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FEDERAL CHARTER OF INCORPORATION ISSUED BY THE UNITED STATES OF AMERICA

EASTERN BAND OF CHEROKEE INDIANS FOR KITUWAH HOLDINGS CORPORATION

A FEDERALLY CHARTERED CORPORATION RECITALS

ARTICLE I – NAME

The name of the Corporation is KITUWAH HOLDINGS CORPORATION.

ARTICLE II – PRINCIPAL OFFICE AND REGISTERED OFFICE

A. Principal Office. The principal office of the Corporation shall be located within trust lands of the Eastern Band of Cherokee Indians (“EBCI”), State of North Carolina. The Corporation may have such other offices, either within or without the EBCI, as the Board of Directors (“Board”) may designate or as the business of the Corporation may require from time to time.

B. Registered Office. The President of the Board of the Corporation is hereby appointed and made lawful agent for, and on behalf of, the Corporation to accept and acknowledge service of, and upon whom may be served at the Corporation’s principal office, all necessary notices, process or processes in any action, suit, or proceeding that may be had or brought against the Corporation. Copies of any and all documents served on the President of the Corporation shall be required to be delivered by the serving party simultaneously to (1) the Attorney General of the EBCI, and (2) Office of the Principal Chief.

ARTICLE III – AUTHORITY FOR CHARTER

The Corporation is organized, incorporated and granted its corporate powers, privileges and immunities as a federally chartered corporation under the laws of the United States, including 25 U.S.C. § 477, as amended, and the rules, regulations and federal case law interpreting and applying that statute.

ARTICLE IV – STATUS OF CORPORATION

A. The Corporation is a distinct and separate legal entity wholly owned by the EBCI, a federally recognized Indian Tribe, and its corporate activities, transactions, obligations, liabilities, and property are not those of the EBCI.

B. The Corporation shall have the same immunity from taxation under federal and Tribal law as the EBCI, but shall be subject to Tribal taxes where applicable. The Corporation shall retain

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the EBCI's tax exemption status and shall enjoy any tax advantages available to this type of corporation.

C. Nothing in this Charter shall be deemed or construed as a waiver of the sovereign immunity of the EBCI or any of its instrumentalities or to permit the Corporation to waive the sovereign immunity of the EBCI or any of its instrumentalities. No waiver of the Corporation of its sovereign immunity shall be deemed or construed as a waiver of the sovereign immunity of the EBCI or any of its instrumentalities and no such waiver shall create any liability on the part of the EBCI or any other instrumentality of the EBCI based on any action, adjudication or other determination of liability of any nature incurred by the Corporation. The acts and omissions of the Corporation, its directors, officers, employees and agents shall not create any liability, obligation or indebtedness either of the EBCI or payable out of assets, revenues, or income of the EBCI.

D. The Corporation is hereby authorized to waive, as provided in Article XVI of this Charter, any defense the Corporation, its directors, officers, employees, attorneys, or agents may otherwise assert that federal, state, or Tribal law requires exhaustion of tribal court remedies prior to suit against the Corporation in a state or federal court otherwise having jurisdiction over the subject matter and the parties.

E. The Corporation shall be deemed to be a subordinate organization of the EBCI for purposes of Public Law 88-352, Title VII, §701, July 2, 1964, 78 Stat. 253 (the "Civil Rights Act of 1964"), for purposes of Public Law 101-336, July 26, 1990, 104 Stat. 327 (the "Americans with Disabilities Act"), and any other federal law that does not apply, either expressly or impliedly, to federally recognized Indian tribes.

ARTICLE V – OWNERSHIP OF CORPORATION

A. The total number of shares of common stock which the Corporation shall have authority to issue is 100 shares with no par value.

B. All shares in the Corporation shall be owned solely by the EBCI for the benefit of the EBCI and its recognized members. No individual or legal entity other than the EBCI shall acquire any shares in the Corporation.

C. The EBCI's shares in the Corporation shall not be sold, transferred, pledged or hypothecated, voluntarily or involuntarily, without the prior written consent of the Shareholder Representative and the approval of the Secretary of the Interior.

D. The EBCI shall be the sole shareholder ("Shareholder") of all interests in the Corporation. The EBCI Tribal Council & Executive shall serve as the Shareholder Representative, and all rights of the Shareholder shall be exercised by the EBCI Tribal Council & Executive serving in this capacity, in accordance with this Charter and applicable Tribal law.

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ARTICLE VI – PERIOD OF DURATION

The period of the Corporation’s duration is perpetual, or until this Charter is revoked or surrendered by an Act of Congress, pursuant to 25 U.S.C. § 477, as amended.

ARTICLE VII – CORPORATE PURPOSES

The purposes for which the Corporation is organized are:

- A. To engage in any type of lawful business, enterprise or venture; and
- B. To promote the economic development and diversification of the EBCI; and
- C. To enable the EBCI to be self-sufficient and to provide economic support for the enrolled members of the EBCI.

ARTICLE VIII – CORPORATE POWERS

- A. Tribal Council may, by Resolution, assign to the Corporation the responsibility and control for the management and operation of any other EBCI-owned businesses.
- B. The Corporation is authorized:
 - 1. To engage in any lawful business permitted to a corporation organized under 25 U.S.C. § 477, as amended.
 - 2. To have a corporate seal that may be altered at the discretion of the Board.
 - 3. To buy, sell, lease and otherwise acquire and maintain land, buildings, offices, shops and other appurtenances proper and necessary for the carrying on of said business.
 - 4. To carry on its business either within or without the Eastern Band of Cherokee Indian Reservation, as permitted by law and pursuant to its annual business plan approved by the Shareholders Representative.
 - 5. Upon prior approval by the shareholder to guarantee, purchase, hold, assign, mortgage, pledge or otherwise dispose of capital stock of, or any bonds, securities or other evidences of indebtedness created by any other corporation or organization that is in existence under the laws of the United States, any state, Indian tribe, nation, government or country, and to exercise all the rights privileges and powers of ownership.

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6. To enter into and make contracts of every kind and nature with any person, firm, association, corporation, municipality, nation, Indian tribe, state or body politic, without the approval of the EBCI or the Secretary of the Interior, except when the use of trust or federally-restricted Indian property requires such approval.
7. To purchase, take by gift or bequest, acquire, own, lease, manage, operate, deal in and dispose of real and personal property of all kinds and descriptions, wherever situated, including the power to purchase restricted Indian lands.
8. Subject to the limitations imposed by Article IX of this Charter, to incur debts and raise, borrow and secure the payment of any money in any lawful manner, including the issue and sale or other disposal of stocks, bonds, indentures, obligations, negotiable and transferrable instruments and evidence of indebtedness of all kinds, whether secured by mortgage, pledge, deed of trust or otherwise, without the approval of the EBCI or the Secretary of the Interior, except when the use of trust or federally-restricted Indian property requires such approval.
9. To apply for, obtain, register, purchase, lease or otherwise acquire, own, hold, use, operate and introduce, and to sell, assign or otherwise dispose of any trademark, trade name, patent, invention, improvements and processes used in connection with or secured under letters patent, and to use, exercise, develop, grant or give licenses in respect thereto.
10. To apply for, purchase or acquire by assignment, transfer or otherwise, and to exercise, carry out and enjoy any license, power, authority, franchise, concession, right or privilege which any government or authority or any corporation or other public body may be empowered to enact, make, or grant, and subject to the limitations imposed by Article IX of this Charter, to pay for and to appropriate any of the Corporation's assets to defray the necessary costs, charges and expenses thereof.
11. To sue and be sued in its Corporate name to the extent provided in Article XVI of this Charter.
12. To employ or appoint employees and agents of the Corporation and define their duties and fix their compensation consistent with Article XII of this Charter.
13. To lend money for its corporate purposes, invest and reinvest its funds and take and hold real and personal property as security for the payment of funds loaned and invested.
14. To sell, convey, mortgage (including leasehold mortgages), pledge, lease, exchange, transfer or otherwise dispose of all or any part of its corporate property or assets to the extent permitted by Article IX (F) of this Charter.
15. To grant rights-of-way and easements, lease, mortgage, encumber, or pledge interests in any trust or restricted lands assigned to the Corporation which are held in trust by the United States for the benefit of the EBCI, for twenty-five (25) years or less without the approval of the Secretary of the Interior and the Tribal Council.

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16. To grant rights-of-way and easements, lease, mortgage, encumber, or pledge interests in any trust or restricted lands assigned to the Corporation which are held in trust by the United States for the benefit of the EBCI, for more than twenty-five (25) years with the approval of the Secretary of the Interior, if such approval is required by federal law.
17. To grant rights-of –way and easements, lease, mortgage, encumber, or pledge interests in any trust or restricted lands assigned to the Corporation which are held in trust by the United States for the benefit of the EBCI, for more than seventy-five (75) years with the approval of the Tribal Council and the Secretary of the Interior, if such approval is required by federal law.
18. To adopt bylaws for the regulation of the internal affairs of the Corporation consistent with this Charter and the laws and regulations of the EBCI provided that such bylaws and any amendments are approved by the EBCI Tribal Council & Executive Branch. Copies of the organization documents shall be provided to the Shareholders representative.
19. To obtain a certificate of authority to transact business in the State of North Carolina or any other state as a foreign corporation, and to comply with applicable state law governing foreign corporations.
20. To have and exercise all lawful powers incidental, necessary or convenient to effect any or all of the purposes for which the Corporation is organized.
21. To form subsidiaries, and all entities whether Tribal or State including corporations, and limited liabilities who shall enjoy the same rights and privileges as this Section 17 Corporation.

ARTICLE IX – LMITATIONS ON CORPORATE POWERES

The Corporation shall have no power:

- A. To expressly or by implication enter into any agreement of any kind on behalf of the EBCI.
- B. To pledge the credit of the EBCI.
- C. To dispose of, pledge, or otherwise encumber real or personal property of the EBCI, except that the Corporation shall have the power to encumber real property pursuant to the terms of written lease agreement(s) between the EBCI and the Corporation.
- D. To waive any right, privilege or immunity of, or release any obligation owed to, the EBCI.
- E. To enter into any sublease or other encumbrance or instrument respecting lands leased to the Corporation by the EBCI without the express written approval of the Shareholder

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Representative. Such approval may be reflected in the written lease agreement(s) between the EBCI and the Corporation.

F. To sell or otherwise dispose of all or substantially all of the Corporation's assets, other than in the usual and regular course of its business, without the prior written consent of the EBCI's Tribal Council & Executive Branch. Prior to any such proposed sale or disposition, the Corporation shall give reasonable notice to Shareholder Representative. The Shareholder Representative's consent to any such proposed sale or disposition shall be in the form of a resolution of the EBCI Tribal Council, duly adopted in accordance with applicable Tribal law.

ARTICLE X – SHAREHOLDER ACTION

A. Regular Shareholder Meetings. Regular meetings of the Shareholder Representative shall be held twice annually, as scheduled by the Corporation but no later than the 30th day of January and the 30th day of July of each year for the purpose of electing Directors, approving the Corporation's annual business plan and budget, and transacting any business that may come before said meeting ("Regular Shareholder Meeting"). If the election of Directors does not occur during the Regular Shareholder Meeting, or at any adjournment thereof, the Board shall cause the election to be held at a special meeting of the Shareholder ("Special Shareholder Meeting") as soon thereafter as is convenient.

B. Special Shareholder Meetings. Special Shareholder Meetings, for any purpose or purposes, unless otherwise proscribed by applicable law, may be called by the EBCI Tribal Council, Principal Chief, or a majority of the Directors. Special Shareholder Meetings shall require written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called. Such notice shall be delivered not less than five (5) days before the date of the meeting, either personally or by mail, to each of the Directors, the Principal Chief, and the Chairman of the Tribal Council of the EBCI. This notice requirement may be waived at any time by any individual who does not receive such notice. Any business in addition to that specified in the notice of the meeting may be transacted at any Special Shareholder Meeting.

C. Meeting Procedures. At all Regular Shareholder Meetings or Special Shareholder Meetings, the EBCI Tribal Council and Executive Branch shall sit in its capacity as the Shareholder Representative, and not in its governmental capacity as the governing body of the EBCI. Matters within the scope and legal authority of the Shareholder under this Charter shall only be discussed and decided by the EBCI Tribal Council & Executive when sitting as the Shareholder Representatives at a meeting duly called as provided in this Article X. On any issue or question presented to the Shareholder Representative, a vote shall be taken of those members of the EBCI Tribal Council & Executive Branch present. All meetings and votes of the Shareholder Representative shall be conducted consistent with the Bylaws, except that notice of special meetings shall also be consistent with paragraph B of this Article X.

ARTICLE XI – BOARD OF DIRECTORS

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A. Management Authority. The business affairs of the Corporation shall be managed exclusively by its Board of Directors (hereinafter referred to as “Board” or “Director(s)”); provided however, that the foregoing shall not limit or impair the Board’s ability to delegate day-to-day management responsibility to staff of the Corporation and to assign specific tasks to staff of the Corporation. The EBCI shall have no authority to direct the business affairs of the Corporation, except through its status as the sole shareholder of the Corporation and as provided in this Charter.

B. Board Membership. The Board shall consist of voting members as enumerated in the next full paragraph:

1. Directors shall be appointed by the Principal Chief and confirmed by weighted vote of the Tribal Council.
2. The Principal Chief, or designee, shall sit on the Board in a non-voting, ex officio status
3. The Chairperson of the EBCI Tribal Council, or designee, shall sit on the Board in a non-voting, ex-officio status
4. All of the Directors shall be enrolled members of the EBCI, provided, however the Board may appoint such non-voting advisory members to the Board as it may see fit to advance the purposes of the Corporation.
5. No Director shall be an employee of the Corporation.
6. All appointed Directors shall have such education or experience in administration, accounting, law, finance, Cherokee culture, or such other field as will contribute to the Board’s ability to manage tribal enterprises to achieve the purposes of the Corporation.
7. Each appointed Director’s character and personal history shall be appropriate to management of the business affairs of the EBCI on behalf of the tribal community and membership, and each appointment shall be subject to confirmation or withdrawal by the Principal Chief and Tribal Council for a period of sixty (60) days from the date of appointment, based on a background check and credit report. Pending any action by the Principal Chief and Tribal Council under the preceding sentence, each appointee shall serve in a temporary capacity as a Director, entitled to exercise all of the powers, and subject to all of the duties, of a Director. Withdrawal of an appointment during the review period shall terminate the temporary appointment and leave the affected Director’s position vacant. Confirmation of the appointment or expiration of the review term without action by the Principal Chief and Tribal Council shall make the appointment final and fully effective.

The Board shall consist of five (5) members appointed as outlined in this Article XI-B, but the number of Directors may thereafter be increased or decreased at any time by a duly adopted resolution of the Shareholder Representative. The Board shall elect a Chairperson, Vice-Chairperson, Treasurer and Secretary. The Chairperson and Vice-Chairperson must be members of the Board, but the Treasurer and Secretary may be members of the staff of the Corporation. The Treasurer shall serve as Treasurer of both the Corporation and the Board. The Secretary shall serve as the Secretary of both the Corporation and the Board. No two persons may hold more than one Board position except that the same person may be Secretary and Vice-Chair or Secretary and Treasurer provided that only a Director may be Vice-Chair. The Chairperson shall preside at Board meetings. The Vice-Chairperson shall assume the duties of the Chairperson in the absence of the Chairperson.

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D. Term of Office. The Directors shall be appointed for terms of five (5) years each, and shall serve only for the term of office or until resignation, removal or death. When a term is completed, a vacancy shall occur. When appointing Directors to increase the number of Directors or to fill a vacancy, the Shareholder Representative may lengthen or shorten the term of office of any Director then being appointed in order to achieve staggered term of office. A Director may serve any number of consecutive five-year terms for which he or she is elected. To ensure continuity for Directors and rotation of appointments, the initial Board members' terms shall be adjusted so that they serve staggered terms. At the beginning of the initial term, the Shareholder Representative shall assign term expiration dates for each current Board member, such that one member's term expires each year during the initial term. The established rotation shall continue for each Board position for future new, renewal, or replacement appointments.

E. Initial Board. The Initial Board of the Corporation shall be determined by the Shareholder Representative at the time this Charter is ratified by the Council.

F. Qualifications of Directors.

1. Each Director shall possess the level of business experience and expertise determined by the Shareholder Representative to be necessary to carry out the duties of a Director and to contribute to the ability of the Corporation to achieve the purposes for which this Charter is issued. At its discretion Shareholder Representative may require specific qualifications for Directors.

2. No person who has been convicted of a felony shall sit on the Board. A felony is a crime punishable by a least one (1) year in jail, regardless of whether the person actually served a full year in jail.

3. No person who has ever been convicted of any crime involving theft or conversion of money or property shall sit on the Board.

4. No employee of the Corporation or of the Bureau of Indian Affairs shall be eligible to serve as a Director during the time of such employment.

5. No more than one-half (1/2) of the Directors may serve concurrently on the Board of the Corporation and on any other board of a corporation or enterprise of which the EBCI is a majority shareholder or owner.

6. A majority of the Board must be enrolled members of the EBCI.

G. Duties of the Directors. The Board shall manage the general affairs and business of the Corporation and shall individually and collectively act in the capacity of a fiduciary for the benefit of the Corporation and its Shareholder. The Directors shall in all cases act as a Board, regularly convened, by a majority vote, and they may adopt such rules and regulations for the conduct of their meetings and the management of the Corporation as they may deem proper, not inconsistent with this Charter, the bylaws of the Corporation and applicable Tribal or federal law. In all of their

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dealings in connection with the business of the Corporation, the Directors, individually and collectively, shall exercise their duties and responsibilities in good faith and in a manner the Director believes to be in or not opposed to the best interests of the Corporation and the Shareholder, and with such care as an ordinarily prudent person would use under similar circumstances in a like position. In performing such duties a Director shall be entitled to rely on factual information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

1. one or more officers or employees of the Corporation whom the Director reasonably believes to be reliable and competent in the matters presented;
2. legal counsel, public accountants or other persons as to matters which the Director reasonably believes to be within such person's professional or expert competence; or
3. a committee of the board upon which the Director does not serve, duly designated in accordance with a provision of the bylaws, as to matters within its designated authority, which committee the Director reasonably believes to merit confidence, but the Director shall not be considered to be acting in good faith if the Director has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

H. Conflicts of Interest.

1. No sitting Board member shall engage in any activity that is, or creates the appearance of, a conflict of interest. A conflict of interest occurs when circumstances create a possibility that a Board member's duty of undivided loyalty to the Corporation might be compromised. Should a conflict of interest develop for a Director, he or she shall state the conflict in writing to the Chairperson of the Board, with a copy to the Shareholder Representative. If the conflict cannot be avoided to the satisfaction of the Principal Chief and Chairperson of Tribal Council, the Director shall immediately resign. In the event of a potential conflict of interest, a Director shall recuse himself or herself from any vote involving the potential conflict of interest.
2. No member of the Board, and no husband, wife, parent, child, or sibling of a Board member, shall be signatory to or beneficiary of any contract or agreement with the Corporation.
3. No member of the Board shall have any financial interest in any business entity that is a signatory to or beneficiary of any contract or agreement with the Corporation.
4. No member of the Board shall act as an agent of the Corporation without having authority to do so expressly granted to the Board member by a Resolution of the Board.
5. No two persons who are married to each other, parent and child, in-laws, or siblings may sit on the Board at the same time.

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I. Director's Meetings. Regular meetings of the Board shall be held immediately following the first Regular Shareholder Meeting to elect officers of the Board and the Corporation. Special meetings of the Board may be called by the Chairperson of the Board at any time, and shall be called by the Chairperson or the Secretary upon the request of Shareholder Representative or of two Directors.

J. Notice of Meetings. Notice of meetings, other than the regular semiannual meetings, shall require written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called. Such notice shall be delivered not less than five (5) days before the date of the meeting, either personally or by mail, to each of the Directors. No business other than that specified in such notice shall be transacted at any special meeting. This notice requirement may be waived at any time by individual Directors who do not receive such notice. At any meeting at which every member of the Board shall be present, although held without notice, any business may be transacted which might have been transacted if the meeting had been duly called.

K. Quorum. At a meeting of the Board, a majority of the Board shall constitute a quorum for the transaction of business; but in the event of a quorum not being present, a lesser number may adjourn the meeting from time to time without further notice.

L. Voting. At a meeting of the Board, each Director has one vote. A majority of a quorum of the Board carries any issue.

M. Meeting Options. Except as otherwise restricted by the bylaws of the Corporation, members of the Board or any committee designated thereby may participate in a meeting of the Board or committee by means of a conference telephone call or similar communications equipment by which all persons participating the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting. Except as otherwise restricted in the bylaws of the Corporation, any action required or permitted to be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and the consent shall have the same effect as a unanimous vote.

N. Resignation and Removal of Directors.

1. Any Director may resign at any time by giving written notice to the Board Chair, and such resignation shall be effective on the date specified in the notice.

2. Any one or more of the Directors may be removed with or without cause at any time by the Tribal Council by weighted voting acting as the representative of the owner, subject to ratification by the Principal Chief. In addition, any one or more of the Directors may be removed for cause at any time by the unanimous vote of the remaining Directors, at a special meeting called for that purpose or at a regular meeting. Cause for removal shall consist of malfeasance, misfeasance or non-feasance of office, gross neglect of duty, misconduct reflecting on the dignity and integrity of the Corporation, or an irresolvable conflict of interest. In addition, any Director who is absent from three (3) consecutive

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meetings of the Board, whether such meetings be regular meeting, special meetings, or a combination thereof, shall be automatically removed.

3. The Director shall be informed in writing of the specific grounds for removal and shall be given a reasonable opportunity to respond in person or through counsel before a decision to remove is made. A right to counsel does not apply when the Director is removed for convenience.

4. Any decision by the Board to remove a Director may be appealed to the Tribal Council and Executive acting as the representative of the owner. The owner's decision concerning removal shall be final, and shall not be subject to any further appeal or review.

O. Vacancies. Whenever any vacancy shall occur in the Board by death, resignation, removal or otherwise, the same shall be filled pursuant to paragraph B of this Article within 60 days.

P. Presumption of Assent. A Director who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless such dissent shall be entered in the minutes of the meeting or unless the Director shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Q. Liability of Directors. A Director shall not be personally liable to the Corporation or its Shareholder for monetary damages for breach of fiduciary duty as a Director unless:

1. the Director has breached or failed to perform the duties of the Director's office as provided in paragraph G of this Article XI; and
2. the breach or failure to perform constitutes willful misconduct or recklessness.

R. Executive Office and Tribal Council.

Members of the Executive Office and Tribal Council shall not be Board Members except as provided in Article XI.

S. Compensation. The Directors shall receive such compensation and expense reimbursement as is reasonable, prudent, and consistent with the Corporation's budget. Director compensation and expense reimbursement shall be subject to written policies and procedures drafted by the Board and approved by the Shareholder Representative. The Board shall disclose to Tribal Council & Executive each Directors compensation and reimbursements.

ARTICLE XII – OFFICERS AND STAFF

A. Officer Positions. The officers of the Corporation shall be the President, Vice-President, Treasurer and Secretary elected pursuant to paragraph B of Article XI of this Charter.

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B. Staff Positions and Duties. The staff position(s), job description(s), duties, and powers of the staff of the Corporation shall be provided in the Corporations bylaws and/or the business plans. Staff positions shall not be created and staff shall not be directed to perform work that unnecessarily duplicates the duties of employees of the Tribal government or the Board or otherwise imprudently expends the Corporations financial resources.

C. Staff Compensation. The staff shall receive such compensation and expense reimbursement as is reasonable, prudent, and consistent with the Corporation's budgets. Staff compensation and expense reimbursement shall be subject to written policies and procedures drafted by the Board and approved by the Shareholders Representative. The Board shall disclose to the Shareholders representative each Staff member's compensation and reimbursements.

D. Council Member/Tribal Employee Officers and Staff. EBCI Tribal Elected Officials or EBCI Tribal employees serving as officers or staff of the Corporation shall not be deemed to be acting within the scope of their duties as Elected Officials or Tribal employees or acting in any other capacity while acting on behalf of the Corporation or under color of the office of the Corporation.

ARTICLE XIII – INDEMNIFICATION

A. The Corporation shall indemnify any current or former Director, officer or employee against reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any action, suit, or proceeding in which he or she is made a party by reason of being, or having been, such Director, officer or employee of the Corporation, and the reasonable costs of settlement of any such action or proceeding. If the majority of Board members are not seeking indemnification or otherwise involved in the controversy then the majority shall determine in good faith:

1. That such person did not act, fail to act, or refuse to act willfully or with gross negligence or with fraudulent or criminal intent; and
2. That any legal fees paid or any settlements made are reasonable; and
3. That the person seeking indemnification did not act beyond the scope of his or her employment or office; and
4. That it is in the best interests of the Corporation that indemnification be made.

B. If the Board is unable to act on a request for indemnification due to lack of disinterested quorum, the decision whether to indemnify shall be submitted to the Shareholder Representative.

C. By action of the Board, notwithstanding any interest of the Directors in the decision to purchase and maintain insurance, the Corporation shall purchase and maintain superior Errors & Omissions insurance, in such amounts as the Board deems appropriate, on behalf of any person

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who is or was a director, officer, employee, or agent of the Corporation, against any liability asserted against such a person and incurred by such a person in any such capacity, or arising out of that person's status as such.

ARTICLE XIV – STOCK DIVIDENDS

- A. The Corporation may declare dividends from the surplus profits of the Corporation whenever, in its opinion, the condition of the Corporation's affairs will render it expedient for such dividends to be declared; provided, that no distribution may be made:
1. During the Corporation's first five (5) years of operation; or
 2. Until the funding of reserve funds that are adequate in the Board's judgment for working capital and reinvestment; or
 3. If the Corporation would not be able to pay its debts as they become due in the usual course of its business; or
 4. If the Corporation's total assets would be less than the sum of its total liabilities
- B. All dividends declared by the Board shall be paid to the EBCI as the owner of the Corporation, and distributed through the Annual Budget Process.

ARTICLE XV – REPORTS TO SHAREHOLDER

- A. The Corporation shall maintain its financial records in conformity with generally accepted accounting principles.
- B. The Board of the Corporation shall, no less frequently than on a quarterly basis, report in writing to the Shareholder Representative on the financial and operating condition of the Corporation, including the assets and liabilities of the Corporation and the official actions of the Corporation's directors, officer, and employees. The content of the report shall be determined jointly by the Board Chair, the Chairperson of the Tribal Council, and the Principal Chief. It shall be the responsibility of the Board Chair to submit each such written report to the Shareholders Representative at least ten (10) days before the respective scheduled Tribal Council meeting.
- C. The financial and operating records of the Corporation shall at all reasonable times be open to inspection by the Shareholder Representative.
- D. The Corporation shall, within 120 days following the close of the Corporation's fiscal year, submit to the Shareholder Representative an audited financial statement showing the status of the Corporation as of the last day of the Corporation's fiscal year.

ARTICLE XVI – LIMITED LIABILITY

- A. The Corporation is an instrumentality of the EBCI and is entitled to all of the privileges and immunities of the EBCI, except as provided in this Article XVI.

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B. The Corporation is authorized to waive, as provided in this Article XVI, any defense of sovereign immunity from suit that the Corporation, its directors, officers, employees or agents may otherwise enjoy under applicable federal, state or Tribal law, arising from any particular agreement, matter or transaction as may be entered into to further the purposes of the Corporation, to consent to suit in Tribal, state and/or federal court, and to consent to alternative dispute resolution mechanisms such as arbitration or mediation.

C. The Corporation is authorized to waive, as provided in this Article XVI, any defense the Corporation, its directors, officers, employees or agents may otherwise assert that federal, state or Tribal law requires exhaustion of Tribal court remedies prior to suit against the Corporation in a state or federal court otherwise having jurisdiction over the subject matter and the parties.

D. Any waiver of the Corporation authorized by paragraph B or C of this Article XVI shall be in the form of a resolution duly adopted by the Board, a copy of such resolution shall be mailed to the Shareholder Representative but the resolution shall not require the approval of the EBCI or the Secretary of the Interior. The resolution shall identify the party or parties for whose benefit the waiver is granted, the transaction or transactions and the claims or classes of claim for which the waiver is granted, the property of the corporation which may be subject to the execution to satisfy any judgment which may entered in the claim, and shall identify the court or courts in which suit against the Corporation may be brought. Any waiver shall be limited to claims arising from the acts or omissions of the Corporation, its directors, officers, employees or agents, and shall be construed only to affect the property and income of the Corporation.

E. Nothing in this Charter, and no waiver of the Corporation's sovereign immunity pursuant to this Article shall be construed as a waiver of the sovereign immunity of the EBCI or any other instrumentality of the EBCI, and no such waiver by the Corporation shall create any liability on the part of the EBCI or any other instrumentality of the EBCI for the debts and obligations of the Corporation, or shall be construed as a consent to the encumbrance or attachment of the EBCI or any other instrumentality of the EBCI based on any action, adjudication or other determination of liability of any nature incurred by the Corporation.

F. Nothing in this Charter, and no action taken by the Corporation pursuant to this Charter, shall be construed as permitting, recognizing, or granting the State of North Carolina any regulatory jurisdiction or taxing jurisdiction over the property or activities of the Corporation or its employees located within the boundaries of the EBCI's jurisdiction and trust lands.

ARTICLE XVII – SEAL

The seal of the Corporation shall be as follows: The Corporation does not need a Seal.

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ARTICLE XVIII – SUSPENSION OF BUSINESS; DISSOLUTION

A. After issuance of this Charter by the Secretary of the Interior and ratification by the EBCI Tribal Council & Executive, the business of the Corporation may be suspended or the Corporation dissolved only as provided in this Article.

B. The business of the Corporation may be suspended and/or the Corporation dissolved as follows:

1. The Board shall adopt a resolution recommending that the business of the Corporation be suspended and/or the Corporation dissolved and directing that the question of suspension and dissolution be submitted to a vote of the Shareholder Representative at Regular or Special Shareholder Meeting.

2. Written notice shall be given to the Shareholder Representative in the manner provided in Article X of this Charter, and shall state that the purpose, or one of the purposes, of the meeting is to consider the advisability of the action proposed.

3. At the Shareholder meeting, a vote shall be taken on resolutions to approve or disapprove the action proposed.

4. Upon adoption of the resolution to suspend business and/or to dissolve, a statement of intent to suspend business and/or dissolve shall be executed by the Corporation by its President or Vice-President and by its Secretary and verified by one of the officers signing the statement, and shall be delivered to the Secretary of the Interior.

5. Upon filing with the Secretary of the Interior of the statement of intent to suspend business and/or dissolve, the Corporation shall cease to carry on its business, except insofar as necessary for the winding up thereof, but its corporate existence shall continue until this Charter is revoked by act of Congress in accordance with 25 U.S.C. § 477, as amended.

6. After filing the statement of intent to suspend business, the Corporation shall follow the procedures provided in the bylaws.

7. After filing the statement of intent to dissolve, the Corporation shall immediately cause notice thereof to be mailed to each known creditor of the Corporation; shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its Shareholder, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, to its Shareholder.

8. By resolution of the Board or by resolution adopted by the EBCI Tribal Council, ratified by the Principal Chief, at any time prior to revocation of this Charter by act of Congress, the Corporation may revoke voluntary dissolution proceedings. Written notice of the revocation shall be filed with the secretary of the Interior. Upon filing the notice of

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revocation of voluntary dissolution proceedings, the revocation shall be effective and the Corporation may again carry on its business.

9. If voluntary dissolution proceedings have not been revoked, when all debts, liabilities and obligations of the Corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the Corporation have been distributed to the Shareholder, the EBCI and the Secretary of the Interior shall take all actions necessary to obtain an act of Congress revoking this Charter and dissolving the Corporation.

ARTICLE XIX – AMENDMENTS

A. The authority to petition for amendments to this Charter is vested in the EBCI Tribal Council & Executive, but such amendments shall have no legal effect until approved by the Secretary of the Interior and ratified by the EBCI Tribal Council and Principal Chief in accordance with 25 U.S.C. § 477, as amended, and in accordance with applicable Tribal law.

B. The Board may request the EBCI Tribal Council and Principal Chief to petition the Secretary of the Interior for amendments to this Charter, but the final decision on submitting any such petition shall be made by the EBCI Tribal Council & Executive.

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ARTICLE XX – CERTIFICATION OF APPROVAL

WHEREAS the Congress of the United States enacted the Act of June 18, 1934 (48 Stat. 984), as amended, which in part authorizes the Secretary of the Interior to issue a Federal Corporate Charter to an Indian Tribe: and

WHEREAS the Eastern Band of Cherokee Indians (EBCI) is a federally recognized Indian tribe; and

WHEREAS on _____, 2014, the governing body of the Eastern Band of Cherokee Indians approved the Chartered Corporation and now submits this Charter to the Secretary of the Interior to issue a Federal Charter of Incorporation to the Eastern Band of Cherokee Indians to establish a nonprofit business corporation as authorized by Section 17 of the Indian Reorganization Act, 25 U.S.C. § 477, as amended; and

WHEREAS all of the legal prerequisites to the issuance of this Charter have been fulfilled;

NOW, THEREFORE, I, _____, Deputy Commissioner of Indian Affairs, by virtue of the power conferred upon the Secretary of the Interior by the said Act and delegated to me, do hereby issue this **CHARTER OF INCORPORATION (“Charter”) to the Eastern Band of Cherokee Indians, State of North Carolina, for KITUWAH HOLDINGS Corporation, (“Corporation”) to be operative when ratified by the governing body of the Eastern Band of Cherokee Indians.**

I, _____, Deputy Commissioner of Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. § 477), as amended, and delegated to me hereby approve this Federal Corporate Charter of use by the Eastern Band of Cherokee Indians and the KITUWAH HOLDINGS CORPORATION. This Charter shall become effective upon ratification by the Eastern Band of Cherokee Indians Tribal Council and Principal Chief, PROVIDED, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to federal law.

Deputy Commissioner of Indian Affairs
Washington, D.C.

Date: