

**TABLED**

**PASSED**

**JUN 13 2019**

**CHEROKEE COUNCIL HOUSE  
CHEROKEE, NORTH CAROLINA**

**Date: APR 04 2019**

**ORDINANCE NO.: 552 (2019)**

WHEREAS, the Eastern Band of Cherokee Indians ("Tribe"), which is a federally recognized Indian tribe organized under the Charter and Governing Document of the Eastern Band Cherokee Indians, resolved to form a Limited Liability Company Ordinance to further economic development and codify the manner in which the Tribe may form and regulate LLC's wholly owned by the Tribe; and

WHEREAS, the Tribal Council passed, and the Principal Chief subsequently ratified, Ordinance #619 (2018), adding Chapter 55B to the Cherokee Code that provides for the formation and regulation of Limited Liability Companies owned by the Eastern Band of Cherokee Indians.; and

WHEREAS, Resolution #337 (2018) authorized the formation of Sequoyah National Golf Club II, LLC to be organized under the laws of the Tribe, to convert the state chartered Sequoyah National Golf Club, LLC into a Tribally chartered LLC, but to be managed independently of the Kituwah Economic Development Board; and

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

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

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

**SEE ATTACHED EXHIBIT A AND EXHIBIT B**

## Chapter 16C -GAMING REVUNUE ALLOCATION PLAN

## Sec. 16C-30 Cherokee Sovereign Wealth Fund.

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

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

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

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

**Sec. 55B-1.2 Purpose.**

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

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

**Sec. 55B-1.3 Findings and Declarations.**

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

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

**Sec. 55B-1.4 No Waiver of Sovereign Immunity.**

By the adoption of this Chapter, the Tribe does not waive its sovereign immunity or consent to suit in any court or forum, whether federal, tribal, or state. Neither the adoption of this Chapter, nor the organization of any limited liability company hereunder, shall be construed to be a waiver of the sovereign immunity of the Tribe or a consent to suit against the Tribe in any court.

**Sec. 55B-1.5 Definitions.**

As used in this Chapter, unless the context otherwise requires:

- (1) "Attorney General" means the Attorney General of the Eastern Band of Cherokee Indians.
- (2) "Chapter" means the Eastern Band of Cherokee Indians Limited Liability Company Chapter.
- (3) "Articles of organization" means documents filed under Sec. 55B-1.9. For the purpose of forming a limited liability company and those documents as amended or restated.

- (4) "Business" means any trade, occupation, profession, or other commercial Chapter activity, including but not limited to professions licensed by a state or other governmental agency whether or not engaged in for profit.
- (5) "Certificate of Formation" means the certificate referred to in § 2 of this Chapter, and such certificate as amended.
- (6) "Contribution" means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a Person contributes to a Limited Liability Company in the Person's capacity as a Member.
- (7) "Court" means the Cherokee Court as defined in C.C. Ch.7 or any successor court.
- (8) "Foreign Limited Liability Company" means a Limited Liability Company formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.
- (9) "Kituwah Economic Development Board" The Principle Chief, with agreement by the Tribal Council may appoint such a Kituwah Economic Development Board as subordinate officers and agents as the business of the Tribe may require and to allow them suitable compensation. The Kituwah Economic Development Board will be responsible for appointing the person to represent the Eastern Band of Cherokee Indians' member interest in the company.
- (10) "Knowledge" means a person's actual knowledge of a facts, rather than the person's constructive knowledge of the facts.
- (11) "Limited Liability Company" and "Domestic Limited Liability Company" means a limited liability company formed under the laws of the Tribe and having one (1) or more Members.
- (12) "Limited Liability Company", "Domestic Limited Liability Company", or "Domestic LLC" means an organization formed under this Chapter.
- (13) "Member" means ~~a person or entity with the Tribe, Kituwah, LLC, or another limited liability company wholly-owned by the Tribe which has~~ a membership interest in a limited liability company with the right and obligations as specified under this Chapter.
- (14) ~~"Member Representative Manager" the persons designated by the Kituwah Economic Development Board to represent the Eastern Band of Cherokee Indians' member interest in the company.~~  
"Manager" or "Managers" means the Kituwah Economic Development Board to represent the Eastern Band of Cherokee Indian's Member Interest in the Company or as set forth in Sec. 55B-3.1(b).
- (15) "Operating agreement" means any agreement, written or oral, of the members as to, or in the case of a limited liability company having a single member, any written agreement between the member and the company memorializing the affairs of a limited liability company and the conduct of its business.
- (16) "Person" means a natural person, partnership (whether general or limited), trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity, in each case, whether domestic or foreign, and a Limited Liability Company or Foreign Limited Liability Company.
- (17) "Personal Representative" means, as to a natural person, the executor, administrator, guardian, conservator or other legal representative thereof and, as to a person other than a natural person, the legal representative or successor thereof.
- (18) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession or other jurisdiction of the United States other than the Tribe.
- (19) "Tribal Council" means the legislative governing body of the Eastern Band of Cherokee Indians.
- (20) "Tribe" means the Eastern Band of Cherokee Indians.

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

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

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

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

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

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

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

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

**Sec. 55B-1.9. Filing.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1        viii.    Each appointed member of the Kituwah Economic Development Board's character and  
2        personal history shall be appropriate to management of the business affairs of The Eastern  
3        Band of Cherokee Indians on behalf of the Tribal Community and membership, and each  
4        appointment shall be subject to confirmation or withdrawal by the Principal Chief and  
5        Tribal Council for a period of sixty (60) days from the date of appointment, based on  
6        background check and credit report. Pending any action by the Principal Chief and Tribal  
7        Council under the preceding sentence, each appointee shall serve in a temporary capacity,  
8        entitled to exercise all of the powers, and subject to all duties. Withdrawal of an  
9        appointment during the review period shall terminate the temporary appointment and  
10       leave the affected members position vacant. Confirmation of the appointment or  
11       expiration of the review term without action by the Principal Chief and Tribal Council  
12       shall make the appointment final and fully effective.

13  
14       (2) Three (3) members of the Kituwah Economic Development Board shall constitute a quorum.

15  
16       (3) The Board of Directors shall elect from among its members a Chairman, and a Vice-Chairman, and  
17       a Secretary. The Secretary will be responsible for maintaining all filing as defined in this Chapter  
18       submitted to the Office of the Attorney General.

19  
20       (4) The Kituwah Economic Development Board may receive compensation for their services at a rate  
21       to be established by The Principal Chief with agreement of the Tribal Council, and reimbursement  
22       for expenses, including traveling expenses, when incurred in the discharge of their duties. Expenses  
23       may be advanced with the approval of the Board. No member of the Kituwah Economic  
24       Development Board shall have his compensation reduced during his term of office, except that if  
25       funds be unavailable for appropriation, the compensation of all board members may be reduced  
26       proportionally to the availability of funds.

27  
28       (5) The Kituwah Economic Development Board shall designate such employee with managerial skills  
29       sufficient to manage the Company to represent the Eastern Band of Cherokee Indians' member  
30       interest in the company. The title of said employee may be referred to as "CEO" or "President" or  
31       both. The CEO or President retains control of all management decisions within the Limited  
32       Liability company common to such positions to include strategic planning, budget approval, and  
33       the employment and compensation. The CEO or President shall designate such subordinate  
34       employees as the Board and CEO or President shall deem necessary. The General Manager of the  
35       Company and, subject to the Member Representative Manager's supervision and shall supervise  
36       and control all of the business and affairs of the Company.

37  
38       (6) The Manager of any subsidiary LLC organized by any member of the Kituwah Economic  
39       Development Board shall be the Kituwah Economic Development Board.

40  
41       (7) The KEDB shall have the power and duty to:

- 42            i. Enter into agreements, contracts, and understandings with any government agency,  
43            person, partnership, corporation or Indian tribe; and  
44            ii. Retain the services of any business or professional consultants.  
45            iii. All contracts and other documents executed in the name of the KEDB may be executed  
46            by either written resolution of the board or signed by two Board members, one of whom  
47            shall be the Chairperson or the Vice-Chairperson, provided that the Board in its  
48            discretion may delegate such signatory authority for specific types of documents to an  
49            officer or employee of the KEDB

1 (b) Notwithstanding subsection (a) in this section, the Tribe may from time to time cause to be  
2 organized such special purpose LLC's to be formed for designated purposes. Management of those  
3 LLC's shall be set forth in their respective Articles of Organization and/or Operating Agreement,  
4 provided that the Member of such LLC shall always be the Tribe.  
5

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

10 (1) Amend the Articles of Organization.

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

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

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

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

15 (6) (5) Authorize the Manager, or other person to act on behalf of the LLC that contravenes the  
16 Operating Agreement.  
17

18 ~~(d) Three (3) members of the Kituwah Economic Development Board shall constitute a quorum.~~  
19

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

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

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

33 ~~(h) The Kituwah Economic Development Board designate shall designate a Member Representative~~  
34 ~~Manager with managerial skills sufficient to manage the Company to represent the Eastern Band~~  
35 ~~of Cherokee Indians' member interest in the company. The Member Representative Manager~~  
36 ~~retains control of all management decisions within the Limited Liability company common to a~~  
37 ~~boards of directors to include strategic planning, budget approval, and the employment and~~  
38 ~~compensation. The Member Representative Manager shall designate a Qualified General Manager~~  
39 ~~pursuant to the Terms of this agreement. The General Manager of the Company and, subject to the~~  
40 ~~Member Representative Manager 'supervision and shall supervise and control all of the business~~  
41 ~~and affairs of the Company~~  
42

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

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

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

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

- 1 (3) A copy of the executed operating agreement and all amendments thereto; together with  
2 executed copies of any powers-of-attorney under which any operating agreement was  
3 executed.  
4 (4) A record of all matters referred to in this chapter as maintained in such record and s which  
5 are not otherwise specified in the operating agreement.  
6 (b) Upon reasonable request, the Tribal Council may, at their own expense, inspect and copy during  
7 ordinary business hours any LLC record unless otherwise provided in the operating agreement.  
8

9 **Sec. 55B-3.3. – Reports.**

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

- 12 (a) A summary of the period activities.  
13 (b) The financial condition of the companies.  
14 (c) The condition of the properties under the Board's management or control.  
15 (d) A summary of any unprofitable ventures and plans for correction.  
16 (e) Any significant problems and accomplishments.  
17 (f) Plans for the future.  
18

19 **Sec. 55B- 4. Finance.**

20  
21 **Sec. 55B-4.1 Contributions.**

22 A Member's contributions to an LLC may consist of cash, property, or services rendered, or promissory  
23 notes or other written obligations to provide cash or property or to perform services.  
24

25 The value of a Member's contribution shall be determined in the manner provided in the operating  
26 agreement. If the operating agreement does not fix a value to a contribution, the value of a contribution  
27 shall be approved by a majority in interest of the Members, shall be properly reflected in the records and  
28 information kept by the LLC. The value of contributions so determined shall be binding and conclusive on  
29 the LLC and its Member.  
30

31 **Sec. 55B-4.2 Liability for Contribution.**

- 32 (a) An obligation of a Member to provide cash or property or to perform services as a contribution to  
33 an LLC is not enforceable unless specified in a writing signed by the Member.  
34 (b) Unless otherwise provided in the operating agreement, a Member is obligated to an LLC to perform  
35 any enforceable promise to provide cash or property or to perform services, even if the Member is  
36 unable to perform because death, disability, or any other reason. If a Member does not provide  
37 cash, property, or services as promised, the Member is obligated at the option of the LLC to provide  
38 cash equal to that portion of the value of the stated contribution that has not been fulfilled.  
39 (c) Unless otherwise provided in the operating agreement, a Member's obligation to provide cash or  
40 property or perform services as a contribution to the LLC may be compromised only by the written  
41 consent of all of the Members.  
42

43 **Sec. 55B-4.3 Allocation of Profits and Losses**

44 The profits and losses of an LLC shall be allocated among the Members in the manner provided in the  
45 operating agreement. If the Members do not enter into an operating agreement or the operating agreement  
46 does not provide otherwise, profits and losses shall be allocated on the basis of value of the contributions  
47 made by each Member.  
48

49 **Sec. 55B- 5. Non- Liquidating Distributions.**  
50

1 **Sec. 55B-5.1 Interim Distributions.**

2 Except as provided in this ~~Part~~Chapter, a Member is entitled to receive distributions from an LLC before  
3 the Member's dissociation from the LLC and before its dissolution and winding up to the extent and at the  
4 times or upon the events specified in the Operating Agreement, or to the extent and at the times determined  
5 by the Kituwah Economic Development Board.  
6

7 **Sec. 55B-5.2 Allocation of Distributions.**

8 (a) Distributions of cash or other assets of an LLC shall be allocated among the Members as provided  
9 in Operating Agreement, or if the Operating Agreement does not so provide, on the basis of the  
10 value of the contributions made by each Member.

11 (b) No distribution of corporate property among the members of the tribal members shall be made,  
12 except out of the net profit of corporate enterprises after all corporate debts then due have been  
13 paid.  
14

15 **Sec. 55B-5.3 Distribution upon Partial Redemption.**

16 Except as provided in this ~~Part~~Chapter, upon the distribution in partial liquidation of a Member's interest,  
17 the redeeming Member is entitled to receive the amount to which the Member is entitled under the  
18 Operating Agreement and, if not otherwise provided in the Operating Agreement, the fair value of the  
19 redeemed interest based on the Member's right to share in distributions from the LLC.  
20

21 **Sec. 55B-5.4 Distribution upon Dissociation.**

22 Except as otherwise provided in this ~~Part~~Chapter, upon an event of dissociation that does not cause  
23 dissolution of the LLC, a dissociating Member is entitled to receive any distribution to which Member is  
24 entitled under the Operating Agreement and, if not otherwise provided in the Operating Agreement, the fair  
25 market value of the Member's interest in the LLC based on the Member's rights to share in distributions  
26 from the LLC.  
27

28 **Sec. 55B-5.5 Distribution in Kind.**

29 Unless otherwise provided in the Operating Agreement:

30 (a) A Member may not demand and receive any distribution from an LLC in the form of cash until all  
31 corporate debts to include contractually obligated payroll liabilities, have been paid.

32 (b) A Member may not be compelled to accept a distribution of any asset in kind except for a  
33 liquidating distribution made proportionately.  
34

35 **Sec. 55B- 5.6 Right to Distribution.**

36 At the time that a Member becomes entitled to receive a distribution from an LLC, the Member has the  
37 status of and is entitled to all remedies available to a creditor of the LLC with respect to the distribution;  
38 provided, however, that such right shall not in any way limit any other remedy.  
39

40 **Sec. 55B-5.7 Limitations of Distributions.**

41 (a) An LLC may not declare or make a distribution to any of its Members, if after giving effect to the  
42 distribution, any of the following would occur:

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

45 (2)The fair market value of the LLC's total assets would be less than the sum of its total  
46 liabilities plus, unless the Operating Agreement provides otherwise, the amount that would  
47 be needed for the preferential rights upon dissolution of Members, if any.  
48

49 (b) An LLC may base a determination that a distribution is not prohibited by subsection (a), above, on  
50 any of the following:

- (1) Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable under the circumstances.
- (2) A fair market valuation or other method that is reasonable under the circumstances.

- (c) An LLC's indebtedness to a Member incurred by reason of a distribution made in accordance with this Sec. is at parity with the LLC's indebtedness to its general unsecured creditors, except to the extent subordinated by written agreement. This Sec. does not affect the validity or priority of a security interest in an LLC's property that is created to secure the indebtedness to the Member.

#### **Sec. 55B-5.8 Liability for Wrongful Distribution.**

- (a) Except as provided in subsection (b) below, a Member (other than the Tribe or Tribal Entity), Appointed Board Member, or Manager who votes to a distribution in violation of Sec. 5.7 or of the Operating Agreement is personally liable to the LLC for the amount of the excess distribution, subject to contribution from all other Managers or Members participating in such action.
- (b) An action to recover under this section may be brought before the Eastern Band of Cherokee Indians Cherokee Court for further action; however, a proceeding under this Sec. is barred unless it is brought within one (1) year after the date of the distribution.
- (c) Nothing in this Chapter serves to waive any aspect of the Tribes' sovereign immunity, and any waiver thereof must be provided explicitly in the LLC's Operating Agreement or Articles of Organization.

#### **Sec. 55B-6. Membership and Transfer of LLC Company Property.**

##### **Sec. 55B-6.1 Membership of LLC Property.**

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

##### **Sec. 55B-6.2 Transfer of Property.**

The property of an LLC may be transferred by an instrument of transfer executed by resolution of the Kituwah Economic Development Board and filed with the Office of the Attorney General in the name of the LLC, subject to any limitation that may be imposed by the Operating Agreement. Notwithstanding the above sentence, any LLC may transfer or sell property in the normal course of business using appropriate instruments of common to the industry.

##### **Sec. 55B-6.3 Nature of Interest.**

An LLC interest is personal property.

##### **Sec. 55B-6.4 RESERVED Assignment of LLC Interest**

~~A. Unless otherwise provided in the Operating Agreement:~~

~~1. An LLC interest is assignable in part of 49% or less~~

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

~~3. An assignment of an LLC interest does not dissolve the LLC.~~

~~4. Unless and until the assignee becomes a Member of the LLC under Sec. 6.5, the assignment of an LLC interest does not entitle the assignee to participate in the management or exercise rights of a Member.~~

5. ~~Unless and until the assignee of an LLC interest becomes a Member of the LLC under Sec. 6.5, the assignor continues to be a Member.~~

6. ~~The assignor of an LLC interest is not released from any personal liability arising under this Code as a Member of the LLC solely as a result of the assignment.~~

B. ~~Unless otherwise provided in the Operating Agreement, the granting of a security interest, lien, or other encumbrance in or against any or all of a Member's LLC interest is not assignable and shall not cause the Member to cease to have the power to exercise any rights or powers of a Member.~~

#### **Sec. 55B-6.5 RESERVED Right of Assignee to Become a Member**

A. ~~Unless otherwise provided in the Operating Agreement, an assignee of an LLC interest may become a Member only if the other Members unanimously consent.~~

B. ~~An assignee of an LLC interest who becomes a Member has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of the assignor under the Operating Agreement and this Code.~~

C. ~~Unless otherwise provided in the Operating Agreement, an assignor of an LLC interest is not released from any liability to the LLC without the written consent of all the Members, whether or not the assignee becomes a Member.~~

#### **Sec. 55B-6.6 Powers of Legal Representative.**

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

#### **Sect. 55B-7 Dissolution.**

##### **Sec. 55B-7.1 Dissolution.**

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

- (a) The occurrence of dissolution events specified in the Operating Agreement.
- (b) The written consent of the Principal Chief with agreement of the Tribal Council and The Kituwah Economic Development Board.
- (c) An event of dissociation of a Member, unless otherwise provided in the Operating Agreement or continuation is consented to by all remaining Members.

##### **Sec. 55B-7.2 Judicial Dissolution.**

- (a) In a proceeding by or for a Member, the Kituwah Economic Development Board or court of competent jurisdiction may order dissolution of an LLC if any of the following is established:

- (1) That it is not reasonably practicable to carry on the business of the LLC.
- (2) That the LLC is not acting in conformity with its Operating Agreement.
- (3) That one or more Managers are acting or will act in a manner that is illegal, oppressive, or fraudulent.
- (4) That one or more Members in control of the LLC are acting or will Chapter in a manner that is illegal, oppressive, or fraudulent.
- (5) That LLC assets are being misapplied or wasted.

- 1 (b) If the Tribe is a Member of the LLC, any action under this Sec. must be brought before the Kituwah  
2 Economic Development Board to determine if action by the Cherokee Court is Necessary, unless  
3 otherwise provided in the Operating Agreement. Nothing in this Sec. may be construed as the  
4 acquiescence of the Tribe to any other jurisdiction or a waiver of the Tribe's sovereign immunity  
5 from suit.  
6

7 **Sec. 55B-7.3 Winding Up.**

- 8 (a) A dissolved LLC continues its legal existence but may not carry on any business except that which  
9 is appropriate to wind up and liquidate its business.  
10  
11 (b) Unless otherwise provided in its Operating Agreement:  
12 (1) The business of the LLC may be wound up by any of the following:  
13 a. The Members or Managers who have authority to manage the LLC before  
14 dissolution.  
15 b. In a judicial dissolution, the person(s) designated by Cherokee Court  
16  
17 (2) The persons winding up the business of the LLC may do all of the following in the name of  
18 and on behalf of the LLC:  
19 a. Collect its assets.  
20 b. Prosecute and defend suits.  
21 c. Take any action necessary to settle and close the business of the LLC.  
22 d. Dispose of and transfer the property of the LLC.  
23 e. Discharge or make provision for discharging the liabilities of the LLC.  
24 f. Distribute to the Members any remaining assets of the LLC.  
25  
26 (c) Dissolution of an LLC does not do any of the following:  
27 (1) Transfer title to the LLC's property.  
28 (2) Prevent transfer of all or part of a Member's interest.  
29 (3) Prevent commencement of a civil, criminal, administrative, or investigatory proceeding by or  
30 against the LLC.  
31 (4) Abate or suspend a civil, criminal, administrative, or investigatory proceeding pending by or  
32 against the LLC at the time of dissolution.  
33 (5) Terminate the authority of the registered agent of the LLC.  
34 (6) Alter the limited liability of a Member.  
35

36 **Sec. 55B-7.4 Distribution of Assets.**

37 Upon the winding up of an LLC, the assets shall be distributed in the following order:

- 38 (a) To creditors, including to the extent permitted by law, Members, and former Members in  
39 satisfaction of liabilities of the LLC.  
40 (b) Unless otherwise provided in the Operating Agreement, to Members and former Members in  
41 satisfaction of liabilities for distributions under Sections 55B-5.1, 55B-5.3, and 55B-5.4  
42 (c) Unless otherwise provided in the Operating Agreement, to Members and former Members first for  
43 the return of their contributions in proportion to their respective values and, thereafter, in proportion  
44 to their respective rights to share in distributions from the LLC before dissolution.  
45

46 **Sec. 55B-7.5 Articles of Dissolution.**

47 After the dissolution of an LLC under Section 55B-7.1, the LLC may file Articles of Dissolution with the  
48 Office of the Attorney General that includes the following:

- 49 (a) The name of the LLC.  
50 (b) The date of filing of its Articles of Organization.  
51 (c) The statutory grounds under Sec. 7.1 for dissolution.

- 1 (d) ~~A~~Effective date of dissolution.

2  
3 **Sec. 55B-7.6 Known Claims Against Dissolved LLC.**

- 4 (a) A dissolved LLC may notify its known claimants in writing of the dissolution and specify a  
5 procedure for making claims.  
6 (b) A claim against the LLC is barred if:  
7 (1) A claimant who was given written notice under subsection (a) above, does not deliver the  
8 claim, in writing, to the LLC by the deadline specified in the notice; or  
9 (2) A claimant whose claim is rejected by the LLC does not commence a proceeding to enforce  
10 the claim within ninety (90) days after receipt of the rejection notice.  
11

12 **Sec. 55B-7.7 Unknown or Contingent Claims.**

13 A claim not barred under Section 55B-7.6 may be enforced:

- 14 (a) Against the dissolved LLC, to the extent of its undistributed assets.  
15 (b) If the dissolved LLC's assets have been distributed in liquidation, against a Member of the LLC,  
16 other than the Band, to the extent of the Member's proportionate share of the claim or of the assets  
17 of the LLC distributed to the Member in liquidation, whichever is less. A Member's total liability  
18 for all claims under this Sec. may not exceed the total value of assets at the time distributed to the  
19 Member.  
20

21 **Sec. 55B-8 ~~{Reserved}~~ Merger and Conversion.**

22  
23 **Sec. 55B-8.1 Definitions.**

- 24 (a) "Business Entity" means both a Domestic business entity and a foreign business entity.  
25 (b) "Domestic business entity" means a Company, incorporated under the laws of the Eastern Band of  
26 Cherokee Indians; a Domestic LLC organized under this Code; a tribally-chartered entity of the Tribe,  
27 an unincorporated cooperative of the Tribe; or other tribally-formed entity that is party to the  
28 merger.  
29 (c) "Foreign business entity" means a Foreign Limited Liability Company, a Foreign limited  
30 partnership, or a Foreign Corporation.  
31 (d) Unless the context requires otherwise, "LLC" includes a Domestic LLC and a Foreign LLC.  
32 (e) "Organizational Documents" include Articles of Organization, Operating Agreements, Articles of  
33 Incorporation, Bylaws, partnership agreements, agreements of trust and declarations of trust, and  
34 any other basic records that create a Business Entity's organization and determine its internal  
35 governance and relations among persons that own it, have an interest in it, or are Members of it.  
36

37 **Sec. 55B-8.2 Merger.**

- 38 (a) Unless otherwise provided in its Operating Agreement, one or more LLCs may merge with or into  
39 one or more other Business Entities if the action of merger is a process permitted under the  
40 applicable laws of the jurisdiction that governs each such other Business Entity and each such  
41 Business Entity approves the plan of merger in accordance with its Organizational Documents.  
42 (b) Interests or shares in an LLC that is a party to a merger may be exchanged for or converted into  
43 cash, property, obligations, or interest in the surviving Business Entity.  
44  
45

46 **Sec. 55B-8.3 Approval of Merger.**

- 47 (a) Unless otherwise provided in the Operating Agreement, a Domestic LLC that is a party to a  
48 proposed merger shall approve the plan of merger by an affirmative vote by all of the Members.  
49 (b) Unless otherwise provided in the Operating Agreement, the manager or managers of a Domestic  
50 LLC may not approve a merger without also obtaining the approval of the LLC's Members under  
51 subsection above.



- 1 (c) Each Business Entity, other than a Domestic LLC, that is a party to a proposed merger shall approve  
2 the merger in the manner and by the vote required by the laws applicable to the Business Entity  
3 and in accordance with their respective Organizational Documents.  
4 (d) Each Business Entity that is a party to the merger shall have any rights to abandon the merger as  
5 provided for in the plan of merger or in the laws applicable to the Business Entity or in accordance  
6 with its Organizational Documents.  
7 (e) Upon approval of a merger, the LLC shall notify its Members of the approval and of the effective  
8 date of the merger.  
9 (f) After a merger is authorized, and at any time before the Articles of Merger are filed with the Office  
10 of the Attorney General, the planned merger may be abandoned, subject to any contractual rights,  
11 without further action on the part of the shareholders or other Members, in accordance with the  
12 procedures set forth in the plan of merger or, if none is set forth, in the manner determined by the  
13 governing body of any Business Entity that is a party to the merger.  
14

15 **Sec. 55B-8.4 Plan of Merger.**

- 16 (a) Each Business Entity must enter into a written plan of merger, which must include all of the  
17 following:  
18 (1) The name, form of Business Entity, and identity of the jurisdiction governing each Business  
19 Entity that is a party to the merger and the name, form of business entity, and identity of  
20 the jurisdiction of the surviving business entity with, or into, which each other business  
21 entity proposes to merge.  
22 (2) The terms and conditions of the proposed merger.  
23 (3) The manner and basis of converting the interests in each business entity that is a party to  
24 the merger into shares, interests, obligations, or other securities of the surviving Business  
25 Entity or into cash or other property in whole or in part.  
26 (4) Amendments to the Articles of Organization or other similar governing document of the  
27 surviving Business Entity.  
28 (5) Other necessary or desirable provisions relating to the proposed merger.  
29

30 **55B- 8.5 Articles of Merger.**

- 31 (a) The surviving Business Entity shall deliver to the Office of the Attorney General the Articles of  
32 Merger, executed by each party to the plan of merger, which shall include all of the following:  
33 (1) The name and jurisdiction of organization for each Business Entity,  
34 (2) The plan of merger,  
35 (3) The name of the surviving or resulting LLC,  
36 (4) The effective date and time of the merger,  
37 (5) A statement as to whether the surviving Business Entity is Tribally Owned,  
38 (6) If Tribally-Owned, a statement as to whether the surviving Business Entity enjoys the  
39 Tribe's sovereign immunity, and  
40 (7) A statement that the plan of merger was approved by each Domestic LLC that is a party  
41 to the merger in accordance with Section 8.3.  
42 (b) Once filed with the Office of the Attorney General, a merger takes effect upon the effective date of  
43 the Articles of Merger.  
44  
45

46 **55B- 8.6 Effects of Merger.**

47 A merger has the following effects:

- 48 (a) The Business Entities must become a single Entity, which shall be the Entity designated in the plan  
49 of merger as the surviving LLC.  
50 (b) Each Business Entity, except the surviving LLC, ceases to exist.

- 1 (c) The surviving LLC possesses all of the rights, privileges, immunities, and powers of each merged  
2 Business Entity and is subject to all of the restrictions, disabilities, and duties of each merged  
3 Business Entity.  
4 (d) All property and all debts, including contributions, and each interest belonging to or owed to each  
5 of the Business Entities are vested in the surviving LLC without further act.  
6 (e) Title to all real estate and any interest in real estate, vested in any Business Entity, does not revert,  
7 and is not in any way impaired because of the merger.  
8 (f) The surviving LLC has all the liabilities and obligations of each of the Business Entity and any  
9 claim existing or action or proceedings pending by or against any merged Business Entity may be  
10 prosecuted as if the merger had not taken place, or the surviving LLC may be substituted in the  
11 action.  
12 (g) The rights of creditors and any liens on the property of any Business Entity survive the merger.  
13 (h) The interests in a Business Entity that are to be converted or exchanged into interest, cash,  
14 obligations, or other property under the terms of the plan of merger are converted and the former  
15 interest holders are entitled only to the rights provided in the plan of merger of the rights otherwise  
16 provided by law.  
17 (i) The Articles of Organization of the surviving LLC is amended to the extent provided in the Articles  
18 of Merger.  
19

20 **55B- 8.7 Right to Object.**

21 Unless otherwise provided in the Operating Agreement, upon receipt of the notice required by Section  
22 8.3(e), a Member who did not vote in favor of the merger may, within twenty (20) days after the date of the  
23 notice, voluntarily dissociate from the LLC under Section 3.7(c) and receive fair value for the Member's  
24 LLC interest under Section 5.4.  
25

26 **55B- 8.8 Conversion.**

- 27 (a) Unless otherwise provided in its Organizational Documents, a Domestic LLC may convert to  
28 another form of Business Entity if it:  
29 (1) Satisfies the requirements under this Chapter relating to conversions; and,  
30 (2) If the conversion is permitted under the applicable law of the jurisdiction that  
31 governs the organization of the Business Entity into which the Domestic LLC is  
32 converting.  
33 (b) Unless otherwise provided in its Organizational Documents, a Business Entity other than a  
34 Domestic LLC may convert into a Domestic LLC if it:  
35 (1) Satisfies the requirements under this Chapter relating to conversions; and  
36 (2) If the conversion is permitted under the applicable law of the jurisdiction that  
37 governs the Business Entity.  
38 (c) The filing requirements of Section 1.9 apply to conversions under this Chapter.  
39 (d) Notwithstanding its prior approval, a plan of conversion under this Chapter may be amended before  
40 the conversion takes effect if the amendment is approved by the members of the converting  
41 Domestic LLC or Business Entity in the same manner as was required for the approval of the  
42 original plan of conversion.  
43

44 **55B-8.9 Plan of Conversion for Domestic LLC into Another Business Entity.**

- 45 (a) Unless subsection (c) applies, the Domestic LLC proposing to convert shall adopt a plan of  
46 conversion that includes all of the following:  
47 (1) The name of the Domestic LLC; the name of the Business Entity into which the  
48 Domestic LLC is converting; the type of Business Entity into which the Domestic  
49 LLC is converting; identification of the statute that will govern the internal affairs  
50 of the surviving Business Entity; the street address of the surviving Business Entity;  
51 the street address of the Domestic LLC, if different from the street address of the

1 surviving Business Entity; and, the principal place of business of the surviving;  
2 Business Entity.

3  
4 (2) The terms and conditions of the proposed conversion, including the manner and  
5 basis of converting the membership interest of the Domestic LLC into Membership  
6 interests or obligations of the surviving Business Entity, into cash, into other  
7 consideration that may include Membership interests or obligations of an entity that  
8 is not a party to the conversion, or into a combination of cash and other  
9 consideration.

10  
11 (3) The terms and conditions of the Organizational Documents that are to govern the  
12 surviving Business Entity.

13  
14 (4) Any other provisions, with respect to the proposed conversion that the Domestic  
15 LLC considers as necessary or desirable.

16  
17 (b) A vote of the Members of the Domestic LLC is required to adopt a plan of conversion under  
18 subsection (a). A unanimous vote of the Members entitled to vote is required to approve a plan of  
19 conversion, unless its Organizational Documents provide otherwise.

20  
21 (c) Subsections (a) and (b) do not apply if: the Domestic LLC has not commenced business; has not  
22 issued any membership interests; has no debts or other liabilities; and has not received any  
23 payments, or has returned any payments it has received after deducting any amount disbursed for  
24 payment of expenses, for subscriptions for its membership interests. In the event that all of these  
25 conditions apply, the Members of the Domestic LLC, may approve of the conversion of the  
26 Domestic LLC into another Business Entity by majority vote.

27  
28 (d) To effect the conversion, a majority of the Members must execute and file a certificate of  
29 conversion under Section 8.10.

30  
31 **55B 8.10 Filing of Certificate of Conversion for Domestic LLC.**

32 (a) If the plan of conversion is approved under Section 8.10(b), the Domestic LLC shall file any  
33 formation documents required to be filed under the laws governing the internal affairs of the  
34 surviving Business Entity, in the manner prescribed by those company documents, and shall file a  
35 certificate of conversion with the Office of the Attorney General.

36  
37 (b) The certificate of conversion shall include all of the following:

38 (1) A copy of the plan of conversion, unless Section 8.9(c) applies.

39 (2) The name of the Domestic LLC that is converting into another business entity.

40 (3) The name of the surviving Business Entity.

41 (4) The type of business entity the Domestic LLC is converting into and the  
42 jurisdiction under which the surviving Business Entity shall be governed.

43 (5) A statement that the members of the Domestic LLC have adopted the plan of  
44 conversion under Section 8.9(b), or that the Members of the Domestic LLC have  
45 approved of the conversion under Section 8.9(c), as applicable.

46 (6) A statement that the surviving Business Entity will furnish a copy of the plan of  
47 conversion, on request and without cost, to any Member of the Domestic LLC.

48 (7) The registered agent and registered office, of the Domestic LLC before and after  
49 conversion.

50 (8) A Statement whether the Domestic LLC is Tribally-Owned.  
51

1 **55 B 8.11 Effect of Conversion of Domestic LLC into Another Business Entity.**

2 All of the following apply, when a Domestic LLC's conversion into another Business Entity takes effect:

- 3 (a) The Domestic LLC converts into the surviving Business Entity, and the Organizational Documents  
4 of the Domestic LLC are canceled.
- 5 (b) Except as otherwise provided in the Code, the surviving Business Entity is organized under and  
6 subject to the organizational laws of the jurisdiction of the surviving Business Entity as stated in  
7 the Certificate of Conversion.
- 8 (c) The surviving Business Entity has all of the liabilities of the Domestic LLC. The conversion of the  
9 Domestic LLC into a Business Entity under this Section shall not be considered to affect any  
10 obligations or liabilities of the Domestic LLC incurred before the conversion or the personal  
11 liability of any person incurred before the conversion, and the conversion shall not be considered  
12 to affect the choice of law applicable to the Domestic LLC with respect to matters arising before  
13 the conversion.
- 14 (d) The title to all real estate and other property and rights owned by the Domestic LLC remain vested  
15 in the surviving Business Entity without reversion or impairment.
- 16 (e) The surviving Business Entity is considered to be the same entity that existed before the conversion  
17 and is considered to be organized on the date that the Domestic LLC was originally organized.
- 18 (f) The membership interests of the Domestic LLC that were to be converted into
- 19 (g) Membership interest or obligations of the surviving Business Entity or into cash or other property  
20 are converted.
- 21 (h) Unless otherwise provided in the plan of conversion, the Domestic LLC is not required to wind up  
22 its affairs or pay its liabilities and distribute its assets on account of the conversion, and the  
23 conversion does not constitute a dissolution of the Domestic LLC.
- 24 (i) The Organizational Documents of the surviving Business Entity are as provided in the plan of  
25 conversion.
- 26 (j) All other provisions of the plan of conversion apply.
- 27

28 **55B - 8.12 Plan of Conversion for a Business Entity into a Domestic LLC.**

29 (a) A Business Entity proposing to convert into a Domestic LLC must adopt a plan of conversion that  
30 includes all of the following:

- 31 (1) The name of the Business Entity, the type of Business Entity that is converting,  
32 identification of the statute that governs the internal affairs of the Business Entity,  
33 the name of the surviving Domestic LLC into which the Business Entity is  
34 converting, the street address of the surviving Domestic LLC company, the street  
35 address of the Business Entity if different from the street address of the surviving  
36 Domestic LLC, and the principal place of business of the surviving Domestic LLC.  
37
- 38 (2) The terms and conditions of the proposed conversion, including the manner and  
39 basis of converting the Membership interests of the Business Entity into  
40 membership interests of the surviving Domestic LLC, into cash, into other  
41 consideration that may include Membership interests or obligations of an entity  
42 that is not a party to the conversion, or into a combination of cash and other  
43 consideration.  
44
- 45 (3) The terms and conditions of the Organizational Documents that are to govern the  
46 surviving Domestic LLC.  
47
- 48 (4) Any other provisions with respect to the proposed conversion that the Business  
49 Entity considers necessary or desirable.  
50

- 1 (b) If a plan of conversion is adopted by the Business Entity under subsection (a), the plan of  
2 conversion is submitted for approval in the manner required by the law governing the internal  
3 affairs of that Business Entity.
- 4
- 5 (c) If the plan of conversion is approved under subsections (a) and (b), the Business Entity shall file a  
6 Certificate of Conversion with the Office of the Attorney General. The Certificate of Conversion  
7 shall include all of the following:
- 8       (1) A copy of the plan of conversion.  
9       (2) A statement that the Business Entity has obtained approval of the plan of  
10 conversion under subsection (b).  
11       (3) A statement that the surviving Domestic LLC will furnish a copy of the plan of  
12 conversion, on request and without cost, to any Member of the Business Entity.  
13       (4) The registered agent and registered office, record agent and record office, or other  
14 similar agent and office of the surviving Domestic LLC before and after  
15 conversion.  
16       (5) The type of Business Entity, as well as the date and location of jurisdiction where  
17 the Business Entity was formed, prior to converting into a Domestic LLC.  
18       (6) A statement whether the surviving Domestic LLC is Tribally-Owned.  
19       (7) Submission of Articles of Organization for the surviving Domestic LLC that meet  
20 all of the requirements of this Code.  
21

22 **55 B- 8.13 Effect of Conversion of Business Entity into Domestic LLC.**

23 All of the following apply when a Business Entity's conversion into a Domestic LLC takes effect:

- 24 (a) The Business Entity converts into the surviving Domestic LLC. Except as otherwise provided in  
25 this Section, the surviving Domestic LLC is organized under and subject to the Code.
- 26 (b) The surviving Domestic LLC has all of the liabilities of the Business Entity. The conversion of the  
27 Business Entity into a Domestic LLC under this Section shall not be considered to affect any  
28 obligations or liabilities that the Business Entity incurred before the conversion, or the personal  
29 liability of any person incurred before the conversion; and, the conversion shall not be considered  
30 to affect the choice of law applicable to the Business Entity with respect to matters arising before  
31 conversion.
- 32 (c) The title to all real estate and other property and rights owned by the Business Entity remains vested  
33 in the surviving Domestic LLC without reversion or impairment.
- 34 (d) A proceeding pending against the Business Entity may be continued as if the conversion had not  
35 occurred, or the surviving Domestic LLC may be substituted in the pending proceeding for the  
36 Business Entity.
- 37 (e) The surviving Domestic LLC is considered to be the same entity that existed before the conversion,  
38 and is considered to be organized on the date that the Business Entity was originally organized.
- 39 (f) The Membership interests of the Business Entity that were to be converted into membership  
40 interests or obligations of the surviving Domestic LLC or into cash or other property are converted.
- 41 (g) Unless otherwise provided in a plan of conversion, the Business Entity is not required to wind up  
42 its affairs or pay its liabilities and distribute its assets on account of the conversion, and the  
43 conversion does not constitute a dissolution of the Business Entity.
- 44 (h) The Organizational Documents of the Domestic LLC are as provided in the plan of conversion.
- 45 (i) All other provisions of the plan of conversion apply.

46 **Sec. 55B-9 Effective Date and Authority.**

47 ~~This Chapter may be amended only by resolution pass with majority vote of the Tribal Council at the~~  
48 ~~advisement of the Kituwah Economic Development Board.~~  
49

1 **Sec. 55B-9.1 Effective Date.**

2 This Chapter shall be in full force and effect according to its terms upon ratification by the Principal Chief  
3 with agreement of the Tribal Council.  
4

5 **Sec. 55B-9.2 Certificated and Certified Copies to be received into Evidence.**

6 All certificates or documents issued by the Office of the Attorney General shall be in accordance with the  
7 provisions of this Chapter and all copies of documents filed in the Office of the Attorney General in  
8 accordance with the provisions of this Chapter, when certified, shall be taken and received in all Courts,  
9 public offices, and official bodies as prima facie evidence of the fact therein stated. A certificate by the  
10 Office of the Attorney General, as to the existence or non-existence of the fact relating to Companies which  
11 would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and  
12 received in all courts, public offices and official bodies as prima facie evidence of the existence or non-  
13 existence of the fact therein stated.  
14

15 **Sec. 55B-9.3 Forms to be furnished by the Office of the Attorney General.**

16 The Office of the Attorney General shall have the authority to prescribe certain forms for documents  
17 required by this Chapter to be filed in the Office of the Attorney General; such forms shall be furnished by  
18 the Secretary of the Kituwah Economic Development Board and used by the public for such filing.  
19

20 **Sec. 55B-10. Miscellaneous.**

- 21 (a) In construing this Chapter, the present tense includes the past and future tenses, and the future tense  
22 includes the present tense.  
23 (b) When reference is made to any portion of this Chapter, the reference shall apply to all amendments  
24 made hereafter.  
25 (c) Section headings shall not be used in construing this Chapter.  
26 (d) If any part of this Chapter is invalidated by a court of competent jurisdiction, all valid parts that are  
27 severable from the invalid part remain in effect. If a part of this Chapter is invalid in one or more  
28 of its applications, that part remains in effect in all valid applications that are severable from the  
29 invalid applications.  
30

31 **Sec. 55B-10. Relationship to the TERO ordinance.**

- 32 (a) Any LLC of the Tribe organized under this Chapter shall only be deemed an enterprise of the Tribe  
33 when acting to procure goods, services, or employment occurring on Trust Lands and such  
34 performance is on Trust Lands.  
35 (b) Any LLC of the Tribe organized under this Chapter managed by the Kituwah Economic  
36 Development Board shall be considered a Priority 1 Certified Economic Entity under Article 5  
37 Section 92 of the Cherokee Code when providing good or services on Trust Lands, provided they  
38 submit of liability insurance as required by Article 3 Section 92 of the Cherokee Code.  
39 (c) Any other LLC may be considered a Priority 1 Certified Economic Entity when providing good or  
40 services on Trust Lands provided, they meet the requirements contained in Article 3 Section 92 of  
41 the Cherokee Code.  
42

1 **Sec. 55B-11. Kituwah, LLC Subsidiaries.**

- 2 (a) Recognizing that the Kituwah Economic Development Board has caused to be formed Kituwah,  
3 LLC, a wholly owned tribal LLC under this Chapter with the Articles of Organization having been  
4 appropriately adopted and filed, and the Operating Agreement executed by the Principal Chief and  
5 the Chair of the Kituwah Economic Development Board, the Tribe hereby conveys upon Kituwah,  
6 LLC the right to form such subsidiary LLCs as the Kituwah Economic Development Board may  
7 from time to time deem to be in the best interests of the Company.  
8 (b) Notwithstanding any previous provisions to the contrary, each subsidiary of Kituwah, LLC shall  
9 be wholly-owned by the Tribe, but its Articles of Organization may allow that Kituwah, LLC is the  
10 member of such subsidiary, and the Manager of each subsidiary shall be the Kituwah Economic  
11 Development Board.  
12  
13  
14

15 BE IT FURTHER ORDANIED, that the Principal Chief shall take the necessary and appropriate steps to  
16 carry out the intent of this ordinance, and  
17

18 BE IT FINALLY ORDANIED that all ordinances and resolutions that are inconsistent with this ordinance  
19 are rescinded, and that this ordinance shall become effective with ratified by the Principal Chief.  
20

21 *Submitted by the Office of the Attorney General*

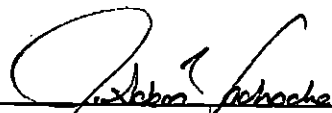
The attached Resolution/Ordinance No. 552 dated APRIL 4, 2019 was

**PASSED ( X )**

**KILLED ( )**

and ratified in open Council on JUNE 13, 2019 by 100 voting for the act  
and 0 members voting against it as follows:

VOTE	FOR	AGAINST	ABSTAIN	ABSENT
Richard French	X			
Perry Shell	X			
Boyd Owle	X			
Bucky Brown	X			
Tom Wahnetah	X			
David Wolfe	X			
Adam Wachacha	X			
Bo Crowe	X			
Jeremy Wilson	X			
Albert Rose	X			
Lisa Taylor	X			
Tommye Saunooke	X			
	100	0	0	0



TRIBAL COUNCIL CHAIRMAN



ENGLISH CLERK



PRINCIPAL CHIEF

APPROVED (✓)

VETOED ( )

VETO UPHeld ( ) VETO DENIED ( )

DATE: 6/27/19

I hereby certify that the foregoing act of the Council was duly:

**PASSED ( )**

**KILLED ( )**

and ratified in open Council after the same has been interpreted by the Official Interpreter and  
has been fully and freely discussed.

INTERPRETED ( )

OMITTED ( )