

OMAHA TRIBAL CODE (2013)

TITLE 34. NOT-FOR-PROFIT CORPORATIONS

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TITLE 34. NOT-FOR-PROFIT CORPORATIONS

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

CHAPTER 1. GENERAL PROVISIONS

SECTION 34-1-2. Title.

This Title shall be known as the Omaha Tribe of Nebraska Not-for-profit Corporation Title.

SECTION 34-1-3. 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.

SECTION 34-1-4. Defined Terms.

As used in Title, unless the context otherwise requires:

- (a) "*articles of incorporation*" or "*articles*" shall include the original articles of incorporation, and all amendments thereto, and includes articles of merger.
- (b) "*board of directors*" shall mean the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated.
- (c) "*bylaws*" shall mean the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.
- (d) "*corporation*" or "*domestic corporation*" shall mean a corporation not for profit subject to the provisions of this Title, except a foreign corporation.
- (e) "*Enterprise Board*" shall have the meaning set forth in Title 32.
- (f) "*foreign corporation*" shall mean a corporation not for profit organized under laws other than the laws of this state.
- (g) "*General Counsel*" shall mean the general counsel to the Tribe.
- (h) "*insolvent*" shall mean the inability of a corporation to pay debts as they become due in the usual course of its affairs.
- (i) "*member*" shall mean one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.
- (j) "*not for profit corporation*" shall mean a corporation where no part of the income of which is distributable to its members, directors or officers.
- (k) "Title" shall mean the Omaha Tribe of Nebraska Not-For-Profit Corporations Title.
- (l) "*Reservation*" shall mean the territory within the exterior boundaries of the Omaha Indian Reservation (including Blackbird Bend and all 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.
- (m) "*Tribe*" shall mean the Omaha Tribe of Nebraska.

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SECTION 34-1-5. Sections; Applicability.

The provisions of this Title relating to domestic corporations shall apply to

- (a) all corporations organized under the provisions of this Title;
- (b) all not-for-profit corporations heretofore organized under any act hereby repealed, without shares or capital stock and for a purpose or purposes for which a corporation might be organized under the provisions of this Title; and
- (c) each not-for-profit corporation having shares or capital stock organized under any act hereby repealed and each not-for-profit corporation, whether with or without shares or capital stock, heretofore organized under any general law or created by special act of the legislature of this state for a purpose or purposes for which a corporation may be organized under the provisions of this Title, but not otherwise entitled to the rights, privileges, immunities and franchises provided by this Title, which shall elect to accept the provisions of this Title as hereinafter provided in this Title.

The provisions of this Title relating to foreign corporations shall apply to all foreign not-for-profit corporations conducting affairs on the Reservation for a purpose or purposes for which a corporation might be organized under the provisions of this Title.

SECTION 34-1-6. Corporate Name.

The corporate name:

- (a) 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
- (b) shall not be the same as or deceptively similar to, the name of any corporation, whether for profit, existing under any act of the Tribe, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, or a trade name, or corporate name reserved or registered as permitted by the laws of the Tribe; and
- (c) shall be transliterated into letters of the English alphabet, if it is not in English.

SECTION 34-1-7. Registered Office; Registered agent.

Each corporation shall have and continuously maintain on the Reservation:

- (a) a registered office which may be, but need not be, the same as its principal office; and
- (b) a registered agent, that may be either a Tribal member whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs on the Reservation, having an office identical with such registered office.

SECTION 34-1-8. Registered Office; Registered Agent; Change.

(a) A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the Enterprise Board a statement in duplicate setting forth:

- (1) the name of the corporation;
- (2) the street address of its then registered office;
- (3) if the street address of its registered office is being changed, the street address to which the registered office is to be changed;
- (4) the name of its then registered agent;
- (5) if its registered agent be changed, the name of its successor registered agent;

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(6) that the street address of its registered office and the street address of the office of its registered agent, as changed, will be identical; and

(7) that such change was authorized by the board of directors and the date on which the resolution authorizing such change was approved.

(b) Such statement shall; be executed by the corporation by its president or a vice president and delivered to the Enterprise Board in duplicate on forms furnished by the Enterprise Board. If the Enterprise Board finds that such statement conforms to the provisions of this Title, it shall file such statement in its office. In the case of a foreign corporation, a duplicate statement, bearing the date of filing in the office of the Enterprise Board, shall be recorded in the office of the Secretary of State of the state where the registered office of the corporation is located. If the statement changes the location of the registered office to another state, the statement bearing the date of the filing in the office of the Enterprise Board shall be filed in both states.

(c) Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Enterprise Board, which shall forthwith mail a copy thereof to the corporation in care of an officer, who is not the resigning registered agent, at the address of such officer as shown by the most recent annual report of the corporation. The appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the Enterprise Board.

(d) Failure to comply with the provisions of this section shall result in the suspension of such corporation. A registered agent must be appointed to remove such suspension of the corporation.

(e) If the corporation is suspended, the annual report and fee cannot be filed and paid in the office of the Enterprise Board until a registered agent is appointed, if the report is not filed, the fee paid and the registered agent appointed by June 2 of the current year, when the fees and report become delinquent, the corporation shall be dissolved for nonpayment of fees in compliance with Section 34-10-4.

SECTION 34-1-9. Service of Process.

The registered agent so appointed by the corporation shall be an agent of such corporation upon whom process, or other legal notice of the commencement of any legal proceeding, or in the prosecution thereof, may be served.

SECTION 34-1-10. Corporate Purposes; Immunities; Taxation of Property; Exemptions.

(a) Corporations may be organized under the provisions of this Title for any lawful purpose or purposes, including, without being limited to, any one or more of the following purposes: charitable, benevolent, eleemosynary, educational, civic, patriotic, political, religious, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural, animal husbandry and professional, commercial, industrial or trade association, providing for, erecting, owning, leasing, furnishing and managing any building, hall, dormitory or apartments, lands or grounds for the use or benefit in whole or in part of any governmental, religious, social, educational, scientific, fraternal or charitable society or societies, body or bodies institution or institutions, incorporated or unincorporated, or for the purpose of holding property of any nature in trust for such society, body or institution or for the purpose of assisting any governmental body in obtaining grants from the federal government, the performance of any requirements necessary to obtain a federal grant or carrying out the purpose for which a federal grant is obtained.

(b) Corporations organized pursuant to the provisions of this Title as to the ownership and taxation of their property, shall have all the rights, privileges and exemptions of the body, society or institution for whose use or benefit or for whom in trust said property is held.

(c) Corporations of which the Tribe is the sole member and which are organized under the provisions of this Title may assume any or all of the Tribe's rights, privileges and immunities, including, without limitation, sovereign immunity.

SECTION 34-1-11. Shares of Stock and Dividends; Prohibited.

A corporation shall not have or issue shares of stock. No dividend shall be paid and no part of the income of such a corporation shall be distributed to its members, directors or officers. A corporation may

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pay compensation in a reasonable amount to its members, directors or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon' dissolution or final liquidation may make distributions to its members as permitted by the provisions of this Title, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income.

SECTION 34-1-12. Incorporators; Number.

Two or more persons may incorporate a not-for-profit corporation by signing and delivering articles of incorporation in duplicate to the Enterprise Board.

SECTION 34-1-13. Books and Records; Where Kept.

Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors and shall keep at its registered office or principal office in this state a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by the Enterprise Board or by any member, or its agent or attorney, for any proper purpose at any reasonable time.

CHAPTER 2. CORPORATE POWERS

SECTION 34-1-14. Corporations; Powers.

Each corporation shall have power:

- (a) to have perpetual succession by its corporate name 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;
- (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;
- (d) to purchase, take, receive, lease, take by gift, devise or bequest, 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;
- (f) to lend money to its employees other than its officers and directors;
- (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, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other tribe, government, state, territory, governmental district or municipality or of any instrumentality thereof;
- (h) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income;
- (i) to tend 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 affairs, carry on its operations and have offices and exercise the powers granted by the provisions of this Title on any Indian reservation or in any state, territory, district or possession of the United States or in any foreign country;
- (k) to elect or appoint officers and agents of the corporation and define their duties and fix their compensation;

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(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) unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, scientific or educational purposes, and in time of war to make donations in aid of war activities;

(n) To indemnify as follows:

(1) a corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding; whether civil, criminal, administrative or investigative other than an action by or in the right of the corporation by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or, upon a plea of nolo contendere or its equivalent, shall not, of, itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or, her conduct was unlawful;

(2) a corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the corporation unless and only to the extent that the court in which, such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper;

(3) to the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subdivisions (1) and (2) of this subdivision, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred in connection therewith;

(4) any, indemnification under subdivisions (1) and (2) of this subdivision, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in subdivisions (1) and (2) of this subdivision. Such determination shall be made by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding or, if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by the shareholders or members, as the case may be;

(5) expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action suit or proceeding as authorized in the manner provided in subdivision (d) of this subdivision upon receipt of an undertaking by or on behalf of the director, officer, employees or agent to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the corporation as authorized in this section;

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(6) the indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of shareholders, members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person; and

(7) a corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have the power to indemnify against, such liability under the provisions of this section;

(o) to cease its corporate activities and surrender its corporate franchise; and

(p) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

SECTION 34-1-15. Defense of Ultra Vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(a) in a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract and in so doing may allow, the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;

(b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the officers or directors of the corporation for exceeding their authority; or

(c) In a proceeding by the General Counsel, as provided in this Title, to dissolve the corporation, or in a proceeding by the General Counsel to enjoin the corporation from performing unauthorized acts, or in any other proceeding by the General Counsel.

CHAPTER 3. MEMBERSHIP

SECTION 34-1-16. Members.

A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein.

SECTION 34-1-17. Meetings.

Meetings of members may be held at such place, either within or without the Reservation, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the principal office of the corporation on the Reservation. Except as may be otherwise restricted by the articles of

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incorporation or bylaws, members may participate in any regular or special, meeting of the members or conduct the meeting through the use of any means of communication by which all, persons participating in the meeting can simultaneously hear each other during the meeting Participation by such means shall constitute presence in person at a meeting.

(a) An annual meeting of the members shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not constitute a forfeiture or dissolution of the corporation.

(b) Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

(c) A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least three days' notice, for such purposes as shall be stated in the notice of the meeting.

SECTION 34-1-18. Meetings; Notice.

(a) Notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If the corporation holds regular weekly meetings, such notice shall be deemed to be delivered by the announcement of such notice at not less than two consecutive regular meetings. If mailed, such notice may be included within any regular publication mailed to the members and shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

(b) The bylaws may provide that no notice need be given of regular meetings or of adjourned meetings.

SECTION 34-1-19. Voting ; Proxies.

(a) The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

(b) A member may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by a duly authorized attorney in fact. No proxy shall be valid after 11 months from the date of its execution unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

(c) The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate a vote and to give one candidate a number of votes equal to that vote multiplied by the number of directors to be elected or by distributing such votes on the same principle among any number of such candidates.

SECTION 34-1-20. Quorum.

The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The vote of a majority of the votes entitled to be cast by the members present, or, represented by proxy at a meeting at which a

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quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by the provisions of this Title, the articles of incorporation or the bylaws.

CHAPTER 4. BOARD OF DIRECTORS, MEETING OF BOARD OF DIRECTORS

SECTION 34-1-21. Qualifications.

The affairs of a corporation shall be managed by a board of directors. Directors need not be Tribal members, residents of the Reservation or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

SECTION 34-1-22. Number; Election; Term; Removal.

(a) The number of directors of a corporation shall be not, less than three Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number of the first board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(b) The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws in the absence of a provision fixing the term of office, the term of office of a director shall be one year.

(c) Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which elected or appointed and until a successor shall have been elected or appointed and qualified.

(d) A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation.

SECTION 34-1-23. Vacancies.

Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of the predecessor in office.

SECTION 34-1-24. Quorum.

A majority of the number of directors fixed by the bylaws or, in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws, but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the provisions of this Title, the articles of incorporation or the bylaws.

SECTION 34-1-25. Designation and Appointment of Committees.

If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation or in the bylaws of the corporation, shall have and exercise the authority of the

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board of directors in the management of the corporation, provided that no such committee shall have the authority of the board of directors in reference to amending, altering or repealing the bylaws: electing, appointing or removing any member of any such committee or any director or officer of the corporation; amending the articles of incorporation; adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the corporation; authorizing the voluntary dissolution of the corporation or revoking proceedings therefor; adopting a plan for the distribution of the assets of the corporation; or amending, altering or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered or repealed by such committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director, of any responsibility imposed upon it or him by law.

SECTION 34-1-26. Meeting.

(a) After the issuance of the certificate of incorporation an organizational meeting of the board of directors named in the articles of incorporation shall be held, either within or without the Reservation, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come; before the meeting: The incorporators calling the meeting shall give at least three days notice thereof by mail; to each director so named, which notice shall state the time and place of the meeting.

(b) Meetings of the board of directors, regular or special, may be held either within or without the Reservation. Regular meetings of the board of directors or any committee established by the board may be held with or without notice as prescribed, in the bylaws. Special meetings of the board of directors or any committee established by the board shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting unless the director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors or any committee established by the board need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

(c) Except as may be otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee established by the board may participate in any regular or special meeting of the board or committee or conduct the meeting through the use of any means of communications by which all persons participating in the meeting can simultaneously hear each other during the meeting. Participation by such means shall constitute presence in person at a meeting.

CHAPTER 5. CHAPTER V - CORPORATE OFFICERS

SECTION 34-1-27. Election; Appointment.

(a) The officers of a corporation shall consist of a president, one or more vice presidents, a secretary, a treasurer and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner as may be prescribed in the articles of incorporation or by the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. Any two or more offices may be held, by the same person, except the offices of president and secretary and except the offices of president and vice president.

(b) The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

(c) The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the bylaws.

SECTION 34-1-28. Removal.

Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal

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of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

SECTION 34-1-29. Loans to Directors and Officers Prohibited.

No loans shall be made by a corporation to its directors or officers. The directors of a corporation who vote for or assent to the making of a loan to a director or officer of the corporation, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment, thereof.

CHAPTER 6. BYLAWS AND ARTICLES OF INCORPORATION

SECTION 34-1-30. Bylaws, Adoption.

The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

SECTION 34-1-31. Contents of Articles of Incorporation.

- (a) The articles of incorporation shall set forth
 - (1) the name of the corporation;
 - (2) the period of duration, which may be perpetual;
 - (3) the purpose or purposes for which the corporation is organized;
 - (4) any provisions, 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 for distribution of assets on dissolution or final liquidation;
 - (5) the street address of its initial registered office and the name of its initial registered agent at such address;
 - (6) the number of directors constituting the initial board of directors and the names and street addresses of the persons who are to serve as the initial directors; and
 - (7) the name and street address of each incorporator.
- (b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Title.
- (c) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.
- (d) The articles of incorporation shall be signed by each of the incorporators.

SECTION 34-1-32. Articles of Incorporation; Filing; Fees.

The original and a duplicate copy of the articles of incorporation shall be delivered to the Enterprise Board. If the Enterprise Board finds that the articles of incorporation conform to law, it shall, when all fees have been paid

- (a) file the original in its office, and

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(b) return to the incorporators or their representative the duplicate copy, stamped with the date of filing in the office of the Enterprise Board.

SECTION 34-1-33. Certificate of Incorporation; Issuance; Effect.

Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Title, except as against the Tribe in a proceeding to cancel or revoke the certificate of incorporation.

SECTION 34-1-34. Articles of Incorporation; Amendment.

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation, as amended, contain only such provisions as are lawful under this Title.

SECTION 34-1-35. Articles of Incorporation; Amendment; Manner.

(a) Amendments to the articles of incorporation shall be made in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member 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 members. The proposed amendments shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast; and

(2) Where there are no members or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(b) Any number of amendments may be submitted and voted upon at any one meeting.

SECTION 34-1-36. Articles of Incorporation; Amendment; Procedure; Statements Required.

The amendments of the articles shall be executed in duplicate by the corporation, by its president or a vice president and by its secretary or an assistant secretary and shall set forth

(a) the name of the corporation;

(b) the amendment so adopted;

(c) where there are members having voting rights, (a) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting and that such amendment received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast or (b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; and

(d) where there are no members, or no members having voting rights, a statement of such fact the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

SECTION 34-1-37. Articles of Incorporation; Amendment; Filing; Fees.

(a) Duplicate originals of the amendments of the articles shall be delivered to the Enterprise Board. If the Enterprise Board finds that the amendments of the articles conform to law, it shall, when all fees have been paid;

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

(2) file and record one of such duplicate originals in his office.

(b) The duplicate original of the amendment of the articles shall be returned to the corporation or its representative.

SECTION 34-1-38. Articles of Incorporation; Amendment; Effect.

(a) Upon the filing of the amendment by the Enterprise Board, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(b) No amendment shall affect any existing cause of action in favor of or against such corporation or any pending action to which such corporation shall be a party, or the existing rights of persons other than members and in the event the corporate name shall be changed by amendment, no action brought by or against such corporation' under its former name shall abate for that reason.

CHAPTER 7. MERGER AND CONSOLIDATION

SECTION 34-1-39. Merger; Procedure.

(a) 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.

(b) Each corporation shall adopt a plan of merger setting forth:

(1) 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;

(2) the terms and conditions of the proposed merger;

(3) a statement of any changes in the articles of incorporation of the surviving corporation to be affected by such merger; and

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

SECTION 34-1-40. Consolidation; Procedure.

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

(b) Each corporation shall adopt a plan or consolidation setting forth:

(1) 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;

(2) the terms and conditions of the proposed consolidation;

(3) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this Title; and

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

SECTION 34-1-41. Merger or Consolidation; Approval.

(a) A plan of merger or consolidation shall be adopted in the following manner:

(1) Where the members of any merging or consolidating corporation having voting rights the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this

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Title for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast; and

(2) Where any merging or consolidating corporation has no members, or no members having voting rights, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

(b) After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefore, if any, set forth in the plan of merger or consolidation.

SECTION 34-1-42. Merger or Consolidation; Articles.

(a) Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate 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 or the plan of consolidation;

(2) where the members of any merging or consolidating corporation have voting rights, then as to each such corporation (i) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast or (ii) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; and

(3) where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation: a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

(b) Duplicate originals of the articles of merger, or articles of consolidation shall be delivered to the Enterprise Board. If the Enterprise Board finds that such articles conform to law, it shall, when all fees have been paid:

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

(2) file and record one of such duplicate originals in its office.

(c) The duplicate original of the articles of merger or articles of consolidation shall be returned to the surviving or new corporation, as the case may be, or its representative.

SECTION 34-1-43. Merger or Consolidation; Effective Date.

Upon the filing of the merger or the consolidation by the Enterprise Board, the merger or consolidation shall be effected.

SECTION 34-1-44. Merger or Consolidation; Effect.

When such merger or consolidation has been effected:

(a) The several corporations, 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;

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

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

(d) 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; and all property, real, personal and mixed, and all debts due on whatever account, and all other choices in 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 single corporation without further act or deed and the title to any real estate, or any, interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation;

(e) 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 corporation shall be impaired by such merger or consolidation; and

(f) In the case of a merger, the articles of incorporation of the surviving corporation 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 incorporation 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 the provisions of this Title shall be deemed to be the articles of incorporation of the new corporation.

SECTION 34-1-45. Sale, Lease, Exchange or Mortgage of Assets.

A sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist, in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge or other disposition and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this Title for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, exchange, mortgage, pledge or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast. After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon, such sale, lease, exchange, mortgage, pledge or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members; or

(b) Where there are no members, or no members having voting rights, a sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

CHAPTER 8. DISSOLUTION

SECTION 34-1-46. 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:

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(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 have been issued;
- (4) that the corporation has not commenced business;
- (5) that no debts of the corporation remain unpaid; and
- (6) 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, the Enterprise Board 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 34-1-47. Voluntary Dissolution by Consent of Members.

(a) A corporation may be voluntarily dissolved by the written consent of all of its members.

(b) Subject to Article 8 of Title 33, a corporation whose sole member is the Tribe and that is 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, with the 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:

- (1) the name of the corporation;
- (2) the names and addresses of its officers;
- (3) the names and addresses of its directors;
- (4) a statement that written consent has been signed by the members of the corporation or signed in their names by their attorneys thereunto duly authorized; and
- (5) the written consent, which shall be signed by all members of the corporation.

SECTION 34-1-48. Voluntary Dissolution by Act of Corporation.

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

(a) 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 members, which may be either an annual or a special meeting.

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(b) A corporation whose sole member is the Tribe and that is 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.

(c) Written notice shall be given to each member 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 members 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.

(d) At such meeting a vote of members entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of a majority of the members of the corporation entitled to vote thereon, unless any 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 a majority of the share, of each class of shares entitled to vote thereon as a class, and of the total shares entitled to vote thereon.

(e) 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 members 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;
- (5) the names and addresses of its officers; and
- (6) the names and addresses of its directors.

SECTION 34-1-49. Filing of Statement of Intent To Dissolve.

Duplicate originals of the statement of intent to dissolve whether by consent of members 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 office of the Enterprise Board;
- (c) return the other duplicate original to the corporation or its representative.

SECTION 34-1-50. 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 members 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 34-1-51. 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.

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(b) The corporation shall proceed to collect its assets, convey and dispose of such of its properties pursuant to Section 34-8-10, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs.

SECTION 34-1-52. 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 pursuant to Section 34-8-10, 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 pursuant to Section 34-8-10; 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 34-1-53. 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 office of the Enterprise Board;
- (c) issue a certificate of dissolution to which the Enterprise Board shall affix the other duplicate original; and
- (d) shall 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 34-1-54. Involuntary Dissolution.

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:

- (a) The corporation procured its articles of incorporation through fraud;
- (b) The corporation has continued to exceed or abuse the authority conferred upon it by law;
- (c) The corporation has failed for 90 days to appoint and maintain a registered agent on the Reservation; or
- (d) The corporation has failed for 90 days after change of its registered officer or registered agent to file in the Business Council's office a statement of such change.

SECTION 34-1-55. Dissolution; distribution of assets.

The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

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- (a) All liabilities and obligations of the Corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;
- (b) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;
- (c) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this Title;
- (d) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others; and
- (e) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, as may be specified in a plan of distribution adopted as provided by the provisions of this Title.

CHAPTER 9. FOREIGN CORPORATIONS

SECTION 34-1-56. Certificate of Authority.

No foreign corporation shall transact business in territories under the jurisdiction of the Tribe unless it obtains a Certificate of Authority pursuant to Chapter 32 of Title 33.

SECTION 34-1-57. Foreign Corporation; Articles of Incorporation; Amendment.

Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in this state are amended, such foreign corporation shall, within 30 days after such amendment becomes effective, file in the office of the Enterprise Board a copy of such amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated, but the filing thereof shall not, of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in conducting its affairs on the Reservation, nor authorize such corporation to conduct affairs on the Reservation under any other name than the name set forth in its Certificate of Authority.

SECTION 34-1-58. Foreign Corporation; Merger.

Whenever a foreign corporation authorized to conduct affairs on the Reservation shall be a party to a statutory merger permitted by the laws of the tribe, state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within 30 days after such merger becomes effective, file with the Enterprise Board a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected, and it shall not be necessary for such corporation to procure either a new or amended Certificate of Authority to conduct affairs on the Reservation unless the name of such corporation be changed thereby or unless the corporation desires to pursue on the Reservation other or additional purposes than those which it is then authorized to pursue on the Reservation.

SECTION 34-1-59. Foreign Corporation; Amended Certificate of Authority; Form.

- (a) A foreign corporation authorized to conduct affairs on the Reservation shall procure an amended Certificate of Authority in the event it changes its corporate name, or desires to pursue on the Reservation other or additional purposes than those set forth in its prior application for a Certificate of Authority, by making application therefor to the Enterprise Board.
- (b) The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the Enterprise Board, the issuance of an amended

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Certificate of Authority and the effect thereof shall be the same as in the case of an original application for a Certificate of Authority.

SECTION 34-1-60. Foreign Corporation; Conducting Affairs Without Certificate of Authority.

(a) No foreign corporation which is conducting affairs on the Reservation without a Certificate of Authority shall be permitted to maintain any action, suit or proceeding in the Tribal Court until such corporation shall have obtained a Certificate of Authority, nor shall any action, suit or proceeding be maintained in the Tribal Court by any successor or assignee of such corporation on any right, claim or demand arising out of the conduct of affairs by such corporation or by a corporation which has acquired all or substantially all of its assets.

(b) The failure of a foreign corporation to obtain a Certificate of Authority to conduct affairs on the Reservation shall not impair the validity of any contract or act of such corporation and shall not prevent such corporation from defending any action, suit or proceeding in the Tribal Court.

CHAPTER 10. REPORTS

SECTION 34-1-61. Biennial Report; Contents.

(a) Each domestic not-for-profit corporation, and each foreign not-for-profit corporation authorized to conduct affairs on the Reservation, shall file, within the time prescribed by this Chapter, a biennial report setting forth:

- (1) The exact name of the corporation;
- (2) The location of the registered office of the corporation on the Reservation;
- (3) A brief statement of the character of the affairs, which the corporation is actually conducting or, in the case of a foreign corporation, which the corporation is actually conducting on the Reservation; and
- (4) The names and respective street addresses of the directors and officers of the corporation.

(b) Such biennial report shall be made on forms prescribed and furnished by the Enterprise Board, and the information therein contained shall be given as of the first day of January of each year. It shall be signed by either the president, a vice president, a secretary or a treasurer of the corporation, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee.

SECTION 34-1-62. Biennial Report; Filing; Fees.

(a) The biennial report, commencing in 1994 and each even-numbered year thereafter, of a domestic, or foreign not-for-profit corporation shall be delivered to the Enterprise Board on or before June, 1, except that the first biennial report of a domestic or foreign not-for-profit corporation shall be filed on or before June 1 of the even numbered year next succeeding the calendar year in which it was incorporated or its Certificate of Authority was issued by the Enterprise Board. Proof to the satisfaction of the Enterprise Board that on or before June 1 such report was deposited in the United States mail in a sealed envelope, properly addressed with postage prepaid, shall be deemed a compliance with this requirement. If the Enterprise Board finds that such report and biennial fee conform to the requirements of this Chapter, it shall file the same. If the Enterprise Board Finds that they do not so conform it shall promptly return the same to the corporation for any necessary corrections.

(b) Upon the filing of the biennial report as provided in this Chapter, the Enterprise Board shall charge and collect a fee of \$20.00. If a corporation required to file a report and pay the fee prescribed fails or neglects to make such report as required therein, or pay such fee before the same shall become delinquent, it shall be subject to a penalty of \$2.00 for each year for which the biennial fee was required to be paid by the corporation.

SECTION 34-1-63. Failure To Approve Filings; Revocation of Certificate of Authority; Appeal.

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(a) If the Enterprise Board fails to approve any articles of incorporation amendment, merger, consolidation or dissolution or any other documents required by this Title to be approved by the Enterprise Board before the same shall be filed in its office, it shall, within 10 days after the delivery thereof to it, give written notice of its disapproval to the person or corporation, domestic or foreign, delivering, the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the Tribal Court.

(b) If the Enterprise Board revokes the Certificate of Authority to conduct affairs on the Reservation of any foreign corporation pursuant to this Title, such foreign corporation may likewise appeal, and the appeal shall be to the Tribal Court.

SECTION 34-1-64. Failure to Pay Fee or Fine Biennial Reports.

(a) The Enterprise Board shall cause to be mailed by first-class mail to the last-named registered agent at the last known street address of each domestic and foreign not-for-profit corporation subject to this Title, a notice stating that the biennial fees of \$20.00 are to be paid on or before June 1 of the same year and that a properly executed and signed report is to be filed on or before June 1 of the same year, that if biennial fees are not paid on or before June 1 of the same year, that on June 2 of the same year, delinquent corporations shall be automatically dissolved for nonpayment of biennial fees and failure to file the report; and that the Enterprise Board shall dissolve the corporation and make such entry and showing upon the records in its office,

(b) Upon the dissolution for nonpayment of the biennial fee or failure to file a properly executed and signed report, the Enterprise Board shall send a list to each Secretary of State wherein a foreign corporation is incorporated.

CHAPTER 11. MISCELLANEOUS

SECTION 34-1-65. 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 near the registered office of the corporation. Such 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 within the county in which the registered office of the corporation is located. 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.

OMAHA TRIBAL CODE (2013)

SECTION 34-1-66. Certificate Issued by Enterprise Board; Certified Copies; Received in Evidence.

All certificates issued by the Enterprise Board in accordance with the provisions of this Title, and all copies of documents filed in its office in accordance with the provisions of this Title when certified by it, shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the facts therein stated. A certificate by the Enterprise Board under the great seal of the Tribe, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates, shall be taken and received in the Tribal Courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

SECTION 34-1-67. Reports; Enterprise Board; Forms; Prescribe; Furnish.

All reports required by the provisions of this Title to be filed in the office of the Enterprise Board shall be made on forms which shall be prescribed and furnished by the Enterprise Board. Forms for all other documents to be filed in the office of the Enterprise Board shall be furnished by the Enterprise Board on request therefor, but the use thereof, unless otherwise specifically prescribed in this Title, shall not be mandatory.

SECTION 34-1-68. Articles of Incorporation; Greater Voting Rights Control.

Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the members or directors, as the case may be, than required by the provisions of this Title with respect to such action, the provisions of the articles of incorporation shall control.

SECTION 34-1-69. Waiver of Notice.

Whenever any notice is required to be given to any member or director of a corporation under the provisions of this Title or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver, thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

SECTION 34-1-70. Action by Members or Directors Without a Meeting.

Any action required by the provisions of this Title to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the directors, as the case may be. Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any article or document filed with the Enterprise Board under this Title.

SECTION 34-1-71. Unauthorized Assumption of Corporate Powers; Effect.

All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

SECTION 34-1-72. Director, Officer, or Trustee; Immunity from Civil Liability.

(a) Any person who serves as a director, officer, or trustee of a not-for-profit organization formed pursuant to this Title 34 and who is not compensated for his or her services as a director, officer, or trustee on a salary or a prorated equivalent basis shall be immune from civil liability for any act or omission which results in damages or injury if such person was acting within the scope of his or her official functions and duties as a director, officer, or trustee unless such damage or injury was caused by the willful or wanton act or omission of such director, officer, or trustee.

(b) Nothing in this section shall be construed to establish, diminish, or abrogate any duties that a director, officer, or trustee of a not-for-profit organization has to the not-for-profit organization for which the director, officer, or trustee serves.

OMAHA TRIBAL CODE (2013)

(c) For purposes of this section, a director, officer, or trustee shall not be considered compensated solely by reason of the payment of his or her actual expenses incurred in attending meetings or in executing such office, the receipt of meals at meetings or the receipt of gifts not exceeding a total value of one hundred dollars in any twelve consecutive months.

