

**RINCON BAND OF LUISEÑO INDIANS
RINCON RESERVATION, CALIFORNIA**



**RINCON LIMITED LIABILITY COMPANY ORDINANCE
RINCON TRIBAL CODE § 7.100**

Adopted September 3, 2026

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

TABLE OF CONTENTS

I. GENERAL PROVISIONS..... 1

 § 7.100 PURPOSE, SCOPE, AND APPLICABLE LAW..... 1

 § 7.101 DEFINITIONS 1

 § 7.102 NAME 5

 § 7.103 REGISTERED OFFICE AND REGISTERED AGENT 5

 § 7.104 TRIBAL ENTITY/TRIBAL COMPANY OR ANOTHER INDIAN
 TRIBE AS AN OWNER..... 5

 § 7.105 LLCs WITH NO TRIBAL OWNERSHIP 7

 § 7.106 NATURE OF BUSINESS..... 7

 § 7.107 EXECUTION OF DOCUMENTS..... 8

 § 7.108 FILING 10

 § 7.109 CERTIFICATE OF STATUS..... 11

 § 7.110 EXECUTION BY JUDICIAL ACT 11

 § 7.111 INTERSTATE APPLICATION..... 11

**II. ARTICLES OF ORGANIZATION, OPERATING AGREEMENT
AND DEALING WITH LLC 11**

 § 7.112 ARTICLES OF ORGANIZATION 11

 § 7.113 OPERATING AGREEMENT 13

 § 7.114 AGENCY POWER OF OWNERS AND MANAGERS..... 13

 § 7.115 ADMISSIONS OF OWNERS AND MANAGERS..... 13

 § 7.116 KNOWLEDGE OF OR NOTICE TO OWNER OR MANAGER..... 13

 § 7.117 LIABILITY OF OWNERS TO THIRD PARTIES 14

 § 7.118 PARTIES TO ACTION 14

 § 7.119 AUTHORITY TO SUE 14

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

III. OWNERS AND MANAGERS	15
§ 7.120 MANAGEMENT	15
§ 7.121 DUTIES.....	16
§ 7.122 LIMITATION OF LIABILITY AND INDEMNIFICATION.....	17
§ 7.123 VOTING	18
§ 7.124 RECORDS AND INFORMATION.....	19
§ 7.125 ADMISSION OF OWNERS	20
§ 7.126 DISSOCIATION	21
 IV. FINANCE	 24
§ 7.127 CONTRIBUTIONS.....	24
§ 7.128 LIABILITY FOR CONTRIBUTION	24
§ 7.129 ALLOCATION OF PROFITS AND LOSSES.....	25
 V. NON-LIQUIDATING DISTRIBUTIONS.....	 25
§ 7.130 INTERIM DISTRIBUTIONS.....	25
§ 7.131 ALLOCATION OF DISTRIBUTIONS.....	25
§ 7.132 DISTRIBUTION UPON PARTIAL REDEMPTION	25
§ 7.133 DISTRIBUTION UPON DISSOCIATION	26
§ 7.134 DISTRIBUTION IN KIND	26
§ 7.135 LIMITATIONS OF DISTRIBUTIONS.....	26
§ 7.136 LIABILITY FOR WRONGFUL DISTRIBUTION	27
 VI. OWNERSHIP AND TRANSFER OF PROPERTY	 27
§ 7.137 OWNERSHIP OF LLC PROPERTY.....	27
§ 7.138 TRANSFER OF PROPERTY	28
§ 7.139 NATURE OF LLC INTEREST.....	28
§ 7.140 ASSIGNMENT OF LLC INTEREST.....	28

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

§ 7.141	RIGHTS OF JUDGMENT CREDITOR.....	28
§ 7.142	RIGHT OF ASSIGNEE TO BECOME AN OWNER.....	29
§ 7.143	POWERS OF LEGAL REPRESENTATIVE	29
VII. DISSOLUTION.....		29
§ 7.144	DISSOLUTION.....	29
§ 7.145	WINDING UP	30
§ 7.146	DISTRIBUTION OF ASSETS	31
§ 7.147	ARTICLES OF DISSOLUTION.....	31
§ 7.148	KNOWN CLAIMS AGAINST DISSOLVED LLC	32
§ 7.149	UNKNOWN OR CONTINGENT CLAIMS	33
VIII. MERGER.....		33
§ 7.150	DEFINITIONS	33
§ 7.151	MERGER.....	33
§ 7.152	APPROVAL OF MERGER.....	34
§ 7.153	PLAN OF MERGER	34
§ 7.154	ARTICLES OF MERGER	34
§ 7.155	EFFECTS OF MERGER.....	35
§ 7.156	RIGHT TO OBJECT	36
IX. GENERAL PROVISIONS		36
§ 7.157	TRIBALLY-OWNED COMPANIES	36
§ 7.158	NON-TRIBALLY OWNED LLCs	37
§ 7.159	PRIVILEGES AND IMMUNITIES.....	37
§ 7.160	OWNERSHIP.....	38
§ 7.161	PROJECT COMPANIES WITH NON-TRIBAL OWNERS.....	38
§ 7.162	GOVERNMENTAL PURPOSE OF LLCs	38

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

§ 7.163	WAIVER OF SOVEREIGN IMMUNITY	38
§ 7.164	RESERVED.....	39
§ 7.165	ADDITIONAL REQUIREMENTS FOR THE ARTICLES OF ORGANIZATION	39
§ 7.166	MANAGEMENT	40
§ 7.167	VOTING	40
§ 7.168	DISTRIBUTIONS OF INCOME	41
§ 7.169	AUDIT.....	41
§ 7.170	FINANCIAL, BUSINESS AND PLANNING INFORMATION.....	42
§ 7.171	COURT ACTIONS BY THE TRIBE OR ANOTHER INDIAN TRIBE AUTHORIZED.....	42
§ 7.172	TRIBAL APPROVAL REQUIRED	43
§ 7.173	RELIEF AVAILABLE.....	43
§ 7.174	NO APPLICATION OF CALIFORNIA SUBSTANTIVE LAW OR CONSENT TO STATE JURISDICTION	43

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

I. GENERAL PROVISIONS

§ 7.100 PURPOSE, SCOPE, AND APPLICABLE LAW

(a) The purpose of this Code is to provide for the formation of Limited Liability Companies under the laws of the Tribe.

(b) This Code shall apply to all Limited Liability Companies organized under its provisions or which elect to accept the provisions of this Code.

The companies organized and created under this Code shall be subject to this Code, and all applicable laws of the Tribe. Subject to RTC § 7.112, by organizing and creating a Company under this Code, the Company and its Owners shall be considered to have entered into a consensual relationship with the Tribe and agree to be subject to the full extent of the Tribe's legislative, regulatory and adjudicatory jurisdiction. Unless displaced by particular provisions of this Code or other Tribal law, all other applicable laws shall supplement this Code, provided that in any proceeding, dispute, court case, arbitration or other dispute resolution, the court, tribunal or arbitrator shall first apply the procedural and substantive law of the Tribe, including any applicable choice of law provisions, and then the procedural and substantive laws, including common law of the United States. , provided that such law does not conflict with this Title or any other applicable laws of the Tribe. To the extent tribal and federal law does not inform the interpretation or construction at issue, the court, tribunal or arbitrator shall look to the laws and court decisions of the State of California, without giving effect to the conflict of laws principles thereof; provided, however, that nothing herein shall be interpreted as conferring jurisdiction on the State of California over the Tribe, or as consent by the Tribe to the jurisdiction of the courts of the State of California or to the application of the laws of the State of California, except as provided by federal law pursuant to P.L. 83-280, narrowly construed.

§ 7.101 DEFINITIONS

For the purposes of this Ordinance, the following definitions shall apply:

(a) **“Administrator”** means the Treasurer, his or her designee(s), or any successor thereto authorized to administer this Code.

(b) **“Articles of Organization”** means the Articles required by RTC § 7.112. The term includes the Articles of Organization as amended or restated.

(c) **“Code”** means this Limited Liability Company Code.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(d) **“Corporation”** means a domestic Corporation for profit organized under the law of the Tribe or a foreign Corporation formed under the laws of any other jurisdiction.

(e) **“Distribution”** means a direct or indirect transfer by a Limited Liability Company of money or other property to or for the benefit of its Owners in respect of their interests.

(f) **“Electronic transmission”** or “electronically transmitted” means any form of communication that meets all of the following:

- (1) It does not directly involve the physical transmission of paper.
- (2) It creates a record that may be retained and retrieved by the recipient.
- (3) It may be directly reproduced in paper form by the recipient through an automated process.

(g) **“Entity”** includes an individual, a general partnership, limited partnership, a Domestic or Foreign Limited Liability Company, a trust, an estate, an association, a Corporation or any other legal or commercial entity.

(h) **“Foreign”** refers to Limited Liability Companies, Corporations and limited partnerships organized under the laws of a jurisdiction other than the Tribe.

(i) **“Indian tribe”** means a federally-recognized Indian tribe pursuant to the List Act of 1994 25 U.S.C. 5101.

(j) **“Interest in the Limited Liability Company”** or “Interest in the LLC” means an Owner’s rights in the Limited Liability Company, including rights to Distributions, profits and losses, and to participate in management, as specified in the Operating Agreement.

(k) **“Limited Liability Company”** or “Domestic Limited Liability Company” means an organization formed under this Code, except as provided for in RTC § 7.150(a)(1).

(l) **“LLC”** means a Limited Liability Company.

(m) **“Majority in Interest”** means an Owner or Owners holding more than fifty percent (50%) of the total voting interests in the Limited Liability Company excluding any

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

interest which is not to be counted as voting on a matter as described elsewhere in this Code.

(n) **“Manager”** or “Managers” means the Person(s) or Entity(ies) designated to manage the LLC pursuant to the Articles of Organization and Operating Agreement.

(o) **“Membership interest”** or “Ownership interest” or “interest” means an Owner’s rights in a Limited Liability Company, including but not limited to any right to receive Distributions or the Limited Liability Company’s assets and any right to vote or participate in management of the Limited Liability Company.

(p) **“Operating Agreement”** means an agreement in writing among all of the Owners as to the conduct of the business of a Limited Liability Company and its relationships with its Owners. The term “Operating Agreement” as used herein does not include oral or implied operating agreements, as such agreements are not recognized by this Code.

(q) **“Organizer(s)”** means the Person(s) or Entity(ies) which signs and delivers the Articles of Organization for filing to the Administrator.

(r) **“Owner”** or “Member” means a Person that is a Member of a Limited Liability Company or has Ownership interest in a Limited Liability Company. The term does not include a Person that has dissociated as a Member under RTC § 7.126.

(s) **“Person”** includes a natural Person, Tribal Entity and an organization such as a general partnership, limited partnership, a Domestic or Foreign Limited Liability Company, a trust, an estate, an association, or a Corporation.

(t) **“Reservation”** means all lands within the boundaries of the Rincon Reservation, and all lands held in trust by the United States for the benefit of the Tribe, including, but not limited to:

all lands within the territorial boundaries of the Rincon Indian Reservation as established by the Executive Order of the President issued on March 2, 1881, the Mission Indian Relief Act, 26 Stat. 712 (1891), the trust patent issued by the President on September 13, 1892, the Act of Congress of August 16, 1941, 55 Stat. 622, the February 12, 1968 Order setting aside land for the Rincon Band and the trust patent issued on January 20, 1971, which established and added to the Rincon Reservation, and any fee land acquired in trust pursuant to 25 U.S.C. 461 and its implementing Regulations, and such other lands as may thereafter be added thereto or made a part thereof; and all other trust, restricted, or tribally-owned lands,

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

regardless of whether they have been formally added to or made part of the Rincon Reservation.

(u) **“State”** includes a State, territory, or possession of the United States and the District of Columbia.

(v) **“Tribal Articles of Association”** means that certain organizational document setting forth rules of procedure to govern the operations and recognize the governing body of the Tribe, adopted by the General Membership on February 14, 1960, and approved by the Commissioner of Indian Affairs on March 15, 1960.

(w) **“Tribal Business Committee”** means the five-member Business Committee established under Section 3 (a) of the Tribal Articles of Association. Tribal Business Committee shall be synonymous with “Tribal Council” or “Rincon Tribal Council” as may be used in this Ordinance or any existing or future Tribal ordinance.

(x) **“Tribal Corporation”** means a Corporation wholly-owned and duly formed by the Tribe or another Indian tribe, and also includes a tribally-owned Corporation the charter for which has been issued by the Secretary of the Interior.

(y) **“Tribal Court”** means the Rincon Civil Trial Court and the Rincon Court of Appeals or other tribal forum designated by the Tribal Council to hear and decide disputes over which the Tribal Court has jurisdiction and decide violations of Tribal Law. For purposes of this Ordinance, Tribal Court shall not include the Intertribal Court of Southern California.

(z) **“Tribal Entity”** includes the Tribe, the Tribal Business Committee, a general partnership, limited partnership, a Domestic or Foreign Limited Liability Company, a trust, an estate, an association, a Corporation, a program, a department, an administrative agency or any other legal, commercial or governmental Entity of the Tribe or another Indian tribe.

(aa) **“Tribally-Owned LLC”** means a Limited Liability Company wholly owned by the Tribe or co-owned with another Indian tribe, or tribes as its sole owner(s).

(bb) **“Tribally-Owned Subsidiary LLC”** means a Limited Liability Company wholly-owned by a Tribal Corporation or Tribally-Owned LLC.

(cc) **“Tribe”** means the Rincon Band of Luiseno Indians.

(dd) **“Vote”** means an affirmative vote, approval or consent.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

§ 7.102 NAME

(a) The name of a Limited Liability Company set forth in its Articles of Organization must contain the words “Limited Liability Company” or end with the abbreviation “L.L.C.” or “LLC”. The name may not contain language stating or implying that the Limited Liability Company is organized for any purpose other than that permitted under RTC § 7.102(b), below.

(b) The name of a Domestic LLC shall be distinguishable from any LLC or Corporation previously organized under the laws of the Tribe.

§ 7.103 REGISTERED OFFICE AND REGISTERED AGENT

(a) A Limited Liability Company registered agent is the LLC’s agent for receiving service of process, notice, or demand required or permitted by law to be served on the LLC under the laws of the Tribe.

(b) Each LLC shall continuously maintain a registered office and a registered agent. The registered office may, but need not, be the same as any of its places of business.

(c) An LLC may change its registered office or registered agent, or both, by filing a written notice of change containing the name of its registered agent and the street address of its registered office, as changed, with the Administrator and paying the filing fee.

(d) The registered agent of an LLC may resign as a registered agent by delivering to the Administrator for filing a written statement of resignation and the appointment by the LLC of another registered agent.

§ 7.104 TRIBAL ENTITY/TRIBAL CORPORATION OR ANOTHER INDIAN TRIBE AS AN OWNER

(a) RINCON BAND AS AN OWNER

(1) If the Tribe or a Tribal Entity is an Owner of an LLC formed under the Code, any action which the Tribe is required or permitted to take with respect to any vote, approval, consent, appointment, direction, or other matter shall be taken as specified in RTC § 7.123 of this Code or, as to actions related to the Managers of a Manager-managed LLC, as stated in the LLC’s Operating Agreement approved by a Tribal Corporation.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(2) If the Tribe is the sole Owner of an LLC formed under this Code, such Tribally-Owned LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit except to the extent otherwise provided in its Operating Agreement.

(3) If the Tribe is an Owner with a Majority in Interest in an LLC formed under this Code, such LLC may possess the privileges and immunities of the Tribe, including sovereign immunity from suit to the extent allowed by Federal Law, this Code or its Operating Agreement.

(4) In no event shall any Manager not an Owner of an LLC in which the Tribe is an Owner, bind the Tribe in any manner; provided that the Tribe's interest as an Owner may be bound by Manager or Owner actions as stated in this Code and the Operating Agreement of the LLC.

(5) Nothing contained in this Code shall be construed as creating any liability or waiving of sovereign immunity of the Tribe, or its officers, agents, representatives, or employees, in any manner; provided that the assets of the LLC in which the Tribe holds an interest may be subject to liabilities and claims unless otherwise provided herein. In no event shall any action taken by the Tribe as Owner concerning the exercise of any right or privilege or discharge of any duty with respect to an interest in an LLC be construed as a waiver of immunity or creation of a liability on the part of the Tribe separate and apart from its interests as an Owner of the LLC. Nothing herein shall be construed as limiting the Tribe's ability to provide express limited waivers of its immunity by other means, but this Code cannot be interpreted as providing the authority for such limited waiver.

(b) ANOTHER INDIAN TRIBE AS OWNER

(1) If another federally recognized Indian tribe is an Owner of an LLC, or a co-owner, formed under this Code, such Tribally-Owned LLC shall possess and retain all of the privileges and immunities of its Owner, including sovereign immunity from suit, to the extent allowed by Federal Law or its Operating Agreement.

(2) The Indian tribe's interest as an Owner of an LLC formed under this Code may be bound by its Manager or Owner actions as stated in this Code and the Operating Agreement of the LLC.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(3) Nothing contained in this Code shall be construed as creating any liability or waiving of sovereign immunity of another federally recognized Indian tribe in any manner; provided that the assets of the LLC in which the Indian tribe holds an interest may be subject to liabilities and claims unless otherwise provided herein. In no event shall any action taken by the Indian tribe as Owner concerning the exercise of any right or privilege or discharge of any duty with respect to an interest in an LLC be construed as a waiver of immunity or creation of a liability on the part of another Indian tribe separate and apart from its interests as an Owner of the LLC. Nothing herein shall be construed as limiting the tribe's ability to provide express limited waivers of its immunity by other means, but this Code cannot be interpreted as providing the authority for such limited waiver.

§ 7.105 LLCs WITH NO TRIBAL OWNERSHIP

(a) If the Tribe or another federally recognized Indian tribe has no Ownership interest in an LLC formed under this Code, such LLC shall not possess and retain any of the privileges and immunities of the Tribe, including sovereign immunity from suit, except to the extent expressly authorized by a duly adopted resolution of the Tribal Business Committee and otherwise allowed by Federal Law or the LLC's Operating Agreement.

(b) An LLC created pursuant to this Code wherein the Tribe or another federally recognized Indian tribe has no Ownership interest may be considered an arm of the Tribe or tribe if a duly adopted resolution of the Tribal Business Committee or governing body of another federally recognized tribe expressly finds or deems such LLC to be an arm of the Tribe or tribe.

(c) Nothing contained in this Code shall be construed as creating any liability or waiving of sovereign immunity of the Tribe, or its officers, agents, representatives, or employees, in any manner. Nothing herein shall be construed as limiting the Tribe's ability to provide express limited waivers of its immunity by other means, but this Code cannot be interpreted as providing the authority for such limited waiver.

§ 7.106 NATURE OF BUSINESS

(a) A Limited Liability Company may be organized under this Code for any lawful purpose. Unless otherwise provided in its Operating Agreement, an LLC organized and existing under this Code has the same powers as an individual to do all things necessary and convenient to carry out its business, including but not limited to all of the following:

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

- (1) Purchase, take, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal in or with real, or personal property or any legal or equitable interest in real or personal property, wherever situated.
- (2) Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, or otherwise dispose of all or any part of its property.
- (3) Lend money, property, and services to, and otherwise assist, its Owners and Managers, if any.
- (4) Purchase, take, receive, subscribe for, or otherwise acquire and own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interest in, or obligations of, any other enterprise or Entity.
- (5) Make contracts and guarantees; incur liabilities; borrow money; issue notes, bonds and other obligations; secure any of its obligations by mortgage or pledge of all or part of its property, franchises, and income.
- (6) Lend money, invest and reinvest its funds, and receive and hold real or personal property as security for repayment.
- (7) Conduct its business, locate offices, and exercise the powers granted by this Code inside or outside of the Reservation.
- (8) Consent to be sued, complain and defend its name; provided, however, that if an LLC is Tribally-Owned, or wholly-owned by another Entity which itself is wholly-owned by another Indian tribe, or is an LLC that has been expressly determined by resolution of the Tribal Business Committee to be an arm of the Tribe, it shall be entitled to and shall enjoy sovereign immunity from suit unless the Operating Agreement otherwise provides.
- (9) Be a promoter, incorporator, partner, Owner, associate, or Manager of any enterprise or Entity.
- (10) Elect or appoint Managers, agents, and employees, define their duties, and fix their compensation.
- (11) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, and benefit or incentive plans for any and all of its current or former Owners, Managers, employees, and agents.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(12) Make donations to and otherwise devote its resources for the public welfare or for charitable, scientific, educational, humanitarian, philanthropic, or religious purposes.

(13) Indemnify an Owner, Manager, employee, officer or agent, or any other Person.

(14) Provide benefits or payments to Owners, Managers, employees, and agents of the LLC, and to their estates, families, dependents, or beneficiaries in recognition of past or future services of the Owners, Managers, employees, and agents of the LLC.

(15) Make payments or donations, or do any other act not prohibited by law, that furthers the business of the LLC.

(16) Transact any lawful business that the Owners or the Managers find to be appropriate to promote and further the business and affairs of the Limited Liability Company.

§ 7.107 EXECUTION OF DOCUMENTS

(a) Except as otherwise provided in this Code, any document required or permitted by this Code to be delivered for filing in accordance with RTC § 7.108 shall be executed by any of the following:

(1) Any Manager, if management of the LLC is vested in a Manager or Managers, or by an Owner, if management of the LLC is reserved to the Owners.

(2) All Organizers of the LLC (the name and address of each Organizer shall be provided).

(3) The name of the drafter of the document.

(b) The person executing the document shall sign it and state beneath or opposite the signature the person's name and capacity in which the person signs.

(c) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the executing of the document need not be shown to nor filed with the Administrator.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

§ 7.108 FILING

(a) The Administrator shall receive all filings required under this Code and maintain the records of such filings pursuant to this Section, including but not limited to the Articles of Organization, amended or restated articles, annual reports, names and addresses of registered offices and agents, and, in, the Operating Agreement and amendments thereto, and other reports required by this Code. The Administrator may establish a procedure for accepting delivery of a document submitted under this subsection by facsimile or other electronic transmission.

(b) Upon receipt of a document for filing under this Code, the Administrator shall ensure it meets the requirements herein and then shall stamp or otherwise endorse the date and time of the receipt of the original, the duplicate copy, and, upon request, any additional copy received. Notwithstanding the foregoing, if the Articles of Organization provide for a waiver of sovereign immunity, such Articles of Organization must be approved in writing by the Tribal Business Committee or the authorized governmental body of another Indian tribe before such Articles of Organization will be deemed effective.

(c) If the Administrator refuses to file a request, the Administrator shall return it to the Person tendering the document for filing within seven (7) business days after the date on which the document is received by the Administrator for filing, together with a brief written explanation of the reason for refusal.

(d) Any document accepted by the Administrator shall be effective at the same time of receipt unless a delayed effective date and/or time not more than ninety (90) days after receipt by the Administrator is specified in the document.

(e) The Administrator may make copies of any documents filed under this Code or any predecessor act by a photostatic, micrographic, photographic, optical disc media, or other process, and may destroy the originals of the copied documents. A photostatic, micrographic, photographic, optical disc media, or other reproduced copy certified by the Administrator, including a copy sent by facsimile or other electronic transmission, is considered an original for all purposes and is admissible in evidence in like manner as an original.

(f) At the Owner's discretion, any non-proprietary records and files of the Administrator relating to Limited Liability Companies may be opened to reasonable inspection by parties with authorization from the Tribe, including the public. The Administrator may maintain the records or files either in their original form or in a photostatic, micrographic, photographic, optical disc media, or other reproduced form.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(g) The Administrator may, but is not required to, impose a reasonable filing fee for each document filed, in an amount set by the Administrator during the life of the LLC, subject to any uniform schedule of fees as may hereafter be adopted by the office from time to time. Additional costs or fees may be set by the Administrator.

§ 7.109 CERTIFICATE OF STATUS

Any Person may obtain from the Administrator, upon written request, a certificate of status for either a Domestic or a Foreign LLC.

§ 7.110 EXECUTION BY JUDICIAL ACT

Any Person who is adversely affected by the failure or refusal of any Person to execute and file any Articles or other document to be filed under this Code may petition the Tribal Court to direct the execution and filing of the Articles or other document. Nothing in this Code, however, serves to waive any aspect of the Tribe's or another Indian tribe's sovereign immunity, and any waiver thereof must be provided explicitly in the LLC's Articles of Organization and Operating Agreement.

§ 7.111 INTERSTATE APPLICATION

An LLC may conduct its business, carry on its operations and have and exercise the powers granted by this Code, in any sovereign tribal government, any State or in any Foreign jurisdiction.

**II. ARTICLES OF ORGANIZATION, OPERATING AGREEMENT
AND DEALING WITH LLC**

§ 7.112 ARTICLES OF ORGANIZATION

(a) One or more Person, Tribe, or Tribal Entity may organize a Limited Liability Company by signing and delivering the Articles of Organization to the Administrator for filing. The Organizer(s) need not be Owners of the LLC at the time of organization or thereafter.

(b) A Limited Liability Company shall have one or more Owners.

(c) The Articles of Organization shall contain all of and only the following information:

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

- (1) A name for the LLC that satisfies the provision of the Code.
 - (2) A statement that the LLC is organized under this Code.
 - (3) The purposes for which the LLC is formed. It is sufficient to state substantially, alone or with specifically enumerated purposes, that the LLC may engage in any activity for which LLCs may be formed under this Code.
 - (4) The maximum duration of the Limited Liability Company (which can be perpetual), the street address of the registered office and the name of the registered agent at that office. For all LLCs formed pursuant to this Code and for all Foreign LLCs operating within the Reservation, such office and agent may be located within the exterior boundaries of the Reservation.
 - (5) A statement as to whether management of the LLC is vested in the Owners or one or more Managers.
 - (6) Whether the LLC is a Tribally-Owned LLC.
 - (7) A statement of whether the Tribe intends to provide a limited waiver of tribal sovereign immunity, and the scope of any such waiver.
 - (8) A statement that the Articles are to be effective upon their approval by the Administrator.
 - (9) The name and address of each Person organizing the LLC.
- (d) The Administrator shall assign each Article of Organization an identification number.
- (e) Amendment. An LLC may amend its Articles of Organization at any time by delivering an amendment, with filing fee (if required), for filing to the Administrator.
- (f) Effect of Delivery or Filing.
- (1) An LLC is formed when the Articles of Organization become effective under RTC § 7.108.
 - (2) The Administrator's filing of the Articles of Organization is conclusive proof that the LLC is organized and formed under this Code.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

§ 7.113 OPERATING AGREEMENT

The power to adopt, alter, amend, or repeal an Operating Agreement of a Limited Liability Company shall be vested in the Owners. The Articles of Organization or a written Operating Agreement may prescribe the manner in which the Operating Agreement may be altered, amended or repealed. If there is any conflict between the provisions of the Articles of Organization and the Operating Agreement, the Articles of Organization shall control.

§ 7.114 AGENCY POWER OF OWNERS AND MANAGERS

(a) Each Owner is an agent of the LLC, but not of any of the other Owners, for the purpose of its business.

(b) If management of the LLC is vested in one or more Managers, no Owner, solely by being an Owner, is an agent of the LLC or of the other Owners.

§ 7.115 ADMISSIONS OF OWNERS AND MANAGERS

(a) Except as provided in RTC § 7.115, an admission or representation made by any Owner concerning the business of an LLC within the scope of the Owner's actual authority may be used as evidence against the LLC in any legal proceeding.

(b) If management of the LLC is vested in one or more Managers:

(1) An admission or representation made by a Manager concerning the business of an LLC within the scope of the Manager's authority may be used as evidence against the LLC in any legal proceeding.

(2) The admission or representation of any Owner, acting solely in the Owner's capacity as an Owner, is not evidence against the LLC in any legal proceeding.

§ 7.116 KNOWLEDGE OF OR NOTICE TO OWNER OR MANAGER

(a) Except as provided in RTC § 7.116, notice to any Owners of any matter relating to the business of an LLC, and the knowledge of an Owner acting in the particular matter, acquired while an Owner or known by the Person at the time of becoming an Owner, and the knowledge of any Owner who reasonably could and should have communicated it to the acting Owner, operate as notice to or knowledge of the LLC.

(b) If management of the LLC is vested in one or more Managers:

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(1) Notice to any Manager of any matter relating to the business of the LLC, and the knowledge of the Manager acting in the particular matter acquired while a Manager or known by the Person at the time of becoming a Manager and the knowledge of any other Manager who reasonably could and should have communicated it to the acting Manager, operate as notice to or knowledge of the LLC.

(2) Notice to or knowledge of any Owner while the Owner is acting solely in the capacity of an Owner is not notice to or knowledge of the LLC.

§ 7.117 LIABILITY OF OWNERS TO THIRD PARTIES

The debts, obligations, and liabilities of an LLC, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the LLC. Except as otherwise specially provided in the Code, an Owner or Manager of an LLC is not personally liable for any debt, obligation, or liability of an LLC, as defined in the Operating Agreement.

§ 7.118 PARTIES TO ACTION

(a) An Owner of an LLC is not a proper party to a proceeding by or against an LLC solely by reason of being an Owner of the LLC, except if any of the following exist:

(1) The object of the proceeding is to enforce an Owner's right against or liability to the LLC.

(2) The action is brought by an Owner under RTC § 7.118.

§ 7.119 AUTHORITY TO SUE

(a) Unless otherwise provided in the Operating Agreement, an action on behalf of an LLC may be brought in the name of the LLC by:

(1) One or more Owners of the LLC, if authorized by a Majority in Interest of Owners, excluding the vote of any Owners who have an interest in the outcome of the action that is adverse to the interest of the LLC.

(2) One or more Managers of an LLC if the management of the LLC is vested in one or more Managers, or if the Managers are authorized to sue by a Majority in Interest of Owners.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(b) Nothing contained herein shall be construed as authorizing actions of any kind whatsoever against the Tribe or another Indian tribe as Owner unless otherwise provided in the Articles of Organization and Operating Agreement of the LLC and/or otherwise authorized by a duly approved resolution containing a limited waiver of the Tribe's immunity.

III. OWNERS AND MANAGERS

§ 7.120 MANAGEMENT

(a) Unless the Articles of Organization vest management in one or more Managers, management of the LLC shall be vested in the Owners subject to any provision in the Operating Agreement or this Code restricting or enlarging the management rights and duties of any Owner or group of Owners.

(b) In an Owner-managed Limited Liability Company, the following rules shall apply, subject to the provisions of the Operating Agreement or this Code:

(1) A difference arising among Owners as to a matter in the ordinary course of the activities of the LLC may be decided by a majority of the Owners.

(2) An act outside the ordinary course of activities of a Limited Liability Company may be undertaken only with the consent of all the Owners.

(c) If the Articles of Organization vest management in one or more Managers, management of the business or affairs of the LLC shall be invested in the Manager or Managers subject to any provisions in the Operating Agreement or this Code restricting or enlarging the management rights and duties of any Manager or group of Managers. Unless otherwise provided in the Operating Agreement, the Manager or Managers:

(1) Shall be designated, appointed, elected, removed, or replaced by a vote of a Majority in Interest of the Owners.

(2) Need not be Owners of the LLC nor individuals.

(3) Unless earlier removed or earlier resigned, shall hold office until a successor is elected and qualified.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

§ 7.121 DUTIES

Unless otherwise provided in the Operating Agreement:

(a) The fiduciary duties that a Member owes to a Member-managed LLC and the other Members of the LLC are the duties of loyalty and care under subdivisions (b) and (c).

(b) A Member's duty of loyalty to the LLC and the other Members is limited to the following:

(1) To account to the LLC and hold as trustee for it any property, profit, or benefit derived by the Member in the conduct and winding up of the activities of a LLC or derived from a use by the Member of a LLC property, including the appropriation of a LLC opportunity.

(2) To refrain from dealing with the LLC in the conduct or winding up of the activities of the LLC as or on behalf of a Person having an interest adverse to the LLC.

(3) To refrain from competing with the LLC in the conduct or winding up of the activities of the LLC.

(c) A Member's duty of care to an LLC and the other Members in the conduct and winding up of the activities of the LLC is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A Member shall discharge the duties to an LLC and the other Members under this Code or under the Operating Agreement and exercise any rights consistent with the obligation of good faith and fair dealing.

(e) A Member does not violate a duty or obligation under this Code or under the Operating Agreement merely because the Member's conduct furthers the Member's own interest.

(f) In a Manager-managed LLC, all of the following rules apply:

(1) Subdivisions (a), (b), (c), and (e) apply to the Manager or Managers and not the Members.

(2) Subdivision (d) applies to the Members and Managers.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(3) Except as otherwise provided, a Member does not have any fiduciary duty to the LLC or to any other Member solely by reason of being a Member.

(g) Every Owner and Manager shall account to the LLC and hold as trustee for it personal profit derived by that Owner or Manager without the consent of a majority of the disinterested Owners or Managers, or other Persons participating in the management of the LLC, from any of the following:

(1) A transaction connected with the organization, conduct, or winding up of the LLC.

(2) A use by an Owner or Manager of the property of an LLC, including confidential or proprietary information or other matters entrusted to the Person as a result of the Person's status as Owner or Manager.

(3) An Operating Agreement may impose duties on its Owners and Managers that are in addition to, but not in abrogation of, those provided in subsection (1) above.

§ 7.122 LIMITATION OF LIABILITY AND INDEMNIFICATION

(a) An LLC shall reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a Member of a Member-managed LLC or the Manager of a Manager-managed LLC in the course of the Member's or Manager's activities on behalf of the LLC, if, in making the payment or incurring the debt, obligation, or other liability, the Member or Manager complied with the duties stated in § 7.121.

(b) Except as otherwise provided in this Code, a LLC may reimburse for any payment made and may indemnify for any debt, obligation, or other liability incurred by a Person not identified in subdivision (a), including, without limitation, any officer, employee, or agent of the LLC, in the course of that Person's activities on behalf of the LLC.

(c) An LLC may purchase and maintain insurance on behalf of any Person against liability asserted against or incurred by that Person even if, under this Code the Operating Agreement could not eliminate or limit the Person's liability to the LLC for the conduct giving rise to the liability.

(d) Without limiting subdivision (a):

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(1) to the extent that an agent of a LLC has been successful on the merits in defense or settlement of any claim, issue, or matter in any proceeding in which the agent was or is a party or is threatened to be made a party by reason of the fact that the Person is or was an agent of the LLC, if the agent acted in good faith and in a manner that the agent reasonably believed to be in the best interests of the LLC and its Members, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

(2) For purposes of this subdivision, the following terms have the following meanings:

A. “Agent” means any Person who is or was a Member of a Member-managed LLC, Manager of a Manager-managed LLC, officer, employee, or other agent of the LLC, or is or was serving at the request of the LLC as a Manager, director, officer, employee, or agent of another foreign or domestic Corporation, Limited Liability Company or Foreign Limited Liability Company, partnership, joint venture, trust, or other enterprise, or was a Manager, director, officer, employee, or agent of a Foreign or Domestic Limited Liability Company, partnership, joint venture, trust, or other enterprise that was a predecessor of the LLC or of another enterprise at the request of the predecessor Entity or other enterprise.

B. “Expenses” include, without limitation, the attorney’s fees and any expenses of establishing a right to indemnification under this subdivision.

C. “Proceeding” means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative.

§ 7.123 VOTING

(a) Unless otherwise provided in the Operating Agreement or this Section, and subject to subsection (2) below, an affirmative vote, approval, or consent as follows shall be required to decide any matter connected with the business of an LLC.

(1) If management of an LLC is reserved to the Owners, an affirmative vote, approval, or consent by a Majority in Interest of Owners (unless a greater percentage is specified in the Operating Agreement).

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(2) If the management of an LLC is vested in one or more Managers, the affirmative vote, consent, or approval of more than fifty percent (50%) of the Managers.

(b) Unless otherwise provided in the Operating Agreement or this Code, the affirmative vote, approval, or consent of all Owners shall be required to do any of the following.

(1) Amend the Articles of Organization

(2) Issue an interest in an LLC to any Person.

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

(4) Allow an LLC to accept any additional contribution from an Owner.

(5) Allow a partial redemption of an interest in an LLC under RTC § 7.132.

(6) Value contributions of Owners under RTC § 7.127.

(7) Authorize a Manager, Owner, or other Person to do any act on behalf of the LLC that contravenes the Operating Agreement.

(c) Unless otherwise provided in the Operating Agreement, if any Owner is precluded from voting with respect to a given matter, the value of the contribution represented by the interest in the LLC with respect to which the Owner would otherwise have been entitled to vote shall be excluded from the total contributions made to the LLC for purposes of determining the fifty percent (50%) threshold under RTC § 7.101 for that matter.

(d) Unless otherwise provided in Operating Agreement or this Section, if all or part of an interest in the LLC is assigned under RTC § 7.140, the assigning Owner shall be considered the Owner of the assigned interest for purposes of determining the fifty percent (50%) threshold under RTC § 7.101 until the assignee of the Interest in the LLC becomes an Owner under RTC § 7.142.

§ 7.124 RECORDS AND INFORMATION

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

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

- (1) A list, in alphabetical order, of each and present Owners and, if applicable, Manager.
 - (2) A copy of the Articles of Organization and all amendments to the articles, together with executed copies of any powers of attorney under which any articles were executed.
 - (3) A copy of the Operating Agreement and all amendments thereto.
 - (4) Copies of records that would enable an Owner to determine the Owners' relative shares of the Limited Liability Company's Distributions and the Owners' relative voting rights.
- (b) A record of all matters referred to in this Code as maintained in such record which is not otherwise specified in the Operating Agreement.
- (1) Upon reasonable request, an Owner may, at the Owner's own expense, inspect and copy during ordinary business hours any LLC record unless otherwise provided in the Operating Agreement.
 - (2) Owners, or, if the management of the LLC is vested in one or more Managers, Managers shall provide true and full information of all things affecting the Owners to any Owner or to the legal representative of any Owner upon reasonable request of the Owner or the Owner's legal representative.
 - (3) Failure of an LLC to keep or maintain any of the records of information required under this Section shall not be grounds for imposing liability on any Person for the debts and obligations of the LLC.

§ 7.125 ADMISSION OF OWNERS

- (a) In connection with the formation of an LLC, a Person acquiring an LLC interest is admitted as an Owner upon formation unless the Operating Agreement otherwise provides.
- (b) After the formation of an LLC, a Person acquiring an LLC interest is admitted as an Owner of the LLC as specified in the Operating Agreement or, if not so specified, by consent of all the other Owners, or, if the Person is an assignee of another Person's LLC interest, only pursuant to RTC § 7.142.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

§ 7.126 DISSOCIATION

(a) A Person has the power to dissociate as a Member at any time, rightfully or wrongfully, by withdrawing as a Member by express will, pursuant to § 7.126(d)-(o).

(b) A Person's dissociation from an LLC is wrongful only if either of the following apply to the dissociation:

(1) The dissociation is in breach of an express provision of the Operating Agreement.

(2) The dissociation occurs before the termination of the LLC and any of the following:

A. The Person withdraws as a Member by express will.

B. The Person is expelled as a Member by judicial order under subdivision (f) of § 7.126.

C. The Person is dissociated under subdivision (j) of § 7.126 by becoming a debtor in bankruptcy.

D. In the case of a Person that is not a trust other than a business trust, an estate, or an individual, the Person is expelled or otherwise dissociated as a Member because it dissolved or terminated.

(c) A Person that wrongfully dissociates as a Member is liable to the LLC and to the other Members for any damages caused by the dissociation. The liability is in addition to any other debt, obligation, or other liability of the Member to the LLC or the other Members.

(d) A Person is dissociated as a Member from an LLC when the LLC has notice of the Person's express will to withdraw as a Member, but, if the Person specified a withdrawal date later than the date the LLC had notice, on that later date.

(e) An event stated in the Operating Agreement as causing the Person's dissociation to occur.

(f) The Person is expelled as a Member pursuant to the Operating Agreement.

(g) The Person is expelled as a Member by the unanimous consent of the other Members because any of the following applies:

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

- (1)** It is unlawful to carry on the LLC's activities with the Person as a Member.
- (2)** There has been a transfer of all of the Person's transferable Interest in the LLC, other than either of the following:
- A.** A transfer for security purposes.
 - B.** A charging order in effect under § 7.14 that has not been foreclosed.
- (3)** The Person is a Corporation and, within 90 days after the LLC notifies the Person that it will be expelled as a Member because the Person has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation and the certificate of dissolution has not been revoked or its charter or right to conduct business has not been reinstated.
- (4)** The Person is an LLC or partnership that has been dissolved and whose business is being wound up.
- (h)** On application by the LLC, the Person is expelled as a Member by judicial order because the Person has done any of the following:
- (1)** Engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the LLC's activities.
 - (2)** Willfully or persistently committed, or is willfully and persistently committing, a material breach of the Operating Agreement or the Person's duties or obligations under § 7.121.
 - (3)** Engaged, or is engaging, in conduct relating to the LLC's activities that makes it not reasonably practicable to carry on the activities with the Person as a Member.
- (i)** In the case of a Person who is an individual, if either of the following applies:
- (1)** The Person dies.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

- (2)** In a Member-managed LLC if either of the following applies:
- A.** A guardian or general conservator for the Person is appointed.
 - B.** There is a judicial order that the Person has otherwise become incapable of performing the Person's duties as a Member under this title or the Operating Agreement.
- (j)** In a Member-managed LLC, the Person becomes a debtor in bankruptcy.
- (k)** In the case of a Person that is a trust or is acting as a Member by virtue of being a trustee of a trust, the trust's entire transferable Interest in the LLC is distributed but not solely by reason of a substitution of a successor trustee.
- (l)** In the case of a Person that is an estate or is acting as a Member by virtue of being a personal representative of an estate, the estate's entire transferable Interest in the LLC is distributed but not solely by reason of a substitution of a successor personal representative.
- (m)** In the case of a Member that is not an individual, partnership, Limited Liability Company, Corporation, trust, or estate, the termination of the Member.
- (n)** The LLC participates in a merger, and either of the following applies:
- (1)** The LLC is not the surviving Entity.
 - (2)** Otherwise as a result of the merger, the Person ceases to be a Member.
- (o)** The LLC terminates.
- (p)** When a Person is dissociated as a Member of an LLC all of the following apply:
- (1)** The Person's right to vote or participate as a Member in the management and conduct of the LLC's activities terminates.
 - (2)** If the LLC is Member-managed, the Person's fiduciary duties as a Member end with regard to matters arising and events occurring after the Person's dissociation.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(3) Subject to § 7.142, any transferable interest owned by the Person immediately before dissociation in the Person's capacity as a Member is owned by the Person solely as a transferee.

(q) A Person's dissociation as a Member of a LLC does not of itself discharge the Person from any debt, obligation, or other liability to the LLC or the other Members that the Person incurred while a Member.

(r) If a Member dies, or a guardian or conservator of the estate is appointed for the Member, or a Member's interest is being administered by an attorney-in-fact under a valid power of attorney, the Member's executor, administrator, guardian, conservator, attorney-in-fact, or other legal 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 the Member had under the Articles of Organization or an Operating Agreement to give a transferee the right to become a Member.

IV. FINANCE

§ 7.127 CONTRIBUTIONS

(a) An Owner's contribution to an LLC may consist of cash, property, or services rendered, or promissory notes or other written obligations to provide cash or property or to perform services.

(b) The value of an Owner's contribution shall be determined in the manner provided in the Operating Agreement. If the Operating Agreement does not fix a value to a contribution, the value of a contribution shall be approved by a Majority in Interest of the Owners, and shall be properly reflected in the records and information kept by the LLC under RTC § 7.124. The value of contributions so determined shall be binding and conclusive on the LLC and its Owners.

§ 7.128 LIABILITY FOR CONTRIBUTION

(a) An obligation of an Owner to provide cash or property or to perform services as a contribution to an LLC is not enforceable unless specified in a writing signed by the Owner.

(b) Unless otherwise provided in the Operating Agreement, an Owner is obligated to an LLC to perform any enforceable promise to provide cash or property or to perform services, even if the Owner is unable to perform because death, disability, or any

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

other reason. If an Owner does not provide cash, property, or services as promised, the Owner is obligated at the option of the LLC to provide cash equal to that portion of the value of the stated contribution that has not been fulfilled. The Operating Agreement may provide that failure of an Owner to perform any enforceable promise to provide cash or property or to perform services to an LLC may, at the discretion of the other Owners, result in expulsion from the LLC.

(c) Unless otherwise provided in the Operating Agreement, an Owner's obligation to provide cash or property or perform services as a contribution to the LLC may be compromised only by the written consent of all of the Owners.

§ 7.129 ALLOCATION OF PROFITS AND LOSSES

The profits and losses of an LLC shall be allocated among the Owners in the manner provided in the Operating Agreement. If the Owners do not enter into an Operating Agreement or the Operating Agreement does not provide otherwise, profits and losses shall be allocated on the basis of value of the capital contributions made by each Owner.

V. NON-LIQUIDATING DISTRIBUTIONS**§ 7.130 INTERIM DISTRIBUTIONS**

Except as provided in this Section, an Owner is entitled to receive Distributions from an LLC before the Owner's dissociation from the LLC and before its dissolution and winding up, to the extent and at the times or upon the events specified in the Operating Agreement, or to the extent and at the times otherwise determined by the Owners or Managers.

§ 7.131 ALLOCATION OF DISTRIBUTIONS

Distributions of cash or other assets of an LLC shall be allocated among the Owners as provided in Operating Agreement, or if the Operating Agreement does not so provide, on the basis of the value of the capital contributions made by each Owner.

§ 7.132 DISTRIBUTION UPON PARTIAL REDEMPTION

Except as provided in RTC § 7.135, upon the Distribution in partial liquidation of an Owner's interest, the redeeming Owner is entitled to receive the amount to which the Owner is entitled under the Operating Agreement and, if not otherwise provided in the

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

Operating Agreement, the fair value of the redeemed interest based on the Owner's right to share in Distributions from the LLC.

§ 7.133 DISTRIBUTION UPON DISSOCIATION

Except as otherwise provided in this Section, upon an event of dissociation under RTC § 7.126 that does not cause dissolution of the LLC, a dissociating Owner is entitled to receive any Distribution to which the Owner is entitled under the Operating Agreement and, if not otherwise provided in the Operating Agreement, the fair market value of the Owner's interest in the LLC based on the Owner's right to share in Distributions from the LLC.

§ 7.134 DISTRIBUTION IN KIND

Unless otherwise provided in the Operating Agreement:

- (a) An Owner may not demand and receive any Distribution from an LLC in any form other than cash.
- (b) An Owner may not be compelled to accept a Distribution of any asset in kind except for a liquidating Distribution made proportionately.

§ 7.135 LIMITATIONS OF DISTRIBUTIONS

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

- (1) The LLC would be unable to pay its debts as they become due in the usual course of business.
- (2) The fair market value of the LLC'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 for the preferential rights upon dissolution of Owners, if any.

(b) An LLC may base a determination that a Distribution is not prohibited by subsection (1), above, on any of the following:

- (1) Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable under the circumstances.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(2) A fair market valuation or other method that is reasonable under the circumstances.

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

§ 7.136 LIABILITY FOR WRONGFUL DISTRIBUTION

(a) Except as provided in subsection (2) below, an Owner (other than the Tribe, another Indian tribe or Tribal Entity) or Manager who votes or assents to a Distribution in violation of RTC § 7.135 or of the Operating Agreement is personally liable to the LLC for the amount of the excess Distribution, subject to contribution from all other Managers or Owners participating in such action.

(b) An action to recover under this Section may be brought in the Tribal Court; however, a proceeding under this Section is barred unless it is brought within four (4) years after the date of the Distribution.

(c) Nothing in this Code serves to waive any aspect of the Tribe's or another Indian tribe's sovereign immunity, and any waiver thereof must be provided explicitly in the LLC's Articles of Organization and Operating Agreement, and/or by duly adopted resolution of the Tribal Business Committee.

VI. OWNERSHIP AND TRANSFER OF PROPERTY

§ 7.137 OWNERSHIP OF LLC PROPERTY

(a) All property originally transferred to or acquired by an LLC is property of the LLC and not the Owners individually.

(b) Property acquired with LLC funds is presumed to be LLC property.

(c) Property may be acquired, held, and conveyed in the name of the LLC.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

§ 7.138 TRANSFER OF PROPERTY

The property of an LLC may be transferred by an instrument of transfer executed by any Owner in the name of the LLC, unless management is vested in Managers, in which case the document of transfer shall be executed by a Manager. Transfers by either an Owner or Manager are subject to any limitation that may be imposed by the Operating Agreement.

§ 7.139 NATURE OF LLC INTEREST

An LLC interest is personal property.

§ 7.140 ASSIGNMENT OF LLC INTEREST

(a) Unless otherwise provided in the Operating Agreement:

- (1) An LLC interest is assignable in whole or in part.
- (2) An assignment of an LLC interest entitles the assignee to receive only the Distributions and to share in the allocations of profits and losses to which the assignee would be entitled with respect to the assigned interest.
- (3) An assignment of an LLC interest does not dissolve the LLC.
- (4) Unless and until the assignee becomes an Owner of the LLC under RTC § 7.142, the assignment of an LLC interest does not entitle the assignee to participate in the management or exercise rights of an Owner.
- (5) Unless and until the assignee of an LLC interest becomes an Owner of the LLC under RTC § 7.142, the assignor continues to be an Owner.
- (6) Unless otherwise provided in the Operating Agreement, the granting of a security interest, lien, or other encumbrance in or against any or all of an Owner's LLC interest is not assignable and shall not cause the Owner to cease to have the power to exercise any rights or powers of an Owner.

§ 7.141 RIGHTS OF JUDGMENT CREDITOR

Upon application to a court of competent jurisdiction, including a court other than the Tribal Court having valid jurisdiction over an Owner, by any judgment creditor of the Owner, the court may charge the LLC interest of any Owner (other than the Tribe or another Indian tribe) with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of an assignee of the Owner's LLC

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

interest in Distributions made by the LLC to Owners and other assigned interest holders in the usual course of business. This Section does not deprive any Owner of the benefit of any exemption laws applicable to the LLC interest. In no event shall the Tribe's or another Indian tribe's interest be attachable in abrogation of its sovereign immunity, or be subject to the Uniform Commercial Code (UCC), unless specifically adopted by the LLC and Tribe on a transactional basis, and only such specified UCC Articles shall apply.

§ 7.142 RIGHT OF ASSIGNEE TO BECOME AN OWNER

(a) Unless otherwise provided in the Operating Agreement, an assignee of an LLC interest may become an Owner only if the other Owners unanimously consent.

(b) An assignee of an LLC interest who becomes an Owner has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of the assignor under the Operating Agreement and this Code.

(c) Unless otherwise provided in the Operating Agreement, an assignor of an LLC interest is not released from any liability to the LLC without the written consent of all the Owners, whether or not the assignee becomes an Owner.

§ 7.143 POWERS OF LEGAL REPRESENTATIVE

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

VII. DISSOLUTION**§ 7.144 DISSOLUTION**

(a) In a proceeding by or for an Owner, the Tribal Court or other court of competent jurisdiction may order dissolution of an LLC if any of the following is established:

- (1) That it is not reasonably practicable to carry on the business of the LLC.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(2) That the LLC is not acting in conformity with its Operating Agreement.

(3) That one or more Managers are acting or will act in a manner that is illegal, oppressive, or fraudulent.

(4) That one or more Owners in control of the LLC are acting or will act in a manner that is illegal, oppressive, or fraudulent.

(5) That LLC assets are being misapplied or wasted.

(b) Any action under this Section must be brought in the Tribal Court, unless explicitly otherwise provided in the Operating Agreement. Nothing in this Section may be construed as a waiver of the Tribe's or another Indian tribe's sovereign immunity from suit, and any waiver thereof must be provided explicitly in the LLC's Articles of Organization, the Operating Agreement and/or a duly authorized resolution of the Tribal Business Committee.

§ 7.145 WINDING UP

A dissolved LLC continues its legal existence but may not carry on any business except that which is appropriate to wind up and liquidate its business. Unless otherwise provided in its Operating Agreement:

(a) The business of the LLC may be wound up by any of the following:

(1) The Owners or Managers who have authority to manage the LLC before dissolution.

(2) In a judicial dissolution, the Person(s) designated by the Tribal Court or court of competent jurisdiction.

(b) The Persons winding up the business of the LLC may do all of the following in the name of and on behalf of the LLC:

(1) Collect its assets.

(2) Prosecute and defend suits.

(3) Take any action necessary to settle and close the business of the LLC.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

- (4) Dispose of and transfer the property of the LLC.
- (5) Discharge or make provision for discharging the liabilities of the LLC.
- (6) Distribute to the Owners any remaining assets of the LLC.
- (c) Dissolution of an LLC does not do any of the following:
 - (1) Transfer title to the LLC's property
 - (2) Prevent transfer of all or part of an Owner's interest.
 - (3) Prevent commencement of a civil, criminal, administrative, or investigatory proceeding pending by or against the LLC.
 - (4) Abate or suspend a civil, criminal, administrative, or investigatory proceeding pending by or against the LLC at the time of dissolution.
 - (5) Terminate the authority of the registered agent of the LLC.
 - (6) Alter the limited liability of an Owner.

§ 7.146 DISTRIBUTION OF ASSETS

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

- (a) To creditors, including to the extent permitted by law, Owners, and former Owners in satisfaction of liabilities of the LLC.
- (b) Unless otherwise provided in the Operating Agreement, to Owners and former Owners in satisfaction of liabilities for Distributions under RTC § 7.130, RTC § 7.132, RTC § 7.133.
- (c) Unless otherwise provided in the Operating Agreement, to Owners and former Owners for the return of their contributions in proportion to their respective values and, thereafter, in proportion to their respective rights to share in Distributions from the LLC before dissolution.

§ 7.147 ARTICLES OF DISSOLUTION

After the dissolution of an LLC under RTC § 7.144, the LLC may file articles of dissolution with the Administrator that include the following:

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

- (a) The name of the LLC.
- (b) The date of filing of its Articles of Organization.
- (c) The statutory grounds under RTC § 7.144 for dissolution.
- (d) The delayed effective date of the articles of dissolution under RTC §7.108, if applicable.

§ 7.148 KNOWN CLAIMS AGAINST DISSOLVED LLC

(a) A dissolved LLC shall notify its known claimants in writing of the dissolution and specify a procedure for making claims at any time after the effective date of the dissolution. The written notice shall include all of the following:

- (1) A description of the information that must be included in a claim. The Limited Liability Company may demand sufficient information to permit it to make a reasonable judgment whether the claim should be accepted or rejected
- (2) A mailing address where a claim may be sent.
- (3) The deadline, which may not be less than six months after the effective date of the written notice, by which the dissolved Limited Liability Company must receive the claim.
- (4) A statement that the claim will be barred if not received by the deadline.

(b) The giving of notice provided for in subsection (a) does not constitute recognition that a Person to whom the notice is directed has a valid claim against the Limited Liability Company.

(c) A claim against the LLC is barred if:

- (1) A claimant who was given written notice under subsection (a) above, does not deliver the claim, in writing, to the LLC by the deadline specified in the notice; or
- (2) A claimant whose claim is rejected by the LLC does not commence a proceeding to enforce the claim within ninety (90) days after receipt of the rejection notice.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

§ 7.149 UNKNOWN OR CONTINGENT CLAIMS

A claim not barred under RTC § 7.148 may be enforced:

(a) Against the dissolved LLC, to the extent of its undistributed assets.

(b) If the dissolved LLC's assets have been distributed in liquidation against an Owner of the LLC, other than the Tribe or another Indian tribe, to the extent of the Owner's proportionate share of the claim or of the assets of the LLC distributed to the Owner in liquidation, whichever is less, but an Owner's total liability for all claims under this Section may not exceed the total value of assets at the time distributed to the Owner.

VIII. MERGER

§ 7.150 DEFINITIONS

(a) “**Constituent Organization**” in this Section means an organization, including a Corporation, a Limited Liability Company, an unincorporated cooperative or other tribally-formed Entity, that is a party to a merger.

(1) Unless the context requires otherwise, in this Section “Corporation” includes a domestic Corporation and a foreign Corporation.

(2) Unless the context requires otherwise, in this Section “LLC” includes a Domestic LLC and a Foreign LLC.

(b) “**Organizational Documents**” includes Articles of Organization, Operating Agreements, articles of incorporation, charter, bylaws, partnership agreement, agreements of trust and declarations of trust, and any other basic records that create an Entity's organization and determine its internal governance and relations among Persons that own it, have an interest in it, or are Owners of it.

§ 7.151 MERGER

(a) Unless otherwise provided in its Organizational Documents, one or more Constituent Organizations may merge with or into one or more LLCs or one or more other Foreign LLCs as provided in the plan of merger.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(b) Interests or shares in a Constituent Organization that is party to a merger may be exchanged for or converted into cash, property, obligations, or interest in the surviving LLC.

§ 7.152 APPROVAL OF MERGER

(a) Unless otherwise provided in the Operating Agreement, a Domestic LLC that is a party to a proposed merger shall approve the plan of merger by an affirmative vote by all of the Owners.

(b) Unless otherwise provided in the Operating Agreement, the Manager or Managers of a Domestic LLC may not approve a merger without also obtaining the approval of the LLC's Owners under subsection (a) above.

(c) All other Constituent Organizations shall approve the merger in the manner and by the vote required by the laws applicable to the Constituent Organizations and their respective Organizational Documents.

(d) Each Constituent Organization shall have any rights to abandon the merger as provided for in the plan of merger or in the laws applicable to the Constituent Organization or its Organizational Documents.

(e) Upon approval of a merger, the Constituent Organization shall notify its Owners, shareholders, and all others that have an ownership interest in it of the approval and of the effective date of the merger.

§ 7.153 PLAN OF MERGER

Each Constituent Organization shall enter into a written plan of merger to be approved under RTC § 7.152.

§ 7.154 ARTICLES OF MERGER

(a) The surviving LLC shall deliver to the Administrator articles of merger, executed by each party to the plan of the merger, that include all of the following:

- (1) The name and jurisdiction of organization for each Constituent Organization.
- (2) The plan of merger.
- (3) The name of the surviving or resulting LLC.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(4) A statement as to whether the management of the surviving LLC will be reserved to its Owners or vested in one or more Managers.

(5) The delayed effective date of the merger under RTC § 7.108, if applicable.

(6) A statement as to whether the surviving LLC is Tribally-Owned.

(7) If Tribally-Owned LLC, a statement as to whether the surviving LLC enjoys an Indian tribe's sovereign immunity.

(8) A statement that the plan of merger was approved in accordance with RTC § 7.152.

(b) A merger takes effect upon the effective date of the articles of merger.

§ 7.155 EFFECTS OF MERGER

A merger has the following effects:

(a) The Constituent Organizations become a single Entity, which shall be in the Entity designated in the plan of merger as the surviving LLC.

(b) Each Constituent Organization, except the surviving LLC, ceases to exist.

(c) The surviving LLC possesses all of the rights, privileges, immunities, and powers of each merged Constituent Organization and is subject to all of the restrictions, disabilities, and duties of each merged Constituent Organization.

(d) All property and all debts including contributions, and each interest belonging to or owned by each of the Constituent Organizations and is subject to all of the restrictions, disabilities, and duties of each merged Constituent Organization.

(e) Title to all real estate and any interest in real estate, vested in any Constituent Organization, does not revert and is not in any way impaired because of the merger.

(f) The surviving LLC has all the liabilities and obligations of each of the Constituent Organizations and any claim existing or action or proceedings pending by or against any merged Constituent Organization may be prosecuted as if the merger had not taken place, or the surviving LLC may be substituted in the action.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(g) The rights of creditors and any liens on the property of any Constituent Organization survive the merger.

(h) The interests in a Constituent Organization that are to be converted or exchanged into interest, cash, obligations, or other property under the terms of the plan of merger are converted and the former interest holders are entitled only to the rights provided in the plan of merger of the rights otherwise provided by law.

(i) The Articles of Organization of the surviving LLC is amended to the extent provided in the articles of merger.

§ 7.156 RIGHT TO OBJECT

Unless otherwise provided in the Operating Agreement, upon receipt of the notice required RTC § 7.152, an Owner who did not vote in favor of the merger may, within twenty (20) days after the date of notice, voluntarily dissociate from the LLC under RTC § 7.126 and receive fair value for the Owner's LLC interest under RTC § 7.133.

IX. GENERAL PROVISIONS

§ 7.157 TRIBALLY-OWNED COMPANIES

(a) **Wholly-Owned Companies**: There are hereby authorized to be created Limited Liability Companies wholly-owned by the Tribe or another Indian tribe. A Tribally Owned LLC shall be created by a duly adopted resolution of the creating Tribal Entity. The Organizer shall file in accordance with RTC § 7.108. When the Organizer files the Articles of Organization and the Operating Agreement of a Tribally-Owned LLC, a certified copy of the resolution authorizing the formation of the LLC and approving the articles shall be included. Tribally-Owned LLCs shall be considered to be instrumentalities of the Tribe or another Indian tribe.

(b) **Tribally-Owned Subsidiary LLC**: There are hereby authorized to be created by resolution of the Managers or Board of Directors of a Tribally-Owned LLC or of a Tribal Corporation, or of a wholly-owned subsidiary of such a Tribally-Owned LLC or Tribal Corporation, subsidiary LLCs to be wholly-owned by the parent Tribally-Owned LLC or parent Tribal Corporation, which shall be considered to be instrumentalities of the Tribe or another Indian tribe. The Organizer of such a Tribally-Owned Subsidiary LLC shall file Articles of Organization in accordance with RTC § 7.108. When the Organizer files the Articles of Organization and the Operating Agreement of the Tribally-Owned Subsidiary LLC, a copy of a resolution of the Managers or Board of Directors of the parent

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

Tribally-Owned LLC or parent Tribal Corporation (or designee thereof) authorizing the formation of the subsidiary LLC and approving the articles shall be included.

§ 7.158 NON-TRIBALLY OWNED LLCs

There are hereby authorized to be created by resolution of the Managers or Board of Directors of a non-tribally-owned LLC, which shall may be considered to be instrumentalities of the Tribe or another Indian tribe, but only if the Tribal Business Committee adopts a resolution designating such non-tribally-owned LLC and such non-tribally-owned LLC otherwise qualifies as an arm of the tribe as a matter of federal law. The Organizer of such a non-tribally-owned LLC shall file Articles of Organization in accordance with RTC § 7.108. When the Organizer files the Articles of Organization and the Operating Agreement of the non-tribally-owned LLC, a copy of documents authorizing the formation of the non-tribally-owned LLC the approving the articles shall be included.

§ 7.159 PRIVILEGES AND IMMUNITIES

(a) The Limited Liability Companies established under RTC § 7.157 shall be considered to be instrumentalities of the Tribe or another Indian tribe and their officers and employees considered officers and employees of the Tribe, created for the purpose of carrying out authorities and responsibilities of the Tribal Business Committee for economic development of the Tribe or another Indian tribe and the advancement of Tribal Members. Such LLCs, their directors, officers, Managers and employees shall, therefore, be entitled to all of the privileges and immunities enjoyed by the Tribe or another Indian tribe, including but not limited to immunities from suit in Federal, State and Tribal courts and from Federal, State and local taxation or regulation.

(b) The Limited Liability Companies established under RTC § 7.158 shall not be considered to be instrumentalities of the Tribe or another Indian tribe and their officers and employees considered officers and employees of the Tribe, unless the Tribal Business Committee adopts a resolution establishing such LLC to be an arm of the tribe, created in part for the purpose of carrying out authorities and responsibilities economic development of the Tribe or another Indian tribe and the advancement of Tribal Members. If qualified as an arm of the tribe, such LLCs, their directors, officers, Managers and employees shall be entitled to those privileges and immunities enjoyed by the Tribe or another Indian tribe, including but not limited to immunities from suit in Federal, State and Tribal courts and from Federal, State and local taxation, except to the limited extent the Tribal Business Committee waives such immunity.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

§ 7.160 OWNERSHIP

(a) No ownership interest in any LLC in which the Tribe or another Indian tribe is an Owner may be alienated unless approved by the Tribal Business Committee. Further, no Ownership interest in any Tribally-Owned Subsidiary LLC may be alienated unless approved by a duly adopted resolution of the Managers or Board of Directors of the parent Tribally-Owned LLC or parent Tribal Corporation.

(b) Unless otherwise specified in the Operating Agreement or Articles of Organization, no ownership interest in any non-tribally-owned LLC may be alienated unless approved by a duly adopted resolution of the Managers or Board of Directors of the LLC.

(c) All interests in any Tribally-Owned LLC shall be held by and for another Indian tribe, or in the case of a wholly-owned subsidiary LLC, by the parent Tribally-Owned LLC or parent Tribal Corporation. No individual member of the Tribe or another Indian tribe shall have any personal ownership interest in any LLC organized under this Section, whether by virtue of such person's status as a member of a Tribe, as an officer of a Tribe's Government, or otherwise.

§ 7.161 PROJECT COMPANIES WITH NON-TRIBAL OWNERS

Any LLC created pursuant to this Section, including subsidiary LLCs, may form or own interests or shares in partnerships, Corporations, or other Limited Liability Companies with other governmental or non-governmental Entities or Persons under the laws of the Tribe or any other jurisdiction ("Project Companies"); provided, however, that the partial ownership interest in such Project Companies shall not diminish or affect the privileges and immunities of the LLCs created pursuant to this Code.

§ 7.162 GOVERNMENTAL PURPOSE OF LLCs

All Tribally-Owned LLCs, whether directly or indirectly owned and those non-tribally owned LLCs intended to operate as arms of the tribe, shall state in their Operating Agreement the purpose of the LLC that relates to the overall needs, priorities, goals, and objectives of the Tribe's government, including how the LLC will contribute to the goals of self-determination and economic self-sufficiency.

§ 7.163 WAIVER OF SOVEREIGN IMMUNITY

The Limited Liability Companies established under RTC §§ 7.157 and 7.158 may only waive the privileges and immunities granted under RTC § 7.159 in the following manner:

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(a) The qualified LLC may specifically grant limited waivers of its immunity from suit and consent to be sued in Tribal Court or another court of competent jurisdiction or consent to binding arbitration pursuant to the procedures and authorities set forth in the LLC Operating Agreement; provided, however, that:

(1) Any such waiver or consent to suit granted pursuant to the LLC Operating Agreement is in writing and shall in no way extend to any action against the Tribe or another Indian tribe, nor shall it in any way be deemed a waiver of any of the rights, privileges and immunities of the Tribe another Indian tribe;

(2) Any recovery against the LLC shall be limited to the assets of the LLC (or such portion of the LLC's assets as further limited by the waiver or consent) and the Tribe or another Indian tribe shall not be liable for the payment or performance of any of the obligations of the LLC, and no recourse shall be had against any assets or revenues of the Tribe or another Indian tribe in order to satisfy the obligations of the LLC; including assets of the Tribe or Indian tribe leased, loaned, or assigned to the LLC for its use, without transfer of title; and

(3) Any waiver of the LLC's immunities granted pursuant to the LLC Operating Agreement shall be further limited or conditioned by the terms of such waiver.

(b) The sovereign immunity of the qualified LLC shall not extend to actions against the LLC by the Tribe or another Indian tribe acting as Owner, or, in the case of a subsidiary LLC created pursuant to this Part, by the parent LLC acting as Owner, pursuant to RTC § 7.171.

(c) The LLC must follow the method mandated by RTC § 7.165.

§ 7.164 RESERVED

§ 7.165 ADDITIONAL REQUIREMENTS FOR THE ARTICLES OF ORGANIZATION

As set forth in RTC § 7.163, Tribally-Owned Limited Liability Companies established under RTC § 7.157 and companies established under RTC § 7.158 that are duly established as arms of the tribe may grant a limited waiver of sovereign immunity in order to promote economic development through commercial transactions for which such a waiver is necessary and beneficial to the Tribe or another Indian tribe. The method for

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

granting limited waiver of sovereign immunity through the above-mentioned Entities is as follows:

- (a) The sovereign immunity of a qualified LLC may be waived only by:
 - (1) A resolution adopted by the Managers or Owner's Board of Directors, of the qualified LLC for the specific purpose of granting a waiver;
 - (2) The language of the waiver must be in writing and explicit; and
 - (3) The waiver must be contained in (i) the Articles of Organization of the LLC, (ii) the Operating Agreement of the LLC, and (iii) a written contract or commercial document to which the LLC is a party.
 - (4) To the extent an LLC waives the Tribe's immunity beyond the terms of this Code or beyond the authority of any applicable resolution of the Tribal Business Council, such waiver is void. To the extent the waiver of immunity extends beyond the limitations set forth in this Code in any applicable resolution of the Tribal Business Council, such waiver is void.

(b) Waivers of sovereign immunity by resolution of the Manager may be granted only when necessary to secure a substantial advantage or benefit to the LLC. Waivers of sovereign immunity by resolution may not be general but must be specific and limited as to duration, grantee, transaction, property or funds of the LLC subject to the waiver, the court having jurisdiction and applicable law.

(c) All waivers of another Tribe's sovereign immunity must be approved by an authorized resolution of the governing body of such other Indian tribe.

§ 7.166 MANAGEMENT

All LLCs formed pursuant to RTC §§ 7.157 and 158 of this Code shall be managed by a Manager or Managers in the manner described in the Operating Agreement. The qualifications, numbers, terms and method for selecting and removing Managers of any LLC shall be specified in the LLC Operating Agreement. If Owner-managed, the LLC shall have one or more Persons exercising the functions of Chief Executive Officer.

§ 7.167 VOTING

(a) The ownership interests in all Tribally-Owned LLCs shall be voted in accordance with the Tribal Business Committee's procedures for voting and passing Tribal Resolutions or applicable laws of the Indian tribe.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(b) The ownership interests in a Tribally-Owned Subsidiary LLC, or a non-tribally-owned LLC shall be voted as provided in the Operating Agreement.

§ 7.168 DISTRIBUTIONS OF INCOME

(a) Subject to the Tribe's or another Indian tribe's ultimate ownership right to all income generated by its Tribally-Owned LLCs, a Tribally-Owned LLC shall distribute the net income of the LLC to the Tribe or another Indian tribe as set forth in a dividend plan adopted in accordance with the Operating Agreement and duly approved by Tribe, except that a Tribally-Owned LLC may retain reserves necessary to carry on the LLC's business in a reasonably prudent manner and as recommended by the Manager or Managers, subject to further limitations set forth in § 7.135 and in the Operating Agreement.

(b) Subject to the parent Tribally-Owned LLC's or parent Tribal Corporation's ultimate ownership right to all income generated by its subsidiary LLCs, a subsidiary LLC created pursuant to RTC § 7.157(b) shall distribute the net income of the LLC to the parent Tribally-Owned LLC or parent Tribal Corporation as set forth in a dividend plan adopted in accordance with the Operating Agreement and duly approved, except that a Tribally-Owned LLC may retain reserves necessary to carry on the LLC's business in a reasonably prudent manner and as recommended by the Manager or Managers, subject to further limitations set forth in RTC § 7.135 and in the Operating Agreement.

(c) All income generated by a non-tribally-owned LLC created pursuant to RTC § 7.158 shall distribute the net income in accordance with the Operating Agreement, except that such LLC may retain reserves necessary to carry on the LLC's business in a reasonably prudent manner and as recommended by the Manager or Managers, subject to further limitations set forth in RTC § 7.135 and in the Operating Agreement.

§ 7.169 AUDIT

In addition to any Owner inspection rights provided in the Operating Agreement of an LLC, the Tribal Business Committee by process in the manner required to be provided in the Operating Agreement, require that any LLC be audited by an independent auditor hired by the Tribe, which shall have the absolute right to require access to all of the LLC's records and documents necessary for such an audit. Nothing herein shall be interpreted to preclude any LLC from imposing additional audit requirements in the Operating Agreement beyond those set forth herein. Nothing herein shall be interpreted to limit the auditing authority of tribal or federal governmental agencies.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

§ 7.170 FINANCIAL, BUSINESS AND PLANNING INFORMATION

In addition to any reports to the Owner required by the Operating Agreement, the Manager or Managers of each LLC, shall upon request submit the following information to the authorized governing body of the Tribe or where applicable, another Indian tribe:

(a) Copies of any periodic financial statements (including monthly or quarterly balance sheets, profit and loss statements, and cash flow statements) as may be prepared in the ordinary course of business, promptly after such statements are furnished to the LLC's Manager or Managers;

(b) A full report of the business activities of the LLC within 120 days after the close of each fiscal year; and a proposed annual plan for the following year, including, where applicable, any proposed funding from the Tribe or anticipated Distributions to the Tribe or another Indian tribe.

§ 7.171 COURT ACTIONS BY THE TRIBE OR ANOTHER INDIAN TRIBE AUTHORIZED

The Tribe or where applicable another Indian tribe, and/or Owner of any LLC organized pursuant to this Code may bring a civil action against the LLC, its Manager or Managers or its officers in the Tribal Court only pursuant to this Part to:

(a) Enjoin temporarily or permanently any action of the LLC that is an ultra vires act outside the authority of the LLC and that is either:

(1) Unlawful;

(2) Has or could cause material harm to the assets of the LLC or the Tribe or another Indian tribe if no immediate action is taken; or

(3) Requires the Distribution of the LLC's surplus net income, to the extent permitted by RTC § 7.135.

(b) In accordance with RTC § 7.159, the sovereign immunity of the LLC, if any, shall not extend to actions against the LLC by the Tribe.

(c) Nothing contained herein shall be construed as authorizing actions of any kind whatsoever against the Tribe or another Indian tribe.

RINCON LIMITED LIABILITY COMPANY ORDINANCE

Rincon Tribal Code § 7.100

(d) Nothing contained herein shall be construed as limiting additional actions as may be allowed for in any applicable Operating Agreement and/or limited waivers of the Tribe's immunity regarding such LLC.

§ 7.172 TRIBAL APPROVAL REQUIRED

The filing of any court action against a Tribally-Owned LLC (including a Tribally-Owned Subsidiary LLC), or any non-tribally-owned LLC that is operating as an arm of the tribe, pursuant to this Code must be authorized by the Tribe or another Indian tribe as Owner in the same manner as required in RTC § 7.167 for voting on any item properly coming before the Tribe or another Indian tribe as Owner. The request for consideration of the proposed court action may be made by the Tribal Business Committee or the authorized governmental body of the Indian tribe.

§ 7.173 RELIEF AVAILABLE

In any action brought under this Section, the Tribal Court may, based on clear and convincing evidence set forth in its findings of fact and conclusions of law award remedies available under Tribal law, including but not limited to:

(a) Issue a temporary restraining order, preliminary injunction, and permanent injunctive relief pursuant to the procedures and standards applicable in the Tribal Court, except that no bond need be posted for any preliminary injunctive relief; or

(b) Order that funds of the LLC be distributed to the extent permitted by the Operating Agreement and RTC § 7.135 of this Code.

§ 7.174 NO APPLICATION OF CALIFORNIA SUBSTANTIVE LAW OR CONSENT TO STATE JURISDICTION

The Tribe hereby asserts the fullest extent of its authority that Tribal and federal law govern LLCs created pursuant to this Code, to exclusion of the laws and jurisdiction of the State of California. Nothing herein shall be interpreted to expand the limited authority of the State of California to apply its laws or assert its jurisdiction over LLCs created by this Code, except as provided by federal law pursuant to P.L. 83-280, narrowly construed.

[END OF DOCUMENT]