

TITLE 12

BUSINESS CODE

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TITLE 12

BUSINESS CODE

CHAPTER 12-1

LIMITED LIABILITY COMPANIES

(adopted 3/27/07)

§12-1-1 Short Title

This Code shall be known and may be cited as the Nez Perce Tribe Limited Liability Companies Act.

§12-1-2 Authority

(a) Article VIII, Section 2(c) of the Nez Perce Tribe Constitution gives the Nez Perce Tribal Executive Committee the power to make laws, including codes, ordinances, resolutions, and statutes.

§12-1-3 Purposes

Limited Liability Companies may be organized under this Act for any lawful purpose or purposes.

§12-1-4 Applicability

The provisions of this Act shall apply to all limited liability companies (LLC) organized hereunder or which elect to accept the provisions of this Act. Pre-existing LLC=s shall be deemed to be in valid existence and allowed a ninety (90) day grace period from the date of the adoption of this Act to amend or conform their articles of organization in order to comply with the provisions herein.

§12-1-5 Rules of Construction

(a) It is the policy of this Act to give maximum effect to the principle of freedom of contract and to the enforceability of articles of operation and other agreements.

(b) Unless displaced by particular provisions of this Act, the principles of law and equity supplement this Act.

§12-1-6 Definitions

Terms used in this Act have the following meaning:

(a) "Articles of Operation" means an agreement in writing among all of the members

as to the conduct of the business of a limited liability company and its relationships with its members.

(b) "Articles of Organization" means the articles filed under §12-1-14 and those articles as amended or restated.

(c) "Corporation" means a "domestic corporation" for profit organized under the laws
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and ordinances of the Nez Perce Tribe and a foreign corporation formed under the laws of any other jurisdiction.

(d) "Court" means the Nez Perce Tribal Court.

(e) "Distribution" means a direct or indirect transfer by a limited liability company of money or other property to or for the benefit of its members in respect of their interests.

(f) "Entity" includes an individual, a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity and the Tribe.

(g) "Foreign" refers to limited liability companies and limited partnerships organized under the laws of a jurisdiction other than the Nez Perce Tribe.

(h) "NPTEC" means the Nez Perce Tribal Executive Committee.

(i) "Limited Liability Company" or "Domestic Limited Liability Company" means an organization formed under this Act, except as provided for in §12-1-53(a).

(j) "Limited Liability Company Interest" or "Interest in the Limited Liability Company" or "Member's Interest" means a member's rights in the limited liability company, including rights to distributions, profits and losses, and to participate in management, as specified in the Articles of Operation.

(k) "LLC" means a limited liability company.

(l) "Majority in Interest" means members contributing more than fifty percent (50%) of the value of total capital contributions to the limited liability company excluding any interest which is not to be counted as voting on a matter as described elsewhere in this Act.

(m) "Manager" or "Managers" means the entity or entities designated to manage the company and this is not necessarily determined by percentage of ownership in the company.

(n) "Member" means a person who has been admitted to membership in a limited liability company and who has not dissociated from the limited liability company.

(o) "Organizer(s)" means the entity(ies) which signs and delivers the articles of organization for filing to the Tribe.

(p) "State" includes a state, territory, or possession of the United States and the District of Columbia.

(q) "Tribe" means the Nez Perce Tribe.

(r) "Trust Land" means land held in trust by the United States for the benefit of the Nez Perce Tribe or its members.

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§12-1-7 Name

(a) The name of a limited liability company as set forth in its articles of organization must contain the words "limited liability company" or end with the abbreviation "L.L.C." or "LLC." The name may not contain language stating or implying that the limited liability company is organized for any purpose other than that permitted under §12-1-10, below.

(b) The name of a domestic LLC shall be distinguishable from any LLC or corporation previously organized under the laws of the Tribe.

§12-1-8 Registered Office and Registered Agent

A limited liability company's registered agent is the company's agent for service of process, notice, or demand required or permitted by law to be served on the company under the laws of the Tribe.

(a) Each LLC shall continuously maintain a registered office and a registered agent.

The registered office may, but need not, be the same as any of its places of business. The agent may be the same person then serving in a designated office of the Tribe, rather than a specified person, if the Tribe is a Member in the LLC of which the Tribe's officer is the appointed agent.

(b) An LLC may change its registered office or registered agent, or both, by including the name of its registered agent and the street address of its registered office, as changed, in articles of amendment to its articles of organization or in articles of merger.

(c) The registered agent of a LLC may resign as registered agent by delivering to the

Tribe for filing a written statement of resignation and the appointment by the LLC of another registered agent.

§12-1-9 Tribe as Member

(a) The Tribe shall form or become a member of a LLC formed under this Act only upon approval of such action by resolution of NPTEC.

(b) In no event shall any manager not a member of a LLC in which the Tribe is a member, bind the Tribe in any manner; provided that the Tribe's interest as a member may be bound by manager or member actions as stated in this Act and the Articles of Operation of the LLC.

(c) Nothing contained in this Act shall be construed as creating any liability or waiving of sovereign immunity of the Tribe in any manner; provided that the assets of the LLC in which the Tribe holds an interest may be subject to liabilities and claims unless otherwise provided herein. In no event shall any action taken by the Tribe concerning the exercise of any right or privilege or discharge of any duty with respect to an interest in a LLC be construed as a waiver of immunity or creation of a liability on the part of the Tribe separate and apart from its interests as a member of the LLC.

(d) If the Tribe is the sole member of a LLC formed under this Act, that LLC shall possess the Tribe's sovereign immunity from suit except to the extent otherwise provided in its Articles of Operation.

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§12-1-10 Nature of Business

A limited liability company may be organized under this Act for any lawful purpose.

Unless otherwise provided in the articles of operation, a LLC organized and existing under this Act has the same powers as an individual to do all things necessary and convenient to carry out its business, including but not limited to all of the following:

(a) Sue and be sued, complain, and defend in its name, provided that if a LLC is wholly owned by the Tribe, it shall be entitled to and shall enjoy the Tribe's sovereign immunity from suit unless the articles of organization otherwise provide.

(b) Purchase, take, receive, lease, or otherwise acquire and own, hold, improve, use,

and otherwise deal in or with real, or personal property or any legal or equitable interest in real or personal property, wherever situated.

(c) Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, or otherwise dispose of all or any part of its property.

(d) Lend money, property, and services to, and otherwise assist, its members and managers, if any.

(e) Purchase, take, receive, subscribe for, or otherwise acquire and own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in, or obligations of, any other enterprise or entity.

(f) Make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or part of its property, franchises, and income.

(g) Lend money, invest and reinvest its funds, and receive and hold real or personal property as security for repayment.

(h) Conduct its business, locate offices, and exercise the powers granted by this Act inside or outside of the boundaries of the Nez Perce Reservation, including the Tribe's trust lands.

(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.

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(n) Transact any lawful business that the members or the managers find to be in aid

of governmental policy.

(o) Make payments or donations, or do any other act not prohibited by law, that furthers the business of the LLC.

(p) 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.

(q) Create, form, partner, or establish subsidiary or other entities, teaming agreements, joint ventures, and other arrangements to further any legally entitled business opportunity or available business development program.

§12-1-11 Documents

(a) Execution of Documents

(1) Except as otherwise provided in this Act, any document required or permitted by this Act to be delivered for filing to the Tribe shall be executed by any of the following:

(A) Any manager, if management of the LLC is vested in a manager or managers, or by a member, if management of the LLC is reserved to the members.

(B) All organizers of the LLC if the LLC has not been organized.

Name and address of each organizer shall be provided.

(C) The name of the drafter of the document.

(2) The person executing the document shall sign it and state beneath or opposite the signature the person's name and capacity in which the person signs.

(3) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the executing of the document need not be shown to nor filed with the Tribe.

(b) Filing

(1) Upon receipt of a document for filing under this Act, the Tribe shall ensure it meets the requirements herein and then shall stamp or otherwise

endorse the date and time of receipt of the original, the duplicate copy, and, upon request, any additional copy received.

(2) If the Tribe refuses to file a request, the Tribe shall return it to the person tendering the document for filing within five (5) business days after the date on which the document is received by the Tribe for filing, together with a brief written explanation of the reason for refusal.

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(3) Any document accepted by the Tribe shall be effective at the time of receipt unless a delayed effective date and/or time not more than ninety (90) days after receipt by the Tribe is specified in the document.

(4) Fees. The Tribe shall impose a \$100.00 filing fee for each document filed and an annual \$100.00 renewal fee during the life of the LLC.

(c) Certificate of Status

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

§12-1-12 Execution by Judicial Act

Any person who is adversely affected by the failure or refusal of any person to execute and file any articles or other document to be filed under this Act may petition the Nez Perce Tribal Court to direct the execution and filing of the articles or other document.

§12-1-13 Interstate Application

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

§12-1-14 Articles of Organization

(a) One or more persons may organize a limited liability company by signing and delivering articles of organization to the Tribe for filing. The organizer(s) need not be members of the LLC at the time of organization or thereafter.

(b) A limited liability company shall have one or more members.

(c) The articles of organization shall contain all of and only the following

information:

- (1) A statement that the LLC is organized under this Act.
- (2) A name for the LLC that satisfies the provisions of this Act.
- (3) The street address of the registered office and the name of the registered agent at that office.
- (4) If management of the LLC is vested in one or more managers, a statement to that effect.
- (5) The name and address of each person organizing the LLC.
- (6) Whether the LLC is wholly or partially owned by the Tribe.
- (7) If owned in whole or in part by the Tribe, whether the LLC is to enjoy the Limited Liability Companies - 7

Tribe's sovereign immunity and the scope of any waiver of that immunity.

- (8) If owned in whole or in part by the Tribe, the name of the person(s) duly appointed by the Tribe to exercise authority on behalf of the Tribe for purposes of the LLC.

(d) The Tribe shall assign each article of organization an identification number.

(e) Amendment. An LLC may amend its articles of organization at any time by delivering an amendment, with the fee filing fee, for filing to the Tribe.

(f) Effect of Delivery or Filing

(1) An LLC is formed when the articles of organization become effective under §12-1-11(b).

(2) The Tribe's filing of the articles of organization is conclusive proof that the LLC is organized and formed under this Act.

§12-1-15 Agency Power of Members and Managers

(a) Except as provided in paragraph (b), below:

(1) Each member is an agent of the LLC for the purpose of its business, but is not an agent of the other members.

(2) The act of any member, including the execution in the name of the LLC of any instrument for apparently carrying on in the ordinary course of

business, the business of the LLC, binds the LLC in the particular matter, unless the person with whom the member is dealing has knowledge that the member has no authority to act in this matter.

(3) If the Tribe is a Member, the Tribe's authority shall be exercised only by the person(s) duly appointed in the Articles of Organization to exercise such authority on behalf of the Tribe for purposes of the LLC.

(b) If management of the LLC is vested in one or more managers:

(1) No member, solely by being a member, is an agent of the LLC or of the other members.

(2) Each manager is an agent of the LLC, but not of the members, for the purpose of its business. The act of any manager, including the execution in the name of the LLC of any instrument for apparently carrying on the ordinary course of business of the LLC, binds the LLC unless the manager has, in fact, no authority to act for the LLC in the particular matter, and the person with whom the manager is dealing has knowledge that the manager has no authority to act in the matter.

(c) No act of a member or, if management of the LLC is vested in one or more

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managers, of a manager that is not apparently for the carrying on in the ordinary course of business, the business of the LLC shall bind the LLC unless in fact the act is authorized at the time of the transaction or at any other time.

§12-1-16 Admissions of Members and Managers

(a) Except as provided in paragraph (b), below, an admission or representation made by any member concerning the business of a LLC within the scope of the member's actual authority as provided in §12-1-15 may be used as evidence against the LLC in any legal proceeding.

(b) If management of the LLC is vested in one or more managers:

(1) An admission or representation made by a manager concerning the business of a LLC within the scope of the manager's authority as provided

under §12-1-15 may be used as evidence against the LLC in any legal proceeding.

(2) The admission or representation of any member, acting solely in the member's capacity as a member, is not evidence against the LLC in any legal proceeding.

§12-1-17 Knowledge of or Notice to Member or Manager

(a) Except as provided in paragraph (b) below, notice to any member of any matter relating to the business of a LLC, and the knowledge of a member acting in the particular matter, acquired while a member or known by the person at the time of becoming a member, and the knowledge of any member who reasonably could and should have communicated it to the acting member, operate as notice to or knowledge of the LLC.

(b) If management of the LLC is vested in one or more managers:

(1) Notice to any manager of any matter relating to the business of the LLC, and the knowledge of the manager acting in the particular matter acquired while a manager or known by the person at the time of becoming a manager and the knowledge of any other manager who reasonably could and should have communicated it to the acting manager, operate as notice to or knowledge of the LLC.

(2) Notice to or knowledge of any member while the member is acting solely in the capacity of a member is not notice to or knowledge of the LLC.

§12-1-18 Liability of Members to Third Parties

The debts, obligations, and liabilities of a LLC, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the LLC. Except as otherwise specifically provided in this Act, a member or manager of a LLC is not personally liable for any debt, obligation, or liability of a LLC, as defined in the Articles of Operation.

§12-1-19 Parties to Action

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

(a) The object of the proceeding is to enforce a member's right against or liability to the LLC.

(b) The action is brought by a member under §12-1-20.

§12-1-20 Authority to Sue

Unless otherwise provided in the articles of operation, an action on behalf of a LLC may be brought in the name of the LLC by:

(a) One or more members of the LLC, if authorized by a majority in interest of members, excluding the vote of any member who has an interest in the outcome of the action that is adverse to the interest of the LLC.

(b) One or more managers of a LLC if the management of the LLC is vested in one or more managers, or if the managers are authorized to sue by a majority in interest if members.

§12-1-21 Management

(a) Unless the articles of organization vest management in one or more managers, management of the LLC shall be vested in the members subject to any provision in articles of operation or this Act restricting or enlarging the management rights and duties of any member or group of members.

(b) If the articles of organization vest management in one or more managers, management of the business or affairs of the LLC shall be invested in the manager or managers subject to any provisions in articles of operation or this Act restricting or enlarging the management rights and duties of any manager or group of managers. Unless otherwise provided in articles of operation, the manager or managers:

(1) Shall be designated, appointed, elected, removed, or replaced by a vote of a majority in interest of the members.

(2) Need not be members of the LLC nor individuals.

(3) Unless earlier removed or earlier resigned, shall not hold office until a successor is elected and qualified.

§12-1-22 Duties

Unless otherwise provided in articles of operation:

(a) No member or manager shall act or fail to act in a manner that constitutes any of

the following:

(1) A willful failure to deal fairly with the LLC or its members in connection with a matter in which the member or manager has a material conflict of interest.

(2) A violation of criminal law, unless the member or manager had reasonable cause to believe that the person's conduct was lawful or no reasonable cause to believe that the conduct was unlawful.

(3) A transaction from which the member or manager derived an improper personal profit.

(4) Willful misconduct.

(b) Every member and manager shall account to the LLC and hold as trustee for it any improper personal profit derived by that member or manager without the consent of a majority of the disinterested members or managers, or other persons participating in the management of the LLC, from any of the following:

(1) A transaction connected with the organization, conduct, or winding up of the LLC.

(2) A use by a member or manager of the property of a LLC, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as member or manager.

(3) Articles of operation may impose duties on its members and managers that are in addition to, but not in abrogation of, those provided in paragraph

(a), above.

§12-1-23 Limitation of Liability and Indemnification

In this Section, "expenses" mean expenses of defending a lawsuit, including attorney's fees, and any civil judgment or penalty, or settlement payment in lieu thereof, paid in connection with a lawsuit against a member or manager in such capacity.

(a) A LLC shall indemnify or allow expenses to each member and each manager for all reasonable expenses incurred with respect to a proceeding if that member or manager was a

party to the proceeding in the capacity of a member or manager.

(b) Articles of Operation may alter or provide additional rights to indemnification or allowance of expenses to members and managers.

(c) Notwithstanding paragraphs (a) and (b), above, a LLC may not indemnify a member or manager unless it is determined that the member or manager did not breach or fail to perform a duty to the LLC as provided in §12-1-22.

(d) Unless otherwise provided in articles of operation:

(1) A member or manager shall be conclusively presumed not to have breached or failed to perform a duty to the LLC to the extent that the member or manager has been successful on the merits or otherwise in the defense of the proceeding.

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(2) In situations not described in paragraph (1), above, the determination of whether member or manager has breached or failed to perform a duty to the LLC shall be made by the vote of a majority in interest of the members, excluding any member who is a party to the same or related proceeding unless all members are parties.

§12-1-24 Voting

(a) Unless otherwise provided in articles of operation or this Section, and subject to paragraph (b), below, an affirmative vote, approval, or consent as follows shall be required to decide any matter connected with the business of a LLC.

(1) If management of a LLC is reserved to the members, an affirmative vote, approval, or consent by majority in interest of members.

(2) If the management of a LLC is vested in one or more managers, the affirmative, vote, consent, or approval of more than fifty percent (50%) of the managers.

(b) Unless otherwise provided in articles of operation or this Act, the affirmative vote, approval, or consent of all members shall be required to do any of the following:

(1) Amend the articles of organization.

- (2) Issue an interest in a LLC to any person.
- (3) Adopt, amend, or revoke articles of operation.
- (4) Allow a LLC to accept any additional contribution from a member.
- (5) Allow a partial redemption of an interest in a LLC under §12-1-33.
- (6) Value contributions of members under §12-1-28.
- (7) Authorize a manager, member, or other person to do any act on behalf of the LLC that contravenes the articles of operation.
- (c) Unless otherwise provided in articles of operation if any member is precluded from voting with respect to a given matter, the value of the contribution represented by the interest in the LLC with respect to which the member would otherwise have been entitled to vote shall be excluded from the total contributions made to the LLC for purposes of determining the fifty percent (50%) threshold under §12-1-6(j) for that matter.
- (d) Unless otherwise provided in articles of operation or this Section, if all or part of an interest in the LLC is assigned under §12-1-42, the assigning member shall be considered the owner of the assigned interest for purposes of determining the 50% threshold under §12-1-6(j) until the assignee of the interest in the LLC becomes a member under §12-1-44.

§12-1-25 Records and Information

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- (a) A LLC shall keep at its principal place of business all of the following:
 - (1) A list, in alphabetical order, of each past and present member and, if applicable, manager.
 - (2) A copy of the articles of organization and all amendments to the articles, together with executed copies of any powers of attorney under which any articles were executed.
 - (3) A record of all matters referred to in this Act as maintained in such records which are not otherwise specified in the articles of operation.
- (b) Upon reasonable request, a member may, at the member's own expense, inspect and copy during ordinary business hours any LLC record unless otherwise provided in articles of operation.

(c) Members or, if the management of the LLC is vested in one or more managers, managers shall provide true and full information of all things affecting the members to any member or to the legal representative of any member upon reasonable request of the member or the legal representative.

(d) Failure of a LLC to keep or maintain any of the records of information required under this Section shall not be grounds for imposing liability on any person for the debts and obligations of the LLC.

§12-1-26 Admission of Members

(a) In connection with the formation of a LLC, a person acquiring LLC interest is admitted as a member upon formation unless the articles of operation otherwise provides.

(b) After the formation of a LLC, a person acquiring a LLC interest is admitted as a member of the LLC as specified in the articles of operation or, if not so specified, by a majority in interest of members.

§12-1-27 Dissociation

(a) A person ceases to be a member of a LLC upon the occurrence of and at the same time of any of the following events:

(1) The member withdraws by voluntary act.

(2) The member is removed as a member in accordance with articles of operation or this Act.

(3) Unless otherwise provided in articles of organization or by the written consent of all members at the time of the event, the member does any of the following:

(A) Makes an assignment for the benefit of the creditors.

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(B) Files a voluntary petition in bankruptcy.

(C) Becomes the subject of an order for relief under the federal bankruptcy laws or state or Tribe insolvency laws.

(D) Fails to gain dismissal of any federal bankruptcy or state or Tribe insolvency proceeding within 120 days of commencement of an

involuntary proceeding.

(4) Unless provided in articles of operation or by the written consent of all members, if the member is an individual:

(A) The member's death.

(B) The entry of an order by a court of competent jurisdiction adjudicating the member incompetent to manage the member's person or estate.

(5) Unless otherwise provided in articles of operation or by written agreement or by the written consent of all members at the time, if the member is a trust, corporation, partnership, or limited liability company upon liquidation, dissolution, or termination.

(b) The members may provide in articles of operation for other events the occurrence of which result in a person ceasing to be a member of the LLC.

(c) Unless articles of operation provide that a member does not have the power to withdraw by voluntary act from a LLC, the member may do so at any time by giving written notice to the other members or as provided in articles of operation. If the member has the power to withdraw but the withdrawal is a breach of the articles of operation, the LLC may offset the damages against the amount otherwise distributable to the member, in addition to pursuing any remedies provided for in articles of operation or otherwise available under applicable law.

§12-1-28 Contributions

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

(b) The value of a member's contribution shall be determined in the manner provided in articles of operation. If the articles of operation do not fix a value to a contribution, the value of a contribution shall be approved by a majority in interest of the members, shall be properly reflected in the records and information kept by the LLC under §12-1-25(a). The value of contributions so determined shall be binding and conclusive on the LLC and its members.

§12-1-29 Liability for Contribution

(a) An obligation of a member to provide cash or property or to perform services as a contribution to a LLC is not enforceable unless specified in a writing signed by the member.

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(b) Unless otherwise provided in articles of operation, a member is obligated to a LLC to perform any enforceable promise to provide cash or property or to perform services, even if the member is unable to perform because of 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 articles of operation, 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.

§12-1-30 Allocation of Profits and Losses

The profits and losses of a LLC shall be allocated among the members in the manner provided in the articles of operation. If the members do not enter into articles of operation or the articles of operation do not so provide, profits and losses shall be allocated on the basis of the value of the contributions made by each member.

§12-1-31 Interim Distributions

Except as provided in this Act, a member is entitled to receive distributions from a LLC before the member's dissociation from the LLC and before its dissolution and winding up to the extent and at the times or upon the events specified in articles of organization, or to the extent and at the times determined by the members or managers.

§12-1-32 Allocation of Distributions

Distributions of cash or other assets of a LLC shall be allocated among the members as provided in articles of operation, or if the articles of operation do not provide, on the basis of the value of the contributions made by each member.

§12-1-33 Distribution Upon Partial Redemption

Except as provided in this Act, upon the distribution in partial liquidation of a member's interest, the redeeming member is entitled to receive the amount to which the member is entitled

under articles of operation and, if not otherwise provided in articles of operation, the fair value of the redeemed interest based on the member's right to share in distributions from the LLC.

§12-1-34 Distribution Upon Dissociation

Except as otherwise provided in this Act, upon an event of dissociation under §12-1-27 that does not cause dissolution of the LLC, a dissociating member is entitled to receive any distribution to which a member is entitled under articles of operation and, if not otherwise provided in articles of operation the fair value of the member's interest in the LLC based on the member's rights to share in distributions from the LLC.

§12-1-35 Distribution in Kind

Unless otherwise provided in articles of operation:

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(a) A member may not demand and receive any distribution from a LLC in any form other than cash.

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

§12-1-36 Right to Distribution

At the time that a member becomes entitled to receive a distribution from a LLC, the member has the status of and is entitled to all remedies available to a creditor of the LLC with respect to the distribution.

§12-1-37 Limitations of Distributions

(a) A LLC may not declare or make a distribution to any of its members, if after giving effect to the distribution, any of the following would occur.

(1) The LLC would be unable to pay its debts as they become due in the usual course of business.

(2) The fair market value of the LLC's total assets would be less than the sum of its total liabilities plus the amount that would be needed for the preferential rights upon dissolution of members, if any, unless articles of operation provides otherwise.

(b) An LLC may base a determination that a distribution is not prohibited by

paragraph (a), above, on any of the following:

- (1) Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable under the circumstances.
- (2) A fair market valuation or other method that is reasonable under the circumstances.
- (c) An LLC's indebtedness to a member incurred by reason of a distribution made in accordance with this Section is at parity with the LLC's indebtedness to its general unsecured creditors, except to the extent subordinated by written agreement. This Section does not affect the validity or priority of a security interest in a LLC's property that is created to secure the indebtedness to the member.

§12-1-38 Liability for Wrongful Distribution

- (a) Except as provided in paragraph (b), below, other than the Tribe, a manager who votes or assents to a distribution in violation of §12-1-37 or of articles of operation is personally liable to the LLC for the amount of the excess distribution, subject to contribution from all other managers or members participating in such action.
- (b) A proceeding under this Section is barred unless it is brought within two (2) years after the date on which the effect of the distribution was measured under §12-1-31.

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§12-1-39 Ownership of LLC Property

- (a) All property originally transferred to or acquired by a LLC is property of the LLC and not the members individually.
- (b) Property acquired with LLC funds is presumed to be LLC property.
- (c) Property may be acquired, held, and conveyed in the name of the LLC.

§12-1-40 Transfer of Property

The property of a LLC may be transferred by an instrument of transfer executed by any member in the name of the LLC, unless management is vested in managers, in which case the document of transfer shall be executed by a manager, subject to any limitation that may be imposed by the articles of operation.

§12-1-41 Nature of Interest

A LLC interest is personal property.

§12-1-42 Assignment of LLC Interest

(a) Unless otherwise provided in articles of operation:

(1) A LLC interest is assignable in whole or in part.

(2) An assignment of a LLC interest entitles the assignee to receive only the distributions and to share in the allocations of profits and losses to which the assignee would be entitled with respect to the assigned interest.

(3) An assignment of a LLC interest does not dissolve the LLC.

(4) Unless and until the assignee becomes a member of the LLC under §12-1-44, the assignment of a LLC interest does not entitle the assignee to participate in the management or exercise rights of a member.

(5) Unless and until the assignee of a LLC interest becomes a member of the LLC under §12-1-44, the assignor continues to be a member.

(6) The assignor of a LLC interest is not released from any personal liability arising under this Act as a member of the LLC solely as a result of the assignment.

(b) Unless otherwise provided in articles of operation, the granting of a security interest, lien, or other encumbrance in or against any or all of a member's LLC interest is not assignable and shall not cause the member to cease to have the power to exercise any rights or powers of a member.

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§12-1-43 Rights of Judgment Creditor

On application to a court of competent jurisdiction, including a court other than the Nez Perce Tribal Court, having valid jurisdiction over the member by any judgment creditor of a member, the court may charge the LLC interest of any member other than the Tribe with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of an assignee of the member's LLC interest. This Section does not deprive any member of the benefit of any exemption laws applicable to the LLC interest. In no

event shall the Tribe's interest be attachable in abrogation of its sovereign immunity.

§12-1-44 Right of Assignee to Become a Member

- (a) Unless otherwise provided in articles of operation, an assignee of a LLC interest may become a member only if the other members unanimously consent.
- (b) An assignee of a LLC interest who becomes a member has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of the assignor under articles of operation and this Act.
- (c) Unless otherwise provided in articles of operation, an assignor of a LLC interest is not released from any liability to the LLC without the written consent of all the members, whether or not the assignee becomes a member.

§12-1-45 Powers of Legal Representative

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

§12-1-46 Dissolution

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

- (a) The occurrence of events specified in articles of operation.
- (b) The written consent of all members.
- (c) An event of dissociation of a member, unless otherwise provided in articles of operation or continuation is consented to by all remaining members.
- (d) Entry of a decree of judicial dissolution under §12-1-47.

§12-1-47 Judicial Dissolution

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In a proceeding by or for a member, the Court may order dissolution of a LLC if any of the following is established.

- (a) That it is not reasonably practicable to carry on the business of the LLC.
- (b) That the LLC is not acting in conformity with articles of operation.
- (c) That one or more managers are acting or will act in a manner that is illegal, oppressive, or fraudulent.
- (d) That one or more members in control of the LLC are acting or will act in a manner that is illegal, oppressive, or fraudulent.
- (e) That LLC assets are being misapplied or wasted.

§12-1-48 Winding Up

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

(a) Unless otherwise provided in articles of operation:

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

(A) The members or managers who have authority to manage the LLC before dissolution.

(B) In a judicial dissolution, the person(s) designated by the Court.

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

(A) Collect its assets.

(B) Prosecute and defend suits.

(C) Take any action necessary to settle and close the business of the LLC.

(D) Dispose of and transfer the property of the LLC.

(E) Discharge or make provision for discharging the liabilities of the LLC.

(F) Distribute to the members any remaining assets of the LLC.

(b) Dissolution of a LLC does not do any of the following:

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

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

- (3) Prevent commencement of a civil, criminal, executive, or investigatory proceeding by or against the LLC.
- (4) Abate or suspend a civil, criminal, executive, or investigatory proceeding pending by or against the LLC at the time of dissolution.
- (5) Terminate the authority of the registered agent of the LLC.
- (6) Alter the limited liability of a member.

§12-1-49 Distribution of Assets

Upon the winding up a 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 articles of operation, to members and former members in satisfaction of liabilities for distributions under §§ 12-1-31, 12-1-33, and 12-1-34.
- (c) Unless otherwise provided in articles of operation, 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.

§12-1-50 Articles of Dissolution

After the dissolution of a LLC under §12-1-46, the LLC may file articles of dissolution with the Tribe 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 12-1-46 for dissolution.
- (d) The delayed effective date of the articles of dissolution under §12-1-11(b), if applicable.

§12-1-51 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 paragraph (a), above, does

not deliver the claim, in writing, to the LLC by the deadline specified in the notice.

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(2) A claimant whose claim is rejected by the LLC does not commence a proceeding to enforce the claim within ninety (90) days after receipt of the rejection notice.

§12-1-52 Unknown or Contingent Claims

A claim not barred under §12-1-51 may be enforced:

- (a) Against the dissolved LLC, to the extent of its undistributed assets.
- (b) If the dissolved LLC's assets have been distributed in liquidation, against a member of the LLC, other than the Tribe, to the extent of the member's proportionate share of the claim or of the assets of the LLC distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this Section may not exceed the total value of assets at the time distributed to the member.

§12-1-53 Merger

- (a) Unless the context required otherwise, in this Act, LLC includes a domestic LLC and a foreign LLC.
- (b) Unless otherwise provided in articles of operation one or more LLC's may merge with or into one or more LLC's or one or more other foreign LLC's provided in the plan of merger.
- (c) Interests in a LLC that is a party to a merger may be exchanged for or converted into cash, property, obligations, or interest in the surviving LLC.

§12-1-54 Approval of Merger

- (a) Unless otherwise provided in articles of operation a LLC that is a party to a proposed merger shall approve the plan of merger by an affirmative vote of a majority in interest of members.
- (b) Unless otherwise provided in articles of operation the manager or managers of a LLC may not approve a merger without also obtaining the approval of the LLC's members under paragraph (a), above.

(c) Each foreign LLC that is a party to a proposed merger shall approve the merger in the manner and by the vote required by the laws applicable to the foreign LLC.

(d) Each LLC that is a party to the merger shall have any rights to abandon the merger that are provided for in the plan of merger or in the laws applicable to the LLC.

(e) Upon approval of a merger, the LLC shall notify each member of the approval and of the effective date of the merger.

§12-1-55 Plan of Merger

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Each LLC that is a party to a proposed merger shall enter into a written plan of merger to be approved under §12-1-54.

§12-1-56 Articles of Merger

(a) The surviving LLC shall deliver to the Tribe articles of merger, executed by each party to the plan of merger, that include all of the following:

(1) The name and state or jurisdiction of organization for each LLC that is to merge.

(2) The plan of merger.

(3) The name of the surviving or resulting LLC.

(4) A statement as to whether the management of the surviving LLC will be reserved to its members or vested in one or more managers.

(5) The delayed effective date of the merger under §12-1-11(b), if applicable.

(6) A statement whether the Tribe is the sole member.

(7) If the Tribe is sole member, a statement as to whether the LLC enjoys the Tribe's sovereign immunity.

(8) A statement that the plan of merger was approved under §12-1-54.

(b) A merger takes effect upon the effective date of the articles of merger.

§12-1-57 Effects of Merger

A merger has the following effects:

(a) The LLC's that are parties to the plan of merger become a single entity, which shall be the entity designated in the plan of merger as the surviving LLC.

- (b) Each party to the plan of merger, except the surviving LLC, ceases to exist.
- (c) The surviving LLC possesses all of the rights, privileges, immunities, and powers of each merged LLC and is subject to all of the restrictions, disabilities, and duties of each merged LLC.
- (d) All property and all debts, including contributions, and each interest belonging to or owed to each of the parties to the merger are vested in the surviving LLC without further act.
- (e) Title to all real estate and any interest in real estate, vested in any party to the merger, does not revert and is not in any way impaired because of the merger.
- (f) The surviving LLC has all the liabilities and obligations of each of the parties to the plan of merger and any claim existing or action or proceedings pending by or against any merged LLC may be prosecuted as if the merger had not taken place, or the surviving LLC may be substituted in the action.
- (g) The rights of creditors and any liens on the property of any party to the plan of merger survive the merger.
- (h) The interests in a LLC that are to be converted or exchanged into interest, cash, obligations, or other property under the terms of the plan of merger are converted and the former interest holders are entitled only to the rights provided in the plan of merger of the rights otherwise provided by law.
- (i) The articles of organization of the surviving LLC are amended to the extent provided in the articles of merger.

§12-1-58 Right to Object

Unless otherwise provided in the articles of operation, upon receipt of the notice required by §12-1-54(e), a member who did not vote in favor of the merger may, within twenty (20) days after the date of the notice, voluntarily disassociate from the LLC under §12-1-27(c) and receive fair value for such member=s LLC interest under §12-1-34.

CHAPTER 12-2

NEZ PERCE TRIBE NONPROFIT

CORPORATIONS CODE

(adopted 5/26/09)

§12-2-1 Title

This Code shall be known as the Nez Perce Tribe Nonprofit Corporations Code.

§12-2-2 Purpose

The purpose of this Code is to enable the Nez Perce Tribe to form a nonprofit corporation and/or nonprofit corporations for the purpose of performing certain exclusive functions for the benefit of Nez Perce Tribal members, and other residents of the Nez Perce Reservation, and enabling such nonprofit corporations to achieve tax-exempt status pursuant to the Internal Revenue Code, 26 U.S.C. ' 501(c)(3).

§12-2-3 Definitions

For the purpose of this Code, unless the context otherwise requires, the terms defined in this section of this Code shall have the meanings ascribed to them as follows:

- (a) "Articles" means the original Articles of Incorporation as amended, articles of merger, or articles of consolidation and incorporation, as the case may be.
- (b) "Bylaws" means the rules adopted for the regulations or management of the internal affairs of the Nonprofit Corporation, regardless of how designated.
- (c) "Directors" means the persons vested with the general management of the affairs of the Nonprofit Corporation, regardless of how they are designated.
- (d) "Member" means an entity, either corporate or natural, having any membership shareholder rights in a Nonprofit Corporation in accordance with its articles, bylaws, or both.
- (e) "Nez Perce Tribe Nonprofit Corporation" or "Nonprofit Corporation" means a nonprofit corporation formed by those elected officials of the Nez Perce Tribe Executive Committee specified in Section 12-2-5 herein for a tribal purpose not involving pecuniary gain to its shareholders or members, paying no dividends or other pecuniary remuneration directly or indirectly, to its shareholders or members as such, and having no capital stock.

(f) ANPTEC@ means the Nez Perce Tribal Executive Committee, the governing body of the Nez Perce Tribe.

(g) "Secretary" means the Secretary of the NPTEC.

§12-2-4 Purposes of a Nonprofit Corporation

A Nonprofit Corporation may be formed under this Code for exclusive operations for one or more of the following purposes: charitable, educational, scientific, literary, or any other

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purpose allowed for organizations subject to federal income tax exemptions under Section 501(c)(3) of Title 26 of the United States Code.

§12-2-5 Incorporators

The Chairman, Vice-Chairman and Treasurer of the NPTEC shall serve as the three incorporators of each Nez Perce Tribe Nonprofit Corporation established under this Code.

§12-2-6 Articles of Incorporation

(a) Execution and Approval. Each Nonprofit Corporation authorized under this Code shall be established by Articles of Incorporation signed and acknowledged by each of the incorporators and shall be approved by resolution of the NPTEC.

(b) Contents. The articles of the Nonprofit Corporation organized under this Code shall state:

- (1) The name of the Nonprofit Corporation;
- (2) The purpose of the Nonprofit Corporation;
- (3) That the Nonprofit Corporation does not afford pecuniary gain, incidentally or otherwise, to its members;
- (4) The period of the duration of corporate existence, which may be perpetual;
- (5) The location, by city, town, or other community, of the Nonprofit Corporation's principal office, which shall be located within the Nez Perce Reservation, and its registered office(s);
- (6) The name and address of its registered agent;
- (7) The name and address of each incorporator;
- (8) The number of directors constituting the first board of directors, the name

and address of each such director, and the tenure in office of the first directors, in accordance with Section 12-2-11 of this Code, and setting forth the authority of the NPTEC to appoint and remove such directors and to fill director vacancies.

(9) Any other provision, consistent with the Nez Perce Tribal Code for regulating the business of the Nonprofit Corporation or the conduct of the corporate affairs.

§12-2-7 Corporate Name

A Nonprofit Corporation organized pursuant to this Code may use any corporate name authorized by the NPTEC, provided, that it shall not be necessary for a Nonprofit Corporation to use the word "corporation", "company", "incorporated," or "limited" or an abbreviation of one of those words in its corporate name.

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§12-2-8 Corporate Capacity and Powers

A Nonprofit Corporation incorporated under this Code shall have general corporate capacity, and shall have and possess all of the general powers of a domestic corporation.

§12-2-9 Filing of Articles

The Articles of Incorporation shall be filed in the Office of the NPTEC Secretary, with a copy to the Nez Perce Tribe Office of Legal Counsel. If the articles conform to law, the Office of the Secretary shall record the Articles and issue and record a certificate of incorporation. The certificate shall state the name of the Nonprofit Corporation and the fact and date of incorporation. Corporate existence shall begin upon the issuance by the Secretary of the certificate of incorporation.

§12-2-10 Amendment of Articles

(a) Every Nonprofit Corporation wishing to change its name or otherwise amend its Articles of Incorporation shall make such change or Amendment subject to the approval of the NPTEC which approval shall be granted so long as the amendment conforms to the requirements of this Code and is consistent with the purpose for which the Nonprofit Corporation was established.

(b) The Articles of Incorporation shall be deemed effective upon issuance of the certificate of incorporation, and shall be deemed amended upon issuance of the certificate of amendment by the NPTEC Secretary.

§12-2-11 Organizational Meeting

After commencement of corporate existence, the first meeting of the board of directors shall be held at the call of the incorporators or the directors, after notice, for the purpose of adopting the initial bylaws, electing officers, performing other acts in the internal organization of the Nonprofit Corporation, and for such other purposes as shall be stated in the notice of the meeting. Such meeting shall be held within thirty (30) days after the issuance of a certificate of incorporation by the Secretary. The initial bylaws adopted by the board of directors shall remain effective until legally amended or repealed at a board of directors meeting duly called for the specific purpose of amending or repealing the bylaws.

§12-2-12 Disposition of Assets

Notwithstanding any other provision of the Nez Perce Tribal Code, or the Articles of Incorporation of a Nonprofit Corporation established pursuant to this Code, the Articles of Incorporation of each Nonprofit Corporation which is an exempt charitable, literary, educational, or scientific organization as described in Section 501(c)(3) of the Federal Revenue Code of 1954, as amended, shall be conclusively deemed to contain the following provision: Upon the dissolution of the Nonprofit Corporation, the board of directors shall, after paying or making provision for the payment of all of the liabilities of the Nonprofit Corporation, dispose of all of the assets of the Nonprofit Corporation exclusively for the purposes of the Nonprofit Corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, literary or scientific purposes as shall at the time qualify as an exempt Nez Perce Tribe NonProfit Corporations Code - 4

organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or the corresponding provision of any future United States Internal Revenue Law, as the board of directors shall determine. Any such assets not so disposed of shall be disposed of by the courts of the Nez Perce Tribe, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for

such purposes.

§12-2-13 General Corporate Laws Applicable

The provisions of the Nez Perce Tribal Code law to corporations shall generally apply to Nonprofit Corporations organized pursuant to this Code except where a different rule is provided in this Code. Absent such applicable law, the general corporate law of the state of Idaho may be used as a guideline. Provided, that Nonprofit Corporations formed exclusively for charitable, literary, educational, or scientific purposes which qualify as a Nonprofit Corporation exempt from federal taxation pursuant to Section 501(c)(3) of Title 26 of the United States Code, as amended, or any successor provision to this section, shall be exempt from payment of any filing fees, franchise fees or license fees.

§12-2-14 Report to Board of Trustees

Each Nonprofit Corporation shall file an annual report with the Secretary of the NPTEC, with a copy to the Treasurer of the NPTEC, within 90 days following the end of each calendar year, which shall be subject to review of the NPTEC. Such report shall incorporate information that meets or exceeds the reporting requirements imposed by the Internal Revenue Service on nonprofit corporations exempt from federal taxation pursuant to Section 501(c)(3) of Title 26 of the United States Code, as amended or any success or provision to this section. The annual report shall be made available to the public upon request.

§12-2-15 Revocation

The NPTEC retains the authority to revoke any Articles of Incorporation issued pursuant to this Code. Revocation shall only be for cause, which shall require a finding by the NPTEC that the Nonprofit Corporation has engaged in conduct, operations or activities that violate this Nonprofit Corporations Code, the Articles of Incorporation of the Nonprofit Corporation, the law or regulations relevant to the 501 (c)(3) status of such Nonprofit Corporation, or that involve financial impropriety by or on behalf of the Nonprofit Corporation. Revocation of the Articles of Incorporation of a Nonprofit Corporation by the Board of Trustees shall be by resolution approved by at least six (6) members of the NPTEC.

§12-2-16 Effective Date

This Code shall be in full force and effect according to its terms from and after the date of

enactment by the NPTEC.

§12-2-17 Provisions as Cumulative

The provisions of this Code shall be cumulative to existing law.

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§12-2-18 Severability

The provisions of this Code are severable and if any part or provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Code.