



MODOC TRIBE OF OKLAHOMA

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RESOLUTION NO. 18-37

MODOC TRIBE OF OKLAHOMA

Approval of creating the Modoc Limited Liability Company - Ordinance

WHEREAS, the Modoc Tribe of Oklahoma is a federally recognized Indian tribe organized under the Oklahoma Indian Welfare Act of 1936 with a Constitution and Bylaws approved by the United States Secretary of the Interior on July 27, 1990, and

WHEREAS, the Elected Council of the Modoc Tribe of Oklahoma is empowered to act on behalf of the Modoc Tribe under Article 1, Section 3 of the Constitution, and

WHEREAS, the Elected Council sees an economic advantage in creating an ordinance to, regulate and develop Limited Liability companies (LLC) for the benefit of the tribe, and

WHEREAS, the Elected Council has directed a Tribal Ordinance be drafted to accomplished the above-described goals, and

WHEREAS, the Elected Council desires to enact the LLC Ordinance for inclusion in the Tribal Law of the Modoc Tribe of Oklahoma

NOW THEREFORE BE IT RESOLVED that the Modoc Tribe hereby enacts the Ordinance and incorporates the same in the laws of the Tribe, and

BE IT FURTHER RESOLVED that the Ordinance is incorporated into this Resolution by reference and made a part hereof as if fully set forth herein.

CERTIFICATION

I hereby certify that the foregoing resolution 18-37 was passed at a meeting of the Elected Council of the Modoc Tribe of Oklahoma on November 15, 2018 with a vote of 4 yes, 0 no and 0 abstaining.


Attest: Troy L. Little Axe


Bill G. Follis, Chief

2018-ORD-000

MODOC NATION LIMITED LIABILITY COMPANY ORDINANCE

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The Modoc Nation Elected Council does ordain as follows:

Section 1. FINDINGS

(a) The Modoc Nation is a federally recognized Indian Nation with a duly-enacted Constitution, and the governing body of the Nation is known as the Modoc Nation Elected Council.

(b) Article I, § 3 of the Constitution of the Modoc Nation, provides that the Elected Council is empowered to act on behalf of the Nation and its members.

(c) Article V of the Constitution provides powers that enable the Elected Council to create organizations including public and private corporations and/or charters for any lawful purpose, which shall be nonprofit or profitmaking.

(d) The Elected Council deems it essential to promote and protect the political integrity, economic security and general welfare of the Nation and its members through the creation of Tribal law that enables that establishment of additional business entities that will provide programs, services, benefits and economic development to improve the quality of life and self-sufficiency of Tribal members, and economic self-sufficiency of the Nation.

Section 2. AUTHORITY AND PURPOSE

(a) **Authority.** The authority for this Ordinance is found in Article V of the Constitution.

(b) **Purpose.** The purpose of this Ordinance is to create Tribal law that enables the establishment of additional business entities that will provide programs, services, benefits and economic development to improve the quality of life and self-sufficiency of Tribal members, and

economic self-sufficiency of the Nation.

Section 3. DEFINITIONS

- (a) "Constitution" means the Constitution of the Modoc Nation.
- (b) "Corporation" means a business entity, recognized by the Internal Revenue Service, with articles of incorporation directed by a Board of Director and owned by stockholders.
- (c) "Manager" means a person who is named as a manager of a limited liability company in, or designated as a manager of a limited liability company pursuant to, a limited liability company agreement or similar instrument under which the limited liability company is formed.
- (d) "Member" means a person who has been admitted to a limited liability company as a member as provided in this Ordinance.
- (e) "Person" means an individual, a corporation, partnership, limited liability company, association, trust, unincorporated organization, or other legal entity or organization, or a Government Body.
- (f) "Personal Property" means everything that is the subject of ownership, not coming under denomination of real estate. A right or interest in things personal, or right or interest less than a freehold in realty, or any right or interest which one has in things movable.
- (g) "Real Property" means land, and generally whatever is erected or growing upon or affixed to land. Also, rights issuing out of, annexed to, and exercisable within or about land.
- (h) "Elected Council" and "Modoc Nation Elected Council" means the governing body of the Nation as established by the Constitution.
- (i) "Tribal Court" means those Courts established have authority in Modoc jurisdiction.
- (j) "Tribal Lands" means all fee, restricted fee and trust lands of the Nation, all lands owned by the Nation that are contiguous to such lands, and all lands over which the Nation has authority.
- (k) "Tribal Member" means a natural person who is duly enrolled in the Nation pursuant to the Enrollment Ordinance and the Constitution of the Modoc Nation.
- (l) "Nation" means the Modoc Nation.

Section 4. APPLICATION OF THIS ORDINANCE

- (a) A limited liability company formed under this Ordinance shall be subject to and comply with all requirements of this Ordinance.

- (b) In construing this Ordinance, any part or section thereof, shall be interpreted according to the laws of the Nation and any associated Tribal regulations.

Section 5. FORM OF INSTRUMENTS AND FILING

- (a) Where any provision of this Ordinance requires an instrument to be filed with the Office of Secretary of Elected Council, such instrument shall be filed by the registered agent or pursuant to its authority and comply with the provisions of this Section 5 unless otherwise expressly provided for under this Ordinance.
- (b) Every instrument referenced herein, filed or required to be filed, shall be in the English language.
- (c) All instruments filed or required to be filed shall be signed by at least:
 - (1) one manager of the limited liability company; or
 - (2) the registered agent of the limited liability company; or
 - (3) a member of the limited liability company; or
 - (4) such other person duly delegated such authority by a manager or member in whom such authority resides.
- (d) An instrument which is signed by the registered agent on behalf of a limited liability company shall be certified by such registered agent to have been signed pursuant to the written authority of the managers, which written authority may be filed with the Office of Secretary of Elected Council at the option of the registered agent.
- (e) Where a provision of this Ordinance requires an instrument to be acknowledged, such requirement means that the person shall sign the instrument to acknowledge that it is his or her act and deed or that it is the act and deed of the limited liability company and declare within that instrument that it was so signed on Tribal Lands. An acknowledgment does not require a signature before a notary public.
- (f) Where a provision of this Ordinance requires an instrument to be filed with the Office of Secretary of Elected Council, such requirement means that:
 - (1) an appropriate payment of all applicable fees shall be delivered to the Office of the Secretary of Elected Council and the original instrument together with a duplicate instrument, both signed and acknowledged;
 - (2) upon delivery of the original signed and acknowledged instrument with the required

payment and an exact signed and acknowledged duplicate, the Office of Secretary of Elected Council shall certify that the instrument has been filed by endorsing the word "Filed" and the date of receipt upon the original instrument and this date shall be the date of filing;

- (3) the Office of Secretary of Elected Council shall compare the signed and acknowledged duplicate with the original signed and acknowledged instrument, and if the text of both instruments is identical, the Office of Secretary of Elected Council shall affix on the duplicate the same endorsement of filing as he or she affixed on the original and the original, as endorsed, shall be returned to the limited liability company;
 - (4) the endorsement by the Office of Secretary of Elected Council under paragraph (3) constitutes the certificate of the Office of Secretary of Elected Council, that the document is a true duplicate of the instrument filed in his or her office and that it was filed as of the date stated in the endorsement;
 - (5) an instrument filed in accordance with paragraph (f) shall be effective as of the filing date stated thereon; and
 - (6) upon the filing of any instrument, the Office of Secretary of Elected Council shall issue an endorsement certificate under his hand and seal certifying that the instrument is filed.
- (g) An instrument relating to a limited liability company and filed with the Office of Secretary of Elected Council under this Ordinance may be corrected with respect to:
- (1) any error apparent on the face; or
 - (2) a defect in the execution of that instrument by filing with the Office of Secretary of Elected Council a certificate of correction, executed and acknowledged in the manner required for the original instrument.
- (h) A certificate of correction shall specify the error or defect to be corrected and shall set forth the portion of the instrument in correct form.
- (i) The correcting instrument when filed shall be effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons, the instrument as corrected shall be effective from the filing date.

Section 6. PENALTY FOR FALSE EXECUTION

Each member or manager of a limited liability company who signs any articles, certificate, statement, report, application, or other document filed with the Office of Secretary of Elected Council that is known to that member or manager to be false in any material respect may be subject to criminal and/or civil penalties.

Section 7. REGISTERED AGENT

- (a) Each limited liability company organized under this Ordinance shall continuously maintain an agent for service of process on the limited liability company. The address of the registered agent may be the same as the registered office of the limited liability company.
- (b) The agent may be any member of the limited liability company.
- (c) Failure to maintain a registered agent or registered office shall be grounds for involuntary dissolution of the limited liability company by the Office of the Secretary of Elected Council.
- (d) The registered agent of a limited liability company may resign by filing an original and one (1) copy of a signed written notice of resignation with the Office of Secretary of Elected Council. The Office of the Secretary of Elected Council shall then mail a copy of the notice of resignation to the registered office of the limited liability company at the address set forth in the company's articles of organization. The resignation of the registered agent shall become effective thirty (30) days after the Office of the Secretary of Elected Council receives notice of the resignation unless the Office of the Secretary receives an appointment of a new registered agent sooner.

Section 8. SERVICE OF PROCESS, NOTICE, OR DEMAND

- (a) Process against a limited liability company may be served by:
 - (1) Delivery to the registered agent; or
 - (2) Writing, which shall be mailed by registered or certified mail to the registered office of the company.
- (b) Service is perfected under Subsection (a)(2) on the earliest of:
 - (1) The date the company receives the process;
 - (2) The date shown on the return receipt, if signed on behalf of the limited liability company; or
 - (3) Five (5) days after mailing.
- (c) This Section does not limit or affect the right to serve, in any other manner permitted by law, any process, notice or demand required or permitted by law to be served upon a limited liability company.

Section 9. WAIVER OF NOTICE. If under the provisions of this Ordinance, the articles of

organization or the operating agreement, notice is required to be given to a member of a limited liability company or to a manager of a limited liability company having a manager or managers, a waiver in writing signed by the person or persons entitled to the notice, whether made before or after the time for notice is given, is equivalent to giving them notice.

Section 10. POWERS.

A limited liability company organized under this Ordinance is authorized to take the following actions:

- (1) Except as otherwise provided by Tribal law, conduct or promote any lawful business or purpose which a partnership or general corporation may conduct or promote;
- (2) to adopt, use and alter a company seal;
- (3) to purchase, take by gift or bequest, acquire, lease, own, hold, manage operate, use, deal in and dispose of real property of every kind and description, or any interest therein;
- (4) to purchase, take by gift or bequest, acquire, lease, own, hold, manage operate, use, deal in and dispose of personal property of every kind and description, or any interest therein, wherever situated;
- (5) to buy, sell, lease and otherwise acquire and maintain buildings, offices, shops and other such facilities or appurtenances thereto proper and necessary for the carrying on of the limited liability company's activities;
- (6) to carry on its business either within or without Tribal lands;
- (7) to sell, convey, mortgage (including leasehold mortgage), pledge, lease, exchange, transfer or otherwise dispose of all or any part of its corporate property or assets;
- (8) to guarantee, purchase, hold, assign, mortgage, pledge or otherwise dispose of capital stock of, or any bonds, securities or other evidence of indebtedness created by any other corporation or organization that is in existence under the laws of the United States, any state, Indian Nation, nation, government or country, and to exercise all the rights, privileges and powers of ownership thereto;
- (9) to enter into and make contracts or agreements of every kind and nature with any person, firm, association, corporation, municipality, country, nation, Indian Nation, state or body politic;
- (10) to incur debts and raise, borrow and secure the payment of any money in any lawful manner, including the issue and sale or other disposal of bonds, indentures,

- obligations, negotiable and transferable instruments and evidence of indebtedness of all kinds, whether secured by mortgage, pledge, deed of trust or otherwise;
- (11) to apply for, obtain, register, purchase, lease or otherwise acquire, own, hold, use, operate and introduce, and to sell, assign or otherwise dispose of any trademark, trade name, patent, invention, improvements and processes used in connection with or secured under letters patent, and to use, exercise, develop, grant and give licenses in respect thereto;
 - (12) Elect or appoint managers and agents of the limited liability company, define their duties, and fix their compensation;
 - (13) Make and alter an operating agreement, not inconsistent with its articles of organization or with the laws of the Nation, for the administration and regulation of its affairs;
 - (14) Indemnify a member or manager or any other person to the same extent that a partnership may indemnify any of the partners, managers, employees, or agents of the partnership against expenses actually and reasonably incurred by the member or manager in connection with the defense of an action, suit, or proceeding, whether civil or criminal, in which the member or manager is made a party;
 - (15) Cease its activities and surrender its certificate of organization;
 - (16) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the company is organized;
 - (17) Transact any lawful businesses which the members or the managers find to be in aid of governmental policy;
 - (18) Pay pensions and establish pension plans, profit-sharing plans, and other incentive plans for any or all of its managers and employees; and
 - (19) Be a promoter, incorporator, general partner, limited partner, member, associate, or manager of any corporation, partnership, limited partnership, limited liability company, joint venture, trust, or other enterprise.

Section 11. FORMATION

- (a) A limited liability company shall at formation of the company and at all times have at least one (1) member.
- (b) Any person may form a limited liability company under this Ordinance.
- (c) Articles of Organization shall be executed by each incorporator forming the limited liability company and shall be filed with the Office of the Secretary of Elected Council in conformity with the provisions of this Ordinance.
- (d) Failure to maintain at least one (1) member in accordance with the requirements herein shall be an event of dissolution.

Section 12. NAME OF LIMITED LIABILITY COMPANY

(a) Except as otherwise provided in subsection Section 6(b), the name of a limited liability company shall:

- (1) end with the company suffix "limited liability company" or "limited company" or the abbreviations "LLC", or "L.L.C."; and
- (2) not be the same as the name of a limited liability company or of any other company of any type or kind, as such name appears on the register of corporations or on the reserved name list of corporations maintained by the Office of the Secretary of Elected Council or a name like any such name as to tend to confuse or deceive.

(b) The provisions of subsection (1) shall not prevent a limited liability company: (1) with which another domestic limited liability company is merged; or (2) which is formed by the reorganization or consolidation of one (1) or more domestic limited liability companies; or (3) upon a sale, lease or other disposition to or exchange with, a domestic limited liability company of all or substantially all the assets of another domestic limited liability company, including its name, from having the same name as any such limited liability companies if at the time such other limited liability company, was existing under this Ordinance.

Section 13. LIST OF COMPANIES

The Office of the Secretary of Elected Council shall maintain a list of companies which contains a list of all names of the limited liability companies registered under this Ordinance and a list of reserved names of limited liability companies.

Section 14. RESERVATION OF NAME

(a) The exclusive right to the use of a name may be reserved by:

- (1) Any person intending to organize a limited liability company under this Ordinance and to adopt that name; or
- (2) Any domestic limited liability company registered within the Reservation which, in either case, proposes to change its name.

(b) The reservation of a specified name shall be made by filing with the Office of the Secretary of Elected Council an application, executed by the applicant, specifying the name to be reserved and the name and address of the applicant. If the Secretary of Elected Council, in its sole discretion, finds that the name is available for use by a domestic limited liability company, the Office of the Secretary shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may again reserve the same name for successive 120-day periods. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the Office of the Secretary of the Elected Council a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name to be transferred and the name and address of the transferee. However, such transfer shall become effective only upon prior approval by the Secretary of Elected Council. The reservation of a specified name may be cancelled by filing with the Office of the Secretary of the Elected Council a notice of cancellation, executed by

the applicant or transferee, specifying the name reservation to be cancelled and the name and address of the applicant or transferee. Unless the Secretary of the Elected Council finds that any application, notice of transfer, or notice of cancellation filed with the Office of the Secretary of the Elected Council as required by this subsection does not conform to law, upon receipt of all filing fees required by law the Secretary shall prepare and return to the person who filed such instrument a copy of the filed instrument with a notation thereon of the action taken by the Secretary of the Elected Council.

- (c) A fee as set forth in this Ordinance shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

Section 15. CONTENTS OF ARTICLES OF ORGANIZATION

The articles of organization shall set forth:

- (1) the name of the limited liability company;
- (2) the authenticated translation of the name of the limited liability company, if required under this Ordinance;
- (3) a statement that the limited liability company is formed under this Ordinance;
- (4) the latest date on which the limited liability company is to dissolve, or if the limited liability company shall have unlimited duration;
- (5) the name of the registered agent of the limited liability company;
- (6) the registered office address of the limited liability company on Tribal Lands, which shall be the registered office of its registered agent;
- (7) the name of each Member and Manager (if any) and a statement that the Company and each Member and Manager (if any) consents to at least be subject to all the laws of the Nation, including specifically citing this Ordinance and the Tribal Employment Rights Ordinance;
- (8) the purposes for which the limited liability company is formed and it shall be sufficient to state, either alone or with other businesses or purposes, that the purpose of the limited liability company is to engage in any lawful act or activity for which limited liability company may be formed under this Ordinance, and by such statement all lawful acts and activities shall be within the purposes of the limited liability company, except for express limitations, if any;
- (9) the name and address of each incorporator of the limited liability company; and
- (10) any provision, which is not inconsistent with the Ordinance, which the incorporators

elect to set forth in the articles of organization for the regulation of the affairs of the limited liability company, and any provision which under this Ordinance is required or permitted to be set forth in the operating agreement.

Section 16. EFFECT OF FILING ARTICLES OF ORGANIZATION

- (a) The limited liability company's existence shall, upon filing the articles of organization, be effective as of the filing date stated thereon if all requirements under this Ordinance are met.
- (b) The endorsement by the Secretary of Elected Council shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the limited liability company has been formed under this Ordinance.
- (c) When a limited liability company has been formed under this Ordinance, the Secretary of Elected Council shall issue a certificate of formation under his or her endorsement certifying that the limited liability company is duly formed and an endorsement certificate certifying that the limited liability company has filed articles of organization.

Section 17. CERTIFICATE OF GOOD STANDING

- (a) The Office of Secretary of Elected Council shall, upon request by the registered agent, issue a certificate of good standing under his or her endorsement certifying that a limited liability company is in good standing if he or she is satisfied that:
 - (1) the name of the limited liability company is on the list of companies;
 - (2) the limited liability company has paid all fees required under this Ordinance;
 - (3) the limited liability company is not in contravention of any of the provisions of this Ordinance; and
 - (4) the limited liability company is not in the process of being wound up and dissolved.
- (b) The certificate of good standing issued by the Office of Secretary of Elected Council under this section is limited to the company's current state of compliance under this Ordinance and should not be taken as a warranty or representation by the Office of Secretary of Elected Council concerning the company's compliance with other Tribal laws.

Section 18. OPERATING AGREEMENT

- (a) The members or managers of a limited liability company may enter into an operating agreement which may contain any provision relating to:
 - (1) the business of the limited liability company;
 - (2) the conduct of its affairs;

- (3) its rights or powers, and the rights of, and its relationship to and among, its members and managers; not inconsistent with this Ordinance or any other Tribal law.
- (b) An operating agreement shall be agreed to by all members before it becomes effective and the operating agreement shall not require the consent of any future member to remain effective.
- (c) An operating agreement shall be in writing.
- (d) If the operating agreement does not provide for the method by which it may be amended, then all members must agree to any amendment in writing.
- (e) The operating agreement may be filed as an exhibit to the articles of organization.
- (f) Any action to interpret, apply or enforce the provisions of an operating agreement, or the duties, obligations or liabilities of a limited liability company to the members or managers of the limited liability company, or the duties, obligations or liabilities among members or managers and of members or managers to the limited liability company, or the rights or powers of, or restrictions on, the limited liability company, members or managers, may be brought solely in Tribal Court. The decision of the Tribal Court is final.
- (g) An operating agreement is required for a limited liability company formed under this Ordinance that has one or more managers.

Section 19. AMENDMENT OF ARTICLES OF ORGANIZATION

- (a) A limited liability company may amend its articles of organization at any time to add or change a provision that is required or permitted in the articles of organization or to delete a provision not required in the articles of organization.
- (b) Except as set forth in subsection 19(c), an amendment of the articles of organization shall be subject to the consent of the members entitled to vote thereon.
- (c) Any one or more of the following amendments may be approved by the managers without the consent of the members:
 - (1) to specify or change the location of the registered office of the limited liability company; and
 - (2) to make, revoke or change the designation of a registered agent, or to specify or change the address of its registered agent.
- (d) The articles of amendment shall be executed for the limited liability company, acknowledged and filed with the Office of Secretary of Elected Council in accordance with the requirements related to filing of the initial articles of organization, and shall set forth:

- (1) the name of the limited liability company, and if it has been changed, the name under which it was formed;
 - (2) the authenticated translation of the name of the limited liability company, if required under this Ordinance;
 - (3) the date its articles of organization were filed with the Office of Secretary of Elected Council and the date of filing of any amendments to the articles of organization;
 - (4) each section affected by the articles of amendment; and
 - (5) the manner in which the amendment to the articles of organization was authorized.
- (e) No amendment to the articles of organization of a limited liability company shall affect any existing cause of action in favor of or against that limited liability company, or any pending legal action to which it shall be a party, or the existing rights of persons other than members.
- (f) Where the name of a limited liability company has been changed, no legal action brought by or against the limited liability company under its former name shall abate for that reason.

Section 20. RECORDS

- (a) Each limited liability company shall keep at its registered office the following:
- (1) A current list in alphabetical order of the full name and last known business street address of each member;
 - (2) A copy of the approved articles of organization and all approved amendments to them;
 - (3) Copies of all the company's income tax returns and reports, if any, for the three (3) most recent years; and
 - (4) A copy of the company's operating agreement, if any.
- (b) Records kept under this Section 20 are subject to inspection and copying at the reasonable request and at the expense of any member during ordinary business hours. The Tribal Court may subpoena any of these records if a limited liability company denies any member access to these records as required under this Ordinance.

Section 21. ADDITION OF MEMBERS

After the filing of a limited liability company's original articles of organization are approved, additional members may be admitted:

- (1) As provided in the operating agreement; or

(2) If there is no operating agreement, with the written consent of all members.

Section 22. RESTATED ARTICLES OF ORGANIZATION

- (a) A limited liability company may integrate into a single instrument all of the provisions of its articles of organization and amendments to them, and it may at the same time also further amend its articles of organization by adopting restated articles of organization.
- (b) If the restated articles of organization merely restate and integrate but do not further amend the initial articles of organization, as previously amended or supplemented by any certificate or instrument that was executed and filed pursuant to this Ordinance, they shall be specifically designated in their heading as “Restated Articles of Organization” together with other words that the company considers appropriate, and shall be executed and filed with the Office of Secretary of Elected Council.
- (c) If the restated articles restate and integrate and also further amend in any respect the articles of organization, as previously amended or supplemented, they shall be specifically designated in their heading as “Amended and Restated Articles of Organization” together with other words that the company considers appropriate, and shall be executed and filed with the Office of Secretary of Elected Council.
- (d) Restated articles of organizations shall state that they were duly executed and filed in accordance with this Section, and shall state, either in their heading or in an introductory paragraph:
 - (1) The company’s present name, and, if it has been changed, the name under which it was originally filed and the date of filing of its original articles of organization with the Office of Secretary of Elected Council; or
 - (2) If the restated articles only restate and integrate and do not further amend the provisions of the articles of organization as previously amended or supplemented and there is no discrepancy between those provisions and the provisions of the restated articles, they shall so state.
- (e) Upon the filing of restated articles of organization with the Office of Secretary of Elected Council, the initial articles, as previously amended or supplemented, shall be superseded. Thereafter, the restated articles of organization, including any further amendment or changes made by the restated articles, shall be the articles of organization, but the original effective date of formation shall remain unchanged.
- (f) Any amendment or change made in connection with the restatement and integration of the articles of organization shall be subject to any other provision of this Ordinance, not inconsistent with this Section, that would apply if a separate certificate of amendment were filed to make the amendment or change.

Section 23. MERGER AND CONSOLIDATION

- (a) Pursuant to any agreement ratified by a majority, by sharing ratios, of the members or as required by the operating agreement, whichever is greater, a limited liability company may merge or consolidate with or into one (1) or more limited liability companies formed under this Ordinance. The successor company shall be as provided in the agreement, provided, however, that the Nation (or any person for which the Nation owns a majority interest) must be a member holding and owning a majority interest in the limited liability company.
- (b) A limited liability company that is not the successor company in the merger or consolidation shall file articles of dissolution, which shall have an effective date not later than the effective date of the merger or consolidation.
- (c) When the articles of dissolution have become effective, the following shall be vested in and enforced against the successor limited liability company as they were in each of the companies that have merged or consolidated:
 - (1) All of the rights, privileges, and powers of each of the limited liability companies that have merged or consolidated;
 - (2) All debts due to any of the limited liability companies; and
 - (3) All other things and causes of action belonging to each of the limited liability companies.

Section 24. DISSOLUTION. A limited liability company organized under this Ordinance shall be dissolved upon the occurrence of any of the following events:

- (1) When the period fixed for the duration of the company in its articles of organization or operating agreement expires;
- (2) When the limited liability company fails to meet the requirements to maintain at least one (1) member that meets the qualifications set forth in Section 11;
- (3) By written agreement signed by the members entitled to receive a majority of the profits of the company, unless otherwise provided in the operating agreement;
- (4) Upon the occurrence of an event specified in the articles of organization or operating agreement as an event resulting in dissolution; or
- (5) When the company is not the successor limited liability company in the merger or consolidation of two (2) or more limited liability companies.

Section 25. SETTLEMENT UPON DISSOLUTION

- (a) In settling accounts after dissolution, the liabilities of the limited liability company shall be entitled to payment in the following order:
- (1) Liabilities to creditors, in the order of priority as provided by law, except those liabilities to members of the company on account of their contributions;
 - (2) Except as provided in the operating agreement, liabilities to members of the company in respect of their contributions to capital; and
 - (3) Liabilities to members of the company in respect of their shares of the profits and other compensation by way of income on their contributions.
- (b) Members shall share in the limited liability company assets as provided in the operating agreement, or if not so provided, in respect to their claims for capital and in respect to their claims for profits or for compensation by way of income on their contributions, respectively, in proportion to the respective amounts of claims.

Section 26. ARTICLES OF DISSOLUTION. When all debts, liabilities and obligations of the limited liability company have been paid or discharged, or adequate provision has been made to do so, and all the remaining property and assets of the company have been distributed to the members, articles of dissolution shall be executed. The articles shall set forth:

- (1) The name of the limited liability company;
- (2) That all taxes payable, debts, obligations, and liabilities have been paid or discharged, or that adequate provision has been made to do so;
- (3) That all the remaining property and assets have been distributed among its members in accordance with their respective rights and interests; and
- (4) That there are no suits pending against the company in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in any pending suit.

Section 27. EFFECT OF FILING OF ARTICLES OF DISSOLUTION

- (a) The articles of dissolution of a limited liability company shall be filed with the Office of Secretary of Elected Council. If the articles of dissolution conform to law and all fees have been paid as prescribed in this Ordinance, the Office of Secretary of Elected Council shall file the articles of dissolution of the company and shall issue a certificate of dissolution and return it to the representative of the dissolved limited liability company.
- (b) Upon the issuance of the certificate of dissolution, the existence of the company shall cease, except for the purpose of suits, other proceedings, and appropriate actions as provided in this Ordinance. The manager or managers in office at the time of dissolution, or the survivors of

the managers, or, if none, the members, shall thereafter become trustees for the members and creditors of the dissolved limited liability company. In this capacity, the trustees may distribute any company property discovered after dissolution, convey real estate, and take other necessary action on behalf of and in the name of the dissolved company.

Section 28. CANCELLATION OF ARTICLES OF ORGANIZATION. The articles of organization of a limited liability company shall be cancelled by the Office of Secretary of Elected Council upon issuance of the certificate of dissolution.

Section 29. LIABILITY OF MEMBERS, MANAGERS AND EMPLOYEES; WAIVER

- (a) Except as otherwise specifically set forth in this Ordinance, neither the members, the managers, nor the employees of a limited liability company are personally liable under a judgment, decree, or order of the Court, or in any other manner, for a debt, obligation, or liability of a limited liability company formed under this Ordinance.
- (b) A member of a limited liability company may waive the protection against personal liability of this Section for the debts, obligations, or liabilities of a limited liability company by executing a waiver in the articles of organization, by a certificate of amendment of the articles of organization or by a separate writing. The member waiving protection from liability must execute the waiver.
- (c) The extent of the waiver is determined by the language of the executed waiver in the articles of organization, amendment to the articles of organization or by other separate writing.

Section 30. LIABILITY FOR ACTING WITHOUT AUTHORITY. All persons who assume to act as a limited liability company without lawful formation under this Ordinance are jointly and severally liable for all debts and liabilities so incurred.

Section 31. CAPITAL CONTRIBUTIONS

The capital contribution of a member to a limited liability company may be in cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services.

Section 32. MEMBER LIABILITIES

- (a) A promise by a member to contribute to the limited liability company is not enforceable unless set forth in writing and signed by the member.
- (b) A member of a limited liability company is liable to the company:

- (1) For the difference between the amount of the member's contributions to capital which have been actually made and the amount which is stated in the operating agreement or other written contract as have been made; and
 - (2) For any unpaid contribution to capital which the member, in the operating agreement or other written contract, agreed to make in the future at the time and on the conditions stated in the operating agreement or other contract.
- (c) A member holds as trustee for the limited liability company:
- (1) Specific property which is stated in the operating agreement or other contract as having been contributed by the member, if the property was not contributed or it has been wrongfully or erroneously returned; and
 - (2) Money or other property wrongfully paid or conveyed to the member on account of the member's contribution.
- (d) The liabilities of a member as set out in this Section may be waived or compromised upon the consent of all other members. This waiver or compromise does not affect the rights of a creditor of the limited liability company who extended credit or whose claim arose prior to the dissolution of the limited liability company.
- (e) When a member has rightfully received the return, in whole or in part, of his or her capital contribution, the member remains liable to the limited liability company for any sum, not in excess of the return with interest, necessary to discharge the limited liability company's obligations to all creditors of the company who extended credit or whose claims arose before the return.

Section 33. MANAGEMENT BY MEMBERS

- (a) The management of a limited liability company, unless otherwise provided in the articles of organization, shall be vested in its members in proportion to their interests in the profits of the company, or as reflected in the operating agreement and as adjusted from time-to-time to properly reflect any additional contributions or withdrawals by the members or as provided in Section 38.
- (b) If the management of a limited liability company is vested in the members, any member has authority to bind the limited liability company, unless otherwise provided in the articles of organization or operating agreement.

Section 34. MANAGERS

- (a) If the articles of organization provide for the management of the limited liability company by a manager or managers:

- (1) The manager or managers shall be any person elected by the members in the manner prescribed by and provided in the operating agreement of the company.
 - (2) Any manager has authority to bind the company, unless otherwise provided in the articles of organization or operating agreement.
- (b) A manager shall serve for a term specified in the operating agreement. This term may not exceed the duration of the limited liability company if specified in the articles of organization.
 - (c) A manager need not be a member of the limited liability company unless required by the articles of organization or operating agreement.
 - (d) The manager or managers shall hold office and have the responsibilities accorded to them by the members and as provided for in the operating agreement of the limited liability company.

Section 35. OWNERSHIP AND DISPOSITION OF PROPERTY

- (a) Real or personal property owned or purchased by a limited liability company may be held and owned, and conveyance shall be made, in the name of the limited liability company.
- (b) Instruments and documents providing for the acquisition, mortgage, or disposition of property of the limited liability company shall be valid and binding upon the company if they are executed by one (1) or more managers of a limited liability company having a manager or managers or if they are executed by one (1) or more members of a limited liability company in which management has been retained by the members.

Section 36. CONDITIONS FOR PROPERTY DISTRIBUTION. From time to time, the limited liability company may distribute its property according to the operating agreement if one exists to the members of the company if, after distribution is made, the fair value of the assets of the company is in excess of all liabilities of the company except liabilities to members on account of their contributions.

Section 37. ASSET DISTRIBUTION. Distributions of cash or other assets of a limited liability company shall be allocated among the members in the manner provided in the operating agreement if applicable. If no operating agreement or the operating agreement does not otherwise provide, cash or other assets shall be allocated on the basis of value of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

Section 38. PROFITS AND LOSSES. The profits and losses of a limited liability company shall be allocated among the members in the manner provided in the operating agreement if applicable. If the operating agreement does not otherwise provide, profits and losses shall be allocated on the basis of value of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

Section 39. CHARACTER, TRANSFER, ADJUSTMENT, AND ASSIGNMENT OF MEMBER INTERESTS

- (a) An interest of a member in a limited liability company is personal property.
- (b) An interest of a member in a limited liability company may be adjusted, transferred, or assigned as provided in the operating agreement.
- (c) Except as otherwise provided in the operating agreement, if the non-transferring members entitled to receive a majority of the non-transferred profits of the limited liability company, pursuant to Section 38, do not consent to the proposed transfer or assignment:
 - (1) The transferee of the interest of the member has no right to:
 - (A) Participate in the management of the business and affairs of the limited liability company; or
 - (B) Become a member; and
 - (2) The transferee is entitled to receive only the share of profits or other compensation by way of income and the return of contributions to which that member would otherwise be entitled.
- (d) On application to the Tribal Court by any judgment creditor of a member in a limited liability company, the Tribal Court may charge the interest of the member in the limited liability company with payment of the unsatisfied amount of the judgment with interest:
 - (1) To the extent a judgment creditor is a beneficiary of a charging order issued under this Subsection, the judgment creditor has only the rights of a transferee under Subsection (c) of the member's interest in the limited liability company.
 - (2) This Ordinance does not deprive any member of the benefit of any exemption laws applicable to the member's interest in the limited liability company.
- (e) Any transfer of a member's interest in a limited liability company in violation of this Section is void.

Section 40. CONDITIONS FOR DISTRIBUTION OF PROPERTY—RETURN OF CONTRIBUTION

- (a) A member shall receive no distribution of limited liability company property on account of any member's contribution to capital until:

- (1) All liabilities of the limited liability company, except liabilities to members on account of their contributions to capital, have been paid or sufficient property of the company remains to pay them; and
 - (2) The consent of all members is obtained, unless the return of the contribution to capital may be rightfully demanded as provided in this Ordinance, the articles of organization or the operating agreement.
- (b) Subject to Subsection (a), a member may rightfully demand the return of the member's contribution:
- (1) Upon the dissolution of the limited liability company;
 - (2) When the date an event specified in the articles of organization for the return of the contribution has arrived; or
 - (3) After the member has given all other members of the limited liability company six (6) months' prior notice in writing, if no other time period is specified in the articles or organization, for the dissolution of the limited liability company.
- (c) In the absence of a statement in the articles of organization or the operating agreement to the contrary or the consent of all members of the limited liability company, a member, irrespective of the nature of the member's contribution, has only the right to demand and receive cash in return for the member's contribution to capital.

Section 41. MEMBER AS A PARTY TO PROCEEDINGS. A member of a limited liability company is not a proper party to proceedings by or against a limited liability company, except when the object is to enforce a member's right against, or liability to, the limited liability company.

Section 42. RIGHT OF ACTION. A member may bring an action in the right of a limited liability company to recover a judgment in its favor if the managers with authority to do so have refused to bring the action and the managers' decision not to sue constitutes an abuse of discretion or involves a conflict of interest that prevents an unprejudiced exercise of judgment, or if an effort to cause those managers to bring the action is not likely to succeed.

Section 43. PROPER PLAINTIFF. In a derivative action, the plaintiff must be a member at the time of bringing the action and:

- (1) Must have been a member at the time of the transaction of which the member complains; or

- (2) The member's status as a member must have devolved upon him or her by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

Section 44. PLEADING. In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a manager or the reasons for not making the effort.

Section 45. EXPENSES. If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the Court may award the plaintiff reasonable expenses, including attorneys' fees, and shall direct him to remit to the limited liability company the remainder of those proceeds received by him.

Section 46. SECURITY AND COSTS

- (a) In any action instituted in the right of any limited liability company, unless the contributions to the company property that are allocable to the plaintiff amount to five percent (5%) or more of the contributions of all members, or the contributions that are allocable to the plaintiff have a market value in excess of \$25,000.00, the limited liability company in whose right the action is brought shall be entitled, at any time before final judgment, to require the plaintiff to give security for the costs and reasonable expenses which may be directly attributable to and incurred by it in the defense of the action or may be incurred by other parties named as defendant for which the limited liability company may become legally liable, but not including attorneys' fees.
- (b) Market value shall be determined as of the date that the plaintiff institutes the action, or, in the case of an intervenor, as of the date that he becomes a party to the action.
- (c) The amount and nature of the security shall be determined by the Court, and the amount of the security may from time-to-time be increased or decreased by the Court, upon showing that the security provided has or may become inadequate or is excessive.
- (d) The limited liability company shall have recourse to the security in the amount as the Court shall determine upon the termination of such action if the Court finds the action was brought without reasonable cause.

Section 47. INDEMNIFICATION OF A MANAGER. To the extent that a manager has been successful on the merits or otherwise in defense of any action, suit, or proceeding brought against the manager under Section 42, or in defense of any claim, suit, or matter therein, the manager shall be indemnified by the members against expenses, including attorneys' fees, that the manager actually and reasonably incurred.

Section 48. FEES

(a) No document required to be filed as required under this Ordinance shall be effective until the applicable fee by this Section is paid. The following fees shall be paid to and collected by the Secretary of the Elected Council for the use of the Nation:

- (1) Upon the receipt for filing of an application for reservation of name, an application for renewal of reservation or a notice of transfer or cancellation of reservation pursuant to this Ordinance, a fee in the amount of \$75.
- (2) Upon the receipt for filing of article of organization under this Ordinance, amendments to the articles of organization under this ordinance, dissolution under this ordinance, a request of merger or consolidation under this ordinance, restated articles of organization under this ordinance, a fee in the amount of \$50.
- (3) For certifying copies of any paper on file as provided for by this chapter, a fee in the amount of \$20 for each copy certified.
- (4) The Secretary of the Elected Council may issue photocopies or electronic image copies of instruments on file, as well as instruments, documents and other papers not on file, and for all such photocopies or electronic image copies, whether certified or not, a fee of \$5 shall be paid for the 1st page and \$1 for each additional page.
- (5) The Secretary of the Elected Council may in his or her discretion charge a fee of \$25 for each check received for payment of any fee that is returned due to insufficient funds or the result of a stop payment order.

(b) In addition to those fees charged under subsection (a) of this Section, there shall be collected by and paid to the Secretary of the Elected Council the following:

- (1) For all services described in subsection (a) of this section that are requested to be completed within 2 hours on the same day as the day of the request, an additional sum of up to \$500;
- (2) For all services described in subsection (a) of this section that are requested to be completed within the same day as the day of the request, an additional sum of up to \$200; and
- (3) For all services described in subsection (a) of this section that are requested to be completed within a 24-hour period from the time of the request, an additional sum of up to \$100. The Secretary of the Elected Council shall establish (and may from time to

time amend) a schedule of specific fees payable pursuant to this subsection.

- (c) The Office of Secretary of Elected Council shall not file any articles, statements, certificates, reports, applications, notice or other papers relating to any company organized under the provisions of this Ordinance until all fees and charges provided to be paid in connection therewith shall have been paid to it or while the company is in default in the payment of any fees, charges or sanctions herein provided to be paid by or assessed against it. Nothing in this Section shall prevent the filing, without the payment of all such fees, charges and sanctions, of a written notice of resignation by a registered agent of a company.
- (d) No company required to pay a fee, charge or sanction under this Ordinance shall maintain within the Reservation any civil action until all such fees, charges and sanctions have been paid in full.

Section 49. TAXATION OF LIMITED LIABILITY COMPANIES

For purposes of taxation by the Nation, if any, a limited liability company formed under this Ordinance shall be classified in the same manner as it is classified for federal income tax purposes.

Section 50. REPEALER

All ordinances or parts of ordinances inconsistent with this Ordinance are repealed.

Section 51. SEVERABILITY

If any provision of the Ordinance or its application to any person or circumstance is held invalid, the remainder shall continue to be in full force and effect to the maximum extent possible that can be given effect without the invalid provision or application.

Section 52. EFFECTIVE DATE

This Ordinance shall take immediate effect and be enforced from and after its passage and publication according to Tribal law.

Passed by the Modoc Nation Elected Council on November 15, 2018.