, with proper first class postage affixed, at least twenty-two (22) days (but not more than sixty-two (62) days) prior to an annual meeting, and at least seven (7) days (but not more than sixty-two (62) days) prior to a special meeting, or on the date personally delivered to the Tribal Vice Chairman of the Tribal Council.
- (D) **Time and Place of Shareholders' Meetings.** Meetings of the shareholders of the corporation shall be held at the principal place of business or of the corporation or at such other location within the Reservation at such time and place as the Board of Directors shall fix.
- (E) **Manner of Meeting.** Except as otherwise provided in this Ordinance, the shareholders of the corporation may conduct regular or special meetings through the use of any means

and procedures which are proper for meetings of the Tribal Council or of the Board of Directors of the Tribe's Economic Development Authority.

- (F) **Presiding Officer.** The Chairperson of the Tribal Council or the Executive Officer of the Tribe's Economic Development Authority (if authorized by the Board of Directors of the Tribe's Economic Development Authority) shall preside over any shareholders' meeting.

80A-14-8. Assets; Distribution of Income.

- (A) **Assets.** Subject to the contractual and sovereign rights of others, including the Tribe, the corporation shall have as its corporate assets, and the authority to acquire, manage, own, use, pledge, encumber, or otherwise dispose of, the following:

- (1) All funds which the corporation may acquire by subscription, grant, gift, loan, or other means, and
- (2) All interests in real and personal property, whether of a tangible or intangible nature, which the corporation may acquire by subscription, grant, gift, loan, purchase, lease, or other means, and
- (3) All earnings, interest, dividends, accumulations, contract rights, claims, and other proceeds arising from any of the foregoing.

- (B) **Distribution of Net Income to Tribe Required.** Unless otherwise restricted in the Articles, all or a portion of the net income of a corporation wholly owned directly by the Tribe or the Tribe's Economic Development Authority shall be distributed to the Tribe or the Tribe's Economic Development Authority at such time as the Tribal Council or the Board of Directors of the Tribe's Economic Development Authority may determine. The net income of any wholly owned subsidiary of such a corporation and the corporation's share of the net income of any subsidiary of such a corporation shall be determined in accordance with generally accepted accounting principles. Upon request of the Tribal Council or the Board of Directors of the Tribe's Economic Development Authority, the Board of Directors of a corporation wholly owned directly by the Tribe or the Tribe's Economic Development Authority will, if the corporation controls a subsidiary (a corporation wholly owned indirectly by the Tribe), cause the subsidiary to distribute to the corporation all or such portion of the net income of the subsidiary as may be requested by the Tribal Council or the Board of Directors of the Tribe's Economic Development Authority.

80A-14-9. Voluntary Dissolution; Tribal Council.

Unless otherwise specified in the Articles, a corporation wholly owned directly by the Tribe or the Tribe's Economic Development Authority with no shares having been issued may be dissolved only by a resolution adopted by the Tribal Council or the Board of Directors of the Tribe's Economic Development Authority. Unless otherwise specified in the Articles, a subsidiary corporation of the Tribe or the Tribe's Economic Development Authority with no

shares having been issued may be dissolved by a resolution adopted by the Board of Directors, with notice of such intent of to dissolve given to the Tribal Council or the Board of Directors of the Tribe's Economic Development Authority at least thirty (30) days prior to dissolution.

PART 15 FOREIGN CORPORATIONS

80A-15-1. Governing Law.

- (A) The laws of the jurisdiction under which a foreign corporation is incorporated shall govern its organization and internal affairs and the liability and authority of its managers and owners, regardless of whether the foreign corporation obtained or should have obtained a certificate of registration under this Part. However, a foreign corporation that has filed a certificate of conversion under Part 11 to become a domestic corporation shall be subject to the requirements of this Part governing domestic corporations on the effective date of the conversion and shall not be subject to the requirements of this Part governing foreign corporations.
- (B) A foreign corporation may not be denied a certificate of registration by reason of any difference between the laws of the other jurisdiction under which it is incorporated and the laws of the Tribe.
- (C) A foreign corporation holding a valid certificate of registration under this Part shall have no greater rights and privileges than a domestic corporation. Registration may not be considered to authorize a foreign corporation to exercise any powers or purposes that a domestic corporation is forbidden by law to exercise.

80A-15-2. Registration Required.

- (A) A foreign corporation may not transact business on Tribal Lands until it obtains a certificate of registration from the Tribal Vice Chairman.
- (B) Activities that for the purposes of subsection (A) do not constitute transacting business include, but are not limited to:
 - (1) Maintaining, defending, or settling any civil, criminal, administrative, or investigatory proceeding.
 - (2) Holding meetings of its Owners or Managers or carrying on other activities concerning its internal affairs.
 - (3) Maintaining financial institution accounts.
 - (4) Maintaining offices or agencies for the transfer, exchange and registration of the foreign corporation's own securities or interests or maintaining trustees or depositories with respect to those securities or interests.

- (5) Selling through independent contractors.
 - (6) Soliciting or obtaining orders, by mail or through employees or agents or otherwise, if the orders require acceptance outside Tribal Lands before they become contracts.
 - (7) Lending money or creating or acquiring indebtedness, mortgages, and security interests in property.
 - (8) Securing or collecting debts or enforcing mortgages and security interests in property security the debts.
 - (9) Owning, without more, property.
 - (10) Transacting business in interstate commerce or between different jurisdictions.
- (C) A foreign corporation shall not be considered to be transacting business on Tribal Lands solely because of any of the following:
- (1) The foreign corporation owns a controlling interest in a corporation that is transacting business on Tribal Lands.
 - (2) The foreign corporation is a limited partner of a limited partnership that is transacting business on Tribal Lands.
 - (3) The foreign corporation is an Owner or Manager of a limited liability company or a foreign corporation that is transacting business on Tribal Lands
 - (4) The foreign corporation is a limited partner of a limited partnership that is transacting business on Tribal Lands.
- (D) This Section does not apply in determining the contracts or activities that may subject a foreign corporation to service of process or taxation on Tribal Lands or to regulation under any other law of the Tribe.

80A-15-3. Consequences of Transacting Business without Registration.

- (A) A foreign corporation transacting business without a certificate of registration may not maintain a proceeding in Tribal Court relating to or involving such transacted business until the foreign corporation obtains a certificate of registration.
- (B) Neither the successor to a foreign corporation that transacted business on Tribal Lands without a certificate of registration nor the assignee of a cause of action arising out of that business may maintain a proceeding based on that cause of action in Tribal Court until the foreign corporation or its successor obtains a certificate of registration.

- (C) The Tribal Court may stay a proceeding commenced by a foreign corporation, or its successor or assignee, until the Tribal Court determines if the foreign corporation or its successor requires a certificate of registration. If the Tribal Court determines that a certificate is required, the Tribal Court may further stay the proceedings until the foreign corporation or its successor obtains the certificate of registration.
- (D) The failure of a foreign corporation to obtain a certificate of registration does not do any of the following:
- (1) Impair the validity of any contract or act of the foreign corporation or its title to property on Tribal Lands.
 - (2) Affect the right of any other party to contract to maintain any action, suit or proceeding on a contract.
 - (3) Prevent the foreign corporation from defending any proceeding in Tribal Court.
- (E) Civil penalty.
- (1) A foreign corporation that transacts business on Tribal Lands without a certificate of registration is liable to the Tribe, for each year or any part of a year during which it transacted business on Tribal Lands without a certificate of registration, in an amount equal to the sum of the following:
 - (a) All fees that would have been imposed by this Part upon the foreign corporation had it applied for and received a certificate of registration.
 - (b) Fifty percent (50%) of the amount owed under subsection (E)(1)(a) above or \$5,000.00, whichever is less.
 - (2) The foreign corporation shall pay the amount owed under subsection (E)(1) to the Tribal Vice Chairman. The Vice Chairman may not issue a certificate of registration to the foreign corporation until the amount owed is paid.
- (F) An Owner or Manager of a foreign corporation is not liable for the debts and obligations of the corporation solely because the corporation transacted business on Tribal Lands without a certificate of registration.

80A-15-4. Application for Certificate of Registration.

A foreign corporation may apply for a certificate of registration to transact business on Tribal Lands by delivering an application to the Tribal Vice Chairman for filing signed by a person with authority to do so under the laws of the State or other jurisdiction of its organization. The application shall include all of the following:

- (A) The name of the foreign corporation and, if different, the name under which it proposes to transact business on Tribal Lands.
- (B) The name of the State or other jurisdiction under whose laws it is incorporated.
- (C) The date of its incorporation.
- (D) The street address of its registered office on Tribal Lands and the name of its registered agent at that office.
- (E) The street address of the office required to be maintained in the State or other jurisdiction of its organization by the laws of that State or jurisdiction or, if no office is required, its principal office.
- (F) A statement that the applicant is a foreign corporation.
- (G) A statement that the foreign corporation is in good standing in the State or other jurisdiction under whose laws it is incorporated.

80A-15-5. Name.

A certificate of registration may not be issued to a foreign corporation unless its name satisfies Section 80A-3-4. If the name under which a foreign corporation is registered in the jurisdiction of its formation does not satisfy Section 80A-3-4, the foreign corporation may obtain a certificate of registration to transact business on Tribal Lands under a trade name registered pursuant to this Part that is available and that satisfies Section 80A-3-4.

80A-15-6. Amended Certificate of Registration.

- (A) A foreign corporation authorized to transact business on Tribal Lands shall obtain an amended certificate of registration from the Tribal Vice Chairman if the foreign corporation changes any of the following:
 - (1) Its name or the fictitious or trade name under which it has been issued a certificate of registration.
 - (2) The State or jurisdiction under whose laws it is incorporated or its date of incorporation.
 - (3) Whether management of the foreign corporation is vested in one (1) or more Managers.
- (B) The requirements of 80A-17-4 for obtaining an original certificate of registration apply to obtaining an amended certificate of registration.

80A-15-7. Registered Office and Registered Agent of a Foreign Corporation.

- (A) A foreign corporation authorized to transact business on Tribal Lands shall continuously maintain on Tribal Lands a registered office and registered agent. The registered office may, but need not, be the same as any of its places of business on Tribal Lands, if any.
- (B) A foreign corporation 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 Tribal Vice Chairman and paying the filing fee.
- (C) The registered agent of a foreign corporation may resign as a registered agent by delivering to the Tribal Vice Chairman for filing a written statement of registration and the appointment by the foreign corporation of another registered agent.

80A-15-8. Service of Foreign Corporation.

- (A) Except as otherwise provided in subsection (B) and (C), the registered agent of a foreign corporation authorized to transact business on Tribal Lands is the foreign corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.
- (B) A foreign corporation authorized to transact business on Tribal Lands may be served in the manner provided in subsection (D) if the foreign corporation has no registered agent or its registered agent cannot with reasonable diligence be served.
- (C) A foreign corporation formerly authorized to transact business on Tribal Lands may be served in the manner provided in subsection (D) in any civil, criminal, administrative or investigatory proceeding based on a cause of action arising while it was authorized to transact business on Tribal Lands, if the foreign corporation has withdrawn its registration under 80A-17-9.
- (D) With respect to a foreign corporation described in subsection (B) or (C), the foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the foreign corporation at its principal office as shown on the records of the Tribal Vice Chairman. Service is perfected under this paragraph at the earliest of the following:
 - (1) The date on which the foreign corporation receives the mail.
 - (2) The date shown on the return receipt, if signed on behalf of the foreign corporation.
 - (3) Five (5) days after the mail is deposited in the U.S. mail, if mailed postpaid and correctly addressed.

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

80A-15-9. Withdrawal of Registration.

- (A) A foreign corporation authorized to transact business on Tribal Lands may not withdraw until it obtains a certificate of withdrawal from the Tribal Vice Chairman.
- (B) A foreign corporation authorized to transact business on Tribal Lands may apply for a certificate of withdrawal by delivering an application to the Tribal Vice Chairman for filing signed by a person with authority to do so under the laws of the State or other jurisdiction of its organization. The application shall include all of the following:
- (1) The name of the foreign corporation and the name of the State or jurisdiction under whose laws it is incorporated.
 - (2) A statement that the foreign corporation is not transacting business on Tribal Lands and that it surrenders its authority to transact business on Tribal Lands.
 - (3) A statement that the foreign corporation revokes the authority of its registered agent to accept service on its behalf and that it consents to services of process under 80A-17-8 (C) and (D) in any proceeding based on a cause of action arising while it was authorized to transact business on Tribal Lands.
 - (4) An address to which a person may mail a copy of any process against the foreign corporation.
 - (5) A commitment to notify the Tribal Vice Chairman in the future of any change in the mailing address of the foreign corporation principal office.

80A-15-10. Grounds for Revocation.

- (A) Except as provided in subsection (B), the Tribal Vice Chairman may revoke the certificate of registration of a foreign corporation registered to transact business on Tribal Lands in accordance with 80A-17-11 if any of the following applies:
- (1) The foreign corporation failed to file its annual report with the Tribal Vice Chairman within four (4) months after it is due.
 - (2) The foreign corporation does not pay, within four (4) months after they are due, any fees or penalties due the Tribal Vice Chairman under this Ordinance.
 - (3) The foreign corporation is without a registered agent or registered office on Tribal Lands for at least six (6) months.

- (4) The foreign corporation obtained a certificate of registration through fraud.
 - (5) The Tribal Vice Chairman receives an authenticated certificate from the Vice Chairman of state or other official having custody of business corporation records in the State or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.
- (B) The Tribal Court may revoke the certificate of registration of the foreign corporation registered to transact business on Tribal Lands. The Tribal Court shall notify the Tribal Vice Chairman of the action, and the Tribal Vice Chairman shall revoke the foreign corporation's certificate of registration under 80A-17-11 (B)(2).

80A-15-11. Procedure for and Effect of Revocation.

- (A) If the Tribal Vice Chairman determines that one (1) or more grounds exist under 80A-17-10 (A) for revocation of a certificate of registration, the Tribal Vice Chairman shall give the foreign corporation written notice of the determination by first class mail, addressed to the foreign corporation's registered office.

(B) Correction of Grounds.

- (1) Within sixty (60) days after the notice takes effect, the foreign corporation shall correct each ground for revocation or demonstrate to the reasonable satisfaction of the Tribal Vice Chairman that each ground determined by the Tribal Vice Chairman does not exist.
 - (2) If the foreign corporation fails to satisfy subsection (B)(1) above, the Tribal Vice Chairman may revoke the foreign corporation's certificate of registration by entering a notation in the Office's records to reflect each ground for revocation and the effective date of the revocation. The Tribal Vice Chairman shall give written notice of those facts to the foreign corporation by first class mail, addressed to the foreign corporation's registered office.
- (C) If any such notice under this Section is undeliverable, then the Tribal Vice Chairman shall give written notice to the foreign corporation addressed to the principal office of the foreign corporation. Notice to the registered office or principal office takes effect at the earliest of the following:
- (1) When received.
 - (2) Five (5) days after its deposit in the U.S. mail, if mailed postpaid and correctly addressed.
 - (3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

- (D) The authority of a foreign corporation to transact business on Tribal Lands, other than as provided in 80A-17-2 (B), ends as of the effective date of revocation of its certificate of registration as reflected in the records of the Tribal Vice Chairman.
- (E) If the Tribal Vice Chairman or the Tribal Court revokes a foreign corporation's certificate of registration, the foreign corporation may be served under 80A-17-8 (C) and (D) or the foreign corporation's registered agent may be served until the registered agent's authority is terminated, in any proceeding based on a cause of action which arose while the foreign corporation was registered to transact business on Tribal Lands.
- (F) Revocation of a foreign corporation's certificate of registration does not terminate the authority of its registered agent.

80A-15-12. Appeal from Revocation.

- (A) A foreign corporation may appeal the Tribal Vice Chairman's revocation of its certificate of registration under 80A-17-10 (A) to the Tribal Court. The foreign corporation shall appeal by petitioning the Tribal Court to set aside the revocation and attaching to the petition copies of its certificate of registration and the Tribal Vice Chairman's notice of revocation.
- (B) The Tribal Court may order the reinstatement of the certificate of registration only if the foreign corporation demonstrates that the Tribal Vice Chairman's revocation was a violation of this Part or otherwise arbitrary or unauthorized.
- (C) The Tribal Court's final decision may be appealed as in other civil proceedings.

**PART 16
FORMS AND FILING**

80A-16-1. Forms.

- (A) The Tribal Vice Chairman shall have the authority to prescribe certain forms for documents required by this Ordinance to be filed in the office of the Tribal Vice Chairman.
- (B) In the event that the Tribal Vice Chairman shall prescribe certain forms or documents required by this Ordinance to be filed in the office of the Tribal Vice Chairman, such forms shall be furnished by the Tribal Vice Chairman and used by the corporation for such filing.
- (C) The Tribal Vice Chairman may prescribe and furnish on request forms for other documents required or permitted to be filed by this Ordinance.

- (D) If the Tribal Vice Chairman has prescribed a mandatory form for a document, the document must conform to the prescribed form.

80A-16-2. Execution of Documents.

- (A) Except as otherwise provided in this Ordinance, any document required or permitted by this Ordinance to be delivered for filing must be executed:
- (1) By the presiding officer of the Board of Directors of the corporation, its President, or by another of its officers;
 - (2) If Directors have not been selected or the corporation has not been formed, then by an incorporator; or
 - (3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, then by that fiduciary.
- (B) The person executing a document shall sign it and state, beneath or opposite the signature, his or her name and the capacity in which he or she signs. The document may, but need not, contain:
- (1) The corporate seal;
 - (2) An attestation by the corporation's Secretary or an Assistant Secretary; or
 - (3) An acknowledgement, verification, or proof.
- (C) The person executing the document may do so as an attorney-in-fact. Powers-of-attorney relating to the execution of the document need not be shown to nor filed with the Tribal Vice Chairman.

80A-16-3. Filing.

- (A) The Tribal Vice Chairman shall receive all filings required under this Ordinance and maintain the records of such filings pursuant to this Section, including but not limited to, the Articles of Incorporation, amended or restated Articles, annual registration, names and addresses of registered offices and agents, and other documents required by this Ordinance.
- (B) Upon receipt of a document for filing under this Ordinance, the Tribal Vice Chairman 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 Tribal Vice Chairman refuses to file a document, the Tribal Vice Chairman 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 for filing, together with a brief written explanation of the reason for refusal.
- (D) Any document accepted by the Tribal Vice Chairman and accompanied by the correct fee shall be effective when filed unless a delayed effective date and/or time not more than ninety (90) days after receipt is specified in the document.

80A-16-4. Execution by Judicial Act.

Any person who is adversely affected by the failure or refusal of the Tribal Vice Chairman to execute and file any Articles or other document required to be filed under this Chapter may petition the Tribal Court solely for the purpose of requesting an order that directs the execution and filing of the Articles or other document. Review by the Tribal Court shall be limited to a determination of whether the articles or document comply with the requirements for the articles or document set forth in this Chapter. Nothing in this Chapter, however, serves to waive any aspect of the Tribe's sovereign immunity. Nothing in this Code authorizes lawsuits against the Tribal Vice Chairman for damages or any relief other than the order described in this section.

80A-16-5. Correcting Filed Documents.

- (A) A corporation may correct a document filed by the Tribal Vice Chairman if the document:
- (1) Contains an incorrect statement; or
 - (2) Was defectively executed, attested, sealed, verified, or acknowledged.
- (B) A document is corrected by preparing Articles of Correction that:
- (1) Describe the document, including its filing date, or attach a copy of it to the Articles of Correction;
 - (2) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective;
 - (3) Correct the incorrect statement or defective execution; and
 - (4) By delivering the Articles of Correction to the Tribal Vice Chairman.
- (C) Articles of Correction are effective on the date of correction except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, Articles of Correction are effective when filed.

80A-16-6. Fees for Filing Documents and Issuing Certificates.

- (A) The Tribal Vice Chairman shall impose a reasonable filing fee for each document filed, and an annual renewal fee, subject to any uniform schedule of fees as may hereafter be adopted by the Tribal Vice Chairman, with approval of the Tribal Council, from time to time.
- (B) The Tribal Council is authorized to make regulations providing for reasonable fees for other services not specifically stated in the title of this Chapter or to make changes in any and all fees for services set out in this Chapter. These changes shall be available through the Tribal Vice Chairman.

80A-16-7. Certificate of Good Standing.

Any person may obtain from the Tribal Vice Chairman, upon request, a certificate of status for either a Domestic or a Foreign Corporation.

**PART 17
EFFECTIVE DATE AND AUTHORITY**

80A-17-1. Severability; Effect of Invalidity of Part of this Ordinance.

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

80A-17-2. Effective Date.

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

80A-17-3. Authority.

This Ordinance is enacted by the Sisseton Wahpeton Oyate Tribal Council under the authority vested in the Tribal Council by the Tribe pursuant to its inherent governmental power, fiscal authority and tribal sovereignty as recognized in the Tribe's Constitution. The Tribal Council reserves the right to repeal or amend the provisions of this Ordinance.

80A-17-4. No Impairment of Contracts.

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

80A-17-5. Certificates and Certified Copies to be Received in Evidence

All certificates issued by the Tribal Vice Chairman in accordance with the provisions of this Ordinance and all copies of documents filed in his or her office in accordance with the provisions of this Ordinance, 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 Vice Chairman 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.

80A-17-6. Repealer.

All prior Codes, Ordinances or Resolutions generally authorizing and regulating the organization of for profit corporations under the laws of the Tribe, are hereby repealed.

FEES ADDENDUM

- (A) The Tribal Vice Chairman shall charge and collect for:
- (1) Filing Articles of Incorporation and issuing a Certificate of Incorporation \$150.00
 - (2) Filing Articles of Amendment and issuing a Certificate of Amendment \$60.00
 - (3) Filing a statement of change of address of registered office or change of registered agent, or both \$55.00
 - (4) Filing Articles of Dissolution \$55.00
 - (5) Filing a statement of election to accept this Chapter and issuing Certificate of Acceptance \$25.00
 - (6) Filing any other statement or report, including an annual report of a domestic or foreign corporation \$50.00
 - (7) Indexing each document filed, except an annual report \$50.00
 - (8) Furnishing a certified copy of any document, instrument, or paper relating to a corporation \$55.00 and
 - (9) Furnishing a Certificate of Existence as to the fact that a corporation has been formed \$0.00

WEIGHTED VOTE ON MOTION NO. 84: 13 For: Kevin Roberts (3); Jerry Eastman (2); Edmund Johnson Jr. (2); Francis Crawford (2); Virginia Max (2); Tribal Vice-Chairman (1); Tribal Secretary (1). 3 Opposed: Marc Beaudreau (3). 0 Abstained. 1 Absent From Vote: Kenneth Johnson (1). 1 Not Voting: Tribal Chairman.

MOTION PASSED.

Resolution No. SWO-16-130

MOTION NO. 85: made by Jerry Eastman, second by Francis Crawford, question by Virginia Max, in resolution form, to repeal Chapter 8 – Sisseton-Wahpeton Sioux Business Corporation Ordinance from the SWO Codes of Law, effective immediately.

WEIGHTED VOTE ON MOTION NO. 85: 14 For: Kevin Roberts (3); Jerry Eastman (2); Edmund Johnson Jr. (2); Francis Crawford (2); Kenneth Johnson (1); Virginia Max (2); Tribal Vice-Chairman (1); Tribal Secretary (1). 3 Opposed: Marc Beaudreau (3). 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.

MOTION PASSED.

Resolution No. SWO-16-131

MOTION NO. 86: made by Jerry Eastman, second by Francis Crawford, question by Kevin Roberts, in resolution form, to approve and adopt Chapter 80A – Business Corporation Ordinance into the SWO Codes of Law, effective immediately, as presented by the Judicial Committee.

WEIGHTED VOTE ON MOTION NO. 86: 14 For: Kevin Roberts (3); Jerry Eastman (2); Edmund Johnson Jr. (2); Francis Crawford (2); Kenneth Johnson (1); Virginia Max (2); Tribal Vice-Chairman (1); Tribal Secretary (1). 3 Opposed: Marc Beaudreau (3). 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.

MOTION PASSED.

Resolution No. SWO-16-132

MOTION NO. 87: made by Francis Crawford, second by Jerry Eastman, question by Kevin Roberts, in resolution form, to approve and adopt Chapter 80B – Limited Liability Company Ordinance into the SWO Codes of Law, effective immediately, as presented by the Judicial Committee.

WEIGHTED VOTE ON MOTION NO. 87: 14 For: Kevin Roberts (3); Jerry Eastman (2); Edmund Johnson Jr. (2); Francis Crawford (2); Kenneth Johnson (1); Virginia Max (2); Tribal Vice-Chairman (1); Tribal Secretary (1). 3 Opposed: Marc Beaudreau (3). 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.

MOTION PASSED.

Resolution No. SWO-16-133

MOTION NO. 88: made by Jerry Eastman, second by Francis Crawford, question by Kenneth Johnson, in resolution form, to repeal Chapter 9 – Nonprofit Corporation Ordinance from the SWO Codes of Law, effective immediately.

