OMAHA TRIBAL CODE (2013)

TITLE 33. BUSINESS CORPORATIONS

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TITLE 33. BUSINESS CORPORATIONS

Source: Omaha Tribal Council Resolution No. 94-46 (12-3-93).

CHAPTER 1. GENERAL PROVISIONS

SECTION 33-1-1. Title.

This Title shall be known as the Omaha Tribe of Nebraska Business Corporation Title.

SECTION 33-1-2. Authority.

This Title is enacted by the Tribal Council under the authority vested in said Tribal Council by Article IV of the Constitution and Bylaws of the Omaha Tribe of Nebraska, as amended. The Tribal Council reserves the right to repeal or amend the provisions of this Title, provided that such action to repeal or amend is approved upon a finding by the Tribe on an action for declaratory judgment that such amendment or repeal is in the best interest of the Tribe. A corporation incorporated under or governed by this Title is subject to this reserved right. Notwithstanding any other provision of law, the Tribal Council may at any time and without any review by the Tribal Court, amend or repeal any provision of this Title as it relates to any corporation which is wholly owned by the Tribe.

History: Section 33-1-2 was amended by Resolution No. 96-57 (2/5/96), by adding the following language: "Notwithstanding any other provision of law, the Tribal Council may at any time and without any review by the Tribal Court, amend or repeal any provision of this Title as it relates to any corporation which is wholly owned by the Tribe."

SECTION 33-1-3. Definitions.

As used in this Title:

(a) "*articles of incorporation*" or "*articles* " shall mean the original or restated articles of incorporation or articles of consolidation and all amendments thereto of the corporations organized hereunder.

(b) "*authorized shares*" shall mean the shares of all classes which the corporation is authorized to issue.

(c) " *Certificate of Authority*" shall mean a certificate of authority for a foreign corporation to transact business in territories under the jurisdiction of the Tribe issued by the Enterprise Board.

(d) "*corporation*" or "*domestic corporation* " shall mean a corporation, except a foreign corporation for profit subject to the provisions of this Title.

(e) "*Enterprise Board*" shall have the meaning set forth in Title 32.

(f) "*foreign corporation*" shall mean a corporation, for profit or not for profit, organized under laws other than the laws of the Tribe.

(g) "*net assets*" shall mean the amount by which the total assets of a corporation exceed the total debts of the corporation.

(h) "*Title*" shall mean the Omaha Tribe of Nebraska Business Corporation Title.

(i) "*Reservation*" shall mean the territory within the exterior boundaries of the Omaha Indian Reservation (including the Blackbird Bend and other tribal land located east of the Missouri River) as set forth in the Omaha Treaty of March 16, 1854, as amended by the treaty of March 6, 1865, and to such other

lands without these boundaries as may have been or may hereafter be added to the Reservation or held in trust for the Tribe under any law of the United States or otherwise.

(j) "*shareholder*" shall mean one who is a holder of record of shares in a corporation, Shareholders of corporations wholly owned by the Tribe shall mean persons recognized as voting members of the Tribal Council of the Tribe.

(k) "*shares*" shall mean the units into which the ownership interests in a corporation are divided.

(l) "*Tribal Council*" shall mean the Tribal Council of the Tribe as defined pursuant to the Constitution and Bylaws of the Tribe.

(m) "*Tribal Court*" shall mean the Tribal Court as defined pursuant to the Constitution and Bylaws of the Tribe.

(n) "*Tribe*" shall mean the Omaha Tribe of Nebraska.

SECTION 33-1-4. Purposes.

Corporations may be organized under this Title for any lawful purpose or purposes and domestic and foreign corporations may be issued a Certificate of Authority to do business on the Reservation. Unless otherwise provided in its articles, a corporation has general business purposes.

SECTION 33-1-5. Corporate Name.

The corporate name.

(a) shall contain the word "corporation," "company," "incorporated" or "limited," or shall contain an abbreviation of one of such words;

(b) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation; and

(c) shall not be the same as, or deceptively similar to, the name of any corporation existing under the laws of the Tribe or the State of Nebraska, or a name the exclusive right to which is, at the time, reserved in the manner provided in this Title, or the name of a corporation which has in effect a registration of its corporate name as provided in this Title, or the laws of the State of Nebraska.

SECTION 33-1-6. Registered Office and Registered Agent.

Each corporation organized pursuant to this Title shall have and continuously maintain on the Reservation a registered agent and a registered office which may be, but need not be, the same as its place of business,

SECTION 33-1-7. Service of Process on Corporation.

Any officer of a corporation or the registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process notice or demand required or permitted by law to be served upon the corporation may be served

SECTION 33-1-8. Form of Application.

Such application shall be made on forms prescribed and furnished by the Enterprise Board and shall be executed, acknowledged and verified by the applicant's president or vice president and by its secretary and delivered to the Enterprise Board with authenticated copies of its articles of incorporation.

CHAPTER 2. CORPORATE POWERS

SECTION 33-2-1. General Powers.

Subject to any limitations provided in any other laws of the Tribe, or in a corporation's articles of incorporation or bylaws, each corporation shall have power:

(a) to have perpetual succession unless a limited period of duration is stated in its articles of incorporation;

(b) to sue and be sued, complain and defend, in its corporate name, except that the extent of the corporation's liability shall be limited to the assets of the corporation and shall be subject to the limitations contained in Section 32-2-3 and Chapter 4 of this Title;

(c) to have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced. A corporation is not obligated to adopt a corporate seal. The use or nonuse of a corporate seal shall not affect the validity, recordability or enforceability of a document or act. If a corporation has a corporate seal, the use of the seal by the corporation on a document is not necessary;

(d) to purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated;

(e) to, sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets including, but not limited to shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals;

(f) to lend money and use its credit to assist its employees:

(g) to purchase, take, receive, subscribe for or otherwise acquire, own, hold; vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof;

(h) to make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations by mortgage or pledge of all or any of its property, franchises and income;

(i) to lend money for its corporate purposes, invest and reinvest its funds and take and hold real and personal property as security for the payment of funds so loaned or invested;

(j) to conduct its business, carry on its operations and have offices and exercise the powers granted by this Title, within or without the Reservation boundaries;

(k) to elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

(l) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of the Tribe for the administration and regulation of the affairs of the corporation;

(m) to make donations for the public welfare or for charitable, scientific or educational purposes;

(n) to transact any lawful business which the board of directors shall find will be in aid of governmental policy;

(o) to pay pensions and establish pension plans, pension trusts, profit sharing plans, stock bonus plans, stock option plans and other incentive plans for any or all of its directors, officers and employees;

(p) to be a promoter, partner, member, associate or manager of any partnership, joint venture; trust or other enterprise;

(q) to establish committees of the board of directors, elect or appoint persons to the committees and define their duties and fix their compensation; and

(r) to have and exercise all powers necessary or convenient to effect its purposes.

SECTION 33-2-2. Special Committees.

An affirmative vote of a majority of the board of directors may establish committees having the authority of the board of directors in the management of the business of the corporation only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights or remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board of directors. The committees shall consist of one or more persons, who need not be directors.

SECTION 33-2-3. Special Powers and Privileges of Corporations Wholly Owned by the Tribe.

The special powers described in this Section 33-2-3 shall only be available to a corporation wholly owned by the Tribe. Such wholly owned corporations:

(a) may assume any or all of the Tribe's rights, privileges and immunities (including, without limitation, sovereign immunity) concerning federal and state taxes, and jurisdiction to the same extent that the Tribe would have such rights, privileges and immunities if it engaged in the activities undertaken by the corporation. Absent consent, a corporation wholly owned by the Tribe shall not be subject to taxation by the Tribe, except to the extent that such taxation is necessary and reasonably appropriate to compensate the Tribe for services provided to the corporation by the Tribe;

(b) shall have the power to sue and is authorized to consent to be sued in the Tribal Court, and other courts of competent jurisdiction; provided, however, that any recovery against such corporation for any such consent shall be limited to the assets of the corporation, and that, to be effective, such corporation must explicitly consent to be sued in a contract or other commercial document which specifies the terms and conditions of such consent, provided however, that consent to suit by a corporation shall in no way extend to the Tribe, nor shall a consent to suit by a corporation in any way be deemed a waiver of any of the rights, privileges and immunities of the Tribe.

(c) Notwithstanding any other provision of law, or any bylaws or articles of incorporation, the directors and officers of any corporation which is wholly owned by the Tribe shall serve at the will of the Tribal Council acting as the sole shareholder of such Tribally owned Corporation.

Source: Section 33-2-3(3) was added by Resolution No. 96-57 (2/5/96).

CHAPTER 3. SHARES

SECTION 33-3-1. Authorized Shares.

Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designation, preferences, limitations and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this Title.

SECTION 33-3-2. Preferred or Special Shares.

Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes, or may provide or authorize the board of directors to issue shares of preferred or special classes:

(a) subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation, or by the board of directors for the redemption thereof;

(b) entitling the holders thereof to cumulative, noncumulative or partially cumulative dividends;

(c) having preference over any other class or classes of shares as to the payment of dividends;

(d) having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation; and

(e) convertible into shares of any other class or into shares of any series of the same or any other class.

SECTION 33-3-3. Shares in Tribally-owned Corporations.

Corporations wholly owned and operated by the Tribe shall issue shares, but all such shares shall be held by and for the Tribe by the Tribal Council. The voting rights of the members of the Tribal Council in such corporation shall not be diminished or enhanced by the issuance of shares. The special provisions of Section 33-3-2 regarding preferred or special shares shall not be available to corporations wholly owned by the Tribe.

SECTION 33-3-4. Payment for Shares.

The consideration for the issuance of shares may be paid, in whole or in part, in cash, in other property, tangible or intangible, received or to be received by the corporation or in labor or services actually performed or to be performed for the corporation.

SECTION 33-3-5. Future Consideration for Shares.

Promissory notes, future services or other consideration which has only an intangible future value may be accepted as payment or part payment for the issuance of shares of a corporation.

SECTION 33-3-6. Certificates Representing Shares.

The shares of a corporation shall be represented by certificates signed by an agent or officer authorized in the articles or bylaws to sign share certificates or, in the absence of such authorization, by an officer of the corporation.

CHAPTER 4. LIABILITY

SECTION 33-4-1. Limited Liability of Shareholders.

A holder of shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued.

SECTION 33-4-2. Limited Liability of the Tribe.

The Tribe shall be under no obligation to a corporation or the creditors; of any corporation which the Tribe incorporates, owns or operates, in whole or in part, and the Tribe shall not be deemed to have waived any of the Tribe's privileges or immunities if the Tribe incorporates, owns or operates a corporation, in whole or in part.

CHAPTER 5. BYLAWS AND ARTICLES OF INCORPORATION

SECTION 33-5-1. Bylaws.

The initial bylaws of a corporation may be adopted by its board of directors. Unless reserved to the shareholders by the articles of incorporation, the power to alter, amend or repeal the bylaws or adopt new bylaws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors.

SECTION 33-5-2. Contents of Articles of Incorporation.

The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the address of the registered office of the corporation and the name of its registered agent, if any, at that address;

(c) the aggregate number of shares that the corporation has authority to issue; if such shares are to consist of one class only, the par value of each of such shares; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class;

(d) the name and address of each incorporator;

(e) the period of duration, which may be perpetual;

(f) the purpose or purposes for which the corporation is organized, which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this Title;

(g) if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class;

(h) if the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(i) any provision limiting or denying to shareholders preemptive rights;

(j) any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision restricting the transfer of shares and any provision which under this Title permitted to be set forth in the bylaws;

(k) any other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the corporation; and

(l) any of the corporate powers desired but not enumerated in this Title.

SECTION 33-5-3. Provisions Subject to Modification in Articles of Incorporation.

The following provisions govern a corporation unless modified in the articles:

(a) the power to adopt, amend or repeal the bylaws is vested in the board of directors;

(b) the corporation does not permit cumulative voting for directors;

(c) the affirmative vote of a majority of directors present is required for an action of the board of directors:

(d) a written action by the board of directors taken without a meeting must be signed by all participating directors;

(e) the board of directors may authorize the issuance of securities and rights to purchase securities;

(f) all shares have equal rights and preferences in all matters not otherwise provided for by the board of directors;

(g) the par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board of directors for certain other purposes;

(h) the board of directors or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or spurs, and may determine the value of nonmonetary consideration;

(i) shares of a class or series must not be issued to holders of shares of another class or series to effectuate share dividends or splits, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued:

(j) a corporation may issue rights to purchase securities whose terms, provisions and conditions are faxed by the board of directors;

(k) the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except where this Title requires the affirmative vote of a majority of the voting power of all shares entitled to vote;

(l) shares of a corporation acquired by the corporation may be reissued;

(m) each share has one vote unless otherwise provided in the terms of the share;

(n) a corporation may issue shares for a consideration less than the par value, if any of the shares; and

(o) except as limited by Sections 33-2-3 and 33-4-2, a corporation shall have the power to sue and be sued in the Tribal Court, and in other courts of competent jurisdiction; provided, however, that any recovery against a corporation shall be limited to the assets of the corporation.

SECTION 33-5-4. Provisions Subject to Modification in Articles of Incorporation or Bylaws.

The following provisions govern a corporation unless modified either in the articles or in the bylaws:

(a) Directors serve for an indefinite term that expires at the next regular meeting of the shareholders;

(b) The compensation of the board of directors is fixed by the board of directors;

(c) If the board of directors fails to select a place for a board of directors meeting, it must be held at the principal executive office;

(d) A director may call a board of directors meeting; and the notice of the meeting need not state the purpose of the meeting;

(e) A majority of the board of directors is a quorum for a meeting;

(f) A committee shall consist of one or more persons, who need not be directors, appointed by a majority vote of the directors present:

(g) The board of directors may establish a special litigation committee;

(h) Regular meetings of shareholders need not be held, unless demanded by a shareholder;

(i) In all instances where a specific minimum notice period has not otherwise been fixed by law, not less than five days notice is required for a meetiing of shareholders;

(j) The number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting;

(k) The board of directors may fix a date up to 60 days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of and entitled to notice of the meeting

(l) Indemnification of directors is required (except for such directors' gross negligence or wilful misconduct); and

(m) The board of directors may authorize, and the corporation may make, distributions not prohibited, limited or restricted by an agreement.

SECTION 33-5-5. Permitted Provisions if Included in Articles of Incorporation.

The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included in the articles:

(a) The members of the first board of directors may be named;

(b) A larger than majority vote may be required for action of the board of directors;

(c) A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be limited to negligence, fraud or misconduct; and

(d) The manner of giving or prescribing the manner of giving voting rights to persons other than shareholders.

SECTION 33-5-6. Permitted Provisions if Included in Bylaws.

The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included in the bylaws:

(a) a manner for increasing or decreasing the number of directors;

(b) additional qualifications for directors;

(c) directors may be classified;

(d) absent directors may be permitted to give written consent or opposition to a proposal;

(e) authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation, other than the chief executive officer;

(f) additional officers may be designated;

(g) additional powers, rights; duties and responsibilities may be given to officers;

(h) a method for filling vacant offices may be specified;

(i) a certain officer or agent may be authorized to sign share certificates;

(j) the transfer or registration of transfer of securities may be restricted.

CHAPTER 6. NOTICES

SECTION 33-6-1. Notices; Publication; Contents.

(a) Notice of incorporation, amendment, merger, consolidation or voluntary dissolution of all corporations subject to this Title shall be published once each week for three consecutive weeks in some legal newspaper of general circulation on the Reservation. A notice of incorporation shall show:

(1) the name of the corporation;

(2) the address of the registered office;

(3) the purpose or purposes for which the corporation is organized;

(4) the time of the commencement and termination of the corporation and, if the corporation is to have perpetual existence, such fact must be stated; and

(5) by what officers the affairs of the corporation are to be conducted.

(b) A brief synopsis of any amendment, merger or consolidation of the said corporation shall be published in the same manner and for the same period of time as notice of incorporation is required to be published.

(c) Whenever any corporation subject to this Title is voluntarily dissolved, notice of the dissolution thereof and the terms and conditions of such dissolution and the names and addresses of the persons who are to manage the corporate affairs and distribute its assets and their official title, with a statement of assets and liabilities of the corporation, shall be published once each week for three consecutive weeks in some legal newspaper of general circulation on the Reservation. Proof of publication of any of the foregoing required notices shall be filed in the office of the Enterprise Board and in the office of the Secretary of State of the state where the registered office of the corporation is located.

(d) In the event any notice required to be given pursuant to this section is not given, but is subsequently published for the required time, and proof of the publication thereof is filed in the office of the Enterprise Board and in the office of the Secretary of State of the state where the registered office of the corporation is located, the acts of such corporation prior to, as well as after, such publication shall be valid.

CHAPTER 7. INCORPORATION, AMENDMENT

SECTION 33-7-1. Who May Incorporate.

Any member or non-member of the Tribe over the age of 13 may act as the incorporator of a corporation by delivering articles of incorporation to the Enterprise Board for filing.

SECTION 33-7-2. Filing of Incorporation.

Duplicate originals of the articles of incorporation shall be delivered to the Enterprise Board. If the Enterprise Board finds that the articles of incorporation conform to tribal law, it shall:

(a) endorse on each such duplicate originals the word "filed" and the month, day and year of the filing thereof;

(b) maintain one such duplicate original in the office of the Enterprise Board; and

(c) issue a certificate of incorporation. to which the Enterprise Board shall affix the duplicate original and return to the incorporators.

SECTION 33-7-3. Effect of Issuance of Certificate of Incorporation.

Upon the issuance of the certificate of incorporation, the corporate existence shall begin.

SECTION 33-7-4. Right To Amend or Restate Articles of Incorporation.

A corporation may amend or restate its articles of incorporation.

SECTION 33-7-5. Articles of Amendment or Restatement.

The articles of amendment or restatement shall be executed by (a) its president or a vice president and (b) its secretary.

SECTION 33-7-6. Filing of Articles of Amendment or Restatement.

Duplicate originals of the articles of amendment or restatement shall be delivered to the Enterprise Board. If the Enterprise Board determines that the articles of amendment or restatement conform to tribal law, the Enterprise Board shall:

(a) endorse on each duplicate original the word "filed" and the month day and year of such filing thereof;

(b) maintain one such duplicate original in the Enterprise Board's Office;

(c) issue a certificate of amendment to which the Enterprise Board shall affix the other duplicate original and return to the corporation.

SECTION 33-7-7. Effect of Certificate of Amendment.

Upon the issuance of the certificate of amendment by the Enterprise Board, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

CHAPTER 8. BOARD OF DIRECTORS

SECTION 33-8-1. Qualifications.

The business and affairs of the corporation shall be managed by a board of directors, subject to any limitations set forth in the articles of, incorporation. The articles of incorporation or bylaws may prescribe qualifications for directors. Directors of a corporation wholly owned by the Tribe need not be a member of the Tribe unless the articles of incorporation or bylaws so prescribe.

SECTION 33-8-2. Number and Election of Directors.

(a) A board of directors must consist of one or more individuals, with the number established in the articles of incorporation or bylaws. Initial directors may be named in the articles of incorporation or elected by the shareholders or, prior to the issuance of shares, elected by the incorporators; thereafter, directors shall be elected at the annual shareholders' meeting, subject to the provisions of Section 33-8-3. If a corporation is to be wholly or partially owned by the Tribe, the articles of incorporation or bylaws may provide that the Tribal Council shall vote the Tribe's shares.

(b) If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a number of directors by the holders of one or more authorized classes of shares.

SECTION 33-8-3. Terms of Directors.

At the first meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting unless otherwise permitted in this Title 33, the articles of incorporation or the bylaws. Each director shall hold office for the term for which elected until a successor shall have been elected and qualified.

SECTION 33-8-4. Resignation of Directors.

A director may resign at any time by delivering written notice to the board of directors or its chairman.

SECTION 33-8-5. Removal of Directors.

(a) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only with cause. If a director is elected by a voting group of shareholders, only, the shareholders of that voting group may participate in the vote to remove the director.

(b) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director, and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

SECTION 33-8-6. Vacancies on the Board of Directors.

Unless the articles of incorporation or bylaws provide otherwise, a vacancy on the board of directors may be filled by the board of directors.

SECTION 33-8-7. Compensation of Directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

SECTION 33-8-8. Director Conflict of Interest.

A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has an interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

(a) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved or ratified the transaction by a majority of the board of directors or committee; but the interested director or directors shall not be counted in determining the presence of, or required number to constitute, a quorum and shall not vote;

(b) the material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved or ratified the transaction by a majority of the shares entitled to vote that are owned by persons other than the interested director or directors; or

(c) the transaction was fair to the corporation at the time it was approved.

SECTION 33-8-9. Loans to Directors.

A corporation may not lend money to or guarantee the obligation of a director of the corporation unless the shareholders approve the loan or guarantee or the board of directors determines the loan or guarantee benefits the corporation and approves the loan or guarantee. A corporation wholly owned by the Tribe may not lend money to or guarantee the personal obligation of a director, officer or employee of the corporation under any circumstances.

CHAPTER 9. MEETINGS OF THE BOARD OF DIRECTORS

SECTION 33-9-1. Regular and Special Meetings.

The board of directors may hold regular or special meetings within or without the borders of the Reservation.

SECTION 33-9-2. Telecommunications Meetings Permitted.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to conduct or participate in a meeting through the use of any means of communication by which all directors may simultaneously hear each other during the meeting. A director so participating is deemed present.

SECTION 33-9-3. Consent to Action Without Meeting Permitted.

Unless the articles of incorporation or bylaws provide otherwise, action by the board of directors may be taken without a meeting if a majority of the members take the action. Such action must be evidenced in writing, signed by the requisite number of directors and included in the minutes or filed with the corporate records.

SECTION 33-9-4. Notice of Meeting.

Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place or purpose of the meeting. Unless the articles of incorporation or bylaws provide for a different period, special meetings of the board of directors must be preceded by at least 48 hours notice of the date, time and place of the meeting. Either before or after a meeting, a director may waive, orally or in writing, any required notice, and a director's attendance at or participation in a meeting waives any required notice, unless the director objects at the meeting's beginning and does not vote thereafter on actions at the meeting.

SECTION 33-9-5. Quorum and Voting.

Unless the articles of incorporation or bylaws provide otherwise, a quorum consists of a majority of the number of directors, provided that in no event shall a quorum consist of fewer than one-third the number of directors. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number.

CHAPTER 10. CORPORATE OFFICERS

SECTION 33-10-1. Required Officers.

A corporation has the officers described in its articles or bylaws or appointed by the board of directors in accordance with the articles or bylaws. The articles or bylaws of the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation. The same individual may simultaneously hold more than one office in a corporation. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board off directors.

SECTION 33-10-2. Resignation and Removal of Officers.

An officer may resign at any time by delivering notice to the corporation. A board of directors may remove any officer at any time with or without cause.

SECTION 33-10-3. Contract Rights of Officers.

The appointment of an officer does not itself create contract rights, nor does the resignation or removal of an officer affect the contract rights, if any, of the officer or corporation. The removal is without prejudice to any contract rights of the officer.

CHAPTER 11. GENERAL STANDARDS FOR DIRECTORS AND OFFICERS

SECTION 33-11-1. Discharge of Duties.

Directors and officers shall discharge their duties:

(a) in good faith;

(b) with the care an ordinary and prudent person in a like position would exercise under similar circumstances; and

(c) in a manner reasonably believed to be in the best interests of the corporation

SECTION 33-11-2. Reliance.

In discharging their individual duties, a director or officer is entitle d to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the officer, or director reasonably believes to be reliable and competent in the matters presented;

(b) legal counsel, public accountants or other persons as to matters the officer or director reasonably believes are within the person's professional or expert competence; or

(c) a committee of the board-of directors upon which the officer or director does not serve, if such officer or director reasonably believes the committee merits confidence.

Directors and officers are not liable for any action taken in their corporate capacity, or any failure to take any action, if they performed the duties of office in compliance with this section.

CHAPTER 12. SHAREHOLDERS; MEETINGS; VOTING

SECTION 33-12-1. Meetings of Shareholders.

A corporation may hold a meeting of shareholders on an annual or other less frequent periodic basis, but such meetings need not be held unless required by the articles of incorporation or bylaws or by Section 33-12-3. Annual meetings need not be held within the boundaries of the Reservation, but annual meetings of corporations wholly owned by the Tribe shall, if held, be held within 100 miles of the Reservation.

SECTION 33-12-2. Effect of Failure to Hold Meetings.

The failure to hold an annual meeting does not affect the validity of any corporate action.

SECTION 33-12-3. Demand of Shareholders for Meetings.

If a regular meeting of shareholders has not been held during the immediately preceding 400 days, a shareholder or shareholders holding 3% or more of the voting power of all shares entitled to vote may demand a regular Meeting of shareholders by written notice of demand given to an officer of the corporation. Within 30 days after receipt of the demand by an officer, the board of directors shall cause a regular meeting of the shareholders to be called and held on notice no later than 90 days after receipt of the demand, all at the expense of the corporation. If the board of directors fails to cause a regular meeting to be called and held as required by this Section 17-12-3, the shareholder or shareholders making the demand may call the regular meeting by giving notice as required by Section 17-12-6, all at the expense of the corporation.

SECTION 33-12-4. Special Meetings for Corporation Wholly Owned by the Tribe.

In the case of corporations wholly owned by the Tribe, a special meeting may be called and held in the same manner as applicable law provides for meetings of the Tribal Council.

SECTION 33-12-5. Necessary Action.

Unless the articles of incorporation or bylaws provide otherwise, action required to be taken at a shareholder's meeting may be taken without a meeting if the action is taken by the holders of a majority of shares or the holders of a majority of each class of shares entitled to vote: Such action must be evidenced in writing, signed by the requisite number of shareholders ,and delivered to the corporation for inclusion in the minutes and records.

SECTION 33-12-6. Notice of Shareholder Meetings.

A corporation shall notify shareholders of the date, time and place of each annual or special shareholders' meeting at least 10 days before the meeting. A shareholder may waive notice and a shareholder may be deemed to have waived notice if the shareholder attends the meeting unless the shareholder objects at the beginning of the meeting.

SECTION 33-12-7. Voting Entitlement of Shares; Proxy Voting.

Unless the articles of incorporation or bylaws provide otherwise, and subject to the provisions of Section 33-3-3 of this Title, each outstanding share is entitled to one vote on each matter voted on at a shareholder's meeting. A shareholder may vote a share in person or by proxy provided that shareholder has appointed a proxy by signing an appointment and filed the appointment with the corporation.

SECTION 33-12-8. Voting Trusts and Agreements.

One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the trust's provisions and transferring the shares to the trustee. When a voting trust agreement is signed, the trustee shall deliver to the corporation the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares transferred to the trust. Two or more shareholders may also provide for the manner in which they will vote their shares by signing an agreement for that purpose. This Section, 33-12-8, shall not apply to shares in corporations wholly owned by the Tribe.

SECTION 33-12-9. Voting Trusts Void for Corporations Wholly Owned by the Tribe.

Any voting trust agreement for shares held in a corporation wholly owned by the Tribe shall be void and unenforceable.

SECTION 33-12-10. Quorum.

The holders of a majority of the voting power of the shares entitled to vote at a meeting are a quorum for the transaction of business, unless a larger or smaller proportion or number is provided in the articles or bylaws. The shareholders shall take action by the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote, except where this Title or the articles require a larger proportion or number. If the articles require a larger proportion or number than is required by this Title for a particular action, the articles control.

SECTION 33-12-11. Shareholder; right to dissent; payment; when.

(a) Any shareholders of a corporation shall have the right to dissent from, and obtain payment for their shares in the event of, any of the following corporate actions:

(1) Any plan of merger or consolidation to which the corporation is a party, except as provided in subsection (3) of this section;

(2) Any sale or exchange of all or substantially all of the property and assets of the corporation, otherwise than in the usual and regular course of its business and other than a sale for cash when the shareholders' approval thereof is conditional upon the distribution of all or substantially all of the net proceeds of the sale to the shareholders in accordance with their respective interests within one year after the date of sale;

(3) Any plan of exchange to which the corporation is a party as the corporation the shares of which are to be acquired;

(4) Any amendment of the articles of incorporation which materially and adversely affects the rights appurtenant to the shares of the dissenting shareholder if such amendment:

(A) Alters or abolishes a preferential right of such shares;

(B) Creates, alters or abolishes a right in respect of the redemption of such shares, including a provision respecting a sinking fund for the redemption or repurchase of such shares;

(C) Alters or abolishes a preemptive right of the holder of such shares to acquire shares or other securities; or

(D) Excludes or limits the right of the holder of such shares to vote on any matter or to cumulate his or her votes, except as such right may be limited by dilution through the issuance of shares or other securities with similar voting rights; or

(5) Any other corporate action taken pursuant to a shareholder vote with respect to which the articles of incorporation, the bylaws or a resolution of the board of directors directs that dissenting shareholders shall have a right to obtain payment for their shares.

(b) A record holder of shares may assert dissenters' rights as to less than all of the shares registered in his or her name. In that event, his or her right shall be determined as if the shares as to which he or she has dissented and his or her other shares were registered in the names of different shareholders.

(1) A beneficial owner of shares who is not the record holder may assert dissenters' rights with respect to shares held on his or her behalf and shall be treated as a dissenting shareholder under the terms of this section and section 33-12-12 if he or she submits to the corporation at the time of or before the assertion of these rights a written consent of the record holder.

(c) The right to obtain payment under this section shall not apply to the shareholders of the surviving corporation in a merger if a vote of the shareholders of such corporation is not necessary to authorize such merger or to the shareholders of a bank, trust company, stock-owned savings and loan association, industrial loan and investment company or the holding company of any of such financial institutions.

(d) A shareholder of a corporation who has a right under this section to obtain payment for his or her shares shall have no right at law or in equity to attack the validity of the corporate action that gives rise to his or her right, to obtain payment; nor to have the action set aside or rescinded; except for mergers authorized under section 33-20-6 or when the corporate action is unlawful or fraudulent with regard to the complaining shareholder or to the corporation.

SECTION 33-12-12. Shareholders; right to dissent, payment; procedure.

(a) As used in this section, unless the context requires otherwise:

(1) Dissenter shall mean a shareholder or beneficial owner who is entitled to and does assert dissenters' rights under section 33-12-11 and who has performed every act required up to the time involved for the assertion of such rights;

(2) Corporation shall mean the issuer of the shares held by the dissenter before the corporate action or the successor by merger or consolidation of that issuer;

(3) Fair value of shares shall mean their value immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of such corporate action unless such exclusion would be inequitable; and

(4) Interest shall mean interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans, or, if none, at such rate as is fair and equitable under all the circumstances.

(b) If a proposed corporate action which would give rise to dissenters' rights under subsection (b) of section 33-12-11 is submitted to a vote at a meeting of shareholders, the notice of such meeting shall notify all shareholders that they have or may have a night to dissent and obtain payment for their shares by complying with the terms of this section and shall be accompanied by a copy of sections 33-12-11 and 33-12-12.

(c) If the proposed corporate action is submitted to a vote of a meeting of shareholders, any shareholder who wishes to dissent and obtain payment for his or her shares must file with the corporation, prior to the vote, a written notice of intention to demand that he or she be paid fair compensation for his or her shares if the proposed action is effectuated and shall refrain from voting his or her shares in approval of such action. A shareholder who fails in either respect shall acquire no right to payment for his or her shares under this section or section 17-12-11.

(d) If the proposed corporate action is approved by the required vote at a meeting of shareholders, the corporation shall mail a further notice to all shareholders who gave due notice of intention to demand payment and who refrained from voting in favor of the proposed action. If the proposed corporate action is to be taken without a vote of shareholders, the corporation shall send to all shareholders who are entitled to dissent and demand payment for their shares a notice of the adoption of the plan of corporate action. The notice shall (a) state where and when a demand for payment must be sent and certificates of certified shares must be deposited in order to obtain payment; (b) inform holders of uncertificated shares to what extent transfer of shares will be restricted from the time that demand for payment is received, (c) supply a form for demanding payment which includes a request for certification of the date on which the shareholder, or the person on whose behalf the shareholder dissents, acquired beneficial ownership of the shares and (d) be accompanied by a copy of section 33-12-11 and section 33-12-12. The time set for the demand and deposit shall be not less than 30 days from the mailing of the notice.

(e) A shareholder who fails to demand payment or fails, in the case of certified shares, to deposit certificates, as required by a notice pursuant to subsection (d) of this section, shall have no right under this section or section 17-12-11 to receive payment for his or her shares. If the shares are not represented by certificates, the corporation may restrict their transfer from the time of receipt of demand for payment until effectuation of the proposed corporate action. The dissenter shall retain all other rights of a shareholder until these rights are modified by effectuation of the proposed corporate action. If the proposed corporate action shall be abandoned or rescinded or the shareholder shall revoke the authority to effect such action, then the right of such shareholder to be paid the fair value of his or her shares shall cease.

(f) Immediately upon effectuation of the proposed corporate action or upon receipt of demand for payment if the corporate action has already been effectuated, the corporation shall remit to dissenters who have made demand and, if their shares are certificated, have deposited their certificates the amount which the corporation estimates to be the fair value of the shares, with interest, if any has accrued. The remittance shall be accompanied by:

(1) The corporation's closing balance sheet and statement of Income for a fiscal year ending not more than 16 months before the date of remittance, together with the latest available interim financial statements;

(2) A statement of the corporation's estimate of fair value of the shares; and

(3) A notice of the dissenter's right to demand supplemental payment, accompanied by a copy of sections 33-12-11 and 33-12-12.

(g) If the corporation fails to remit as required by subsection (f) of this section, or if the dissenter believes that the amount remitted is less than the fair value of his or her shares or that the interest is not correctly determined, he or she may send the corporation his or her own estimate of the value of the shares or of the interest and demand payment of the deficiency.

(1) If the dissenter does not send such an estimate within 30 days after the corporation's mailing of its remittance, he or she shall be entitled to no more than the amount remitted.

(h) Within 60 days after receiving a demand for payment pursuant to subsection (g) of this section, if any such demands for payment remain unsettled, the corporation shall file in the Tribal Court a petition requesting that the fair value of the shares and interest thereon be determined by the court.

(1) If, in the case of a merger, consolidation or exchange of shares, the corporation is a foreign corporation without a registered office on the Reservation, the petition shall be filed in the county where the registered office of the domestic corporation was last located.

(2) All dissenters, wherever residing, whose demands have not been settled shall be made parties to the proceeding as in an action against their shares. A copy of the petition shall be served on each such dissenter. If a dissenter is a nonresident, the copy may be served on him or her by registered or certified mail or by publication as provided by law.

(3) The jurisdiction of the Tribal Court shall be plenary and exclusive. The Court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or in any amendment of such order. The dissenters shall be entitled to discovery in the same manner as parties in other civil suits.

(4) All dissenters who are made parties shall be entitled to judgment for the amount by which the fair value of their shares is found to exceed the amount previously remitted, with interest.

(5) If the corporation fails to file a petition as provided in subdivision (h)(1) of this section, each dissenter who made a demand and who has not already settled his or her claim against the corporation shall be paid by the corporation the amount demanded by him or her, with interest, and may sue therefor in the Tribal Court.

(i) Notwithstanding the foregoing provisions of this section the corporation may elect to withhold the remittance required by subsection (6) of this section from any dissenter with respect to the shares of which the dissenter, or the person on whose behalf the dissenter acts, was not the beneficial owner on the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action. With respect to such shares, the corporation shall, upon effectuating the corporate action; state to each dissenter its estimate of the fair value of the shares, state the rate of interest to be used explaining the basis of such rate of interest and offer to pay the resulting amounts on receiving the dissenter's agreement to accept them in full satisfaction.

(1) If the dissenter believes that the amount offered is less than the fair value of the shares and interest determined according to this section, he or she may, within 30 days after the date of mailing of the corporation's offer, mail to the corporation his or her own estimate of fair value and interest and demand their payment. If the dissenter fails to do so, he or she shall be entitled to no more than the corporation's offer.

(2) If the dissenter makes a demand as provided in subdivision (1) of this subsection, the provisions of subsection (h) of this section shall apply to further proceedings on the dissenter's demand.

(j) Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under him or her shall be conclusively presumed to have approved and ratified the corporate action and shall be bound by the terms thereof.

(k) Shares required by a corporation pursuant to payment of the agreed value therefor or payment of the judgment entered therefor, as in this section provided, may be held and disposed of by such corporation as in the case of other treasury shares, except that, in the case of an effected merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide.

CHAPTER 13. DISSOLUTION

SECTION 33-13-1. Voluntary Dissolution by Incorporators.

A corporation which has not, commenced business and which has not issued any shares may be voluntarily dissolved by its incorporators at any time in the following manner.

(a) Articles of dissolution shall be executed in duplicate by a majority of the incorporators, and verified by them, and shall set forth:

(1) the name of the corporation;

(2) the date of issuance of its certificate of incorporation;

(3) that none of its shares has been issued;

(4) that the corporation has not commenced business;

(5) that the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;

(6) that no debts of the corporation remain unpaid; and

(7) that a majority of the incorporators elect that the corporation be dissolved.

(b) Duplicate originals of the articles of dissolution shall be delivered to the Enterprise Board. If the Enterprise Board finds that the articles of dissolution conform to law, it shall:

(1) endorse on each of such duplicate originals the word "filed" and the month, day and year of the filing thereof.

(2) file one of such duplicate originals in, the Enterprise Board's Office.

(3) issue a certificate of dissolution to which the Enterprise Board shall affix the other duplicate original.

(c) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the Enterprise Board, shall be returned to the incorporators or their representative. Upon the issuance of such certificate of dissolution by the Enterprise Board, the existence of the corporation shall cease.

SECTION 33-13-2. Voluntary Dissolution by Consent of Shareholders.

A corporation may be voluntarily dissolved by the written consent of all of its shareholders. Subject to 33-14-1 herein, a corporation wholly owned and operated by the Tribe shall only be dissolved voluntarily by a resolution adopted by a two-thirds majority of the then voting members of the Tribal Council, upon recommendation and approval of such resolution by the board of directors of the dissolving corporation. Upon the execution of such written consent, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president, in the case of corporations wholly owned by the Tribe, by the Chairman and Vice Chairman of the Tribe and, in all cases, by the corporation's secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(a) the name of the corporation;

(b) the names and addresses of its officers;

(c) the names and addresses of its directors;

(d) a statement that written consent has been signed by the shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized; and

(e) the written consent, which shall be signed by all shareholders of the corporation.

SECTION 33-13-3. Voluntary Dissolution by Act of Corporation.

(a) A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

(b) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(c) A corporation wholly owned and operated by the Tribe with no shares having been issued shall be dissolved by a resolution adopted by the board of directors and separately concurred in by a majority of the then voting members of the Tribal Council.

(d) Written notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this Title for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or special meeting, shall state that the purpose, or one of the purposes of such meeting is to consider the advisability of dissolving the corporation.

(e) At such meeting a vote of shareholders entitled to vote shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless an class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(f) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed in duplicate by the corporation by (a) its president or a vice president and (b) by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(1) the name of the corporation;

(2) a copy of the resolution adopted by the shareholders or the Tribe authorizing the dissolution of the corporation;

(3) the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class;

(4) the number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively;

(5) the names and addresses of its officers; and

(6) the names and addresses of its directors.

SECTION 33-13-4. Filing of Statement of Intent To Dissolve.

Duplicate originals of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the Enterprise Board. If the Enterprise Board finds that such statement conforms to law, the Enterprise Board shall:

(a) endorse on each of such duplicate originals the word "filed" and the month, day and year of the filing thereof;

(b) file one of such duplicate originals in the Enterprise Board's office; and

(c) return the other duplicate original to the corporation or its representative.

SECTION 33-13-5. Effect of Statement of Intent To Dissolve.

Upon the filing with the Enterprise Board of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof., but its corporate existence shall continue until a certificate of dissolution has been issued by the Enterprise Board or until a decree dissolving the corporation has been entered by the Enterprise Board.

SECTION 33-13-6. Procedure After Filing of Statement of intent To Dissolve.

After filing with the Enterprise Board the statement of intent to dissolve:

(a) The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation.

(b) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

(c) The corporation may, at any time during the liquidation of its business affairs, make application to the Tribal Court to have the liquidation continued under the supervision of the Tribal Court.

(d) No corporation shall be dissolved under this Title XVII until any and all fees and taxes due or assessable by the Tribe shall have been paid.

SECTION 33-13-7. Articles of Dissolution.

When all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice president and by its secretary, which statement shall set forth:

(a) the name of the corporation;

(b) that all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(c) that all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests; and

(d) that there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

SECTION 33-13-8. Filing Articles of Dissolution.

Duplicate originals of such articles of dissolution shall be delivered to the Enterprise Board. If the Enterprise Board finds that such articles of dissolution conform to tribal law, the Enterprise Board shall:

(a) endorse on each of such duplicate originals the word "filed" and the month, day and year of the filing thereof;

(b) maintain one of such duplicate originals in the Enterprise Board's Office;

(c) issue a certificate of dissolution to which the Enterprise Board shall affix the other duplicate original; and

(d) return the certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers.

SECTION 33-13-9. Involuntary Dissolution.

(a) A corporation may be dissolved involuntarily by a decree of the Tribal Court in an action filed in the name of the Tribe by the Enterprise Board when it is established that:

(b) The corporation procured its articles of incorporation through fraud;

(c) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(d) The corporation has failed for 90 days to appoint and maintain a registered agent on the Reservation; or

(e) The corporation has failed for 90 days after change of its registered officer or registered agent to file in the Enterprise Board's office a statement of such change.

(f) The corporation has failed for 60 days to pay any and all fees and taxes due pursuant to Titles 32, 33, 34 or 35.

SECTION 33-13-10. Voluntary Dissolution; Revocation; Consent of Shareholders.

(a) By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Enterprise Board, revoke voluntary dissolution proceedings theretofore taken.

(b) Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, which statement shall set forth:

(1) The name of the corporation;

(2) The names and respective street addresses of its officers;

(3) The names and respective street addresses of its directors:

(4) A copy of the written consent signed by all shareholders of the corporation revoking such voluntary dissolution proceedings; and

(5) That such written consent has been signed by all shareholders of the corporation or signed in their names by their attorney thereunto duly authorized.

SECTION 33-13-11. Voluntary Dissolution; Revocation; Act of Corporation.

By the act of the corporation, a corporation may, at any, time prior to the issuance of a certificate of dissolution by the Enterprise Board, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

(a) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of such revocation be submitted to a vote at a special meeting of shareholders:

(b) Written or printed notice, stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this Title for the giving of notice of special meeting of shareholders;

(c) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares; and

(d) Upon the adoption of such resolution a statement of revocation of voluntary dissolution proceedings shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, which statement shall set forth:

(1) The name of the corporation;

(2) The names and respective addresses of its officers;

(3) The names and respective street addresses of its directors;

(4) A copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings;

(5) The number of shares outstanding; and

(6) The number of shares voted for and against the resolution, respectively.

SECTION 33-13-12. Voluntary Dissolution; Revocation; Statement; Filing.

The original and a duplicate copy of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be delivered to the Enterprise Board, who shall, when a11 fees provided by law shall have been paid:

(a) File the original in its office; and

(b) Return to the corporation or its representative the duplicate copy stamped with the date of filing in the office of the Enterprise Board.

The duplicate copy of the statement of revocation of voluntary dissolution proceeding for a foreign corporation, bearing the date of filing in the office of the Enterprise Board; shall be recorded in the office of the county clerk of the county where the registered office of the corporation is located.

SECTION 33-13-13. Voluntary Dissolution; Revocation; Statement; Filing; Effect.

Upon filing and recording in the office of the Enterprise Board of the original of the statement of revocation of voluntary dissolution proceedings, whether by consent of the shareholders or by act of the corporation, the revocation. of the voluntary dissolution proceedings shall become effective and the corporation may again carry on its business.

SECTION 33-13-14. Venue and Process.

Every action for the involuntary dissolution of a corporation shall be commenced by the General Counsel for the Tribe in the name of the Tribe in the Tribal Court. Summons shall issue and be served as in other civil actions.

SECTION 33-13-15. Involuntary Dissolution; Action; Summons; Notice; Default.

Every action for the involuntary dissolution of a corporation shall be commenced by the General Council in the Tribal Court. Summons shall issue and be served as in other civil actions. If process is returned not found, the General Council shall cause publication to be made as in other civil cases in a newspaper published in the county where the last-known registered office of the corporation is situated, containing a notice of pendency of such action, the title of the court, the title of the action, and the date on or after which default may be entered. The General Council may include in one notice the names of any number of corporations against which actions are then pending in the same court. The General Council shall cause a copy of such notice to be mailed to the corporation at its last-known registered office or mailing address with-in ten days after the first publication thereof. The certificate of the General Council of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the first publication of such notice.

SECTION 33-13-16. Jurisdiction of Omaha Tripe of Nebraska.

The Tribe shall have full power to liquidate the assets and business of a corporation:

(a) In an action by a shareholder when it is established:

(1) that the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is.being suffered or is threatened by reason thereof;

(2) that the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent;

(3) that the shareholders are deadlocked in voting power and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

(4) that the corporate assets are being misapplied or wasted.

(b) In an action by a shareholder when it is established that:

(1) the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent;

(2) the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent;

(3) an application has been made by a corporation which has filed a statement of intent to dissolve, as provided in this Title, to have its liquidation continued under the supervision of the Tribal Court; or

(4) an action has been filed by the General Counsel for the Tribe to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

SECTION 33-13-17. Shareholders Not Necessary Parties.

It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

CHAPTER 14. LIQUIDATION OF CORPORATE ASSETS

SECTION 33-14-1. Procedure in Liquidation of Corporation by the Tribe.

The following procedures shall be followed in the event of liquidation of a corporation by the Tribe:

(a) In proceedings to liquidate the assets and business of a corporation, the Tribal Court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the Tribal Court from time to time may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated and carry on the business of the corporation until a full hearing can be had.

(b) In the event that a creditor or creditors petition the Tribal Court to appoint a liquidating receiver, such creditor or creditors shall pay such liquidating receiver's fees, which shall be set by the Tribal Court.

(c) After a hearing had upon such notice as the Tribe may direct to be given to all parties to the proceedings and to any other parties in interest designated by the Tribal Court, the Tribal Court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the Tribal Court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(d) The Tribal Court shall have power to allow from time to time as. expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(e) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The Tribal Court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

(f) A receiver of a corporation appointed under the provisions of this section shall, absent gross negligence, be held harmless for his or her official acts.

SECTION 33-14-2. Involuntary Dissolution; Receivers; Qualifications; Bond.

A receiver shall in all cases be a natural person or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business on the Reservation, and every receiver, shall give such bond as the Tribal Court may direct with such sureties as the Tribal Court, may require.

SECTION 33-14-3. Filing of Claims in Liquidation Proceedings.

In proceedings to liquidate the assets and business of a corporation, the Tribe may require all creditors of the corporation to file with the Clerk of the Tribal Court or with the receiver, in such folio as the Tribal Court may prescribe, proofs under oath of their respective claims. If the Tribal Court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the Tribal Court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of the Tribal Court, from participating in the distribution of the assets of the corporation.

SECTION 33-14-4. Discontinuance of Liquidation Proceedings.

The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the Tribal Court shall make such orders as it deems appropriate with respect to expenses and costs, and shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

SECTION 33-14-5. Decree of Involuntary Dissolution.

In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge; such costs, expenses, debts and obligations, all the property and assets have been applied so far, as they will go to their payment, the Tribal Court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

SECTION 33-14-6. Filing of Decree of Dissolution.

In case the Tribal Court shall enter a decree dissolving a corporation, it shall be the duty of the Clerk of the Tribal Court to cause a certified copy of the decree to be filed with the Enterprise Board. No fee shall be charged by the Enterprise Board-for the filing thereof.

SECTION 33-14-7. Deposit With the Tribe of Amounts Due Certain Shareholders.

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the Enterprise Board and shall, upon ex pane petition or such other proceeding as the Tribal Court deems proper, be paid over to such creditor or shareholder or to his legal representative upon proof reasonably satisfactory to the Enterprise Board of his right thereto.

SECTION 33-14-8. Survival of Remedy After Dissolution.

The dissolution of a corporation

(a) by the issuance of a certificate of dissolution by the Enterprise Board,

(b) by a decree of the Tribe when the Tribal Court has not liquidated the assets and business of the corporation as provided in this Title, or

(c) by expiration of its period of duration,

shall not take away or impair any remedy available to or against such corporation, its directors, officers, or shareholders, for any right or claim existing or any liability incurred, prior to such dissolution if action or other proceeding, thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation maybe prosecuted by or defended by the corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration and such amendment shall be deemed to relate back to such date of dissolution.

CHAPTER 15. CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS

SECTION 33-15-1. Foreign Corporations Must Have Certificate of Authority.

No foreign corporation shall transact business in territories under the jurisdiction of the Tribe unless it holds a Certificate of Authority, and no foreign company or corporation may purchase land in the territory under the jurisdiction of the Tribe.

SECTION 33-15-2. Application for Certificate of Authority.

In order to procure a Certificate of Authority to transact business, a corporation shall make application to the Enterprise Board, which application shall set forth:

(a) the name of the corporation and the Indian tribe, state or country under the laws of which it is organized;

(b) the date of its incorporation and the period of its duration;

(c) the address of its principal office;

(d) that it irrevocably consents to that service of process upon it as set forth in Section 2-2-7 or any amendment thereto;

(e) the name and respective addresses of its directors and officers;

(f) a statement of the aggregate number of shares having par value and shares without par value which it shall have authority to issue, itemized by classes and series;

(g) a statement of the aggregate number of its issued or allotted shares having par value and of shares without par value, itemized by classes and series; and

(h) a statement that the officers executing the application have been only authorized by the board of directors of the corporation.

Such application shall be made on forms prescribed and furnished by the Enterprise Board and shall be executed, acknowledged and verified by its president or vice president and by its secretary and delivered to the Enterprise Board with authenticated copies of its articles of incorporation.

SECTION 33-15-3. Issuance of Certificate of Authority.

If the application be according to law, the Enterprise Board, when all fees and charges have been paid as required by law, shall file in its office the application and a copy of the articles of incorporation and shall issue and record a Certificate of Authority to transact business on land under the jurisdiction of the Tribe upon the affirmative action of the Enterprise Board.

SECTION 33-15-4. Contents of Certificate of Authority.

The certificate of authority shall contain the name of the corporation, the Indian Tribe, or the state or country of organization, the period of duration of its corporate existence, the address of its registered office and a statement that it is authorized to transact business on land under the jurisdiction of the Tribe. No corporation shall transact business within territories under the jurisdiction of the Tribe after December 31, 1993 unless it holds a Certificate of Authority.

SECTION 33-15-5. Effect of Certificate of Authority.

After issuance of Certificate of Authority and until cancellation or revocation thereof or issuance of a certificate of withdrawal, the corporation shall possess within said territories the same rights and privileges that any corporation would possess if organized for the purpose set forth in the articles of incorporation of such corporation pursuant to which its Certificate of Authority is issued, and shall be subject to the laws of the Tribe.

SECTION 33-15-6. Registered Office on Trust Land.

Foreign corporations authorized to transact business on said territories shall have and continuously maintain a registered office on trust land within the territories under the jurisdiction of the Tribe.

SECTION 33-15-7. Application for Withdrawing, Filing.

(a) If a foreign corporation holding a Certificate of Authority desires to withdraw, it shall file an application for withdrawal with the Enterprise Board.

(b) The application for withdrawal shall set forth (a) the name of the corporation and the state and country under the laws of which it is organized, (b) that it has no property located on territories under the jurisdiction of the Tribe and has ceased to transact business therein, (c) that its board of directors has duly determined to surrender its authority to transact business on said territories, (d) that it revokes the authority of its registered agent in the Tribe to accept service of process, (e) the address to which the Enterprise Board shall mail copy of any process against the corporation that may be served upon it, (f) that it will pay to the Enterprise Board the amount of any additional license fee or tax properly found by the Enterprise Board to be then due from such corporation and (g) such additional information as may be required or demanded by the Enterprise Board to enable it to determine the additional fee, if any, payable by such corporation.

(c) The application for withdrawal shall be executed, acknowledged and verified on behalf of the corporation by its president or vice president, and by its secretary or, if the corporation is in the hands of a receiver or trustee, by such receiver or trustee.

(d) Such application for withdrawal shall be delivered to the Enterprise Board and upon receipt thereof, it conforms to the provisions of this Chapter, it shall be, when all license fees, filing fees and other charges have been paid as required by law, filed in the office of the Enterprise Board, and the Enterprise Board shall issue and record a certificate of withdrawal, and shall thereupon transmit such certificate to the Secretary of State of the state in which the registered office of the corporation is situated. Upon issuance of such certificate by the Enterprise Board, the authority of the corporation to transact business on lands under the jurisdiction of Tribe shall cease.

SECTION 33-15-8. License Revocation.

(a) The Certificate of Authority of a foreign corporation to transact business on said territories under the jurisdiction of the Tribe shall be revoked by the Enterprise Board if it fails:

(1) to pay any fee due under the provisions of this Chapter or any other provision of Tribal law;

(2) to designate a registered agent when a vacancy occurs in that office, or when the appointed registered agent becomes disqualified or incapacitated;

(3) to file an annual report.

(b) When the Enterprise Board shall find that any such default has occurred, it shall give notice by certified mail to such corporation, at its registered office, that such default exists and that its Certificate of Authority will be revoked unless such default shall be cured within 30 days after the mailing of such notice.

(c) The Enterprise Board shall revoke the Certificate or Authority of such corporation to do business on territories under the jurisdiction of the Tribe if such default shall not be cured within such period of 30 days, provided that for good cause shown the Enterprise Board may enlarge the period from time to time, but the aggregate of such enlargement shall not exceed three months.

(d) Upon revoking such Certificate of Authority, the Enterprise Board shall:

(1) issue a certificate of revocation, in duplicate;

(2) transmit one of such certificate to the Secretary of State of the state in which the registered office of the corporation is situated; and

(3) mail to such corporation, at its principal office in the state or county under the laws of which it is organized, a notice of such revocation, accompanied by one such certificate, and mail to such corporation, at its registered office on the Reservation, a notice of such revocation.

(e) Upon the issuance of such certificate of revocation; the authority of the corporation to transact business on territories under the jurisdiction of the Tribe shall cease.

SECTION 33-15-9. Cancellation of Certificate of Authority.

(a) When the public interest may require, the General Counsel of the Tribe shall bring an action against a foreign corporation to cancel its Certificate of Authority to transact business on territories under the jurisdiction of the Tribe upon the grounds that

(1) the Certificate of Authority was procured through fraud practiced upon said territories;

(2) the Certificate of Authority should not have been issued to the corporation under this Chapter;

(3) the Certificate of Authority was procured without a substantial compliance with the conditions prescribed by this Chapter or precedent or essential to its issuance;

(4) the corporation has offended against any provisions of the Tribal law regulating corporations, or has abused or usurped corporation privileges or power;

(5) the corporation is knowingly and persistently violating any provisions of Tribe law; or

(6) the corporation has done or omitted any action which amounts to a surrender of its Certificate of Authority.

(b) If the ground for the action is an act which the corporation has done or omitted to do, and it appears probable that correction can be made, then such action shall not be instituted unless the General Counsel shall give notice to such corporation by certified mail at its registered office on territories under the jurisdiction of the Tribe that such default or violation exists, and that an action to cancel its Certificate of Authority will begin unless such default shall be cured or such violation discontinued within 30 days, provided that for good cause shown the General Counsel may enlarge this period from time to time, but the aggregate of such enlargement shall not exceed three months.

(c) The General Counsel shall cause two certified copies of the judgment cancelling a certificate of authority to be delivered to the Enterprise Board. The Enterprise Board shall file one copy in its office and shall transmit the other copy to the Secretary of State of the state in which the registered office of the corporation is located.

(d) Any foreign corporation whose certificate of authority to do business on said territories shall have been revoked or cancelled may file with the Enterprise Board an application for reinstatement. Such application shall be on forms prescribed by the Enterprise Board and shall contain all the matters required to be set forth in an original application for a certificate of authority and such other pertinent information as may be required by the Enterprise Board.

(e) If the certificate of authority was revoked by the Enterprise Board pursuant to Section 33-15-9, the corporation shall pay to the Enterprise Board of the Tribe $200 before it may be reinstated. If the certificate of authority was cancelled by a judgment pursuant to Section 17-15-10, the corporation shall pay the Enterprise Board of the Tribe $500 before it may be reinstated.

(f) Upon filing of such application and upon payment of all penalties, fees and charges required by law, not including, however, an initial license fee or additional license fees to the extent that the same have theretofore been paid by such corporation, the Enterprise Board shall issue and record a certificate of reinstatement and shall transmit such certificate, together with a fee of $1.00, to the Secretary of State of the state in which the registered office of the corporation in this state. The Secretary of State shall record such certificate for such fee.

SECTION 33-15-10. Certificate Issued by the Enterprise Board.

(a) Any certificate issued by the Enterprise Board pursuant to the provisions of this Chapter, and copies of such certificate by it shall be prima facie evidence of the matter stated therein and, except certificate issued pursuant to Section 33-15-11(b), may be recorded in the office of the Enterprise Board.

(b) A certifcate of the Enterprise Board to the effect that a foreign corporation is not authorized to transact business in territories under the jurisdiction of the Tribe shall be prima facie evidence of the facts therein stated.

CHAPTER 16. FEES

SECTION 33-16-1. Incorporation Fees; License Fees Duration.

Upon submission of articles of incorporation a corporation shall pay the Enterprise Board the sum of $100 which shall be refundable only upon rejection of the articles of incorporation by the Enterprise Board. At the time of making application for a certificate of authority, the foreign or domestic corporation making such application shall pay the Enterprise Board the sum of $125 as an initial license fee. Prior to the issuance of a certificate of authority, each foreign or domestic. corporation shall pay to the Enterprise Board the sum of $375 as a license fee. Each certificate of authority shall be valid for one year from the date of issuance. An instrument extending or renewing corporate existence shall pay to the Enterprise Board the sum of $100. All fees shall be nonrefundable.

SECTION 33-16-2. Service of Process Fees.

When any foreign or domestic corporation incorporated under or authorized to transact business in said territories fails to appoint or maintain a registered agent upon whom service of process may be had, or whenever any registered agent cannot be found at its registered office as shown by the return of the officer of the Tribe or whenever any corporation withdraws from said territories or whenever the Certificate of Authority of any foreign or domestic corporation is revoked or cancelled, service may be made by delivering to and leaving with the Commissioner of Business Affairs or his designee three copies thereof and a fee of $10, provided that; after a foreign or domestic corporation withdraws from said territories, pursuant to Chapter 15, service upon the corporation may be pursuant to the provision of this section only

when based upon the liability or obligation of the corporation incurred within said territories by the corporation prior to the issuance of a certificate of withdrawal.

SECTION 33-16-3. Service of Process Fees for Foreign Corporations.

If a foreign-corporation makes a contract with a resident of the Tribe to be performed in whole or in part by either party on said territories or if a foreign or domestic corporation commits a tort in whole or in part in said territories against a resident of the Tribe, such acts shall be deemed to be doing business on territories under the jurisdiction of the Tribe by the foreign corporation and shall be deemed equivalent to the appointment by the foreign or domestic corporation of the Commissioner of Business Affairs and his successors to be its true and lawful attorney upon whom it may be served all lawful process in any action or proceedings against the foreign or domestic corporation arising from or growing out of contract or tort. Process shall be served in duplicate upon the Commissioner of Business Affairs, together with a fee of $10, and the Commissioner of Business Affairs shall mail one copy thereof to the corporation at its last known address and the corporation shall have 10 days within which to answer from the date of mailing, notwithstanding any other provision of the law. The making of the contract or the committing of the tort shall be deemed to be the agreement of the foreign or domestic corporation that any process against it which is so served upon the Commissioner of Business Affairs of the Tribe shall be of the same legal force and effect as if served personally on it within territories under the jurisdiction of the Tribe.

SECTION 33-16-4. Forfeitures.

A corporation or business shall forfeit to the Tribe $50 for each day it neglects to keep any or all of the books or records as required by the Enterprise Board.

SECTION 33-16-5. Partial Waiver of Fees.

Any member of the Tribe who seeks to engage in any commercial activity on lands under the jurisdiction of the Tribe, pursuant to this Title, shall be eligible for a waiver of imposed fees of 50 % upon a showing of proof of enrollment.

CHAPTER 17. EFFECT OF INVALIDITY OF PART OF THIS TITLE

SECTION 33-17-1. Effect of Invalidity of Part of This Title.

If the Tribe shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this Title, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Title, but the effect thereof shall be confined to the clause, sentence, paragraph. section or part of this Title as adjudged to be invalid or unconstitutional.

CHAPTER 18. EFFECTIVE DATE

SECTION 33-18-1. Effective Date.

This Title shall be in full force and effect according to its terms from and after December 3, 1993.

CHAPTER 19. CORPORATE CONTRACTS

SECTION 33-19-1. Corporation Contracts Preserved.

Otherwise lawful contracts and other obligations of any corporation shall not be impaired by any subsequent action of the Tribe or its Tribal Council. No corporation wholly owned by the Tribe may be dissolved under Section 33-13-2 unless all contracts, debts and obligations of the corporation are satisfied,

SECTION 33-19-2. Actions to Impair Corporate Contracts.

Actions to restrain any attempts to impair contracts of Tribal corporations, or to declare such actions null and void, shall be available to any interested party in the Tribe. If the court finds for the plaintiff in any such action, it shall award treble damages, including all costs, attorney fees and disbursements. Nothing in this Chapter shall be construed to restrict the general application of law or of this Title to the acts and contracts of Tribal corporations.

CHAPTER 20. MERGER AND CONSOLIDATION

SECTION 33-20-1. Merger, Procedure.

Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this Title XVII. The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(a) The names of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation:

(b) The terms and conditions of the proposed merger;

(c) The manner and basis of converting the equity securities of each corporation into securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property and, if any equity securities of each merging corporation are not be converted solely into securities of the surviving entity, the cash, property or securities of any other corporation which the holders of such equity securities are to receive in exchange for, or upon conversion of, such equity securities and the surrender of the certificates evidencing them, which cash, property or securities of any other corporation may be in addition to or in lieu of securities of the surviving corporation;

(d) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger; and

(e) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

SECTION 33-20-2. Consolidation; Procedure.

Any two or more domestic corporations may consolidate into a new entity pursuant to a plan of consolidation approved in the manner provided in this Title.

(a) The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

(b) The names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(c) The terms and conditions of the proposed consolidation;

(d) The manner and basis of converting the equity securities of each corporation into securities of the new corporation or of any other corporation or, in whole or in part, into cash or other property and, if any equity securities of such corporation are not to be converted solely into securities of the new corporation, the cash, property or securities of any other corporation which the holders of such equity securities are to receive in exchange for, or upon conversion of, such equity securities and the surrender of the certificates evidencing them, which cash, property or securities of any other corporation may be in addition to or in lieu of securities of the new corporation;

(e) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under the act; and

(f) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

SECTION 33-20-3. Exchange of Shares; Procedure.

All the issued or all the outstanding shares of one or more classes of any domestic corporation may be acquired through the exchange of all such shares of such class or classes by another domestic or foreign corporation pursuant to a plan of exchange approved in the manner provided in this Title.

The board of directors of each corporation shall, by resolution adopted by, each such board, approve a plan of exchange setting forth:

(a) The name of the corporation the shares of which are proposed to be acquired by exchange and the name of the corporation to acquire the shares of such corporation in the exchange, which is hereinafter designated as the acquiring corporation;

(b) The terms and conditions of the proposed exchange;

(c) The manner and basis of exchanging the shares to be acquired for shares, obligations or other securities of the acquiring corporation or any other corporation or, in whole or in part, for cash or other property; and

(d) Such other provisions with respect to the proposed exchange as are deemed necessary or desirable.

The procedure authorized by this section shall not be deemed to limit the power of a corporation to acquire all or part of the shares of any class or classes of a corporation through a voluntary exchange or otherwise by agreement with the shareholders.

SECTION 33-20-4. Merger, Consolidation or Exchange; Approval of Shareholders; Exception.

(a) The board of directors of each corporation in the case of a merger or consolidation, and the board of directors of the corporation the shares of which are to be acquired in the case of exchange, upon approving such plan of merger, consolidation or exchange, shall, by resolution, direct that the plan be submitted to a vote at a meeting of its shareholders, which may be either an annual or a special meeting. Written or printed notice shall be given to each shareholder of record entitled to vote at such meeting, not less than 20 days before such meeting, in the manner provided in this Title, for the giving of notice of meetings of shareholders and, whether the meeting be an annual or special meeting, shall state that the purpose or one of the purposes of the meeting is to consider the proposed plan of merger, consolidation or exchange. A copy or a summary of the plan of merger, consolidation or exchange, as the case may be, shall be included in or enclosed with such notice.

At each such meeting, a vote of the shareholders shall be taken on the proposeed plan. Each outstanding share of each such corporation shall be entitled to vote on the proposed plan, whether or not such share has voting rights under the provisions of the articles of incorporation of such corporation. The plan shall be approved upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares of each such corporation, unless any class of shares of any such corporation is entitled to vote as a class thereon, in which event, as to such corporation, the plan shall be approved upon receiving the affirmative vote of the holders of a least two-thirds of the outstanding shares of each class of shares entitled to vote as a class thereon and of the total outstanding shares. Any class of shares of any such corporation shall be entitled to vote, if any such plan contains any provision which, if contained in a propose amendment to the articles of incorporation, would entitle such class of shares to vote as a class and, in the case of an exchange, if the class is included in the exchange.

After such approval by a vote of the shareholders of each corporation, and at any time prior to the filing of the articles of merger, consolidation or exchange, the merger, consolidation or exchange may be abandoned pursuant to provisions thereof, if any, set forth in the plan.

(b) Notwithstanding the provisions of subsection (a) of this section, submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation shall not be required if:

(1) The articles of incorporation of the surviving corporation do not differ except in name from those of the corporation before the merger;

(2) Each holder of shares of the surviving corporation which were outstanding immediately before the effective date of the merger is to hold the same number of shares with identical rights immediately after;

(3) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued, will not exceed by more than 20 % the number of voting shares outstanding immediately before the merger; and

(4) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued, will not exceed by more than 20 % the number of participating shares outstanding immediately before the merger.

(c) As used in subsection (b) of this section:

(1) Voting shares shall mean shares which entitle their holders to vote unconditionally in elections of directors; and

(2) Participating shares shall mean shares which entitle their holders to participate without limitation in distribution of earnings or surplus.

SECTION 33-20-5. Merger, Consolidation or Exchange; Articles; Contents; Filing.

(a) Upon such approval, the articles of merger, the articles of consolidation or the articles of exchange shall be executed by each corporation by its president or a vice president and by its secretary or an assistant secretary and shall set forth:

(1) The plan of merger, consolidation or exchange;

(2) As to each corporation the shareholders of which were required to vote thereon, the number of shares outstanding and, if the shares of any class were entitled to vote as a class, the designation and number of outstanding shares of each such class;

(3) As to each corporation the shareholders of which were required to vote thereon, the number of shares voted for and against such plan, respectively, and, if the shares of any class were entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively; and

(4) As to the acquiring corporation in a plan of exchange, a statement that the adoption of, the plan and performance of its terms were duly approved by its board of directors and such other requisite corporate action, if any, as may be required of it.

(b) The original and a duplicate copy of the articles of merger, consolidation or exchange shall be delivered to the Enterprise Board, which shall, when all fees provided by law shall have been paid:

(1) File the original in the office of the Enterprise Board; and

(2) Return to the surviving, new or acquiring corporation, as the case may be, or its representative, the duplicate copy stamped with the date of filing in the office of the Enterprise Board.

SECTION 33-20-6. Merger; Subsidiary Corporation; Procedure.

(a) Any corporation owning 95% of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(1) The name of the subsidiary corporation and the name of the corporation owning 95% of its shares, which is hereinafter designated as the surviving corporation;

(2) The manner and basis of converting the shares of the subsidiary corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property; and

(3) The business purpose or purposes for the proposed merger demonstrating a bona fide corporate need for the merger.

(b) A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(c) Articles of merger shall be executed in duplicate by the surviving corporation by its president or a vice president and by its secretary or an assistant secretary and shall set forth:

(1) The plan of merger;

(2) The number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(3) The date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(d) On and after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation, or upon the waiver thereof by the holders of all outstanding shares, duplicate originals of the articles of merger shall be delivered to the Enterprise Board. If the Enterprise Board finds that such articles conform to law, it shall, when all fees and occupation taxes have been paid:

(1) Endorse on each of such duplicate originals the word Filed, and the month, day and year of the filing thereof;

(2) File one of such duplicate originals in his or her office; and

(3) Issue a certificate of merger to which he or she shall affix the other duplicate original.

(e) The certificate of merger, together with the duplicate original of the articles of merger affixed thereto by the Enterprise Board, shall be returned to the surviving corporation or its representative.

SECTION 33-20-7. Merger, Consolidation or Exchange; When Effective; Consequences.

(a) A merger, consolidation or exchange shall become effective upon filing and recording in the office of the Enterprise Board of the original of the articles of merger, consolidation or exchange or on such later date, not more than 30 days subsequent to the filing thereof with the Enterprise Board, as shall be provided for in the plan. When such merger or consolidation has become effective:

(1) The several corporations which are parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;

(2) The separate existence of all corporations which are parties to the plan of merger or consolidation except the surviving or new corporation shall cease;

(3) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all duties and liabilities of a corporation organized under this Title;

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of a public as well as of a private nature of each of the merging or consolidating corporations. All property, real, personal and mixed, all debts due on whatever account, all other things and causes of action and all and every other interest of or belonging to or due to each of the corporations so merged or consolidated shall be taken and deemed to be transferred to

and vested in such corporation without further act or deed and shall thereafter be the property of the surviving or new corporation to the same extent as they were of each of such merging or consolidating entities. The title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way unpaired by reason of such merger or consolidation.

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporations shall be impaired by such merger or consolidation;

(6) In the case of a merger, other than a merger under the provisions of section 17-20-6, the surviving entity's articles of incorporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in, the articles of incorporation of corporations organized under this Title shall be deemed to be the original articles of incorporation of the new entity; and

(7) The net surplus of the merging or consolidating corporations which was available for the payment of dividends immediately prior to such merger or consolidation, to the extent that such surplus is not transferred to stated capital or capital surplus by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by such surviving or new corporation.

(b) When a merger, consolidation or exchange has become effective, the equity securities of the corporation or corporations party to the plan that are, under the terms of the plan, to be converted or exchanged, shall cease to exist, in the case of a merger or consolidation, or be deemed to be exchanged in the case of an exchange, and the holders of such equity securities shall thereafter be entitled only to the cash, property or securities into which they shall have been converted or for which they shall have been exchanged, in accordance with the plan, subject to any rights under section 33-12-11.

SECTION 33-20-8. Merger, Consolidation or Exchange; Domestic and, Foreign Corporations; Procedure.

(a) One or more foreign corporations and one or more domestic corporations or any combination of such entities may be merged or consolidated, or participate in an exchange, in the following manner, if such merger, consolidation or exchange is permitted by the laws of the state under which each such foreign corporation is organized:

(1) Each domestic corporation shall comply with this Title with respect to the merger, consolidation, or exchange, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized; and

(2) If the surviving or new entity in the merger or consolidation is to be governed by the laws of any state, it shall comply with this Title if it is to transact business on the Reservation, and, in every case, it shall file with the Enterprise Board:

(A) An agreement that it may be served with process within or without the Reservation in any proceeding in the Tribal Court for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new entity; and

(B) An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they will be entitled under this Title with respect to the rights of dissenting shareholders.

(b) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations if the surviving or new entity is to be governed by the laws of the Tribe. If the surviving or new entity is to be governed by the laws of any state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such state provide otherwise.

(c) At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

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