

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: APR 04 2019

ORDINANCE NO.: 552 (2019)

WHEREAS, the Eastern Band of Cherokee Indians ("Tribe"), which is a federally recognized Indian tribe organized under the Charter and Governing Document 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; and

WHEREAS, the Tribal Council passed, and the Principal Chief subsequently ratified, Ordinance #619 (2018), adding Chapter 55B 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, Resolution #337 (2018) authorized the formation of Sequoyah National Golf Club II, LLC to be organized under the laws of the Tribe, to convert the state chartered Sequoyah National Golf Club, LLC into a Tribally chartered LLC, but to be managed independently of the Kituwah Economic Development Board; and

WHEREAS, Ordinance #335 (2018) established the Cherokee Sovereign Wealth Fund with the intention of said fund being managed by a newly formed LLC to be called the Cherokee Sovereign Wealth Fund, LLC which is to be managed by the Investment Committee; and

WHEREAS, it has been determined the best way to implement Ordinance #619 (2018), Resolution #337 (2018), and Ordinance #335 (2018) is to amend Cherokee Code Section 16C-30 and Chapter 55B to provide clarification of the management and regulation of such special purposed LLC's.

NOW THEREFORE BE IT ORDAINED, by the Tribal Council of the Eastern Band of Cherokee Indians, in council assembled, at which a quorum is present, that Cherokee Code Chapters 16C and 55B are amended as set out in Exhibits A and B, respectively, which are attached hereto and incorporated herein:

SEE ATTACHED EXHIBIT A AND EXHIBIT B

Chapter 16C -GAMING REVUNUE ALLOCATION PLAN**Sec. 16C-30 Cherokee Sovereign Wealth Fund.**

~~The Tribal Council hereby establishes the Cherokee Sovereign Wealth Fund, LLC to be used to diversify the investment portfolio of the Eastern Band of Cherokee Indians. The limited liability company shall be established under the laws of the Eastern Band of Cherokee Indians and shall be funded as approved by the Tribal Council. The Investment Committee shall oversee the investment management and performance of the Cherokee Sovereign Wealth Fund. The purpose of the fund shall be investment in alternative investment strategies, direct investment, co-investment and private equity strategies.~~

- (a) The Investment Committee has decided to diversify the investment portfolio of the Eastern Band of Cherokee Indians to include a Sovereign Wealth Fund and believes it to be in the best interest of the Tribe for the benefit of the Tribe and its members. The purpose of the fund shall be investment in alternative investment strategies, direct investment, co-investment, and private equity strategies.
- (b) The Investment Committee shall organize Cherokee Sovereign Wealth Fund, LLC to oversee the management and performance of the Cherokee Sovereign Wealth Fund. The Investment Committee shall be the Manager of the LLC. Organization, management, and regulation shall be in accordance with Chapter 55B of the Cherokee Code and this section.

Chapter 55B- LIMITED LIABILITY COMPANY**Sec. 55B-1. Title.**

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

Sec. 55B-1.2 Purpose.

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

- (a) Exercising its inherent sovereign authority to provide the legal framework for organizing business entities to expand the private business sector on the Reservation, ~~and;~~
- (b) A limited liability company may be organized under this Chapter and may conduct business for any lawful purpose, unless a more limited purpose is stated in its articles of organization.
- (c) Authorizing the formation of wholly-owned Tribal business entities to be organized as the Economic Development Arm of the Tribe for managing the Tribe's non-gaming activities separate from the general affairs of its Tribal Council, with the ability to enter into legally-binding contracts and commercial relationships without the need for formal Tribal Council action.

Sec. 55B-1.3 Findings and Declarations.

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

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

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 Sec. 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 § 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. Ch.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.
- (11) "Limited Liability Company" and "Domestic Limited Liability Company" means a limited liability company formed under the laws of the Tribe and having one (1) or more Members.
- (12) "Limited Liability Company", "Domestic Limited Liability Company", or "Domestic LLC" means an organization formed under this Chapter.
- (13) ~~"Member" means a person or entity with the Tribe, Kituwah, LLC, or another limited liability company wholly-owned by the Tribe which has a membership interest in a limited liability company with the right and obligations as specified under this Chapter.~~
- (14) ~~"Member Representative Manager" the persons designated by the Kituwah Economic Development Board to represent the Eastern Band of Cherokee Indians' member interest in the company.~~
- ~~"Manager" or "Managers" means the Kituwah Economic Development Board to represent the Eastern Band of Cherokee Indian's Member Interest in the Company or as set forth in Sec. 55B-3.1(b).~~
- (15) "Operating agreement" means any agreement, written or oral, of the members as to, or in the case of a limited liability company having a single member, any written agreement between the member and the company memorializing the affairs of a limited liability company and the conduct of its business.
- (16) "Person" means a natural person, partnership (whether general or limited), trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity, in each case, whether domestic or foreign, and a Limited Liability Company or Foreign Limited Liability Company.
- (17) "Personal Representative" means, as to a natural person, the executor, administrator, guardian, conservator or other legal representative thereof and, as to a person other than a natural person, the legal representative or successor thereof.
- (18) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession or other jurisdiction of the United States other than the Tribe.
- (19) "Tribal Council" means the legislative governing body of the Eastern Band of Cherokee Indians.
- (20) "Tribe" means the Eastern Band of Cherokee Indians.

1 **Sec. 55B-1.6 The Tribe as the Member.**

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

35
36 **Sec. 55B-1.7 Nature of Business.**

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

- 41
42 (a) Consent to be sued, complain, and defend in its name; provided, however, that if an LLC is
43 Tribally-owned, or wholly-owned by another entity which itself is wholly-owned by the Tribe, it
44 shall be entitled to and shall enjoy and be cloaked with the Tribe's sovereign immunity from suit
45 unless the Operating Agreement provides otherwise.
- 46 (b) Purchase, take, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise
47 deal in or with real, or personal property or any legal or equitable interest in real or personal
48 property, wherever situated.
- 49 (c) Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, or otherwise dispose
50 of all or any part of its property.
- 51 (d) Lend money, property, and services to, and otherwise assist, its Members and Managers, if any.

- (e) Purchase, take, receive, subscribe for, or otherwise acquire and own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in, or obligations of, any other enterprise or entity.
- (f) Make contracts and guarantees; incur liabilities; borrow money; issue notes, bonds, and other obligations; and secure any of its obligations by mortgage or pledge of all or part of its property, franchises, and income.
- (g) Lend money, invest and reinvest its funds, and receive and hold real or personal property as security for repayment.
- (h) Conduct its business, locate offices, and exercise the powers granted by this Code inside or outside of the Reservation.
- (i) Be a promoter, incorporator, partner, Member, associate, or Manager of any enterprise or entity.
- (j) Elect or appoint Managers, agents, and employees, define their duties, and fix their compensation.
- (k) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, and benefit or incentive plans for any or all of its current or former Members, Managers, employees, and agents.
- (l) Make donations to and otherwise devote its resources for the public welfare or for charitable, scientific, educational, humanitarian, philanthropic, or religious purposes.
- (m) Indemnify a Member, Manager, employee, officer or agent, or any other person.
- (n) Provide benefits or payments to Members, Managers, employees, and agents of the LLC, and to their estates, families, dependents or beneficiaries in recognition of the past services of the Members, Managers, employees, and agents of the LLC.
- (o) Make payments, or do any other Chapter not prohibited by law, that furthers the business of the LLC.
- (p) Transact any lawful business that the Members or the Managers find to be appropriate to promote and further the business and affairs of the limited liability company.

Sec. 55B-1.8. Execution of Formation Documents.

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

Sec. 55B-1.9. Filing.

- (a) The Office of the Attorney General shall receive all filings required under this chapter and maintain the records of such filings pursuant to this section, including but not limited to the Articles of Organization, amended or restated articles, annual reports, names and addresses of registered offices and agents, and, in the case of Tribally-owned LLC's, the Operating Agreement and amendments thereto, and other reports required by this chapter.

- 1 (b) Upon receipt of a document for filing under this Code, the Office of the Attorney General shall
2 ensure it meets the requirements herein and then shall stamp or otherwise endorse the date and time
3 of receipt of the original, the duplicate copy, and, upon request, any additional copy received.
4 (c) Any document accepted by the Office of the Attorney General shall be effective at the time of
5 receipt unless a delayed effective date and/or time not more than 90 days after receipt by the Office
6 of the Attorney General is specified in the document.
7

8 **Sec. 55B-1.10 Certificate of Good Standing.**

9 Any person may obtain from the Office of the Attorney General, upon request, a Certificate of Good
10 Standing.
11

12 **Sec. 55B-2. LLC Formation and Operations.**

13
14 **Sec. 55B-2.1 Name Reservation Request.**

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

- 17 (a) The authorized organizer who intends to form a limited liability company under this Chapter.
18 (b) The authorized organizer may reserve a specified name by filing a signed application with the
19 Office of the Attorney General.
20 (c) If the Office of the Attorney General finds that the name is available for use by a limited liability
21 company, it shall reserve the name for the exclusive use of the applicant for sixty days or such
22 shorter period as may be requested.
23

24 **Sec. 55B-2.2 Registered Office and Agent.**

- 25 (a) Each limited liability company shall continuously maintain:
26 (1) A registered office on file with the Office of the Attorney General.
27 (2) At least one registered agent who is an authorized organizer.
28 (b) The location and post office address of the original registered office and the full name and post
29 office address of the original registered agent shall be stated in the initial report.
30 (c) After organization, a limited liability company may change its registered agent or registered office
31 by filing for record with the Office of the Attorney General a statement authorizing the designation
32 or change signed by the Office of the Attorney General. Any change of registered agent shall be
33 approved by written resolution of the Kituwah Economic Development Board.
34

35 **Sec. 55B-2.23 Articles of Organization.**

- 36 (a) One or more authorized organizers or the Member may organize a limited liability company by
37 signing and delivering the Articles of Organization to the Office of the Attorney General for filing.
38 (b) The articles of organization shall set forth the following:
39 (1) The name of the Limited Liability Company;
40 (2) The location and mailing address;
41 (3) The term and commencement date;
42 (4) The purposed for which the Limited Liability Company is organized;
43 (5) The name and mailing address of the ~~initial~~ member;
44 (6) Limited waiver of sovereign immunity if approved by the Kituwah Economic Development
45 Board;
46 (7) Name of appointed Member Representative Manager.
47 (c) The Office of the Attorney General shall assign each Article of Organization an identification
48 number.
49 (d) Amendment. An LLC may amend its Articles of Organization at any time by delivering an
50 amendment to the Office of the Attorney General.
51 (e) Effect of Delivery or Filing.

- 1 (1) An LLC is formed when the Articles of Organization is approved by the EBCI Attorney
2 General.
3 (2) The Office of the Attorney General's filing of the Articles of Organization is conclusive
4 proof that the LLC is organized and formed under this Chapter.
5

6 **Sec. 55B-3. Management.**
7

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

9 (a) The management affairs of Eastern Band of Cherokee Indians Limited Liability Companies other
10 than those managed pursuant to Sec. 55B-3.1(b) shall be managed by the Kituwah Economic
11 Development Board. The Tribe shall have no authority to direct the business affairs of the
12 Company, except through The Kituwah Economic Development Board, as a representative of The
13 Eastern Band of Cherokee Indians in the capacity of member. The Kituwah Economic
14 Development Board shall be composed of five (5) persons.
15

16 ~~(b)~~ (1) The board shall consist of voting members as enumerated in the next full paragraph:
17

- 18 i. Directors shall be appointed by the Principal Chief and confirmed by weighted vote of the
19 Tribal Council.
20 ii. No member of the Kituwah Economic Development Board ~~maybe~~ may be a member of
21 the EBCI Tribal Council.
22 iii. Each member of the Economic Development Board shall serve a term of five years,
23 subject to removal, with just cause, by a majority of the Tribal Council. Just cause
24 includes, but is not limited to, insanity, conviction of a felony, excessive absence from
25 meetings, alcohol or substance abuse, conviction of any misdemeanor involving "deceit,
26 untruthfulness, dishonesty, including, but not limited to, bribery, extortion and
27 embezzlement..." breach of duties to the Cherokee people, malfeasance or
28 misfeasance. Nothing in this chapter shall be construed to preclude a member of the
29 Economic Development Board from serving successive terms. There shall be a six-
30 month probationary period for each new appointee to be reviewed by the Tribal Council.
31 iv. To ensure continuity in the Board and rotation of appointments, the initial Board
32 members' terms shall be adjusted so that they serve staggered terms. Upon the effective
33 date of this amendment, the Principal Chief shall assign first term expiration dates for
34 each current Board member, such that one member's term expires each year on
35 September 30. The established rotation shall continue for each Board position for future
36 new, renewal, or replacement appointments.
37 v. All of the members of the Kituwah Economic Development Board shall be members of a
38 federally recognized Tribe with at least a majority of members being members of EBCI,
39 provided however, the Board may appoint such non-voting advisory members to the
40 Board as it may see fit to advance the purposes of the Companies.
41 vi. No member of the Kituwah Economic Development Board may be an employee of the
42 company, except by unanimous vote of the voting officers.
43 vii. All appointed Managers shall have such education or experience in administration,
44 accounting, law, finance, Cherokee culture, or such other field as will contribute to the
45 Boards ability to manage tribal enterprises to achieve the purposes of the company.
46

- viii. Each appointed member of the Kituwah Economic Development Board's character and personal history shall be appropriate to management of the business affairs of The Eastern Band of Cherokee Indians 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 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, entitled to exercise all of the powers, and subject to all duties. Withdrawal of an appointment during the review period shall terminate the temporary appointment and leave the affected members 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.
- (2) Three (3) members of the Kituwah Economic Development Board shall constitute a quorum.
- (3) The Board of Directors shall elect from among its members a Chairman, and a Vice-Chairman, and a Secretary. The Secretary will be responsible for maintaining all filing as defined in this Chapter submitted to the Office of the Attorney General.
- (4) The Kituwah Economic Development Board may receive compensation for their services at a rate to be established by The Principal Chief with agreement of the Tribal Council, and reimbursement for expenses, including traveling expenses, when incurred in the discharge of their duties. Expenses may be advanced with the approval of the Board. No member of the Kituwah Economic Development Board shall have his compensation reduced during his term of office, except that if funds be unavailable for appropriation, the compensation of all board members may be reduced proportionally to the availability of funds.
- (5) The Kituwah Economic Development Board shall designate such employee with managerial skills sufficient to manage the Company to represent the Eastern Band of Cherokee Indians' member interest in the company. The title of said employee may be referred to as "CEO" or "President" or both. The CEO or President retains control of all management decisions within the Limited Liability company common to such positions to include strategic planning, budget approval, and the employment and compensation. The CEO or President shall designate such subordinate employees as the Board and CEO or 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 subsidiary LLC organized by any member of the Kituwah Economic Development Board shall be the Kituwah Economic Development Board.
- (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

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

5
6 (c) Unless otherwise provided in the Operating Agreement or this Chapter, the affirmative vote,
7 approval, or consent of the Principal Chief with agreement of the Tribal Council, shall be required
8 to do any of the following:
9

10 (1) Amend the Articles of Organization.

11 (2) Issue an interest in an LLC to any person.

12 ~~(3) Adopt, amend, or revoke Operating Agreement.~~

13 ~~(4) (3) Allow an LLC to accept any additional contributions~~

14 ~~(5) (4) Allow a partial redemption of an interest in an LLC~~

15 ~~(6) (5) Authorize the Manager, or other person to act on behalf of the LLC that contravenes the~~
16 ~~Operating Agreement.~~

17
18 ~~(d) Three (3) members of the Kituwah Economic Development Board shall constitute a quorum.~~

19
20 ~~(e) The Board of Directors shall elect from among its members a Chairman, and a Vice Chairman, and~~
21 ~~a Secretary. The Secretary will be responsible for maintaining all filing as defined in this Chapter~~
22 ~~submitted to the Office of the Attorney General.~~

23 ~~(f) Removal of an Officer from an office shall not be deemed to be a removal from the Board.~~
24 ~~However, removal of an officer from the Board with cause shall constitute a removal from his~~
25 ~~office whether or not specifically so stated in the removal proceedings.~~

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

33 ~~(h) The Kituwah Economic Development Board designate shall designate a Member Representative~~
34 ~~Manager with managerial skills sufficient to manage the Company to represent the Eastern Band~~
35 ~~of Cherokee Indians' member interest in the company. The Member Representative Manager~~
36 ~~retains control of all management decisions within the Limited Liability company common to a~~
37 ~~boards of directors to include strategic planning, budget approval, and the employment and~~
38 ~~compensation. The Member Representative Manager shall designate a Qualified General Manager~~
39 ~~pursuant to the Terms of this agreement. The General Manager of the Company and, subject to the~~
40 ~~Member Representative Manager 'supervision and shall supervise and control all of the business~~
41 ~~and affairs of the Company~~

42
43 **Sec. 55B-3.2. – Records and information.**

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

45 (1) A list, in alphabetical order, of each past and present Manager.

46 (2) A copy of the executed Articles of Organization and all amendments to the Articles,
47 together with executed copies of any powers-of-attorney under which any Articles were
48 executed.

- (3) A copy of the executed operating agreement and all amendments thereto; together with executed copies of any powers-of-attorney under which any operating agreement was executed.
- (4) A record of all matters referred to in this chapter as maintained in such record and which are not otherwise specified in the operating agreement.
- (b) Upon reasonable request, the Tribal Council may, at their own expense, inspect and copy during ordinary business hours any LLC record unless otherwise provided in the operating agreement.

Sec. 55B-3.3. – Reports.

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

- (a) A summary of the period activities.
- (b) The financial condition of the companies.
- (c) The condition of the properties under the Board's management or control.
- (d) A summary of any unprofitable ventures and plans for correction.
- (e) Any significant problems and accomplishments.
- (f) Plans for the future.

Sec. 55B- 4. Finance.

Sec. 55B-4.1 Contributions.

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

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

Sec. 55B-4.2 Liability for Contribution.

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

Sec. 55B-4.3 Allocation of Profits and Losses

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

Sec. 55B- 5. Non- Liquidating Distributions.