

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: FEB 03 2022

ORDINANCE NO. 140 (~~20220~~)

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WHEREAS, the Eastern Band of Cherokee Indians, a federally recognized Indian tribe organized under the Charter of the Eastern Band Cherokee Indians, resolved to form a Limited Liability Company Ordinance to further economic development and codify the manner in which the Tribe may form and regulate LLC's wholly owned by the Tribe.

WHEREAS, the Tribal Council passed, and the Principal Chief subsequently ratified, Ordinance 619, adding Chapter 55-B to the Cherokee Code that provides for the formation and regulation of Limited Liability Companies owned by the Eastern Band of Cherokee Indians; and

WHEREAS, the Tribe has been presented with numerous opportunities both inside and outside the territorial borders of the Qualla Boundary for investment and economic diversification that would be best beneficial to the Tribe if organized under a majority/minority Limited Liability Company structure; and

WHEREAS, Chapter 55-B does not presently ~~have the provisions to allow for an LLC to be organized under Tribal Law that is not wholly owned by the Tribe and needs to be amended to allow for Kituwah Economic Development Board wholly-owned subsidiaries to have Managers other than the Kituwah Economic Development Board, such and in some limited cases such ability for the KEDB to designate alternative managers. formation of majority/minority Limited Liability Companies.~~

NOW THEREFOR BE IT ORDAINED by the Eastern Band of Cherokee Indians Tribal Council assembled, at which a quorum is present, that the Tribal Council of the Eastern Band of Cherokee Indians amends the Cherokee Code to strike the identified sections of Chapter 55-B and replace as follows in Exhibit B; and

BE IT FURTHER ORDAINED that the Office of the Attorney General is authorized to take the necessary steps to carry out the intent of this resolution;

BE IT FURTHER ORDAINED that all resolutions that are inconsistent with this resolution are rescinded, and that this resolution shall become effective with ratified by the Principal Chief;

BE IT FURTHER ORDAINED the provisions of the Chapter which amend or adopt new Sections of the Cherokee Code shall be codified by the Department of Justice. The Department of Justice shall be incorporate such amended provisions in the next codification of the Cherokee Code.

3 ATTACHMENT A

4 Chapter 55B - LIMITED LIABILITY COMPANY

5 Sec. 55B-1. - Title.

6 This Chapter shall be known as The Eastern Band of Cherokee Indians Limited Liability
7 Company Chapter which shall be the tribe, exercising its inherent sovereignty, operating in its
8 corporate form, whether wholly owned or for subsidiaries in part, having the purposes, powers,
9 and duties as herein or hereafter provided by tribal law.

10 Sec. 55B-1.2. - Purpose.

11 The Eastern Band of Cherokee Indians ("Tribe") has a primary interest in:

- 12 (a) Exercising its inherent sovereign authority to provide the legal framework for organizing
13 business entities to expand the private business sector on the Reservation.
- 14 (b) A limited liability company may be organized under this chapter and may conduct
15 business for any lawful purpose, unless a more limited purpose is stated in its articles of
16 organization.
- 17 (c) Authorizing the formation of wholly-owned Tribal business entities to be organized as the
18 Economic Development Arm of the Tribe for managing the Tribe's non-gaming activities
19 separate from the general affairs of its Tribal Council, with the ability to enter into legally-
20 binding contracts and commercial relationships without the need for formal Tribal
21 Council action.
- 22 (d) Authorizing subsidiaries of such wholly owned tribal business entities that maybe
23 themselves wholly or majority owned by the parent Tribal business entities.

24
25 Sec. 55B-1.3. - Findings and declarations.

26 The Tribal Council of the Eastern Band of Cherokee Indians finds and declares as follows:

- 27 (a) The Tribe is a sovereign, federally recognized Indian tribe, and is ~~charter~~ organized
28 pursuant to the Charter and Governing Document of the Eastern Band of Cherokee
29 Indians, enacted and adopted May 8, 1986, by the Tribal Council of the Eastern Band of
30 Cherokee Indians, Cherokee Council House, Cherokee, North Carolina, by Resolution
31 No. 132 (1986), and amended by Tribal Referendum conducted October 8, 1986.
- 32 (b) The Tribe, through its authority and duty to provide for the health, safety, morals, and
33 welfare of all persons within the jurisdiction of the tribe, there is hereby established and
34 created a public body corporate and politic known as the Eastern Band of Cherokee
35 Indians Limited Liability Company Chapter, which shall be the tribe, operating in its
36 corporate form, whether wholly owned or for subsidiaries in part, having the purposes,
37 powers, and duties as herein or hereafter provided by tribal law.

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Sec. 55B-1.4. - No waiver of sovereign immunity.

By the adoption of this chapter, the Tribe does not waive its sovereign immunity or consent to suit in any court or forum, whether federal, tribal, or state. Neither the adoption of this chapter, nor the organization of any limited liability company 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.

Sec. 55B-1.5. - Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Attorney General" means the Attorney General of the Eastern Band of Cherokee Indians.
- (2) "Chapter" means the Eastern Band of Cherokee Indians Limited Liability Company Chapter.
- (3) "Articles of organization" means documents filed under Section 55B-1.9. For the purpose of forming a limited liability company and those documents as amended or restated.
- (4) "Business" means any trade, occupation, profession, or other commercial chapter activity, including but not limited to professions licensed by a state or other governmental agency whether or not engaged in for profit.
- (5) "Certificate of formation" means the certificate referred to in Section 55B-2 of this chapter, and such certificate as amended.
- (6) "Contribution" means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in the person's capacity as a member.
- (7) "Court" means the Cherokee Court as defined in C.C. Chapter 7 or any successor court.
- (8) "Foreign limited liability company" means a limited liability company formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.
- (9) "Kituwah Economic Development Board." The Principle Chief, with agreement by the Tribal Council may appoint such a Kituwah Economic Development Board as subordinate officers and agents as the business of the Tribe may require and to allow them suitable compensation. The Kituwah Economic Development Board will be responsible for appointing the person to represent the Eastern Band of Cherokee Indians' member interest in the company.
- (10) "Knowledge" means a person's actual knowledge of a facts, rather than the person's constructive knowledge of the facts.

- 1 (11) "Limited liability company" and "domestic limited liability company" means a limited
2 liability company formed under the laws of the Tribe and having one or more members.
- 3 (12) "Limited liability company", "domestic limited liability company", or "Domestic
4 LLC" means an organization formed under this chapter.
- 5 (13) "Member" ~~means the Tribe, Kituwah, LLC, or another limited liability company~~
6 ~~wholly owned by the Tribe which has a membership interest in a limited liability~~
7 ~~company with the right and obligations as specified under this chapter.~~ means: (i) the
8 Tribe, (ii) Kituwah, LLC, (iii) Kituwah Global Government Group, LLC, or (iv) in the
9 case of a majority owned subsidiary of Kituwah, LLC and Kituwah Global Government
10 Group, LLC, a Person(s) owning a minority member interest in such subsidiary.
- 11 (14) "Manager" or "managers" ~~means the Kituwah Economic Development Board of~~
12 ~~Kituwah, LLC or Kituwah Global Government Group, LLC as set forth in their Articles~~
13 ~~of Organization or operating agreement as set forth in Section 55B-3.1(b).~~ means the
14 person(s) or entity designated to represent the Tribes interest in an LLC shall be the
15 Kituwah Economic Development Board or for wholly owned or majority owned
16 subsidiaries controlled by the KEDB, the manager shall be the KEDB or as set forth in
17 their Articles of Organization or operating agreement or as set forth in Section 55B-
18 3.1(b).
- 19 (15) "Operating agreement" means any agreement, written or oral, of the members as to, or
20 in the case of a limited liability company having a single member, any written agreement
21 between the member and the company memorializing the affairs of a limited liability
22 company and the conduct of its business.
- 23 (16) "Person" means a natural person, partnership (whether general or limited), trust, estate,
24 association, corporation, custodian, nominee or any other individual or entity in its own
25 or any representative capacity, in each case, whether domestic or foreign, and a limited
26 liability company or foreign limited liability company.
- 27 (17) "Personal representative" means, as to a natural person, the executor, administrator,
28 guardian, conservator or other legal representative thereof and, as to a person other than
29 a natural person, the legal representative or successor thereof.
- 30 (18) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any
31 state, territory, possession or other jurisdiction of the United States other than the Tribe.
- 32 (19) "Tribal Council" means the legislative governing body of the Eastern Band of
33 Cherokee Indians.
- 34 (20) "Tribe" means the Eastern Band of Cherokee Indians.

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36 Sec. 55B-1.6. - The Tribe as the member.

- 37 (a) The Principal Chief, with agreement of the Tribal Council, shall appoint the Kituwah
38 Economic Development Board as a Representative of the Eastern Band of Cherokee Indians
39 in the capacity of member.

- 1 (b) If the Tribe or a Tribal Entity is a Member of an LLC formed under this chapter, any action
2 which is required or permitted to take with respect to approval, consent, appointment,
3 direction, or other matter shall be taken as specified in Section 3.1 of this chapter or, as to
4 actions related to the managers of a manager-managed LLC, as stated in the LLC's operating
5 agreement.
- 6 (c) If the Tribe is the sole member of an LLC formed under this chapter, such tribally owned LLC
7 shall be deemed to possess all of the privileges and immunities of the Tribe, including the
8 Tribe's sovereign immunity from suit, except to the extent otherwise provided in this chapter.
- 9 (d) If a Tribally-owned LLC, in which the Tribe or a Tribal Entity is the sole member, forms a
10 Tribally-Owned Subsidiary LLC, to which the Tribally-Owned LLC is the sole member, such
11 Tribally-Owned Subsidiary LLC shall possess all of the privileges and immunities of the
12 Tribe, including the Tribes' sovereign immunity from suit except to the extent otherwise
13 provided in this chapter. Notwithstanding the above sentence, the Kituwah Economic
14 Development Board may cause to be waived sovereign immunity for specific purposes in said
15 subsidiary LLC's organic documents.
- 16 (e) If the Tribe or a Tribal Entity is not the sole member of an LLC formed under this chapter,
17 such LLC must not be deemed to possess the privileges and immunities of the Tribe, including
18 sovereign immunity from suit; provided, however, that the Tribe, or Tribal Entity that is a
19 member, shall retain its privileges and immunities.
- 20 (f) In no event shall the Kituwah Economic Development Board, or an appointed member
21 representative manager of an LLC in which the Tribe is a member, bind the Tribe's interest as
22 a member in any manner without consent of the Principal Chief with agreement by the Tribal
23 Council; provided that the Tribe's interest as a member may be bound by the Kituwah
24 Economic Development Board or Member actions as stated in this chapter and the operating
25 agreement of the LLC.
- 26 (g) Nothing contained in this chapter shall be construed as creating any liability or waiving of
27 sovereign immunity of the Tribe in any manner; provided that the assets of any LLC in which
28 the Tribe holds an interest may be subject to liabilities and claims unless otherwise provided
29 herein. In no event shall any action taken by the Tribe as member concerning the exercise of
30 any right or privilege or discharge of any duty with respect to an interest in an LLC be
31 construed as a waiver of immunity or creation of a liability on the tribe separate and apart
32 from its interests as a member of the LLC.

33

34 Sec. 55B-1.7. - Nature of business.

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

- 39 (a) Consent to be sued, complain, and defend in its name; provided, however, that if an LLC
40 is Tribally-owned, or wholly-owned by another entity which itself is wholly-owned by
41 the Tribe, it shall be entitled to and shall enjoy and be cloaked with the Tribe's sovereign
42 immunity from suit unless the operating agreement provides otherwise.

- 1 (b) Purchase, take, receive, lease, or otherwise acquire and own, hold, improve, use, and
2 otherwise deal in or with real, or personal property or any legal or equitable interest in
3 real or personal property, wherever situated.
- 4 (c) Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, or otherwise
5 dispose of all or any part of its property.
- 6 (d) Lend money, property, and services to, and otherwise assist, its members and managers,
7 if any.
- 8 (e) Purchase, take, receive, subscribe for, or otherwise acquire and own, hold, vote, use,
9 employ, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares
10 or other interests in, or obligations of, any other enterprise or entity.
- 11 (f) Make contracts and guarantees; incur liabilities; borrow money; issue notes, bonds, and
12 other obligations; and secure any of its obligations by mortgage or pledge of all or part of
13 its property, franchises, and income.
- 14 (g) Lend money, invest and reinvest its funds, and receive and hold real or personal property
15 as security for repayment.
- 16 (h) Conduct its business, locate offices, and exercise the powers granted by this Code inside
17 or outside of the reservation.
- 18 (i) Be a promoter, incorporator, partner, member, associate, or manager of any enterprise or
19 entity.
- 20 (j) Elect or appoint managers, agents, and employees, define their duties, and fix their
21 compensation.
- 22 (k) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, and benefit
23 or incentive plans for any or all of its current or former members, managers, employees,
24 and agents.
- 25 (l) Make donations to and otherwise devote its resources for the public welfare or for
26 charitable, scientific, educational, humanitarian, philanthropic, or religious purposes.
- 27 (m) Indemnify a member, manager, employee, officer or agent, or any other person.
- 28 (n) Provide benefits or payments to members, managers, employees, and agents of the LLC,
29 and to their estates, families, dependents or beneficiaries in recognition of the past
30 services of the members, managers, employees, and agents of the LLC.
- 31 (o) Make payments, or do any other chapter not prohibited by law, that furthers the business
32 of the LLC.
- 33 (p) Transact any lawful business that the members or the managers find to be appropriate to
34 promote and further the business and affairs of the limited liability company.

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1 Sec. 55B-1.8. - Execution of formation documents.

- 2 (a) Except as otherwise provided in this chapter, any formation document required or permitted
3 by this to be delivered for filing shall be executed by any of the following authorized
4 organizers:
- 5 (1) The Eastern Band of Cherokee Indians Principal Chief with agreement of the Tribal
6 Council.
- 7 (2) Any member of the appointed Kituwah Economic Development Board.
- 8 (b) The person executing the formation document shall sign it and state beneath or opposite the
9 signature the person's name and capacity in which the person signs.
- 10 (c) The person executing the formation document may do so as an attorney-in-fact. Powers-of-
11 attorney relating to the executing of the formation document need not be shown to nor filed
12 with the Office of the Attorney General.

13 Sec. 55B-1.9. - Filing.

- 14 (a) The Office of the Attorney General shall receive all filings required under this chapter and
15 maintain the records of such filings pursuant to this section, including but not limited to the
16 Articles of Organization, amended or restated articles, annual reports, names and addresses of
17 registered offices and agents, and, in the case of Tribally-owned LLC's, the Operating
18 Agreement and amendments thereto, and other reports required by this chapter.
- 19 (b) Upon receipt of a document for filing under this Code, the Office of the Attorney General
20 shall ensure it meets the requirements herein and then shall stamp or otherwise endorse the
21 date and time of receipt of the original, the duplicate copy, and, upon request, any additional
22 copy received.
- 23 (c) Any document accepted by the Office of the Attorney General shall be effective at the time
24 of receipt unless a delayed effective date and/or time not more than 90 days after receipt by
25 the Office of the Attorney General is specified in the document.

26

27 Sec. 55B-1.10. - Certificate of good standing.

28 Any person may obtain from the Office of the Attorney General, upon request, a Certificate
29 of Good Standing.

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31 Sec. 55B-2. - LLC formation and operations.

32 Sec. 55B-2.1. - Name reservation request.

33 The exclusive right to use a specified name for a domestic or foreign limited liability
34 company may be reserved by any of the following:

- 35 (a) The authorized organizer who intends to form a limited liability company under this
36 chapter.

1 (b) The authorized organizer may reserve a specified name by filing a signed application with
2 the Office of the Attorney General.

3 (c) If the Office of the Attorney General finds that the name is available for use by a limited
4 liability company, it shall reserve the name for the exclusive use of the applicant for 60
5 days or such shorter period as may be requested.

6
7 Sec. 55B-2.2. - Registered office and agent.

8 (a) Each limited liability company shall continuously maintain:

9 (1) A registered office on file with the Office of the Attorney General.

10 (2) At least one registered agent who is an authorized organizer.

11 (b) The location and post office address of the original registered office and the full name and post
12 office address of the original registered agent shall be stated in the initial report.

13 (c) After organization, a limited liability company may change its registered agent or registered
14 office by filing for record with the Office of the Attorney General a statement authorizing the
15 designation or change signed by the Office of the Attorney General. Any change of registered
16 agent shall be approved by written resolution of the Kituwah Economic Development Board.

17
18 Sec. 55B-2.3. - Articles of organization.

19 (a) One or more authorized organizers or the member may organize a limited liability company
20 by signing and delivering the Articles of Organization to the Office of the Attorney General
21 for filing.

22 (b) The articles of organization shall set forth the following:

23 (1) The name of the limited liability company;

24 (2) The location and mailing address;

25 (3) The term and commencement date;

26 (4) The purposed for which the limited liability company is organized;

27 (5) The name and mailing address of the member; or in the case of a majority owned
28 subsidiary of Kituwah, LLC or Kituwah Global Government Group, LLC, a list of each
29 member and mailing address

30 (6) Limited waiver of sovereign immunity if approved by the Kituwah Economic
31 Development Board; or the Board of the Special Purpose LLC.

32 (7) Name of ~~appointed member representative manager~~. manager(s).

33 (c) The Office of the Attorney General shall assign each Article of Organization an identification
34 number.

35 (d) Amendment. An LLC may amend its Articles of Organization at any time by delivering an
36 amendment to the Office of the Attorney General.

1 (e) Effect of delivery or filing.

2 (1) An LLC is formed when the Articles of Organization is approved by the EBCI Attorney
3 General.

4 (2) The Office of the Attorney General's filing of the Articles of Organization is conclusive
5 proof that the LLC is organized and formed under this chapter.
6

7 Sec. 55B-3. - Management.

8 Sec. 55B-3.1. - Kituwah Economic Development Board.

9 (a) The management affairs of Eastern Band of Cherokee Indians Limited Liability Companies,
10 other than those managed pursuant to Section 55B-3.1(b), shall be managed by the Kituwah
11 Economic Development Board. In the case of majority, but not wholly owned subsidiaries of
12 Kituwah, LLC and Kituwah Global Government Group, LLC, the Manager shall be as
13 designated in their respective Articles of Organization or Operating Agreement. The Tribe
14 shall have no authority to direct the business affairs of the Company, except through The
15 Kituwah Economic Development Board, as a representative of The Eastern Band of Cherokee
16 Indians in the capacity of member. The Kituwah Economic Development Board shall be
17 composed of five persons.

18 (1) The board shall consist of voting members as enumerated in the next full paragraph:

19 i. Directors shall be appointed by the Principal Chief and confirmed by weighted vote
20 of the Tribal Council.

21 ii. No member of the Kituwah Economic Development Board may be a member of the
22 EBCI Tribal Council.

23 iii. Each member of the Economic Development Board shall serve a term of five years,
24 subject to removal, with just cause, by a majority of the Tribal Council. Just cause
25 includes, but is not limited to, insanity, conviction of a felony, excessive absence
26 from meetings, alcohol or substance abuse, conviction of any misdemeanor involving
27 "deceit, untruthfulness, dishonesty, including, but not limited to, bribery, extortion
28 and embezzlement..." breach of duties to the Cherokee people, malfeasance or
29 misfeasance. Nothing in this chapter shall be construed to preclude a member of the
30 Economic Development Board from serving successive terms. There shall be a six-
31 month probationary period for each new appointee to be reviewed by the Tribal
32 Council.

33 iv. To ensure continuity in the Board and rotation of appointments, the initial Board
34 members' terms shall be adjusted so that they serve staggered terms. Upon the
35 effective date of this amendment, the Principal Chief shall assign first term expiration
36 dates for each current Board member, such that one member's term expires each year
37 on September 30. The established rotation shall continue for each Board position for
38 future new, renewal, or replacement appointments.

39 v. All of the members of the Kituwah Economic Development Board shall be members
40 of a federally recognized Tribe with at least a majority of members being members

1 of EBCI, provided however, the Board may appoint such non-voting advisory
2 members to the Board as it may see fit to advance the purposes of the companies.

3 vi. No member of the Kituwah Economic Development Board may be an employee of
4 the company, except by unanimous vote of the Board and Officers of the company
5 voting officers.

6 vii. All appointed managers shall have such education or experience in administration,
7 accounting, law, finance, Cherokee culture, or such other field as will contribute to
8 the Boards ability to manage tribal enterprises to achieve the purposes of the
9 company.

10 viii. Each appointed member of the Kituwah Economic Development Board's character
11 and personal history shall be appropriate to management of the business affairs of
12 The Eastern Band of Cherokee Indians on behalf of the Tribal Community and
13 membership, and each appointment shall be subject to confirmation or withdrawal
14 by the Principal Chief and Tribal Council for a period of 60 days from the date of
15 appointment, based on background check and credit report. Pending any action by
16 the Principal Chief and Tribal Council under the preceding sentence, each appointee
17 shall serve in a temporary capacity, entitled to exercise all of the powers, and subject
18 to all duties. Withdrawal of an appointment during the review period shall terminate
19 the temporary appointment and leave the affected members position vacant.
20 Confirmation of the appointment or expiration of the review term without action by
21 the Principal Chief and Tribal Council shall make the appointment final and fully
22 effective.

23 (2) Three members of the Kituwah Economic Development Board shall constitute a quorum.

24 (3) The Board of Directors shall elect from among its members a Chairman, and a Vice-
25 Chairman, and a Secretary. The Secretary will be responsible for maintaining all filing as
26 defined in this chapter submitted to the Office of the Attorney General.

27 (4) The Kituwah Economic Development Board may receive compensation for their services
28 at a rate to be established by The Principal Chief with agreement of the Tribal Council,
29 and reimbursement for expenses, including traveling expenses, when incurred in the
30 discharge of their duties. Expenses may be advanced with the approval of the Board. No
31 member of the Kituwah Economic Development Board shall have his compensation
32 reduced during his term of office, except that if funds be unavailable for appropriation,
33 the compensation of all board members may be reduced proportionally to the availability
34 of funds.

35 (5) The Kituwah Economic Development Board shall designate such employee with
36 managerial skills sufficient to manage the Company to represent the Eastern Band of
37 Cherokee Indians' member interest in the company. The title of said employee may be
38 referred to as "CEO" or "President" or both. The CEO or President retains control of all
39 management decisions within the limited liability company common to such positions to
40 include strategic planning, budget approval, and the employment and compensation. The
41 CEO or President shall designate such subordinate employees as the Board and CEO or
42 President shall deem necessary. ~~The general manager of the company and, subject to the~~

~~member representative manager's supervision and shall supervise and control all of the business and affairs of the company.~~

(6) The manager of any wholly owned subsidiary LLC organized by any member of the Kituwah Economic Development Board shall be the Kituwah Economic Development Board ~~or by unanimous consent of the Kituwah Economic Development Board such other persons as the Kituwah Economic Development Board may determine, provided no remuneration shall accrue for such subsidiary Board Managers solely for their position on a subsidiary Board.~~ - The manager of any majority owned subsidiary organized by any member of the KEDB shall be as designated in their respective Articles of Organization or Operating Agreement.

(7) The KEDB shall have the power and duty to:

- i. Enter into agreements, contracts, and understandings with any government agency, person, partnership, corporation or Indian tribe; and
- ii. Retain the services of any business or professional consultants.
- iii. All contracts and other documents executed in the name of the KEDB may be executed by either written resolution of the board or signed by two Board members, one of whom shall be the Chairperson or the Vice-Chairperson, provided that the Board in its discretion may delegate such signatory authority for specific types of documents to an officer or employee of the KEDB or one its companies.
- iv. Notwithstanding any provision of any Articles of Organization or Operating Agreement, the KEDB may, in its sole discretion, transfer as equity interest any funds from one wholly entity managed by the KEDB to another entity managed by the KEDB.

(b) Notwithstanding subsection (a) in this section, the Tribe may from time to time cause to be organized such special purpose LLC's to be formed for designated purposes. Management of those LLC's shall be set forth in their respective Articles of Organization and/or Operating Agreement, provided that the Member of such LLC shall always be the Tribe; or the LLC in which the Tribe is the sole member.

(c) Unless otherwise provided in the operating agreement or this chapter, the affirmative vote, approval, or consent of the Principal Chief with agreement of the Tribal Council, shall be required to do any of the following:

- (1) Amend the Articles of Organization.
- (2) Issue an interest in an LLC to any person.
- (3) Allow an LLC to accept any additional contributions.
- (4) Allow a partial redemption of an interest in an LLC.
- (5) Authorize the manager, or other person to act on behalf of the LLC that contravenes the operating agreement.

1 Sec. 55B-3.2. - Records and information.

2 (a) An LLC shall keep at its principal place of business all of the following:

3 (1) A list, in alphabetical order, of each past and present manager.

4 (2) A copy of the executed Articles of Organization and all amendments to the articles,
5 together with executed copies of any powers-of-attorney under which any articles were
6 executed.

7 (3) A copy of the executed operating agreement and all amendments thereto; together with
8 executed copies of any powers-of-attorney under which any operating agreement was
9 executed.

10 (4) A record of all matters referred to in this chapter as maintained in such record and s which
11 are not otherwise specified in the operating agreement.

12 (b) Upon reasonable request, the Tribal Council may, at their own expense, inspect and copy
13 during ordinary business hours any LLC record unless otherwise provided in the operating
14 agreement.

15

16 Sec. 55B-3.3. - Reports.

17 The Chairman of Kituwah Economic Development Board shall submit bi-monthly and
18 annual reports to the Tribal Council showing:

19 (a) A summary of the period activities.

20 (b) The financial condition of the companies.

21 (c) The condition of the properties under the Board's management or control.

22 (d) A summary of any unprofitable ventures and plans for correction.

23 (e) Any significant problems and accomplishments.

24 (f) Plans for the future.

25

26 Sec. 55B-4. - Finance.

27 Sec. 55B-4.1. - Contributions.

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

30 The value of a member's contribution shall be determined in the manner provided in the
31 operating agreement. If the operating agreement does not fix a value to a contribution, the value
32 of a contribution shall be approved by a majority in interest of the members, shall be properly
33 reflected in the records and information kept by the LLC. The value of contributions so
34 determined shall be binding and conclusive on the LLC and its member.

35

1 Sec. 55B-4.2. - Liability for contribution.

- 2 (a) An obligation of a member to provide cash or property or to perform services as a
3 contribution to an LLC is not enforceable unless specified in a writing signed by the member.
- 4 (b) Unless otherwise provided in the operating agreement, a member is obligated to an LLC to
5 perform any enforceable promise to provide cash or property or to perform services, even if
6 the member is unable to perform because death, disability, or any other reason. If a member
7 does not provide cash, property, or services as promised, the member is obligated at the option
8 of the LLC to provide cash equal to that portion of the value of the stated contribution that has
9 not been fulfilled.
- 10 (c) Unless otherwise provided in the operating agreement, a member's obligation to provide cash
11 or property or perform services as a contribution to the LLC may be compromised only by the
12 written consent of all of the members.

13

14 Sec. 55B-4.3. - Allocation of profits and losses.

15 The profits and losses of an LLC shall be allocated among the members in the manner
16 provided in the operating agreement. If the members do not enter into an operating agreement or
17 the operating agreement does not provide otherwise, profits and losses shall be allocated on the
18 basis of value of the contributions made by each member.

19

20 Sec. 55B-5. - Non-liquidating distributions.

21 Sec. 55B-5.1. - Interim distributions.

22 Except as provided in this chapter, a member is entitled to receive distributions from an LLC
23 before the member's dissociation from the LLC and before its dissolution and winding up to the
24 extent and at the times or upon the events specified in the operating agreement, or to the extent
25 and at the times determined by the Kituwah Economic Development Board.

26

27 Sec. 55B-5.2. - Allocation of distributions.

- 28 (a) Distributions of cash or other assets of an LLC shall be allocated among the members as
29 provided in operating agreement, or if the operating agreement does not so provide, on the
30 basis of the value of the contributions made by each member.
- 31 (b) No distribution of corporate property among the members of the tribal members shall be
32 made, except out of the net profit of corporate enterprises after all corporate debts then due
33 have been paid.

34

35 Sec. 55B-5.3. - Distribution upon partial redemption.

1 Except as provided in this chapter, upon the distribution in partial liquidation of a member's
2 interest, the redeeming member is entitled to receive the amount to which the member is entitled
3 under the operating agreement and, if not otherwise provided in the operating agreement, the fair
4 value of the redeemed interest based on the member's right to share in distributions from the
5 LLC.

6
7 Sec. 55B-5.4. - Distribution upon dissociation.

8 Except as otherwise provided in this chapter, upon an event of dissociation that does not
9 cause dissolution of the LLC, a dissociating member is entitled to receive any distribution to
10 which member is entitled under the operating agreement and, if not otherwise provided in the
11 operating agreement, the fair market value of the Member's interest in the LLC based on the
12 member's rights to share in distributions from the LLC.

13
14 Sec. 55B-5.5. - Distribution in kind.

15 Unless otherwise provided in the operating agreement:

- 16 (a) A member may not demand and receive any distribution from an LLC in the form of
17 cash until all corporate debts to include contractually obligated payroll liabilities, have
18 been paid.
- 19 (b) A member may not be compelled to accept a distribution of any asset in kind except for
20 a liquidating distribution made proportionately.

21
22 Sec. 55B-5.6. - Right to distribution.

23 At the time that a member becomes entitled to receive a distribution from an LLC, the
24 member has the status of and is entitled to all remedies available to a creditor of the LLC with
25 respect to the distribution; provided, however, that such right shall not in any way limit any other
26 remedy.

27
28 Sec. 55B-5.7. - Limitations of distributions.

- 29 (a) An LLC may not declare or make a distribution to any of its members, if after giving effect
30 to the distribution, any of the following would occur:
- 31 (1) The LLC would be unable to pay its debts as they become due in the usual course of
32 business.
- 33 (2) The fair market value of the LLC's total assets would be less than the sum of its total
34 liabilities plus, unless the operating agreement provides otherwise, the amount that would
35 be needed for the preferential rights upon dissolution of members, if any.

1 (b) An LLC may base a determination that a distribution is not prohibited by subsection (a),
2 above, on any of the following:

3 (1) Financial statements and other financial data prepared on the basis of accounting
4 practices and principles that are reasonable under the circumstances.

5 (2) A fair market valuation or other method that is reasonable under the circumstances.

6 (c) An LLC's indebtedness to a member incurred by reason of a distribution made in accordance
7 with this section is at parity with the LLC's indebtedness to its general unsecured creditors,
8 except to the extent subordinated by written agreement. This section does not affect the
9 validity or priority of a security interest in an LLC's property that is created to secure the
10 indebtedness to the member.

11
12 Sec. 55B-5.8. - Liability for wrongful distribution.

13 (a) Except as provided in subsection (b) below, a member (other than the Tribe or Tribal Entity),
14 appointed Board Member, or manager who votes to a distribution in violation of Section 55B-
15 5.7 or of the operating agreement is personally liable to the LLC for the amount of the excess
16 distribution, subject to contribution from all other managers or members participating in such
17 action.

18 (b) An action to recover under this section may be brought before the Eastern Band of Cherokee
19 Indians Cherokee Court for further action; however, a proceeding under this Section is barred
20 unless it is brought within one year after the date of the distribution.

21 (c) Nothing in this chapter serves to waive any aspect of the Tribes' sovereign immunity, and
22 any waiver thereof must be provided explicitly in the LLC's operating agreement or Articles
23 of Organization.

24
25 Sec. 55B-6. - Membership and transfer of LLC company property.

26 Sec. 55B-6.1. - Membership of LLC property.

27 (a) All property originally transferred to or acquired by an LLC is property of the LLC and not
28 the members individually.

29 (b) Property acquired with LLC funds is presumed to be LLC property.

30 (c) Property may be acquired, held, and conveyed in the name of the LLC.

31
32 Sec. 55B-6.2. - Transfer of property.

33 The property of an LLC may be transferred by an instrument of transfer executed by
34 resolution of the Kituwah Economic Development Board and filed with the Office of the
35 Attorney General in the name of the LLC, subject to any limitation that may be imposed by the
36 Operating Agreement. Notwithstanding the above sentence, any LLC may transfer or sell

1 property in the normal course of business using appropriate instruments of common to the
2 industry.

3 Sec. 55B-6.3. - Nature of interest.

4 An LLC interest is personal property.

5

6 Sec. 55B-6.4. - Reserved.

7 Sec. 55B-6.5. - Reserved.

8 Sec. 55B-6.6. - Powers of legal representative.

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

15

16 Sec. 55B-7. - Dissolution.

17 Sec. 55B-7.1. - Dissolution.

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

- 20 (a) The occurrence of dissolution events specified in the operating agreement.
- 21 (b) The written consent of the Principal Chief with agreement of the Tribal Council and
22 The Kituwah Economic Development Board.
- 23 (c) An event of dissociation of a member, unless otherwise provided in the operating
24 agreement or continuation is consented to by all remaining members.

25

26 Sec. 55B-7.2. - Judicial dissolution.

27 (a) In a proceeding by or for a member, the Kituwah Economic Development Board or court of
28 competent jurisdiction may order dissolution of an LLC if any of the following is established:

- 29 (1) That it is not reasonably practicable to carry on the business of the LLC.
- 30 (2) That the LLC is not acting in conformity with its operating agreement.
- 31 (3) That one or more managers are acting or will act in a manner that is illegal, oppressive,
32 or fraudulent.
- 33 (4) That one or more members in control of the LLC are acting or will Chapter in a manner
34 that is illegal, oppressive, or fraudulent.

1 (5) That LLC assets are being misapplied or wasted.

2 (b) If the Tribe is a member of the LLC, any action under this section must be brought before
3 the Kituwah Economic Development Board to determine if action by the Cherokee Court is
4 necessary, unless otherwise provided in the operating agreement. Nothing in this Section may
5 be construed as the acquiescence of the Tribe to any other jurisdiction or a waiver of the
6 Tribe's sovereign immunity from suit.

7
8 Sec. 55B-7.3. - Winding up.

9 (a) A dissolved LLC continues its legal existence but may not carry on any business except that
10 which is appropriate to wind up and liquidate its business.

11 (b) Unless otherwise provided in its operating agreement:

12 (1) The business of the LLC may be wound up by any of the following:

13 a. The members or managers who have authority to manage the LLC before
14 dissolution.

15 b. In a judicial dissolution, the person(s) designated by Cherokee Court

16 (2) The persons winding up the business of the LLC may do all of the following in the name
17 of and on behalf of the LLC:

18 a. Collect its assets.

19 b. Prosecute and defend suits.

20 c. Take any action necessary to settle and close the business of the LLC.

21 d. Dispose of and transfer the property of the LLC.

22 e. Discharge or make provision for discharging the liabilities of the LLC.

23 f. Distribute to the members any remaining assets of the LLC.

24 (c) Dissolution of an LLC does not do any of the following:

25 (1) Transfer title to the LLC's property.

26 (2) Prevent transfer of all or part of a member's interest.

27 (3) Prevent commencement of a civil, criminal, administrative, or investigatory proceeding
28 by or against the LLC.

29 (4) Abate or suspend a civil, criminal, administrative, or investigatory proceeding pending
30 by or against the LLC at the time of dissolution.

31 (5) Terminate the authority of the registered agent of the LLC.

32 (6) Alter the limited liability of a member.

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Sec. 55B-7.4. - Distribution of assets.

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

- (a) To creditors, including to the extent permitted by law, members, and former members in satisfaction of liabilities of the LLC.
- (b) Unless otherwise provided in the operating agreement, to members and former members in satisfaction of liabilities for distributions under Sections 55B-5.1, 55B-5.3, and 55B-5.4
- (c) Unless otherwise provided in the operating agreement, to members and former members first for the return of their contributions in proportion to their respective values and, thereafter, in proportion to their respective rights to share in distributions from the LLC before dissolution.

Sec. 55B-7.5. - Articles of dissolution.

After the dissolution of an LLC under Section 55B-7.1, the LLC may file Articles of Dissolution with the Office of the Attorney General that includes the following:

- (a) The name of the LLC.
- (b) The date of filing of its Articles of Organization.
- (c) The statutory grounds under Section 55B-7.1 for dissolution.
- (d) Effective date of dissolution.

Sec. 55B-7.6. - Known claims against dissolved LLC.

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

Sec. 55B-7.7. - Unknown or contingent claims.

A claim not barred under Section 55B-7.6 may be enforced:

- (a) Against the dissolved LLC, to the extent of its undistributed assets.

1 (b) If the dissolved LLC's assets have been distributed in liquidation, against a member of
2 the LLC, other than the Band, to the extent of the member's proportionate share of the
3 claim or of the assets of the LLC distributed to the member in liquidation, whichever is
4 less. A member's total liability for all claims under this Section may not exceed the total
5 value of assets at the time distributed to the member.
6

7 Sec. 55B-8. - Merger and conversion.

8 Sec. 55B-8.1. - Definitions.

9 (a) "Business entity" means both a domestic business entity and a foreign business entity.

10 (b) "Domestic business entity" means a company, incorporated under the laws of the Eastern
11 Band of Cherokee Indians; a Domestic LLC organized under this Code; a tribally-charted
12 entity of the Tribe, an unincorporated cooperative of the Tribe; or other tribally-formed entity
13 that is party to the merger.

14 (c) "Foreign business entity" means a foreign limited liability company, a foreign limited
15 partnership, or a foreign corporation.

16 (d) Unless the context requires otherwise. "LLC" includes a Domestic LLC and a Foreign LLC.

17 (e) "Organizational documents" include Articles of Organization, operating agreements,
18 Articles of Incorporation, Bylaws, partnership agreements, agreements of trust and
19 declarations of trust, and any other basic records that create a business entity's organization
20 and determine its internal governance and relations among persons that own it, have an interest
21 in it, or are members of it.
22

23 Sec. 55B-8.2. - Merger.

24 (a) Unless otherwise provided in its operating agreement, one or more LLCs may merge with
25 or into one or more other business entities if the action of merger is a process permitted under
26 the applicable laws of the jurisdiction that governs each such other business entity and each
27 such business entity approves the plan of merger in accordance with its organizational
28 documents.

29 (b) Interests or shares in an LLC that is a party to a merger may be exchanged for or converted
30 into cash, property, obligations, or interest in the surviving business entity.
31

32 Sec. 55B-8.3. - Approval of merger.

33 (a) Unless otherwise provided in the operating agreement, a domestic LLC that is a party to a
34 proposed merger shall approve the plan of merger by an affirmative vote by all of the
35 members.

- 1 (b) Unless otherwise provided in the operating agreement, the manager or managers of a
2 domestic LLC may not approve a merger without also obtaining the approval of the LLC's
3 members under subsection above.
- 4 (c) Each business entity, other than a domestic LLC, that is a party to a proposed merger shall
5 approve the merger in the manner and by the vote required by the laws applicable to the
6 business entity and in accordance with their respective organizational documents.
- 7 (d) Each business entity that is a party to the merger shall have any rights to abandon the merger
8 as provided for in the plan of merger or in the laws applicable to the business entity or in
9 accordance with its organizational documents.
- 10 (e) Upon approval of a merger, the LLC shall notify its members of the approval and of the
11 effective date of the merger.
- 12 (f) After a merger is authorized, and at any time before the Articles of Merger are filed with the
13 Office of the Attorney General, the planned merger may be abandoned, subject to any
14 contractual rights, without further action on the part of the shareholders or other members, in
15 accordance with the procedures set forth in the plan of merger or, if none is set forth, in the
16 manner determined by the governing body of any business entity that is a party to the merger.

17

18 Sec. 55B-8.4. - Plan of merger.

- 19 (a) Each business entity must enter into a written plan of merger, which must include all of the
20 following:
- 21 (1) The name, form of business entity, and identity of the jurisdiction governing each
22 business entity that is a party to the merger and the name, form of business entity, and
23 identity of the jurisdiction of the surviving business entity with, or into, which each other
24 business entity proposes to merge.
- 25 (2) The terms and conditions of the proposed merger.
- 26 (3) The manner and basis of converting the interests in each business entity that is a party
27 to the merger into shares, interests, obligations, or other securities of the surviving
28 business entity or into cash or other property in whole or in part.
- 29 (4) Amendments to the Articles of Organization or other similar governing document of the
30 surviving business entity.
- 31 (5) Other necessary or desirable provisions relating to the proposed merger.

32

33 Sec. 55B-8.5. - Articles of merger.

- 34 (a) The surviving business entity shall deliver to the Office of the Attorney General the Articles
35 of Merger, executed by each party to the plan of merger, which shall include all of the
36 following:
- 37 (1) The name and jurisdiction of organization for each business entity,

- 1 (2) The plan of merger.
2 (3) The name of the surviving or resulting LLC,
3 (4) The effective date and time of the merger,
4 (5) A statement as to whether the surviving business entity is Tribally owned.
5 (6) If Tribally-owned, a statement as to whether the surviving business entity enjoys the
6 Tribe's sovereign immunity, and
7 (7) A statement that the plan of merger was approved by each domestic LLC that is a party
8 to the merger in accordance with Section 8.3.
9 (b) Once filed with the Office of the Attorney General, a merger takes effect upon the effective
10 date of the Articles of Merger.
11

12 Sec. 55B-8.6. - Effects of merger.

13 A merger has the following effects:

- 14 (a) The business entities must become a single entity, which shall be the Entity designated
15 in the plan of merger as the surviving LLC.
16 (b) Each business entity, except the surviving LLC, ceases to exist.
17 (c) The surviving LLC possesses all of the rights, privileges, immunities, and powers of
18 each merged business entity and is subject to all of the restrictions, disabilities, and duties
19 of each merged business entity.
20 (d) All property and all debts, including contributions, and each interest belonging to or
21 owed to each of the business entities are vested in the surviving LLC without further act.
22 (e) Title to all real estate and any interest in real estate, vested in any business entity, does
23 not revert, and is not in any way impaired because of the merger.
24 (f) The surviving LLC has all the liabilities and obligations of each of the business entity
25 and any claim existing or action or proceedings pending by or against any merged
26 business entity may be prosecuted as if the merger had not taken place, or the surviving
27 LLC may be substituted in the action.
28 (g) The rights of creditors and any liens on the property of any business entity survive the
29 merger.
30 (h) The interests in a business entity that are to be converted or exchanged into interest,
31 cash, obligations, or other property under the terms of the plan of merger are converted
32 and the former interest holders are entitled only to the rights provided in the plan of
33 merger of the rights otherwise provided by law.
34 (i) The Articles of Organization of the surviving LLC is amended to the extent provided in
35 the Articles of Merger.
36

1 Sec. 55B-8.7. - Right to object.

2 Unless otherwise provided in the operating agreement, upon receipt of the notice required by
3 Section 8.3(e), a member who did not vote in favor of the merger may, within 20 days after the
4 date of the notice, voluntarily dissociate from the LLC under Section 3.7(c) and receive fair
5 value for the member's LLC interest under Section 5.4.

6

7 Sec. 55B-8.8. - Conversion.

8 (a) Unless otherwise provided in its organizational documents, a domestic LLC may convert to
9 another form of business entity if it:

- 10 (1) Satisfies the requirements under this Chapter relating to conversions; and,
11 (2) If the conversion is permitted under the applicable law of the jurisdiction that governs
12 the organization of the business entity into which the domestic LLC is converting.

13 (b) Unless otherwise provided in its organizational documents, a business entity other than a
14 domestic LLC may convert into a domestic LLC if it:

- 15 (1) Satisfies the requirements under this Chapter relating to conversions; and
16 (2) If the conversion is permitted under the applicable law of the jurisdiction that governs
17 the business entity.

18 (c) The filing requirements of Section 1.9 apply to conversions under this Chapter.

19 (d) Notwithstanding its prior approval, a plan of conversion under this Chapter may be amended
20 before the conversion takes effect if the amendment is approved by the members of the
21 converting domestic LLC or business entity in the same manner as was required for the
22 approval of the original plan of conversion.

23

24 Sec. 55B-8.9. - Plan of conversion for domestic LLC into another business entity.

25 (a) Unless subsection (c) applies, the domestic LLC proposing to convert shall adopt a plan of
26 conversion that includes all of the following:

27 (1) The name of the domestic LLC; the name of the business entity into which the domestic
28 LLC is converting; the type of business entity into which the domestic LLC is converting;
29 identification of the statute that will govern the internal affairs of the surviving business
30 entity; the street address of the surviving business entity; the street address of the domestic
31 LLC, if different from the street address of the surviving business entity; and, the principal
32 place of business of the surviving; business entity.

33 (2) The terms and conditions of the proposed conversion, including the manner and basis
34 of converting the membership interest of the domestic LLC into membership interests or
35 obligations of the surviving business entity, into cash, into other consideration that may
36 include membership interests or obligations of an entity that is not a party to the
37 conversion, or into a combination of cash and other consideration.

1 (3) The terms and conditions of the organizational documents that are to govern the
2 surviving business entity.

3 (4) Any other provisions, with respect to the proposed conversion that the domestic LLC
4 considers as necessary or desirable.

5 (b) A vote of the members of the domestic LLC is required to adopt a plan of conversion under
6 subsection (a). A unanimous vote of the members entitled to vote is required to approve a plan
7 of conversion, unless its organizational documents provide otherwise.

8 (c) Subsections (a) and (b) do not apply if: the domestic LLC has not commenced business; has
9 not issued any membership interests; has no debts or other liabilities; and has not received any
10 payments, or has returned any payments it has received after deducting any amount disbursed
11 for payment of expenses, for subscriptions for its membership interests. In the event that all
12 of these conditions apply, the members of the domestic LLC, may approve of the conversion
13 of the domestic LLC into another business entity by majority vote.

14 (d) To effect the conversion, a majority of the members must execute and file a certificate of
15 conversion under Section 8.10.

16

17 Sec. 55B-8.10. - Filing of certificate of conversion for domestic LLC.

18 (a) If the plan of conversion is approved under Section 8.10(b), the domestic LLC shall file any
19 formation documents required to be filed under the laws governing the internal affairs of the
20 surviving business entity, in the manner prescribed by those company documents, and shall
21 file a certificate of conversion with the Office of the Attorney General.

22 (b) The certificate of conversion shall include all of the following:

23 (1) A copy of the plan of conversion, unless Section 8.9(c) applies.

24 (2) The name of the domestic LLC that is converting into another business entity.

25 (3) The name of the surviving business entity.

26 (4) The type of business entity the domestic LLC is converting into and the jurisdiction
27 under which the surviving business entity shall be governed.

28 (5) A statement that the members of the domestic LLC have adopted the plan of conversion
29 under Section 8.9(b), or that the members of the domestic LLC have approved of the
30 conversion under Section 8.9(c), as applicable.

31 (6) A statement that the surviving business entity will furnish a copy of the plan of
32 conversion, on request and without cost, to any member of the domestic LLC.

33 (7) The registered agent and registered office, of the domestic LLC before and after
34 conversion.

35 (8) A Statement whether the domestic LLC is Tribally-owned.

36

1 Sec. 55B-8.11. - Effect of conversion of domestic LLC into another business entity.

2 All of the following apply, when a domestic LLC's conversion into another business entity
3 takes effect:

- 4 (a) The domestic LLC converts into the surviving business entity, and the organizational
5 documents of the domestic LLC are canceled.
- 6 (b) Except as otherwise provided in the Code, the surviving business entity is organized
7 under and subject to the organizational laws of the jurisdiction of the surviving business
8 entity as stated in the Certificate of Conversion.
- 9 (c) The surviving business entity has all of the liabilities of the domestic LLC. The
10 conversion of the domestic LLC into a business entity under this Section shall not be
11 considered to affect any obligations or liabilities of the domestic LLC incurred before the
12 conversion or the personal liability of any person incurred before the conversion, and the
13 conversion shall not be considered to affect the choice of law applicable to the domestic
14 LLC with respect to matters arising before the conversion.
- 15 (d) The title to all real estate and other property and rights owned by the domestic LLC
16 remain vested in the surviving business entity without reversion or impairment.
- 17 (e) The surviving business entity is considered to be the same entity that existed before the
18 conversion and is considered to be organized on the date that the domestic LLC was
19 originally organized.
- 20 (f) The membership interests of the domestic LLC that were to be converted into
21 (g) Membership interest or obligations of the surviving business entity or into cash or other
22 property are converted.
- 23 (h) Unless otherwise provided in the plan of conversion, the domestic LLC is not required
24 to wind up its affairs or pay its liabilities and distribute its assets on account of the
25 conversion, and the conversion does not constitute a dissolution of the domestic LLC.
- 26 (i) The organizational documents of the surviving business entity are as provided in the plan
27 of conversion.
- 28 (j) All other provisions of the plan of conversion apply.

29
30 Sec. 55B-8.12. - Plan of conversion for a business entity into a domestic LLC.

- 31 (a) A business entity proposing to convert into a domestic LLC must adopt a plan of conversion
32 that includes all of the following:
- 33 (1) The name of the business entity, the type of business entity that is converting,
34 identification of the statute that governs the internal affairs of the business entity, the
35 name of the surviving domestic LLC into which the business entity is converting, the
36 street address of the surviving domestic LLC company, the street address of the business
37 entity if different from the street address of the surviving domestic LLC, and the principal
38 place of business of the surviving domestic LLC.

- 1 (2) The terms and conditions of the proposed conversion, including the manner and basis
2 of converting the membership interests of the business entity into membership interests
3 of the surviving domestic LLC, into cash, into other consideration that may include
4 membership interests or obligations of an entity that is not a party to the conversion, or
5 into a combination of cash and other consideration.
- 6 (3) The terms and conditions of the organizational documents that are to govern the
7 surviving domestic LLC.
- 8 (4) Any other provisions with respect to the proposed conversion that the business entity
9 considers necessary or desirable.
- 10 (b) If a plan of conversion is adopted by the business entity under subsection (a), the plan of
11 conversion is submitted for approval in the manner required by the law governing the internal
12 affairs of that business entity.
- 13 (c) If the plan of conversion is approved under subsections (a) and (b), the business entity shall
14 file a Certificate of Conversion with the Office of the Attorney General. The Certificate of
15 Conversion shall include all of the following:
- 16 (1) A copy of the plan of conversion.
- 17 (2) A statement that the business entity has obtained approval of the plan of conversion
18 under subsection (b).
- 19 (3) A statement that the surviving domestic LLC will furnish a copy of the plan of
20 conversion, on request and without cost, to any member of the business entity.
- 21 (4) The registered agent and registered office, record agent and record office, or other
22 similar agent and office of the surviving domestic LLC before and after conversion.
- 23 (5) The type of business entity, as well as the date and location of jurisdiction where the
24 business entity was formed, prior to converting into a domestic LLC.
- 25 (6) A statement whether the surviving domestic LLC is Tribally-owned.
- 26 (7) Submission of Articles of Organization for the surviving domestic LLC that meet all of
27 the requirements of this Code.

28

1 Sec. 55B-8.13. - Effect of conversion of business entity into domestic LLC.

2 All of the following apply when a business entity's conversion into a domestic LLC takes
3 effect:

- 4 (a) The business entity converts into the surviving domestic LLC. Except as otherwise
5 provided in this Section, the surviving domestic LLC is organized under and subject to
6 the Code.
- 7 (b) The surviving domestic LLC has all of the liabilities of the business entity. The
8 conversion of the business entity into a domestic LLC under this Section shall not be
9 considered to affect any obligations or liabilities that the business entity incurred before
10 the conversion, or the personal liability of any person incurred before the conversion; and,
11 the conversion shall not be considered to affect the choice of law applicable to the
12 business entity with respect to matters arising before conversion.
- 13 (c) The title to all real estate and other property and rights owned by the business entity
14 remains vested in the surviving domestic LLC without reversion or impairment.
- 15 (d) A proceeding pending against the business entity may be continued as if the conversion
16 had not occurred, or the surviving domestic LLC may be substituted in the pending
17 proceeding for the business entity.
- 18 (e) The surviving domestic LLC is considered to be the same entity that existed before the
19 conversion, and is considered to be organized on the date that the business entity was
20 originally organized.
- 21 (f) The membership interests of the business entity that were to be converted into
22 membership interests or obligations of the surviving domestic LLC or into cash or other
23 property are converted.
- 24 (g) Unless otherwise provided in a plan of conversion, the business entity is not required to
25 wind up its affairs or pay its liabilities and distribute its assets on account of the
26 conversion, and the conversion does not constitute a dissolution of the business entity.
- 27 (h) The organizational documents of the domestic LLC are as provided in the plan of
28 conversion.
- 29 (i) All other provisions of the plan of conversion apply.

30
31 Sec. 55B-9. - Miscellaneous.

- 32 (a) In construing this Chapter, the present tense includes the past and future tenses, and the
33 future tense includes the present tense.
- 34 (b) When reference is made to any portion of this Chapter, the reference shall apply to all
35 amendments made hereafter.
- 36 (c) Section headings shall not be used in construing this Chapter.
- 37 (d) If any part of this Chapter is invalidated by a court of competent jurisdiction, all valid parts
38 that are severable from the invalid part remain in effect. If a part of this Chapter is invalid in

1 one or more of its applications, that part remains in effect in all valid applications that are
2 severable from the invalid applications.

3
4 Sec. 55B-10. - Relationship to the TERO ordinance.

5 (a) Any LLC of the Tribe organized under this Chapter shall only be deemed an enterprise of
6 the Tribe when acting to procure goods, services, or employment occurring on Trust Lands
7 and such performance is on Trust Lands.

8 (b) ~~Any LLC of the Tribe organized under this Chapter managed by the Kituwah Economic~~
9 ~~Development Board.~~ Kituwah, LLC, Kituwah Global Government Group, LLC and their
10 subsidiaries shall be considered a Priority 1 Certified Economic Entity under Article 5 Section
11 92 of the Cherokee Code when providing good or services on Trust Lands, provided they
12 submit of liability insurance as required by Article 3 Section 92 of the Cherokee Code.

13 (c) Any other LLC may be considered a Priority 1 Certified Economic Entity when providing
14 good or services on Trust Lands provided, they meet the requirements contained in Article 3
15 Section 92 of the Cherokee Code.

16
17 Sec. 55B-11. - Kituwah, LLC and Kituwah Global Government Group, LLC Subsidiaries.

18 (a) Recognizing that the Kituwah Economic Development Board has caused to be formed
19 Kituwah, LLC, and Kituwah Global Government Group, LLC, ~~a~~ wholly owned tribal LLCs
20 under this Chapter with the Articles of Organization having been appropriately adopted and
21 filed, and the operating agreement executed by the Principal Chief and the Chair of the
22 Kituwah Economic Development Board, the Tribe hereby conveys upon Kituwah, LLC and
23 Kituwah Global Government Group, LLC the right to form such subsidiary LLCs as the
24 Kituwah Economic Development Board may from time to time deem to be in the best interests
25 of the company.

26 (b) Notwithstanding any previous provisions to the contrary, each subsidiary of Kituwah, LLC or
27 Kituwah Global Government Group, LLC shall be wholly- or majority owned by the Tribe,
28 but its Articles of Organization may allow that Kituwah, LLC and Kituwah Global
29 Government Group, LLC is are the majority member of such subsidiary, and the Manager of
30 each subsidiary shall be the Kituwah Economic Development Board unless otherwise
31 designated in their respective Articles of Organization or Operating Agreement.