|  |
| --- |
| **COMANCHE NATION LIMITED LIABILITY COMPANY ORDINANCE** |

Table of Contents

Chapter I. General Provisions

Chapter II. Formation; Certificate of Formation

Chapter III. Members

Chapter IV. Managers

Chapter V. Finance

Chapter VI. Distributions and Resignation

Chapter VII. Assignment of Limited Liability Company Interests

Chapter VIII. Dissolution

Chapter IX. Foreign Limited Liability Companies

Chapter X. Derivative Actions

Chapter XI. Miscellaneous

# General Provisions.

## Definitions.

As used in this Ordinance unless the context otherwise requires:

1. “Certificate of formation” means documents filed for the purpose of forming a limited liability company, and the certificate as amended;
2. “Bankrupt” means bankrupt under the United States Bankruptcy Code, as amended, or insolvent under any state or tribal insolvency act;
3. “Business” means any trade, occupation, profession or other activity regardless of whether engaged in for gain, profit or livelihood;
4. “Contribution” means anything of value that a person contributes to the limited liability company as a prerequisite for, or in connection with, membership, including cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services;

### “Comanche Indian Country” means land held in trust by the United States for the benefit of the Comanche Nation, all land within the boundaries of the Kiowa Comanche Apache Reservation established by the Treaty of Medicine Lodge Creek over which the Comanche Nation retains jurisdiction, and all other territory described as Indian Country within the meaning of Section 1151 of Title 18 of the United States Code over which the Comanche Nation has authority, including tribal or individual, trust, non-trust and restricted land, and including all land owned by tribal agencies in their own name, all waters, airspace, minerals and wildlife (vegetation), and any other such land, or interest in land, which may be subsequently acquired by virtue of Executive Order, a declaration or regulation of the United States Department of Interior, a declaration or order of a Court of competent jurisdiction, by purchase, gift, relinquishment, or by any other lawful means

### “Comanche Tax Commission” means the commission established by the Comanche Business Committee pursuant to the “Comanche Revenue and Taxation Act of 1995”.

### “Foreign limited liability company” means a limited liability company formed under laws other than the laws of the Tribe.

### “Knowledge” means a person’s actual knowledge of a fact, rather than the person’s constructive knowledge of the fact.

### “Limited liability company” and “domestic limited liability company” mean a limited liability company formed under the laws of the Tribe.

### “Operating agreement” regardless of whether referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, means any agreement of the members, including a sole member, as to the affairs of a limited liability company and the conduct of its business, including the agreement as amended or restated.

### “Limited liability company interest” means a member’s share of the profits and losses of a limited liability company and a member’s right to receive distributions of the limited liability company’s assets.

### “Liquidating trustee” means a person carrying out the winding up of a limited liability company.

### “Manager” means a person who is named as a manager of a limited liability company in, or designated as a manager of a limited liability company pursuant to, an operating agreement or similar instrument under which the limited liability company is formed.

### “Member” means a person who has been admitted to a limited liability company as a member as provided in Section 301 of this ordinance or, in the case of a foreign limited liability company, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized.

### “Person” means a natural person, partnership (whether general or limited and whether domestic or foreign), limited liability company, foreign limited liability company, trust, estate, association (including any group, organization, co-tenancy, plan, board, council or committee), corporation, custodian, nominee or any other individual or entity (or series thereof) in its own or any representative capacity, in each case, whether domestic or foreign.

### “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.

### “State” means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

### “Tribal Court” means the District and Appellate Courts of the Comanche Nation.

### “Tribe” means the Comanche Nation.

## Name set forth in certificate.

The name of each limited liability company as set forth in its certificate of formation:

### Shall contain the words “Limited Liability Company” or the abbreviation “L.L.C.” or the designation “LLC”; and

### Must be distinguishable from others names on record with the Tax Commission for any corporation, partnership, limited partnership, statutory trust or limited liability company reserved, registered, formed or organized under the laws of the Tribe or registered with the Tax Commission to do business within the Comanche Indian Country; except that a limited liability company may use a non-distinguishable name with the written consent of a similarly-named entity, if such consent is filed with the Tax Commission,.

## Reservation of name.

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

#### Any person intending to organize a limited liability company under this Ordinance and to adopt that name;

#### Any domestic limited liability company or any foreign limited liability company registered with the Tax Commission to do business in the Comanche Indian Country which, in either case, proposes to change its name;

#### A foreign limited liability company which intends to register with the Tax Commission to do business in the Comanche Indian Country and adopt that name.

### A person seeking to reserve a specified name shall file an application executed by the applicant with the Tax Commission and pay the filing fee required by law. If the Tax Commission finds that the name is available for use, it shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may again reserve the same name for successive 120-day periods.

### The right to the exclusive use of a reserved name may be transferred to any other person by filing in the Tax Commission a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

## Registered office; registered agent.

### Each limited liability company shall have and maintain within Comanche Indian Country:

#### A registered office; and

#### A registered agent for service of process on the limited liability company.

### A limited liability company may designate or change its registered agent, registered office, or principal office by filing with the Tax Commission a statement authorizing the designation or change signed by any manager, and by paying a fee as set forth in Section 1105 of this ordinance. Such designation or change is effective when the Tax Commission files the statement, unless a later effective date or time, no later than the ninetieth day after the filing, is provided in the statement.

### A registered agent who changes his or her street address in the state may notify the Tax Commission of the change by filing with the Tax Commission a statement of the change signed by the agent or on the agent’s behalf.

#### The statement shall include:

##### the name of the limited liability company for which the change is effective,

##### the new street address of the registered agent, and

##### the date on which the change is effective, if to be effective after the filing date.

#### The change of address of the registered agent is effective when the Tax Commission files the statement, unless a later effective date or time, which shall be a specified date or time, no later than the ninetieth day after the filing, is provided in the statement.

### A registered agent may resign by paying a fee as set forth in Section 1105 of this ordinance and filing with the Tax Commission a copy of the resignation, signed and acknowledged by the registered agent, which contains a statement that notice of the resignation was given to the limited liability company at least thirty (30) days before the filing of the resignation by mailing or delivering the notice to the limited liability company at its address last known to the registered agent and specifying the address therein.

#### The resignation is effective thirty days after it is filed, unless a later effective date or time, which shall be a specified date or time not later than a time on the ninetieth day after the filing, is provided in the resignation.

#### If a domestic limited liability company fails to obtain and designate a new registered agent before the resignation is effective, the Tax Commission shall be deemed to be the registered agent of the limited liability company until a new registered agent is designated.

### If a limited liability company has no registered agent or the registered agent cannot be found, then service of process on the limited liability company may be made by serving the Tax Commission as its agent in accordance with § 105 of this ordinance.

## Substitute service of process on domestic limited liability companies.

### If after due diligence, legal process cannot be served in any manner provided for by the Comanche Nation Rules of Civil Procedure, it shall be lawful to serve the process against the limited liability company upon the Tax Commission. In the event that service is effected through the Tax Commission in accordance with this section, the Tax Commission shall notify the limited liability company by letter, certified mail, return receipt requested, directed to the limited liability company at its address as it appears on the records on file with the Comanche Tax Commission. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Comanche Tax Commission that service is being effected pursuant to this section, and to pay the Comanche Tax Commission the sum of $50.

## Nature of business permitted; powers.

### A limited liability company may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of granting policies of insurance, or assuming insurance risks or banking.

### A limited liability company shall possess and may exercise all the powers and privileges granted by this Ordinance or by any other law or by its operating agreement, together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited liability company.

### Notwithstanding any provision of this Ordinance to the contrary, without limiting the general powers enumerated in subsection (b) of this section, a limited liability company shall, subject to such standards and restrictions, if any, as are set forth in its operating agreement, have the power and authority to make contracts of guaranty and suretyship and enter into interest rate, basis, currency, hedge or other swap agreements or cap, floor, put, call, option, exchange or collar agreements, derivative agreements, or other agreements similar to any of the foregoing.

## Business transactions of member or manager with the limited liability company.

Except as provided in an operating agreement, a member or manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one or more obligations of, provide collateral for, and transact other business with, a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

## Indemnification.

Subject to such standards and restrictions, if any, as are set forth in its operating agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever.

## Interpretation and enforcement of ordinance and operating agreement.

Any action to interpret, apply or enforce the provisions of this ordinance or of an operating agreement, or the duties, obligations or liabilities of a limited liability company to the members or managers of the limited liability company, or the duties, obligations or liabilities among members or managers and of members or managers to the limited liability company, or the rights or powers of, or restrictions on, the limited liability company, members or managers, may be brought in the Tribal Court. Each person accepting a membership interest in a domestic limited liability company or agreeing to serve as a manager of a domestic limited liability company irrevocably consents to the jurisdiction of the Tribal Court for such actions.

# Formation; Certificate of Formation

## Certificate of formation.

### In order to form a limited liability company, one or more authorized persons must execute a certificate of formation. The certificate of formation shall be filed with the Tax Commission and set forth:

#### The name of the limited liability company;

#### The address of the registered office and the name and address of the registered agent for service of process required to be maintained by § 104 of this ordinance;

#### The name of each Manager or Member;

#### A statement that the Company and each Manager or Member consents to the jurisdiction of the Tribal Court; and

#### any other matters the members determine to include therein.

### A limited liability company is formed at the time of the filing of the certificate of formation filed with the Tax Commission unless a later date or time is specified in the certificate of formation.  A limited liability company formed under this ordinance shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company’s certificate of formation.

### An operating agreement may be entered into either before, after or at the time of the filing of a certificate of formation and may be made effective as of the formation of the limited liability company or at such other time or date as provided in the operating agreement.

## Amendment to certificate of formation.

### A certificate of formation is amended by filing a certificate of amendment with the Tax Commission. The certificate of amendment shall set forth:

#### The name of the limited liability company; and

#### The amendment to the certificate of formation.

### The certificate of formation shall be amended when:

#### There is a change in the name of the limited liability company;

#### There is a false or erroneous statement in the certificate of formation;

#### There is a change in the time for the cancellation of the limited liability company; or

#### The members desire to amend the certificate of formation for any other proper purpose.

### A certificate of amendment shall be effective at the time of its filing with the Tax Commission unless a later date or time is specified in the certificate of amendment or this ordinance.

## Cancellation of certificate.

A certificate of formation shall be cancelled upon the dissolution and the completion of winding up of a limited liability company, or as provided in § 1105 of this ordinance, or upon the filing of a certificate of merger or consolidation if the limited liability company is not the surviving entity in a merger or consolidation. A certificate of cancellation shall be filed with the Tax Commission to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company and shall set forth:

### The name of the limited liability company;

### The date of filing of its certificate of formation;

### The future effective date or time (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate; and

### Any other information the person filing the certificate of cancellation determines.

## Execution.

### Each certificate required by this Chapter to be filed with the Tax Commission shall be executed by one or more authorized persons.

#### A certificate of formation must be signed by at least one person who need not be a member of the limited liability company; and

#### Amendments, mergers, consolidations, conversions or dissolutions must be signed by a manager.

### Any person may sign any certificate by an attorney-in-fact. A person who executes articles as an attorney-in-fact, agent or fiduciary is not required to exhibit evidence of his or her authority as a prerequisite to filing.

### The execution of any articles under this act constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

### Any signature on articles or any other instrument authorized by this act may be a facsimile signature, a conformed signature or an electronically transmitted signature.

## Execution, amendment or cancellation by judicial order.

### If a person required to execute a certificate required by this Chapter fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Tribal Court to direct the execution of the certificate. If the Tribal Court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the Tax Commission to record an appropriate certificate.

### If a person required to execute an operating agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Tribal Court to direct the execution of the operating agreement or amendment thereof. If the Tribal Court finds that the operating agreement or amendment thereof should be executed and that any person required to execute the operating agreement or amendment thereof has failed or refused to do so, it shall enter an order granting appropriate relief.

## Merger and consolidation.

### Pursuant to an agreement of merger or consolidation, one or more domestic limited liability companies may merge or consolidate with or into one or more domestic limited liability companies or one or more other business entities formed or organized under the laws of the Tribe or any other tribe or any state or the United States or any foreign country or other foreign jurisdiction, or any combination thereof, with such domestic limited liability company or other business entity as the agreement shall provide being the surviving or resulting domestic limited liability company or other business entity.

### Unless otherwise provided in the operating agreement, a merger or consolidation shall be approved by the members who own more than fifty percent (50%) of the interest in the company. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

### In connection with a merger or consolidation, interests in a domestic limited liability company may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic limited liability company or other business entity.

### If a domestic limited liability company is merging or consolidating under this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation executed by one or more authorized persons. The certificate of merger or consolidation shall state:

#### The name, jurisdiction of formation or organization, and type of entity of each of the limited liability companies or other entities which are to merge or consolidate;

#### That an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies or other entities which is to merge or consolidate;

#### The name of the surviving or resulting domestic limited liability company or other entity;

#### The future effective date or time, which shall be a specific date or time not later than a time on the ninetieth day after the filing, of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

#### That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other entity, and shall state the street address thereof;

#### That a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting domestic limited liability company or other entity, upon request and without cost, to any member of any domestic limited liability company or any person holding a membership or membership, economic or ownership interest in any other entity which is to merge or consolidate;

#### In the case of a merger, any amendments or changes in the certificate of formation of the surviving domestic limited liability company that are to be effected by the merger, which amendments or changes may amend and restate the articles of organization of the surviving domestic limited liability company in its entirety;

#### In the case of a consolidation, that the certification of formation of the resulting domestic limited liability company shall be as set forth in an attachment to the certification of consolidation; and

#### If the surviving or resulting entity is not a domestic limited liability company or entity formed or organized pursuant to the laws of the Tribe, a statement that the surviving or resulting other entity irrevocably appoints the Tax Commission as its agent to accept service of process in any action, suit, or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate; and specifies the street address to which process shall be mailed to the entity by the Tax Commission.

### Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing with Tax Commission of a certificate of merger or consolidation.

### Articles of merger or consolidation terminate the separate existence of a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation.

### Once any merger or consolidation is effective pursuant to this section, all of the rights, privileges, and powers of each of the domestic limited liability companies and other entities that have merged or consolidated and all property, real, personal, and mixed, and all debts due to each domestic limited liability company or other entity, as well as all other things and causes of action belonging to each domestic limited liability company or other entity shall be vested in the surviving or resulting domestic limited liability company or other entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other entity

#### The title to any real property vested by deed or otherwise in any domestic limited liability company or other entity shall not revert or be in any way impaired by reason of this section, but all rights of creditors and all liens upon any property of each domestic limited liability company or other entity shall be preserved unimpaired.

#### All debts, liabilities and duties of each domestic limited liability company or other entity that has merged or consolidated shall thereafter attach to the surviving or resulting domestic limited liability company or other entity, and may be enforced against the surviving or resulting limited liability company or other entity to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the surviving or resulting limited liability company or other entity.

## Contractual appraisal rights.

An operating agreement or an agreement of merger or consolidation may provide that contractual appraisal rights with respect to a limited liability company interest or another interest in a limited liability company shall be available for any class or group of members or limited liability company interests in connection with any amendment of an operating agreement, any merger or consolidation in which the limited liability company is a constituent party to the merger or consolidation, any conversion of the limited liability company to another business form, any transfer to or domestication in any jurisdiction by the limited liability company, or the sale of all or substantially all of the limited liability company’s assets. The Tribal Court shall have jurisdiction to hear and determine any matter relating to any such appraisal rights.

## Certificate of correction.

### Whenever any certificate has been filed with the Tax Commission and is inaccurate, or was defectively or erroneously executed, such certificate may be corrected by filing with the Tax Commission a certificate of correction. The certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the certificate in corrected form, and shall be executed and filed as required by this ordinance. The certificate of correction shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the correction, and as to those persons the certificate of correction shall be effective from the filing date.

# Members

## Admission of members.

### In connection with the formation of a limited liability company, a person is admitted as a member of the limited liability company upon the later of:

#### The formation of the limited liability company; or

#### The time provided in the operating agreement or, if the operating agreement does not so provide, when the person’s admission is reflected in the records of the limited liability company.

### After the formation of a limited liability company, a person is admitted as a member of the limited liability company:

#### In the case of a person who is not an assignee of a limited liability company interest, at the time provided in the operating agreement or, if the operating agreement does not so provide, upon the consent of all members and when the person’s admission is reflected in the records of the limited liability company;

#### In the case of an assignee of a limited liability company interest, as provided in Section 704(a) of this ordinance and at the time provided in the operating agreement or, if the operating agreement does not so provide, when any such person’s permitted admission is reflected in the records of the limited liability company; or

#### In the case of a person being admitted as a member of a surviving or resulting limited liability company pursuant to a merger or consolidation, at the time provided in the operating agreement of the surviving or resulting limited liability company or in the agreement of merger or consolidation, and in the event of any inconsistency, the terms of the agreement of merger or consolidation shall control; and in the case of a person being admitted as a member of a limited liability company pursuant to a merger or consolidation in which such limited liability company is not the surviving or resulting limited liability company in the merger or consolidation, as provided in the operating agreement of such limited liability company.

### A person may be admitted to a limited liability company as a member of the limited liability company and may receive a limited liability company interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company.

### Unless otherwise provided in an operating agreement or another agreement, a member shall have no preemptive right to subscribe to any additional issue of limited liability company interests or another interest in a limited liability company.

## Classes and voting.

### An operating agreement may provide for classes of members having such relative rights, powers and duties as the operating agreement may provide. An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any class of members. An operating agreement may provide that any class of members shall have no voting rights.

### An operating agreement may grant to a specified class of the members the right to vote separately on any matter. Voting by members may be on a per capita, number, financial interest, class, group or any other basis.

### An operating agreement may set forth provisions relating to notice of the time, place or purpose of any meeting of members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

### Unless otherwise provided in an operating agreement, meetings of members may be held by means of video or telephone conference. Unless otherwise provided in an operating agreement, members may take action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the members having not less than the minimum number of votes that would be necessary to such action at a meeting.

### Unless otherwise provided in an operating agreement, the members may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law.

## Liability to 3rd parties; No waivers of Tribal sovereign immunity.

### Except as otherwise provided by this ordinance, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely, the debts, obligations and liabilities of the limited liability company, and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

### Notwithstanding the provisions of subsection (a) of this section, under an operating agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of the limited liability company.

### Nothing in this ordinance shall be construed as waiving or abrogating the sovereign immunity of any tribally-owned limited liability company. Any limited liability company in which the Tribe (or its instrumentalities or wholly-owned entities) or Comanche Nation Enterprises, Inc. (or its subsidiaries) has a membership interest shall be entitled to sovereign immunity to the full extent of law. Notwithstanding any other provision contained in this ordinance:

#### any limited liability company in which the Tribe, Comanche Nation Enterprises, Inc., or an instrumentality of the Tribe or wholly-owned entity of the Tribe is a member shall have the power to consent in writing to such limited liability company being sued in courts or to have claims against it resolved through arbitration, but shall not have the power to consent to suit against the Tribe or any other tribal entity, and

#### no suit may be brought against any limited liability company in which the Tribe, Comanche Nation Enterprises, Inc., or an instrumentality of the Tribe or wholly-owned entity of the Tribe is a member except insofar as consent has validly been given in writing pursuant to this subsection of this ordinance. Any such consent shall be strictly construed.

### Notwithstanding any other provision contained in this ordinance, limited liability companies may not dispose of, mortgage, or otherwise encumber real or personal property of the Tribe, except that such limited liability companies may grant a leasehold mortgage or other security interest in such limited liability companies’ leasehold interest in any lease of real or personal property of the Tribe to such limited liability company.

## Events of bankruptcy.

A person ceases to be a member of a limited liability company upon the happening of any of the following events:

### Unless otherwise provided in an operating agreement, or with the written consent of all members, a member:

#### Makes an assignment for the benefit of creditors;

#### Files a voluntary petition in bankruptcy;

#### Is adjudged a bankrupt or insolvent, or has entered against the member an order for relief, in any bankruptcy or insolvency proceeding;

#### Files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

#### Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature;

#### Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of the member’s properties; or

### Unless otherwise provided in an operating agreement, or with the written consent of all members, 120 days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without the member’s consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of the member’s properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.

## Access to and confidentiality of information; records.

### Each member of a limited liability company has the right, subject to such reasonable standards (including standards governing what information and documents are to be furnished at what time and location and at whose expense) as may be set forth in an operating agreement or otherwise established by the manager or, if there is no manager, then by the members, to obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member’s interest as a member of the limited liability company:

#### True and full information regarding the status of the business and financial condition of the limited liability company;

#### Promptly after becoming available, a copy of the limited liability company’s federal, tribal, state and local income tax returns for each year;

#### A current list of the name and last known business, residence or mailing address of each member and manager;

#### A copy of any written operating agreement and certificate of formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the operating agreement and any certificate and all amendments thereto have been executed;

#### True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and

#### Other information regarding the affairs of the limited liability company as is just and reasonable.

### Each manager shall have the right to examine all of the information described in subsection (a) of this section for a purpose reasonably related to the position of manager.

### The manager of a limited liability company shall have the right to keep confidential from the members, for such period of time as the manager deems reasonable, any information which the manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business or which the limited liability company is required by law or by agreement with a 3rd party to keep confidential.

### A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

### Any demand by a member under this section shall be in writing and shall state the purpose of such demand.

### Any action to enforce any right arising under this section shall be brought in the Tribal Court. If the limited liability company refuses to permit a member to obtain or a manager to examine the information described in subsection (a)(3) of this section or does not reply to the demand that has been made within five (5) business days after the demand has been made, the demanding member or manager may apply to the Tribal Court for an order to compel such disclosure.

### The rights of a member or manager to obtain information as provided in this section may be restricted in an original operating agreement or in any subsequent amendment approved or adopted by all of the members and in compliance with any applicable requirements of the operating agreement. The provisions of this subsection shall not be construed to limit the ability to impose restrictions on the rights of a member or manager to obtain information by any other means permitted under this section.

## Remedies for breach of operating agreement by member.

An operating agreement may provide that:

### A member who fails to perform in accordance with, or to comply with the terms and conditions of, the operating agreement shall be subject to specified penalties or specified consequences; and

### At the time or upon the happening of events specified in the operating agreement, a member shall be subject to specified penalties or specified consequences. Such specified penalties or specified consequences may include and take the form of any penalty or consequence set forth in § 502(c) of this title.

# Managers

## Admission of managers.

A person may be named or designated as a manager of the limited liability company as provided in § 101(m) of this ordinance.

## Management of limited liability company.

Unless otherwise provided in an operating agreement, the management of a limited liability company shall be vested in its members in proportion to their interest in the profits of the limited liability company, the decision of members owning more than fifty percent (50%) of the interest in the profits shall be controlling; provided however, that if an operating agreement provides for management by a manager, the management of the limited liability company shall be vested in the manager who shall be chosen in the manner provided in the operating agreement. A limited liability company may have more than one (1) manager. Unless otherwise provided in an operating agreement, each member and manager has the authority to bind the limited liability company.

## Contributions by a manager.

A manager of a limited liability company may make contributions to the limited liability company and share in the profits and losses of, and in distributions from, the limited liability company as a member. A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as provided in an operating agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of the manager’s participation in the limited liability company as a member.

## Classes and voting.

### An operating agreement may provide for classes of managers having such relative rights, powers and duties as the operating agreement may provide. An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any class of managers. An operating agreement may provide that any class of managers shall have no voting rights.

### An operating agreement may grant to a specified class of the managers the right to vote separately on any matter. Voting by managers may be on a per capita, number, financial interest, class, group or any other basis.

### An operating agreement may set forth provisions relating to notice of the time, place or purpose of any meeting of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

### Unless otherwise provided in an operating agreement, meetings of managers may be held by means of video or telephone conference. Unless otherwise provided in an operating agreement, managers may take action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the managers having not less than the minimum number of votes that would be necessary to such action at a meeting.

### Unless otherwise provided in an operating agreement, the managers may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law.

## Remedies for breach of operating agreement by manager.

An operating agreement may provide that:

### A manager who fails to perform in accordance with, or to comply with the terms and conditions of, the operating agreement shall be subject to specified penalties or specified consequences; and

### At the time or upon the happening of events specified in the operating agreement, a manager shall be subject to specified penalties or specified consequences.

## Reliance on reports and information by member or manager; delegation of rights and powers to manage.

### A manager shall discharge the duties as a manager in good faith, with the care an ordinary prudent person in a like position could exercise under similar circumstances, and in the manner the manager reasonably believes to be in the best interests of the limited liability company;

### In discharging the duties, a manager may rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

#### one or more employees of the limited liability company whom the manager reasonably believes to be reliable and competent in the matters presented,

#### legal counsel, public accountants, or other persons as to matters the manager reasonably believes are within the person's professional or expert competence, or

#### a committee of managers of which the manager is not a member if the manager reasonably believes the committee merits confidence;

#### A manager is not acting in good faith if the manager has knowledge concerning the matter in question that makes reliance otherwise permitted by this paragraph unwarranted;

### Unless otherwise provided in the operating agreement, a manager has the authority to delegate to other persons the manager’s rights and powers to manage and control the business and affairs of the limited liability company. The delegation by a manager shall not cause the manager to cease to be a manager of the limited liability company;

### A manager is not liable for any action taken as a manager, or any failure to take any action, if the manager performed the duties of the office in compliance with the business judgment rule as applied to directors and officers of a corporation; and

### Except as otherwise provided in the certificate of formation or operating agreement, every manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by the manager without the informed consent of the members from any transaction connected with the conduct or winding up of the limited liability company or from any personal use by the manager of its property.

# Finance

## Form of contribution.

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

## Liability for contribution.

### Except as provided in an operating agreement, a member is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or any other reason. If a 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 agreed value (as stated in the records of the limited liability company) 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 such member under the operating agreement or applicable law.

### Unless otherwise provided in an operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this ordinance may be compromised only by consent of all the members.

### An operating agreement may provide that the interest of any member who fails to make any contribution that the member is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member’s proportionate interest in a limited liability company, subordinating the member’s limited liability company interest to that of nondefaulting members, a forced sale of that limited liability company interest, forfeiture of the defaulting member’s limited liability company interest, the lending by other members of the amount necessary to meet the defaulting member’s commitment, a fixing of the value of the defaulting member’s limited liability company interest by appraisal or by formula and redemption or sale of the limited liability company interest at such value, or other penalty or consequence.

## Allocation of profits and losses.

The profits and losses of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in the operating agreement. If the operating agreement does not so provide, profits and losses shall be allocated on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

## Allocation of distributions.

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in the operating agreement. If the operating agreement does not so provide, distributions shall be made on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

## Defense of usury not available.

No obligation of a member or manager of a limited liability company to the limited liability company arising under the operating agreement or a separate agreement or writing, and no note, instrument or other writing evidencing any such obligation of a member or manager, shall be subject to the defense of usury, and no member or manager shall interpose the defense of usury with respect to any such obligation in any action.

# Distributions and Resignation

## Resignation of manager.

A manager may resign as provided in the operating agreement. An operating agreement may provide that a manager shall not have the right to resign. Notwithstanding that an operating agreement provides that a manager does not have the right to resign, a manager may resign by giving written notice to the members and other managers. If the resignation of a manager violates the operating agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the operating agreement and offset the damages against the amount otherwise distributable to the resigning manager.

## Resignation of member.

A member may resign from a limited liability company as provided in the operating agreement. Notwithstanding anything to the contrary under applicable law, unless an operating agreement provides otherwise, a member may not resign from a limited liability company prior to the dissolution and winding up of the limited liability company. Notwithstanding anything to the contrary under applicable law, an operating agreement may provide that a limited liability company interest may not be assigned prior to the dissolution and winding up of the limited liability company.

## Distribution upon resignation.

Except as provided in this Chapter, upon resignation any resigning member is entitled to receive any distribution to which such member is entitled under an operating agreement and, if not otherwise provided in the operating agreement, such member is entitled to receive, within a reasonable time after resignation, the fair value of such member’s limited liability company interest as of the date of resignation based upon such member’s right to share in distributions from the limited liability company.

## Distribution in kind.

### Except as provided in an operating agreement, 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 cash.

### No member may be compelled to accept from a limited liability company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the member exceeds the percentage which the member's interest in the limited liability company is of all of the interests in the limited liability company

## Right to distribution.

### Subject to Sections 606 and 804 of this ordinance, and unless otherwise provided in an operating agreement, at the time a member becomes entitled to receive a distribution, the member is entitled to all remedies available to a creditor of a limited liability company with respect to the distribution. An operating agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

### Subject to Section 606, the Comanche Business Committee may declare a distribution be made to members of any domestic limited liability company in which the Tribe, an instrumentality of the Tribe, a wholly-owned entity of the Tribe, Comanche Nation Enterprises, Inc., or subsidiaries of Comanche Nation Enterprises, Inc., has a membership interest.

## Limitations on distribution.

### A distribution may not be made if, after giving effect to the distribution:

#### The limited liability company would not be able to pay its debts as they become due in the usual course of business; or

#### The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement permits 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 upon dissolution of members whose preferential rights are superior to the rights of members receiving the distribution.

### A member who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to a limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution. Subject to subsection (c) of this section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

### Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this ordinance or other applicable law for the amount of the distribution after the expiration of 3 years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said 3-year period and an adjudication of liability against such member is made in the said action.

# Assignment of Limited Liability Company Interests

## Nature of limited liability company interest.

A limited liability company interest is personal property. A member has no interest in specific limited liability company property.

## Assignment of limited liability company interest.

### A limited liability company interest is assignable except as provided in an operating agreement. The assignee of a member’s limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in an operating agreement and upon:

#### The approval of all of the members other than the member assigning the limited liability company interest; or

#### Compliance with any procedure provided for in the operating agreement.

### Unless otherwise provided in an operating agreement:

#### An assignment of a limited liability company interest does not entitle the assignee to become or to exercise any rights or powers of a member;

#### An assignment of a limited liability company interest entitles the assignee to share in the profits and losses, to receive distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

#### A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of the member’s limited liability company interest. Unless otherwise provided in an operating agreement, the pledge or granting of an encumbrance in the limited liability company interest of a member shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

### Unless otherwise provided in an operating agreement, a member’s interest in a limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company. An operating agreement may provide for the assignment or transfer of any limited liability company interest represented by such a certificate and make other provisions with respect to such certificate.

### Unless otherwise provided in an operating agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

### Unless otherwise provided in the operating agreement, a limited liability company may acquire, by purchase, redemption or otherwise, any limited liability company interest or other interest of a member or manager in the limited liability company. Unless otherwise provided in the operating agreement, any such interest so acquired by the limited liability company shall be deemed canceled.

## Member’s limited liability company interest subject to charging order.

### On application by a judgment creditor of a member or of a member’s assignee, the Tribal Court may charge the limited liability company interest of the judgment debtor to satisfy the judgment. To the extent so charged, the judgment creditor has only the right to receive any distributions to which the judgment debtor would have been entitled.

### A charging order constitutes a lien on the judgment debtor’s limited liability company interest.

### This ordinance does not deprive a member or member’s assignee of a right under exemption laws with respect to the judgment debtor’s limited liability company interest.

### The entry of a charging order is the exclusive remedy by which a judgment creditor of a member or of a member’s assignee may satisfy a judgment out of the judgment debtor’s limited liability company interest.

### No creditor of a member or of a member’s assignee shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

### The Tribal Court shall have jurisdiction to hear and determine any matter relating to any such charging order.

## Right of assignee to become member.

### An assignee of a limited liability company interest may become a member as provided in an operating agreement and upon:

#### The approval of all of the members of the limited liability company other than the member assigning limited liability company interest; or

#### Compliance with any procedure provided for in the operating agreement.

### An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member. Notwithstanding the foregoing, unless otherwise provided in an operating agreement, an assignee who becomes a member is liable for the obligations of the assignor to make contributions as provided in Section 502 of this ordinance, but shall not be liable for the obligations of the assignor under Chapter VI of this ordinance. However, the assignee is not obligated for liabilities, including the obligations of the assignor to make contributions as provided in Section 502 of this ordinance, unknown to the assignee at the time the assignee became a member and which could not be ascertained from an operating agreement.

### Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from liability to a limited liability company under Chapters V and VI of this ordinance.

## Powers of estate of deceased or incompetent member.

If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent, the member’s personal representative may exercise all of the member’s rights for the purpose of settling the member’s estate or administering the member’s property, including any power under an operating agreement of an assignee to become a member. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its personal representative.

# Dissolution

## Dissolution.

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

#### At the time or upon the happening of events specified in an operating agreement;

#### Unless otherwise provided in an operating agreement, the written consent of all of the members or, if there is more than one class of members, then by the written consent of all of the members of each class;

#### At any time there are no members; provided, that the limited liability company is not dissolved and is not required to be wound up if:

##### Unless otherwise provided in an operating agreement, within ninety (90) days after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; provided, that an operating agreement may provide that the personal representative of the last remaining member shall be obligated to agree in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, or

##### A member is admitted to the limited liability company in the manner provided for in the operating agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, within ninety (90) days or such other period as is provided for in the operating agreement after the occurrence of the event that terminated the continued membership of the last remaining member, pursuant to a provision of the operating agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company.

#### The entry of a decree of judicial dissolution under Section 802 of this ordinance

### Unless otherwise provided in an operating agreement, the death, retirement, resignation, expulsion, bankruptcy or dissolution of any member or the occurrence of any other event that terminates the continued membership of any member shall not cause the limited liability company to be dissolved or its affairs to be wound up, and upon the occurrence of any such event, the limited liability company shall be continued without dissolution.

## Judicial dissolution.

On application by or for a member or manager the Tribal Court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with an operating agreement.

## Winding up.

### Except as otherwise provided in the operating agreement:

#### The business or affairs of the limited liability company may be wound up in one of the following ways:

##### by the managers, or

##### if one or more of the members or managers have engaged in conduct that casts reasonable doubt on their ability to wind up the business or affairs of the limited liability company, or upon other cause shown, by the Tribal Court on application of any member, his legal representative, or assignee; and

### The persons winding up the business or affairs of the limited liability company may, in the name of, and for and on behalf of, the limited liability company:

#### prosecute and defend suits,

#### settle and close the business of the limited liability company,

#### dispose of and transfer the property of the limited liability company,

#### discharge the liabilities of the limited liability company, and

#### distribute to the members any remaining assets of the limited liability company.

### Except as provided in subsections (e) and (f) of this section, after an event causing dissolution of the limited liability company any manager can bind the limited liability company:

#### By any act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

#### By any transaction that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

### The filing of the certificate of cancellation shall be presumed to constitute notice of dissolution for purposes of paragraph 2 of subsection (c) of this section.

### An act of a manager or member that is not binding on the limited liability company pursuant to subsection (c) of this section is binding if it is otherwise authorized by the limited liability company.

### An act of a manager or member that would be binding under subsection (c) or would be otherwise authorized but that is in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

## Distribution of assets.

### Upon the winding up of a limited liability company, the assets shall be distributed as follows:

#### To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members and former members under Section 603 of this ordinance;

#### Unless otherwise provided in an operating agreement, to members and former members in satisfaction of liabilities for distributions under Section 603 of this ordinance; and

#### Unless otherwise provided in an operating agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

### A limited liability company which has dissolved:

#### Shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured contractual claims, known to the limited liability company;

#### Shall make such provision as will be reasonably likely to be sufficient to provide compensation for any claim against the limited liability company which is the subject of a pending action, suit or proceeding to which the limited liability company is a party; and

#### Shall make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited liability company or that have not arisen but that, based on facts known to the limited liability company, are likely to arise or to become known to the limited liability company within ten (10) years after the date of dissolution. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in the operating agreement, any remaining assets shall be distributed as provided in this ordinance. Any liquidating trustee winding up a limited liability company’s affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited liability company by reason of such person’s actions in winding up the limited liability company.

### A member who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to the limited liability company for the amount of the distribution. For purposes of the immediately preceding sentence, the term “distribution” shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution. Subject to subsection (d) of this section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

### Unless otherwise agreed, a member who receives a distribution from a limited liability company to which this section applies shall have no liability under this ordinance or other applicable law for the amount of the distribution after the expiration of three (3) years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said 3-year period and an adjudication of liability against such member is made in the said action.

### Section 606 of this ordinance shall not apply to a distribution to which this section applies.

## Trustees or receivers for limited liability companies; appointment; powers; duties.

When the certificate of formation of any limited liability company formed under this ordinance shall be canceled by the filing of a certificate of cancellation pursuant to Section 203 of this title, the Tribal Court, on application of any creditor, member or manager of the limited liability company, or any other person who shows good cause therefor, at any time, may either appoint one or more of the managers of the limited liability company to be trustees, or appoint one or more persons to be receivers, of the limited liability company, to take charge of the limited liability company’s property, and to collect the debts and property due and belonging to the limited liability company, with the power to prosecute and defend, in the name of the limited liability company, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the limited liability company, if in being, that may be necessary for the final settlement of the unfinished business of the limited liability company. The powers of the trustees or receivers may be continued as long as the Tribal Court shall think necessary for the purposes aforesaid.

# Foreign Limited Liability Companies

[RESERVED]

# Derivative Actions

## Right to bring action.

Subject to Section 303(c) of this ordinance, a member or an assignee of a limited liability company interest may bring an action in the Tribal Court in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

## Proper plaintiff.

In a derivative action, the plaintiff must be a member or an assignee of a limited liability company interest at the time of bringing the action and:

### was a member of the limited liability company at the time of the transaction of which he complains; or

### The plaintiff’s status as a member or an assignee of a limited liability company interest had devolved upon the plaintiff by operation of law or pursuant to the terms of an operating agreement from a person who was a member or an assignee of a limited liability company interest at the time of the transaction.

## Complaint.

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

## Expenses.

If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the Tribal Court may award the plaintiff reasonable expenses, including reasonable attorney’s fees, from any recovery in any such action or from a limited liability company.

# Miscellaneous

## Construction and application of ordinance and operating agreement.

### The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this ordinance.

### It is the policy of this ordinance to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.

### Unless the context otherwise requires, as used herein, the singular shall include the plural and the plural may refer to only the singular. The use of any gender shall be applicable to all genders. The captions contained herein are for purposes of convenience only and shall not control or affect the construction of this ordinance.

### Sections 9-406 and 9-408 of Article Nine of the Uniform Commercial Code (including that of the Comanche Nation or any other jurisdiction) do not apply to any interest in a limited liability company, including all rights, powers and interests arising under an operating agreement or this ordinance. This provision prevails over §§ 9-406 and 9-408 of the Uniform Commercial Code.

## Title.

This Ordinance may be cited as the “Comanche Nation Limited Liability Company Ordinance.”

## Severability.

If any provision of this ordinance or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

## Cases not provided for in this ordinance and persuasive authority.

In any case not provided for in this ordinance, the rules of law and equity, including the law merchant, shall constitute persuasive authority, and with the laws of the Tribe, shall govern. This ordinance is based in large part on the Limited Liability Acts of the State of Delaware, as in effect on May 23, 2008, and State of Oklahoma, as in effect on November 11, 2021, and the judicial construction of such laws shall also constitute persuasive authority in the interpretation and application of this ordinance by the Tribal Court.

## Fees.

### No document required to be filed under this ordinance shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Tax Commission for the use of the Tribe:

#### For filing a certificate of formation, a fee of One Hundred Fifty Dollars ($150.00);

#### For filing amended, corrected or restated certificate of formation, a fee of Seventy Five Dollars ($75.00)

#### For filing a certificate of merger or consolidation, a fee of One Hundred Twenty Five Dollars ($125.00);

#### For filing a certificate of cancellation, a fee of Fifty Dollars ($50.00);

#### [reserved];

#### For issuing a certificate for any purpose whatsoever, a fee of Forty Dollars ($40.00);

#### For filing an application for reservation of a name, or for filing a notice of the transfer or cancellation of any name reservation, a fee of Fifty Dollars ($50.00);

#### For filing a statement of change of address of the principal office or change of resident agent, or both, a fee of Fifty Dollars ($50.00);

#### For filing a change of address for a registered agent for service of process, for change of name of registered agent or for the resignation of a registered agent, a fee of Fifty Dollars ($50.00);

#### For any service of notice, demand, or process upon the Tax Commission as resident agent of a limited liability company, a fee of Fifty Dollars ($50.00), which amount may be recovered as taxable costs by the party to be sued, action, or proceeding causing such service to be made if such party prevails therein; and

#### For acting as the registered agent, a fee of One Hundred Dollars ($100.00) shall be paid on July 1 each year to the Tax Commission.

### In addition to those fees charged under subsection (a) of this section, there shall be collected by and paid to the Comanche Tax Commission an additional sum of Three Hundred Dollars ($300.00) for all services described in subsection (a) of this section that are requested to be completed before the end of the following business day.

### Every domestic limited liability company shall file a certificate each year in the Tax Commission, which confirms it is an active business and includes its principal place of business address, and shall pay an annual certificate fee of One Hundred Dollars ($100.00).

#### The annual certificate shall be due on the anniversary date of filing the certificate of formation until cancellation of the articles of organization or withdrawal of the registration.

#### A domestic limited liability company that fails to file the annual certificate and pay the annual certificate fee within sixty (60) days after the date due shall cease to be in good standing as a domestic limited liability company.

### Except for accepting a resignation of a registered agent when a successor registered agent is not being appointed or an application for reinstatement, the Tax Commission shall not accept for filing any certificate, or issue any certificate of good standing, in respect to any domestic limited liability company that has ceased to be in good standing, unless or until the domestic limited liability company has been reinstated as a domestic limited liability company in good standing.

### A domestic limited liability company that has ceased to be in good standing may not maintain any action, suit or proceeding in tribal court until the domestic limited liability company has been reinstated.

### The certificate of formation of a domestic limited liability company shall be deemed to be canceled if the domestic limited liability company fails to file the annual certificate and pay the annual fee provided in Section 1105(c) of this title or pay the registered agent fee to the Tax Commission due under Section 1105(a)(11) of this title within three years from the date the certificate or fee is due, the cancellation to be effective on the third anniversary of the due date.

## Reinstatement of a limited liability company.

### A domestic limited liability company not in good standing for failure to file an annual certificate and pay the annual certificate fees or registered agent fees, including a domestic limited liability company whose certificate of formation been canceled under Section 1105(g) of this title, may apply to the Tax Commission for reinstatement by:

#### Filing all delinquent annual certificates with the Tax Commission and paying all delinquent annual certificate fees or paying all delinquent registered agent fees to the Tax Commission; and

#### Filing an application for reinstatement with the Tax Commission stating its name at the time it ceased to be in good standing or was withdrawn, the date it ceased to be in good standing or was withdrawn, and its current name, if its name at the time it ceased to be in good standing or was withdrawn is no longer available.

#### If the Tax Commission determines that the application contains the required information, the information is correct, all delinquent certificates or other filings are submitted, and all delinquent fees are paid, the Tax Commission shall and issue a certificate of reinstatement.

### When reinstatement under this section has become effective, the reinstatement relates back to and takes effect as if the domestic limited liability company had never ceased to be in good standing and as if its certificate of formation had never been canceled.

### The failure of a domestic limited liability company to file an annual certificate and pay an annual certificate fee or a registered agent fee to the Tax Commission shall not impair the validity on any contract, deed, mortgage, security interest, lien or act of the domestic limited liability company or prevent the domestic limited liability company from defending any action, suit or proceeding in Tribal Court.

### All real and personal property, and all rights and interests, which belonged to the domestic limited liability company at the time its articles of organization were canceled or which were acquired by the limited liability company after cancellation, and which were not disposed of before its reinstatement, shall be vested in the limited liability company after its reinstatement as fully as they were held by the limited liability company at, and after, as the case may be, the time its articles of organization were canceled.

### A member or manager of a domestic limited liability company is not liable for the debts, obligations or liabilities of the domestic limited liability company solely by reason of the failure of the domestic limited liability company to file an annual certificate and pay an annual certificate fee or a registered agent fee to the Tax Commission or by reason of the domestic limited liability company ceasing to be in good standing or its articles of organization being canceled.

## Electronic filing, Schedule of Fees

The Tax Commission may require electronic filing or storage of any certificate or other document contemplated by this Ordinance. The Tax Commission may publish a schedule of fees for any services, document, or certificates not provided for in Section 1105 or elsewhere in this Ordinance.

## Reserved power of the Tribe to alter or repeal ordinance.

All provisions of this ordinance may be altered from time to time or repealed and all rights of members and managers are subject to this Comanche Indian Country. Unless expressly stated to the contrary in this ordinance, all amendments of this ordinance shall apply to limited liability companies and members and managers whether or not existing as such at the time of the enactment of any such amendment.