



BLUE LAKE RANCHERIA

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ORDINANCE NO. 06-01

ORDINANCE OF THE BUSINESS COUNCIL OF THE BLUE LAKE RANCHERIA ADDING TITLE 2, ARTICLE 2, CHAPTER 3 TO THE BLUE LAKE RANCHERIA TRIBAL CODE, ENTITLED: "SOLE MEMBER LIMITED LIABILITY COMPANY ACT"

The Business Council of the Blue Lake Rancheria hereby ordains as follows.

A new Title 2, Article 2, Chapter 3 is hereby added to the Blue Lake Rancheria Tribal Code to read as follows:

**SOLE MEMBER LIMITED LIABILITY COMPANY ACT
SUBCHAPTER 1. General Provisions**

§ 02-02-03-00. Citation of Ordinance

This Ordinance shall be known and may be cited as the Blue Lake Rancheria Sole Member Limited Liability Company Act.

§ 02-02-03-01. Definitions

Unless the context otherwise indicates, the following definitions govern the construction of this Chapter:

(a) "Acknowledged" means that an instrument is either of the following:

(1) Executed to include substantially the following wording preceding the signature: It is hereby declared that I am the person who executed this instrument, which execution is my act and deed.

(2) Any certificate of acknowledgment taken before a notary public or a judge or clerk of a court of record having an official seal need not be further authenticated.

(b) "Articles of organization" means articles of organization filed under Section 02-02-03-006, including all amendments thereto or restatements thereof.

(c) "Bankrupt" or "bankruptcy" means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code, or any successor statute or other statute in any foreign jurisdiction having like import or effect.

(d) "Capital account" means, unless otherwise provided in the operating agreement, the amount of the capital interest of a member in the limited liability company consisting of that member's original contribution, as (1) increased by any additional contributions and by that member's share of the limited liability company's profits, and (2) decreased by any distribution to that member and by that member's share of the limited liability company's losses.

(e) "Contribution" means any money, property, or services rendered, or a promissory note or other binding obligation to contribute money or property, or to render services as permitted in this chapter, which a member contributes to a limited liability company as capital in that member's capacity as a member.

(f) "Distribution" means the transfer of money or property by a limited liability company to its members without consideration.

(g) "Economic interest" means a person's right to share in the income, gains, losses, deductions, credit, or similar items of, and to receive distributions from, the limited liability company, but does not include any other rights of a member, including, without limitation, the right to vote or to participate in management, or, except as provided in Section 02-02-03-106, any right to information concerning the business and affairs of the limited liability company.

(h) (1) "Electronic transmission by the limited liability company" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the limited liability company, (2) posting on an electronic message board or network that the limited liability company has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication, (b) to a recipient who has provided an unrevoked consent to the use of those means of transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. However, an electronic transmission by a limited liability company to an individual member is not authorized unless, in addition to satisfying the requirements of this section, the transmission satisfies the requirements applicable to consumer consent to electronic records as set forth in the Electronic Signatures in Global and National Commerce Act (*15 U.S.C. Sec. 7001(c)(1)*).

(2) "Electronic transmission to the limited liability company" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the limited liability company has provided from time to time to members or managers for sending communications to the limited liability company, (2) posting on an electronic message board or network that the limited liability company has designated for those communications, and which transmission shall be validly delivered upon the posting, or (3) other means of electronic communication, (b) as to which the limited liability company has placed in effect reasonable measures to verify that the sender is the

member or manager (in person or by proxy) purporting to send the transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

(i) "Mail" unless otherwise provided in the operating agreement, means first-class mail, postage prepaid, unless registered mail is specified. Registered mail includes certified mail.

(j) "Manager" means a person elected by the member of a limited liability company to manage the limited liability company if the articles of organization contain the statement referred to in subdivision (b) of Section 02-02-03-401 or, if the articles of organization do not contain that statement, "manager" means the member of the limited liability company.

(k) "Member" means the Tribe or the Section 17 Corporation of the Tribe which is the member of the Sole Member Limited Liability Company.

(l) "Membership interest" means a member's rights in the limited liability company, collectively, including the member's economic interest, any right to vote or participate in management, and any right to information concerning the business and affairs of the limited liability company provided by this chapter.

(m) "Officer" means any person elected or appointed pursuant to Section 02-02-03-404.

(n) "Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

(o) "Return of capital," unless otherwise provided in the operating agreement, means any distribution to a member to the extent that the member's capital account, immediately after the distribution, is less than the amount of that member's contributions to the limited liability company as reduced by prior distributions that were a return of capital.

(p) "Section 17 Corporation of the Tribe" means the Blue Lake Rancheria Economic Development Corporation formed under Section 17 of the Indian Reorganization Act of 1933 (25 U.S.C. §477), including the Charter approved by the Secretary of Interior on December 29, 2004, and ratified by the Blue Lake Rancheria Business Council on January 31, 2005.

(q) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(r) "Sole Member Limited Liability Company" or "limited liability company," means a limited liability company formed under this chapter with the Tribe or the Section 17 Corporation as its sole member

(s) "Time a notice is given or sent," unless otherwise expressly provided, means the time a written notice is deposited in the United States mail; is personally delivered to the recipient, is delivered to a common carrier for transmission, or is actually transmitted by the person giving the notice by electronic transmission, to the recipient; or the time any oral notice is communicated, in person or by telephone, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

(t) "Tribe" means the Blue Lake Rancheria, a federally recognized Tribe.

§ 02-02-03-002. Status and authorized activities of sole member limited liability company

Subject to any limitations contained in the articles of organization and to compliance with any other applicable laws, a limited liability company may engage in any lawful business activity, whether or not for profit. A Single Member Limited Liability company shall have the same sovereign immunity, tax status, and be subject to the same regulatory jurisdiction as its member.

§ 02-02-03-003. Powers of sole member limited liability company

Subject to any limitations contained in the articles of organization and in compliance with this chapter and any other applicable laws, a Sole Member Limited liability Company organized under this chapter shall have all of the same powers as its sole member, including, without limitation, the power to:

(a) Transact its business, carry on its operations, qualify to do business, and have and exercise the powers granted by this chapter in any Indian reservation or Indian County, state, territory, district, possession, or dependency of the United States, and in any foreign country.

(b) Sue, complain and defend any action, arbitration, or proceeding, whether judicial, administrative, or otherwise, in its own name, except that the sole member limited liability company shall enjoy the same sovereign immunity from suit as the Tribe itself; provided, however, that if authorized by the articles of organization or the operating agreement, such Sole Member Limited Liability company may conditionally or absolutely waive its immunity from suit in the manner authorized in the articles of organization or the operating agreement.

(c) Adopt, use, and at will alter a company seal; but failure to affix a seal does not affect the validity of any instrument.

(d) Make contracts and guarantees, incur liabilities, act as surety, and borrow money.

(e) Sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of all or any part of its property and assets.

(f) Purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any interest in real or personal property, wherever located.

(g) Lend money to and otherwise assist its members and employees.

(h) Issue notes, bonds, and other obligations and secure any of them by mortgage or deed of trust or security interest of any or all of its assets.

(i) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and otherwise use and deal in and with stock or other interests in and obligations of any person, or direct or indirect obligations of the United States or of any government, state, territory, governmental district, or municipality, or of any instrumentality of any of them.

(j) Invest its surplus funds, lend money from time to time in any manner which may be appropriate to enable it to carry on the operations or fulfill the purposes set forth in its articles of

organization, and take and hold real property and personal property as security for the payment of funds so loaned or invested.

(k) Be a promoter, stockholder, partner, member, manager, associate, or agent of any person.

(l) Indemnify or hold harmless any person.

(m) Purchase and maintain insurance.

(n) Issue, purchase, redeem, receive, take, or otherwise acquire, own, hold, sell, lend, exchange transfer, or otherwise dispose of, pledge, use, and otherwise deal in and with its own bonds, debentures, and other securities.

(o) Pay pensions and establish and carry out pension, profit-sharing, bonus, share purchase, option, savings, thrift, and other retirement, incentive, and benefit plans, trusts, and provisions for all or any of the current or former members, managers, officers, or employees of the limited liability company or any of its subsidiary or affiliated entities, and to indemnify and purchase and maintain insurance on behalf of any fiduciary of such plans, trusts, or provisions.

(p) Make donations, regardless of specific benefit to the limited liability company, to the public welfare or for community, civic, religious, charitable, scientific, literary, educational, or similar purposes.

(q) Make payments or donations or do any other act, not inconsistent with this chapter or any other applicable law, that furthers the business and affairs of the limited liability company.

(r) Pay compensation, and pay additional compensation, to any or all managers, officers, members, and employees on account of services previously rendered to the limited liability company, whether or not an agreement to pay such compensation was made before such services were rendered.

(s) Insure for its benefit the lives of any of its managers, who are natural persons, officers, or employees.

(t) Do every other act not inconsistent with law that is appropriate to promote and attain the purposes set forth in its articles of organization.

§ 02-02-03-004. Authority for member to lend money to company; Member not entitled to remuneration for acting in business

(a) The sole member may lend money to and transact other business with the limited liability company and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a member.

(b) The member furnishing services to the limited liability company is entitled to remuneration for such services.

§ 02-02-03-005. Articles of organization and operating agreement

(a) Except as provided in subdivisions (b) and (c), the limited liability company is governed by the articles of organization and operating agreement. To the extent the articles of organization or

operating agreement do not otherwise provide, this chapter governs the limited liability company.

(b) The effect of the provisions of this chapter may be varied by the articles of organization or a written operating agreement. Notwithstanding the first sentence of this subdivision, neither the articles of organization nor the operating agreement may vary the definitions in Section 02-02-03-001, except as specifically provided therein.

(c) If any provision of the articles of organization conflicts with one or more provisions of a written operating agreement, the articles of organization shall control.

§ 02-02-03-006. Execution and filing of articles of organization

(a) In order to form a limited liability company, the member shall execute and file articles of organization with, and on a form prescribed by, the Tribal Secretary and, either before or after the filing of articles of organization, the member may enter into an operating agreement.

(b) A sole member limited liability company shall have one member. Said sole member shall be the Tribe or the Section 17 Corporation of the Tribe.

(c) The existence of a limited liability company begins upon the filing of the articles of organization. For all purposes, a copy of the articles of organization duly certified by the Secretary of the Tribe is conclusive evidence of the formation of a limited liability company and prima facie evidence of its existence.

§ 02-02-03-007. Provisions to be included in articles of organization

(a) The articles of organization shall set forth:

(1) The name of the limited liability company.

(2) The following statement:

The purpose of the limited liability company is to engage in any lawful act or activity in which its member could engage.

(3) The name and address of an agent for service of process on the limited liability.

(4) If the limited liability company is to be managed by one or more managers and not by its member, the statement referred to in subdivision (b) of Section 02-02-03-401. If the limited liability company is to be managed by only one manager, the articles of organization shall contain a statement to that effect.

(b) It is not necessary to set out in the articles of organization any of the powers of a limited liability company enumerated in this chapter.

(c) The articles of organization may contain any other provision not inconsistent with law, including, but not limited to:

(1) A provision limiting or restricting the business in which the limited liability company may engage or the powers that the limited liability company may exercise or both.

- (2) The time, if any, at which the limited liability company is to dissolve.
- (4) Any events that will cause a dissolution of the limited liability company.
- (5) A statement of whether there are limitations on the authority of managers or member to bind the limited liability company, and, if so, what the limitations are.
- (6) The names of the managers of the limited liability company.

§ 02-02-03-008. Company name; Requirements

The name of each limited liability company as set forth in its articles of organization:

- (a) Shall contain either the words "sole member limited liability company" or the abbreviation "LLC" or "L.L.C." as the last words in the name of the limited liability company. The words "limited" and "company" may be abbreviated to "Ltd." and "Co.," respectively.
- (b) May contain the name of the member.
- (c) Shall not be a name that the Secretary of the Tribe determines is likely to mislead the public.

§ 02-02-03-009. Amendment of articles of organization

(a) Subject to subdivision (b) of Section 02-02-03-007, the articles of organization may be amended at any time and in any manner as the members may determine, as long as the articles of organization as amended contain only those provisions as it would be lawful to insert in original articles of organization filed at the time of the filing of the amendment. The articles of organization may be amended regardless of whether any provision contained in the amendment was permissible at the time of the original organization of the limited liability company.

(b) The articles of organization shall be amended by filing a certificate of amendment thereto duly executed by at least one manager, unless a greater number is provided in the articles of organization. The certificate of amendment shall be filed with, and on a form prescribed by, the Secretary of the Tribe, and shall set forth all of the following:

- (1) The name and the Secretary of the Tribe's file number of the limited liability company.
 - (2) The text of the amendment to the articles of organization.
- (c) A certificate of amendment to the articles of organization shall be filed to effect any of the following:
- (1) A change in the name of the limited liability company.
 - (2) Any change in the statement referred to in subdivision (b) of Section 02-02-03-401.
 - (3) Any change in the time as stated in the articles of organization for the dissolution of the limited liability company.

(4) Any change in the events that will cause a dissolution of the limited liability company.

(d) The managers shall cause to be filed a certificate of amendment to the articles of organization within 30 days of the discovery by any of the managers of any false or erroneous material statement contained in the articles of organization or any amendment thereto.

(e) Any manager who executes a certificate of amendment shall be liable for any statement materially inconsistent with the operating agreement or any material misstatement of fact contained in the certificate of amendment if the manager knew or should have known that the statement was false when made or that the statement became false and an amendment required by subdivision (d) was not filed, and the person suffering the loss relied on the statement or misstatement.

(f) Articles of organization may be restated at any time. Restated articles of organization shall be filed with, and on a form prescribed by, the Secretary of the Tribe, shall be specifically designated as restated in the heading, shall set forth the limited liability company's name and the Secretary of the Tribe's file number, may set forth the name and address of the agent for service of process.

§ 02-02-03-010. Certificate of correction for documents containing errors

(a) If any document filed with the Secretary of the Tribe under this chapter contains any typographical error, error of transcription, or other technical error, or has been defectively executed, the document may be corrected by the filing of a certificate of correction.

(b) A certificate of correction shall be filed with, and on a form prescribed by, the Secretary of the Tribe, and shall set forth:

(1) The name and the Secretary of the Tribe's file number of the limited liability company.

(2) The chapter of the document being corrected.

(3) The name of each party to the document being corrected.

(4) The date that the document being corrected was filed.

(5) The provision in the document as previously filed and as corrected and, if execution of the document was defective, the manner in which it was defective.

(c) A certificate of correction shall not make any other change or amendment that would not have complied in all respects with the requirements of this title at the time the document being corrected was filed.

(d) A certificate of correction shall be executed in the same manner in which the document being corrected was required to be executed.

(e) A certificate of correction may not:

(1) Change the effective date of the document being corrected.

(2) Affect any right or liability accrued or incurred before its filing, except that any right or liability accrued or incurred by reason of the error or defect being corrected shall be extinguished by the filing if the person having the right or to whom the liability is owed has not detrimentally relied on the original document.

§ 02-02-03-011. Execution of documents required by this chapter

(a) Unless otherwise specified in any other section of this chapter, any document required by this chapter to be executed and filed with the Secretary of the Tribe shall be executed:

(1) By an authorized official of the Tribe or the Section 17 Corporation of the Tribe, when the limited liability company has not yet been formed.

(2) By any manager.

(3) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

§ 02-02-03-012. Office to maintain records; Agent for service of process

Each limited liability company shall continuously maintain on the Blue Lake Rancheria each of the following:

(a) An office at which shall be maintained the records required by Section 02-02-03-013.

(b) An agent for service of process on the limited liability company.

§ 02-02-03-013. Books and records required of limited liability company; Acceptable forms of keeping; Business records to be available to assessor upon request

(a) Each limited liability company shall maintain in writing or in any other form capable of being converted into clearly legible tangible form at the office referred to in subdivision (a) of Section 02-02-03-012 all of the following:

(1) A current list of the full name and last known business or residence address of the member.

(2) If the articles of organization contain the statement described in subdivision (b) of Section 02-02-03-401, a current list of the full name and business or residence address of each manager.

(3) A copy of the articles of organization and all amendments thereto.

(4) A copy of the limited liability company's operating agreement, if in writing, and any amendments thereto.

(5) Copies of the financial statements of the limited liability company, if any, for the six most recent fiscal years.

(6) The books and records of the limited liability company as they relate to the internal affairs of the limited liability company for at least the current and past four fiscal years.

§ 02-02-03-014. Power to alter, amend or repeal operating agreement

The power to adopt, alter, amend, or repeal the operating agreement of a limited liability company shall be vested in the member. The articles of organization or a written operating agreement may prescribe the manner in which the operating agreement may be altered, amended, or repealed.

§ 02-02-03-015. Service of process

(a) Process may be served upon a limited liability company as provided in this section.

(b) Personal service of a copy of any process against the limited liability company by delivery (1) to any individual designated by it as agent, or (2) if the designated agent is the Tribe or the Section 17 Corporation, the person who is authorized to accept service on its behalf.

(c) (1) If an agent for service of process has resigned and has not been replaced or if the designated agent cannot with reasonable diligence be found at the address designated for personal delivery of the process, and it is shown by affidavit to the Secretary of the Tribe that process against a limited liability company cannot be served with reasonable diligence upon the designated agent by hand, the Secretary may agree to accept service on behalf of the limited liability company. Service in this manner shall be deemed complete on the 10th day after delivery of the process to the Secretary of the Tribe.

(2) Upon receipt of the copy of process, the Secretary of the Tribe shall give notice of the service of the process to the limited liability company, at its principal executive office, by forwarding to that office, by registered mail with request for return receipt, the copy of the process.

(3) The Secretary of the Tribe shall keep a record of all process served upon the Secretary of the Tribe be under this chapter and shall record therein the time of service and the action taken by the Secretary of the Tribe. A certificate under the Secretary of the Tribe's official seal, certifying to the receipt of process, the giving of notice to the limited liability company or foreign limited liability company, and the forwarding of the process pursuant to this section, shall be competent and prima facie evidence of the service of process.

(d) (1) The articles of organization of a limited liability company shall designate, as the agent for service of process, an individual residing on the Blue Lake Rancheria or at another location. If an individual is designated, the statement shall set forth that person's complete business or residence address in this state.

(2) An agent designated for service of process may file with the Secretary of the Tribe a signed and acknowledged written statement of resignation as an agent. Upon filing of the statement of resignation, the authority of the agent to act in that capacity shall cease and the Secretary of the Tribe shall give written notice of the filing of the statement of resignation by mail to the limited liability company addressed to its principal executive office.

(3) If an individual who has been designated agent for service of process dies or resigns or no longer can be found at the designated address, the limited liability company shall promptly file an initial or amended statement with the Secretary of the Tribe designating a new agent.

(e) A member may, in a written operating agreement or other writing, consent to be subject to the nonexclusive jurisdiction of the courts of a specified jurisdiction.

(f) If a member desires to use the arbitration process, that member may, in a written operating agreement or other writing, consent to be nonexclusively subject to arbitration in a specified state, or to be exclusively subject to arbitration on the Blue Lake Rancheria.

(g) Along with the consent to the jurisdiction of courts or to be subject to arbitration as provided in subdivisions (e) and (f), a member may consent to be served with legal process in the manner prescribed in a written operating agreement or other writing.

(h) Nothing in this Section shall be deemed to waive the sovereign immunity of a sole member limited liability company or subject such limited liability company to the personal or subject matter jurisdiction of any court.

SUBCHAPTER 2. Formation

§ 02-02-03-200. Instrument deemed filed upon receipt; Date of filing

An instrument shall be deemed filed, and the date of filing endorsed thereon, upon receipt by the Secretary of the Tribe of any instrument. The date of filing shall be the date the instrument is received by the Secretary of the Tribe unless in the judgment of the Secretary of the Tribe, the filing is intended to be coordinated with the filing of some other document that cannot be filed. Upon receipt and after filing of any document under this chapter, the Secretary of the Tribe may microfilm or reproduce by other techniques any filings or documents and destroy the original filing or document. The microfilm or other reproduction of any document under the provision of this section shall be admissible in any court of law.

SUBCHAPTER 3. Members

§ 02-02-03-300. Acquisition of membership interest; Termination of interest

A sole member limited liability company may be formed by the Tribe or by the Section 17 Corporation of the Tribe who shall be its only member. That membership may not be transferred or otherwise assigned.

§ 02-02-03-301. Personal liability of member

(a) The member of a limited liability company shall not be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a member of the limited liability company.

(b) Notwithstanding subdivision (a), the member of a limited liability company may agree to be obligated personally for any or all of the debts, obligations, and liabilities of the limited liability company as long as the agreement to be so obligated is set forth in the articles of organization or in a written operating agreement that specifically references this subdivision.

§ 02-02-03-302. Actions may be taken without meeting

(a) The member can meet at any time, in any location to make decisions for the limited liability company. Unless the articles of organization or operating agreement provides

otherwise, the governing body of the member (e.g. the Business Council, in the case of the Tribe, the Board of Directors, in the case of the Section 17 Corporation of the Tribe) shall make member decisions, under the rules of the member governing such meetings.

(b) The articles of organization or operating agreement may specify a different method for making member decisions.

(c) If the member is empowered to make a decision without holding a meeting, it may make member decisions in the same way.

§ 02-02-03-303. Access to records and documents by members; Specific rules for certain companies; Court's power to enforce duties; Awards; Waiver of rights unenforceable; Who may make request, inspect or copy

(a) Upon the request of the member, for purposes reasonably related to the interest of that person as a member, a manager shall promptly deliver, in writing, to the member a copy of the information required to be maintained by paragraphs (1), (2), (3) and (4) of subdivision (a) of Section 02-02-03-013, and any written operating agreement of the limited liability company.

(b) The member and any manager has the right upon reasonable request, for purposes reasonably related to the interest of that person as a member or manager to each of the following:

(1) To inspect and copy during normal business hours any of the records required to be maintained by Section 02-02-03-013, and any other financial records of the limited liability company, including budgets, balance sheets, profit and loss statements, transaction records and other similar documents.

(2) To obtain in writing from the limited liability company promptly after becoming available, a copy of the limited liability company's federal, state, and local income tax or information returns, if any, for each year.

(c) A manager shall promptly furnish to a member a copy of any amendment to the articles of organization or operating agreement executed by a manager pursuant to a power of attorney from the member. The articles of organization or operating agreement may be sent by electronic transmission by the limited liability company.

(d) The limited liability company shall send or cause information to be sent in writing to the member within 90 days after the end of each taxable year such information as is necessary to complete federal and state income tax or information returns.

(e) Semi-annually, the limited liability company shall make a written report to the member of the company's financial condition and all transactions or events which had a material effect on its business or financial condition since the last such report.

(f) Any request, inspection, or copying by the member may be made by that person or by that person's agent or attorney.

SUBCHAPTER 4. Management

§ 02-02-03-400. Business and affairs of company managed by the member

Unless the articles of organization include the statement referred to in subdivision (b) of Section 02-02-03-401 vesting management of the limited liability company in a manager or managers, the business and affairs of a limited liability company shall be managed by the member. If management is vested in the member, the members shall have the same rights and be subject to all duties and obligations of managers as set forth in this chapter.

§ 02-02-03-401. Management by nonmember

(a) The articles of organization may provide that the business and affairs of the limited liability company shall be managed by or under the authority of one or more managers who may, but need not, be the member.

(b) If the limited liability company is to be managed by one or more managers and not by its member, the articles of organization shall contain a statement to that effect. Neither the names of the managers nor the number of managers need be specified in the articles of organization, but if management is vested in only one manager, the articles of organization shall so state.

(c) The articles of organization or operating agreement may prescribe the number and qualifications of managers who may, but need not, be natural persons.

§ 02-02-03-402. Management vested in manager pursuant to articles of organization; Election; Removal; Resignation

If management of the limited liability company is vested in one or more managers pursuant to a statement in the articles of organization:

(a) The member shall elect the managers to fill initial positions or vacancies.

(b) Any or all managers may be removed, with or without cause, by the member at a meeting called expressly for that purpose. Any removal shall be without prejudice to the rights, if any, of the manager under any contract of employment.

(c) Any manager may resign as a manager at any time upon written notice to the limited liability company, without prejudice to the rights, if any, of the limited liability company under any contract to which the manager is a party.

(d) Unless they have earlier resigned or been removed, managers shall hold office until the expiration of the term for which they were elected or, if no term was provided, until their successors have been elected and qualified.

§ 02-02-03-403. Fiduciary duties of manager

The fiduciary duties a manager owes to the limited liability company and to its member are those of a partner to a partnership and to the partners of the partnership.

§ 02-02-03-404. Appointment of officers; Authority of signing officers in documents

(a) A written operating agreement may provide for the appointment of officers, including, without limitation, a chairperson or a president, or both, a secretary, a chief financial officer, and any other officers with such titles, powers, and duties as shall be specified in the articles of organization or operating agreement, or determined by the managers or members. An officer

may, but need not, be a member or manager of the limited liability company, and any number of offices may be held by the same person.

(b) Officers, if any, shall be appointed in accordance with the written operating agreement or, if no such provision is made in the operating agreement, any officers shall be appointed by the managers and shall serve at the pleasure of the managers, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the limited liability company without prejudice to the rights, if any, of the limited liability company under any contract to which the officer is a party.

§ 02-02-03-405. Indemnification of manager, member, officer, and others; Purchase of insurance

(a) Except for a breach of the duty set forth in Section 02-02-03-403, the articles of organization or written operating agreement of a limited liability company may provide for indemnification of any person, including, without limitation, any manager, member, officer, employee, or agent of the limited liability company, against judgments, settlements, penalties, fines, or expenses of any kind incurred as a result of acting in that capacity.

(b) A limited liability company shall have power to purchase and maintain insurance on behalf of any manager, member, officer, employee, or agent of the limited liability company against any liability asserted against or incurred by the person in that capacity or arising out of the person's status as a manager, member, officer, employee, or agent of the limited liability company.

§ 02-02-03-404. More than one manager; Decisions by majority vote

Except as otherwise provided in the articles of organization or the operating agreement, if the member has appointed more than one manager, decisions of the managers shall be made by majority vote of the managers if at a meeting, or by unanimous written consent.

§ 02-02-03-405. Member as agent of company unless otherwise provided; Manager as agent

(a) Unless the statement referred to in subdivision (b) of Section 02-02-03-401 is included in the articles of organization, and except with respect to a waiver of sovereign immunity, which may be waived only as provided in section 02-02-03- 003(b), the member is an agent of the limited liability company for the purpose of its business or affairs, and the act of the member, including, but not limited to, the execution in the name of the limited liability company of any instrument, for the apparent purpose of carrying on in the usual way the business or affairs of the limited liability company of which that person is a member, binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the member is dealing has actual knowledge of the fact that the member has no such authority.

(b) If the articles of organization contain the statement referred to in subdivision (b) of Section 02-02-03-401 that management of the limited liability company is vested in a manager or managers, then:

(1) The member, acting solely in the capacity of a member, is not an agent of the limited liability company nor can the member bind, nor execute any instrument on behalf of, the limited liability company.

(2) Every manager is an agent of the limited liability company for the purpose of its business or affairs, and the act of any manager, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company of which the person is the manager, except with respect to a waiver of sovereign immunity, which may be waived only as provided in section 02-02-03-003(b), binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has actual knowledge of the fact that the manager has no such authority.

(c) No act of a manager or member in contravention of a restriction on authority shall bind the limited liability company to persons having actual knowledge of the restriction. Without regard to actual knowledge of the restriction, the sovereign immunity of the limited liability company may only be waived as provided in section 02-02-03-003(b).

§ 02-02-03-406. Personal liability of manager or officer

(a) No person who is a manager or officer or both a manager and officer of a limited liability company shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a manager or officer or both a manager and officer of the limited liability company.

(b) Notwithstanding subdivision (a), a manager of a limited liability company may agree to be obligated personally for any or all of the debts, obligations, and liabilities of the limited liability company as follows:

(1) If the agreement to be so liable is set forth in the articles of organization or in a written operating agreement that specifically references this subdivision.

(2) Pursuant to the terms of a written guarantee or other contractual obligation entered into by the manager, other than an operating agreement.

SUBCHAPTER 5. Finance

§ 02-02-03-500. Capital contributions of the member

(a) The articles of organization or the operating agreement may provide for capital contributions of the member. The contribution of the member may be in money, property, or services, or other obligation to contribute money or property or to render services.

(b) Unless the articles of organization or operating agreement provide otherwise, the member shall not be required to make any additional contribution to the limited liability company.

§ 02-02-03-501. Obligation of member to contribute cash or property or to perform services; Failure of member to make contribution; Enforcement of obligation

(a) (1) Subject to the terms of the articles of organization or the operating agreement, the member is not excused from an obligation to the limited liability company to perform any

promise to contribute cash or property or to perform services because of death, disability, dissolution, or any other reason.

(2) If the member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of the fair market value (or agreed value if stated in writing and signed by the limited liability company and the member) of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against the member under the articles of organization, operating agreement, or applicable law.

§ 02-02-03-502. Allocation of profits and losses to the member

Whether or not provided in the operating agreement, the profits and losses of a limited liability company shall be allocated exclusively to the sole member.

§ 02-02-03-503. Distributions of money or property to the member

All distributions of the money or property of a limited liability company shall be made to the member. If the operating agreement does not otherwise provide, distributions that are a return of capital shall be made in proportion to the contributions made by the member and distributions that are not a return of capital shall be made in proportion to the allocation of profits.

At the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. An operating agreement may provide for the establishment of a record date with respect to the sharing of profits and distributions from a limited liability company.

SUBCHAPTER 6. Distributions and Withdrawals

§ 02-02-03-600. Entitlement of member to receive distributions prior to withdrawal or dissolution

Except as provided in this subchapter, a member is entitled to receive distributions from a limited liability company before the withdrawal of that member from the company and before the dissolution and winding up of the company, subject to the limitations contained in Section 02-02-03-604, to the extent and at the times or upon the happening of the events specified in the operating agreement.

§ 02-02-03-601. Withdrawal of member; Notice; Entitlement to distribution

If the member elects to withdraw, the limited liability company shall either be merged into another business entity specified by the member or the limited liability company shall dissolve.

§ 02-02-03-602. Distribution in form other than money; Distribution of asset

(a) Except upon dissolution, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than money.

(b) Except upon a dissolution and winding up of a limited liability company, the member may not be compelled to accept a distribution of any asset in kind.

§ 02-02-03-603. Requirements to make distribution

(a) No distribution shall be made if, after giving effect to the distribution, either of the following occurs:

(1) The limited liability company would not be able to pay its debts as they become due in the usual course of business.

(2) The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement provides otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution that are superior to the rights of the member receiving the distribution.

(b) The limited liability company may base a determination that a distribution is not prohibited under subdivision (a) on any of the following:

(1) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances.

(2) A fair valuation.

(3) Any other method that is reasonable in the circumstances.

(c) Except as provided in subdivision (e), the effect of a distribution under subdivision (a) is measured as of (1) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization, or (2) the date payment is made if it occurs more than 120 days after the date of authorization.

(d) (1) If terms of the indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to the member could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subdivision (b).

(2) If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(e) A member is obligated to return a distribution from a limited liability company to the extent that (1) the member had actual knowledge of facts indicating the impropriety of the distribution, and (2) immediately after giving effect to the distribution, and notwithstanding the compromise of an obligation referred to in subdivision (b) of Section 02-02-03-201, all liabilities of the limited liability company, other than liabilities to the member and liabilities as to which recourse of creditors is limited to specified property of the limited liability company, exceed the fair market value of the limited liability company's assets, provided that the fair market value of any property that is subject to a liability as to which recourse of creditors is so limited shall be included in the limited liability company assets only to the extent that the fair market value of the property exceeds this liability.

(f) A cause of action with respect to an obligation to return a distribution pursuant to subdivision (e) is extinguished unless the action is brought within four years after the distribution is made.

SUBCHAPTER 7. Dissolution

§ 02-02-03-700. Occurrence of dissolution upon specified event

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

(a) At the time specified in the articles of organization, if any, or upon the happening of the events, if any, specified in the articles of organization or a written operating agreement.

(b) By the vote of a majority in interest of the members, or a greater percentage of the voting interests of members as may be specified in the articles of organization or a written operating agreement.

(c) Entry of a decree of judicial dissolution pursuant to Section 02-02-03-351.

§ 02-02-03-701. Cancellation of articles of organization where domestic limited liability company has not conducted any business; Time for filing certificate of cancellation

(a) Notwithstanding any other provision of this division, if a domestic limited liability company has not conducted any business, only a majority of the members, or, if there are no members, the majority of the managers, if any, or if no members or managers, the person or a majority of the persons signing the articles of organization, may execute and acknowledge a certificate of cancellation of articles of organization, on a form prescribed by the Secretary of State, stating all of the following:

(1) The name of the domestic limited liability company and the Secretary of the Tribe's file number.

(2) That the certificate of cancellation is being filed within 12 months from the date the articles of organization were filed.

(3) That the limited liability company does not have any debts or other liabilities, except as provided in paragraph (4).

(4) That the tax liability of the limited liability company, if any, will be satisfied on a taxes-paid basis or that a person, limited liability company, or other business entity assumes the tax liability, if any, of the dissolving limited liability company as security for the issuance of a tax clearance certificate from any taxing authority with jurisdiction over the limited liability company.

(6) That the known assets of the limited liability company remaining after payment of, or adequately providing for, known debts and liabilities have been distributed to the persons entitled thereto or that the limited liability company acquired no known assets, as the case may be.

(7) That the limited liability company has not conducted any business from the time of the filing of the articles of organization.

(8) That a majority of the managers or members voted, or, if no managers or members, the person or a majority of the persons signing the articles of organization, voted to dissolve the limited liability company.

(9) If the limited liability company has received payments for interests from investors, that those payments have been returned to those investors.

(b) A certificate of cancellation executed and acknowledged pursuant to subdivision (a) shall be filed with the Secretary of the Tribe within 12 months from the date that the articles of organization were filed. The Secretary of the Tribe shall file the certificate of cancellation.

(c) Upon filing a certificate of cancellation pursuant to subdivision (a), a limited liability company shall be cancelled and its powers, rights, and privileges shall cease.

§ 02-02-03-702. Decree of dissolution upon specified event; Avoidance of dissolution

(a) Pursuant to an action filed by any manager or by the member, a court of competent jurisdiction may decree the dissolution of a limited liability company whenever any of the following occurs:

(1) It is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.

(2) Dissolution is reasonably necessary for the protection of the rights or interests of the complaining member.

(3) The business of the limited liability company has been abandoned.

(4) The management of the limited liability company is deadlocked or subject to internal dissention.

(5) Those in control of the company have been guilty of, or have knowingly countenanced persistent and pervasive fraud, mismanagement, or abuse of authority.

§ 02-02-03-703. Winding up of company's affairs; Notice to creditors and claimants; Decree ordering winding up of company; Compensation of managers or members

In the event of a dissolution of a limited liability company:

(a) The managers who have not wrongfully dissolved the limited liability company or, if none, the member may wind up the limited liability company's affairs, unless the dissolution occurs pursuant to subdivision (c) of Section 02-02-03-350, in which event the winding up shall be conducted in accordance with the decree of dissolution. The persons winding up the affairs of the limited liability company shall give written notice of the commencement of winding up by mail to all known creditors and claimants whose addresses appear on the records of the limited liability company.

(b) Upon the petition of any manager or of the member a court of competent jurisdiction may enter a decree ordering the winding up of the limited liability company if that appears necessary for the protection of any parties in interest. The decree shall designate the managers or member who is to wind up the limited liability company's affairs.

(c) Except as otherwise provided in the articles of organization or a written operating agreement, the managers or the member winding up the affairs of the limited liability company pursuant to this section shall be entitled to reasonable compensation.

§ 02-02-03-704. Distribution of remaining assets; Preferences

(a) Except as otherwise provided in the articles of organization or the written operating agreement, after determining that all the known debts and liabilities of a limited liability company in the process of winding up, including, without limitation, debts and liabilities to the member who is a creditor of the limited liability company, have been paid or adequately provided for, the remaining assets shall be distributed to the member.

(b) If the winding up is by court proceeding or subject to court supervision, the distribution shall not be made until after the expiration of any period for the presentation of claims that has been prescribed by order of the court.

(c) The payment of a debt or liability, whether the whereabouts of the creditor is known or unknown, has been adequately provided for if the payment has been provided for by either of the following means:

(1) Payment thereof has been assumed or guaranteed in good faith by one or more financially responsible persons or by the United States government or any agency thereof, and the provision, including the financial responsibility of the person, was determined in good faith and with reasonable care by the members or managers of the limited liability company to be adequate at the time of any distribution of the assets pursuant to this section.

(2) The amount of the debt or liability has been deposited with the Secretary of the Tribe.

This subdivision shall not prescribe the exclusive means of making adequate provision for debts and liabilities.

(d) Nothing in this Section shall be deemed to waive the sovereign immunity of the limited liability company.

§ 02-02-03-705. Continuation of dissolved company for specified purposes; Distribution of assets previously omitted

(a) A limited liability company that is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it in order to collect and discharge obligations, disposing of and conveying its property, and collecting and dividing its assets. A limited liability company shall not continue business except so far as necessary for the winding up thereof.

(b) No action or proceeding to which a limited liability company is a party abates by the dissolution of the limited liability company or by reason of proceedings for the winding up and dissolution thereof.

(c) Any assets inadvertently or otherwise omitted from the winding up continue in the dissolved limited liability company for the benefit of the persons entitled thereto upon dissolution and on realization shall be distributed accordingly.

§ 02-02-03-706. Certificate of dissolution; Certificate of cancellation of articles of organization

(a)(1) The managers shall cause to be filed in the office of, and on a form prescribed by, the Secretary of the Tribe, a certificate of dissolution upon the dissolution of the limited liability company pursuant to Chapter 7 (commencing with Section 02-02-03-700), unless the event causing the dissolution is that specified in subdivision (c) of Section 02-02-03-700, in which case the managers or the member conducting the winding up of the limited liability company's affairs pursuant to Section 02-02-03-702 shall have the obligation to file the certificate of dissolution.

(2) The certificate of dissolution shall set forth all of the following:

(A) The name of the limited liability company and the Secretary of the Tribe's file number.

(B) Any other information the managers or member filing the certificate of dissolution determine to include.

(3) If a dissolution pursuant to subdivision (b) of Section 02-02-03-700 is made by the vote of the member and a statement to that effect is added to the certificate of cancellation of articles of organization pursuant to subdivision (b), the separate filing of a certificate of dissolution pursuant to this subdivision is not required.

(b)(1) The managers or member who filed the certificate of dissolution shall cause to be filed in the office of, and on a form prescribed by, the Secretary of the Tribe, a certificate of cancellation of articles of organization upon the completion of the winding up of the affairs of the limited liability company pursuant to Chapter 7 (commencing with Section 02-02-03-700), unless the event causing the dissolution is that specified in subdivision (c) of Section 02-02-03-700, in which case the managers or member conducting the winding up of the limited liability company's affairs pursuant to Section 02-02-03-352 shall have the obligation to file the certificate of cancellation of articles of organization.

(2) The certificate of cancellation of articles of organization shall set forth all of the following:

(A) The name of the limited liability company and the Secretary of the Tribe's file number.

(B) Any other information the managers or members filing the certificate of cancellation of articles of organization determine to include.

**SUBCHAPTER 8
Conversions**

§ 02-02-03-800. Conversion of another business entity into a sole member limited liability company.

Any business entity wholly owned by the Tribe, whether an unincorporated government instrumentality, business division or political subdivision, a corporation, a limited liability

company, partnership, limited partnership or trust, may be converted into a sole member limited liability company.

§ 02-02-03-801. Approval of plan of conversion

(a) The governing body of tribally owned business entity that desires to convert to a sole member limited liability company under this chapter shall, in accordance with the governing documents of that entity, approve a plan of conversion which contains the following:

- (1) The name of the business entity seeking the conversion.
- (2) The name of the limited liability company after conversion.
- (3) Whether the member of the limited liability company will be the Tribe or the Section 17 Corporation of the Tribe.
- (4) A copy of the articles of organization for the limited liability company.

§ 02-02-03-802. Certificate or statement of conversion

(a) Upon conversion of a converting entity to a limited liability company, the approved certificate of conversion shall be filed with the Secretary of the Tribe.

(b) Any certificate of conversion shall be executed and acknowledged by an officer authorized by resolution of the converting entity's governing body, and shall set forth all of the following:

- (1) The name of the converting entity.
- (2) A statement that the principal terms of the plan of conversion were approved by the governing body of the converting entity in accordance with that entity's governing documents.
- (3) The name of the sole member limited liability company into which the converted entity has been converted.
- (c) The filing with the Secretary of the Tribe of a certificate of conversion shall have the effect of the filing of a certificate of cancellation by the converting entity.
- (d) The limited liability company into which the converting entity is being converted shall file articles of organization and otherwise comply with this chapter.

§ 02-02-03-803. Rights and liabilities

(a) An entity that converts into a limited liability company pursuant to this chapter is for all purposes the same entity that existed before the conversion.

(b) Upon a conversion taking effect, all of the following apply:

- (1) All the rights and property, whether real, personal, or mixed, of the converting entity are vested in the converted entity or converted limited liability company.

(2) All debts, liabilities, and obligations of the converting entity continue as debts, liabilities, and obligations of the converted entity or converted limited liability company.

(3) All rights of creditors and liens upon the property of the converting entity shall be preserved unimpaired and remain enforceable against the limited liability company to the same extent as against the converting entity or converting limited liability company as if the conversion had not occurred.

(4) Any action or proceeding pending by or against the converting entity may be continued against the limited liability company as if the conversion had not occurred.

(c) A member of a converted limited liability company remains liable for any and all obligations of the converting entity for which the member was personally liable before the conversion, but only to the extent that the member was personally liable for the obligations of the converting entity prior to the conversion.

CERTIFICATION

As the Chairperson of the Business Council for the Blue Lake Rancheria, I hereby certify that the Business Council adopted this Ordinance at a duly called meeting at which a quorum was present by a vote of 5 for, with 0 against, with 0 abstaining, with 0 absent on this 6th day of April, 2006.




Claudia Brundin, Chairperson



Date of Approval

ATTEST:



Melanie Shelanskey, Tribal Secretary



Date of Approval