



**Habematolel Pomo of Upper Lake  
TRIBAL OWNED LIMITED LIABILITY COMPANY ORDINANCE**

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Adopted: 11-08-2019 Resolution No. 11-19-03  
MONTH - DAY OF MONTH - YEAR                      MONTH    YEAR    # SEQUENCE

**Ordinance Number**  
2019-11-01  
YEAR - MONTH - # SEQUENCE

*Subject: Limited Liability Company Ordinance*

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**TITLE:**

This ordinance shall be known as the Habematolel Pomo of Upper Lake Tribally Owned Limited Liability Company Ordinance.

**AUTHORITY:**

The Habematolel Pomo of Upper Lake Executive Council is the duly elected governing body of the Habematolel Pomo of Upper Lake Tribe; a federally recognized American Indian Tribe which is eligible for all rights and privileges afforded to a federally recognized American Indian Tribe and enacts this Ordinance by the power and authority granted under the Habematolel Pomo of Upper Lake Constitution.

**PURPOSE:**

The purpose of this ordinance is to address shall apply to all agencies of the Tribe formed as limited liability companies organized under laws of the Tribe that are limited liability companies ("LLCs") wholly owned by the Tribe, whether directly or as a wholly-owned subsidiary of another LLC or other entity that is wholly owned by the Tribe. The companies organized and created under this Ordinance shall be subject to this Ordinance and all other laws of the Tribe, provided that in any conflict, this Ordinance shall prevail. This Ordinance shall supersede all other acts pertaining to limited liability companies that are wholly owned by the Tribe.

**HABEMATOLEL POMO OF UPPER LAKE**  
**TRIBALLY-OWNED LIMITED**  
**LIABILITY COMPANY**  
**ORDINANCE**

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**PART 1. GENERAL PROVISIONS FOR AGENCIES OF THE TRIBE FORMED AS LLCs WHOLLY OWNED BY THE TRIBE**

**SECTION 1.1 SCOPE**

This Ordinance shall apply to all agencies of the Tribe formed as limited liability companies organized under laws of the Tribe that are limited liability companies (“LLCs”) wholly owned by the Tribe, whether directly or as a wholly-owned subsidiary of another LLC or other entity that is wholly owned by the Tribe. The companies organized and created under this Ordinance shall be subject to this Ordinance and all other laws of the Tribe, provided that in any conflict, this Ordinance shall prevail. This Ordinance shall supersede all other acts pertaining to limited liability companies that are wholly owned by the Tribe.

**SECTION 1.2 PURPOSE OF LLCs FORMED UNDER THIS ORDINANCE & FINDINGS OF TRIBAL LAW REGARDING SUCH**

The Tribe’s governmental purpose in creating LLCs pursuant to the Ordinance is to further the Tribe’s goal of building a strong Tribal government and a vigorous Tribal economy which plays a constructive role in the local, regional and national economies by replacing the lack of a traditional tax base with revenues from Tribal business entities. The Tribe hereby seeks to accomplish this purpose by creating wholly-owned businesses which supply governmental revenues and employment opportunities to Tribal members and its neighbors leading to self-sufficiency and self-determination for the Tribal government and its individual members. As with state and federal governments, the Tribe endeavors to properly manage the risks associated with specific business lines by limiting certain liabilities to a specific business entity—all the while recognizing that, due to the Tribe’s lack of a traditional tax base, any impact on the revenue streams of an LLC formed under this Ordinance will have a direct impact on the governmental revenues of the Tribe.

In light of the Tribe’s purposes, the Executive Council, pursuant to its general powers granted in Article X of the Tribe’s Constitution to act in all matters that concerns the general welfare of the Tribe, therefore hereby finds that as a matter of Tribal law:

- (a) Tribal business enterprises are the only means by which the Tribe can raise revenues, are essential to the fulfillment of the Tribe’s governmental obligations, and are critical to the Tribe’s goal of self-sufficiency; and
- (b) the Tribal government concurs with researchers from the Harvard Project on American Economic Development<sup>1</sup> that:

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<sup>1</sup> Stephen Cornell & Joseph P. Kalt, *Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations*, in *WHAT CAN TRIBES DO?: STRATEGIES AND INSTITUTIONS IN AMERICAN INDIAN ECONOMIC DEVELOPMENT* 1, 3 (Stephen Cornell & Joseph P. Kalt eds., 1992).

- (1).undermining tribal sovereignty is one of the quickest ways to halt development and prolong the impoverished conditions of American Indians; and
  - (2).the Tribal government (like all governments) should work to create and sustain an appropriate economic environment for the Tribe that puts in place “the rules of the games” that non-Tribal parties need to understand and for predictability and stability to make strategic decisions about business transaction with the Tribe; and
  - (3).most economically successful tribes manage eventually to insulate day-to-day operations from politics, and the Tribal government expresses a long-term goal of insulating Tribal businesses from Tribal political issues; and
  - (4).to attract business and investment, the Tribal government finds it necessary to formalize rules and procedures to make it easier for non-Tribal parties to analyze the business environment and feel more comfortable about doing business with the Tribe and in the Tribe’s jurisdiction, including the formation of LLCs under this Ordinance and the regulation of LLCs formed by the Tribe by regulatory bodies of the Tribe.
- (c) the formation of LLCs under this Ordinance are governmental by nature despite their for-profit nature because the Tribe must replace the traditional tax base deprived to the Tribe by failed federal policies and such formation furthers the self-determination and self-governance goals expressed by United States Congress through, among other actions and statutes, the Native American Business Development, Trade Promotion and Tourism Act of 2000<sup>2</sup> and assists in Congressionally endorsed Tribal efforts to further the twin goals of self-sufficiency and political self-determination of the Tribe by allowing the Tribe to more readily access the following to address the economic challenges faced by the Tribe: (A) the resources of the private market; (B) adequate capital; and (C) technical expertise; and
  - (d) the formation of business entities is essential to the general welfare of the Tribe because the Tribe relies on the revenue generation and risk management aspects of its business entities to properly manage the assets of the Tribe and to generate revenues (and limit the liabilities that could potentially affect those revenues) for Tribal programs including but not limited to cultural preservation, education, elder care, governmental employees and other needs of the Tribe; and
  - (e) the formation of business entities such as LLCs formed under this Ordinance are by nature a body corporate and politic and an instrumentality of the Tribal government and an authorized agency of the Tribe that follow formalized Tribal rules and procedures intended to make it easier for non-Tribal parties to analyze the business environment and feel more comfortable doing business with the Tribe by providing familiar business structures and a mechanism to be able to succinctly waive the sovereign immunity of the Tribe in a limited manner for a specific business need by making limited waivers of sovereign immunity by the business entity thus allowing the Tribe to engage non-Tribal parties for services and resources; and

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<sup>2</sup> Native American Business Development, Trade Promotion, and Tourism Act of 2000, Pub. L. No. 106-464, § 2(a)(4), 114 Stat. 2012 (codified at 25 U.S.C. § 4301(a)(4) (2000)).

- (f) all assets owned by an LLC created pursuant to this Ordinance shall be considered resources and assets of the Tribe and any action by the management of an LLC formed under this ordinance binding or obligating funds of the LLC are, by Tribal law, binding and obligating assets of the Tribe regardless of whether the Tribe is directly liable;
- (g) the economic benefits produced by LLCs created pursuant to this Ordinance inure to the benefit of the Tribe and any impact on assets or revenues of an LLC created pursuant to this Ordinance effectively strikes a blow against the Tribal treasury, regardless of whether the Tribe is directly liable;
- (h) the Tribe, through the appointment of the Board of Directors or the Manager, directly oversees the operations of the companies formed under this Ordinance, and even in the event the Tribe eventually implements policies suggested by Harvard studies to insulate Tribal businesses from Tribal politics by delegating authority to a Board of Directors or a Manager independent of the Tribal government, the Tribe remains in ultimate control of the LLCs formed pursuant to this Ordinance even if the Tribal government is not in direct control of the business minutiae and day-to-day management of the LLC; and
- (i) the Tribe’s intent in forming LLCs pursuant in this Ordinance is to create arms of the Tribe possessing the inherent attributes of the Tribal government including sovereign immunity; and
- (j) preserving the sovereign immunity of LLCs formed pursuant to this Ordinance benefits the Tribe in protecting the Tribal treasury by using the same risk management mechanisms used by states and corporations and is necessary to promote the federal policies of tribal self-determination, economic development, and cultural autonomy;
- (k) for questions regarding the governmental nature and sovereign immunity of LLCs formed pursuant to this Ordinance, the Tribal government finds that it shall be sufficient to provide documents only as to the governmental nature and purposes of the LLC in question such as the Tribe’s constitution, this Ordinance, Tribal Resolutions made in compliance with this Ordinance, the Articles of Organization of an LLC, and the LLC’s operating agreement, and it shall violate sovereign immunity of the Tribe and any LLC formed pursuant to this Ordinance, as well as the the public policy and law of the Tribe (as well as the federal policy of self-governance and self-determination) to allow discovery as a “fishing expedition” into the proprietary information of the Tribe’s business operations which are determined to be matters internal to the Tribe and Tribal government.

**SECTION 1.3 LLCs DIRECTLY OWNED BY THE TRIBE**

The Tribe hereby authorizes the creation of LLCs wholly owned by the Tribe by a duly adopted resolution of the Habematolel Pomo of Upper Lake Executive Council (the “Executive Council”). All formation documents as required in Section 1.5 shall, after approval by the Executive Council, be filed with the Secretary of the Tribe.

**SECTION 1.4 SUBSIDIARY LLCs**



The Tribe hereby authorizes the creation of wholly-owned subsidiary LLCs of LLCs created pursuant to Section 1.3 or this Section 1.4 wherein the subsidiary LLCs are wholly owned by the parent LLC and ultimately are wholly-owned instrumentalities and arms of the Tribe by either (a) a duly adopted resolution of the Executive Council or (b) a duly adopted resolution of the Board of Directors or Manager of the parent LLC. All formation documents as required in Section 1.5 shall, after approval by the Executive Council or the forming LLC's Board of Directors or Manager, be filed with the Secretary of the Tribe.

## **SECTION 1.5 FORMATION DOCUMENTS**

All LLCs (including subsidiary LLCs) formed pursuant to this Ordinance must be organized after approval of the following initiating documents:

1. The Articles of Organization shall contain all the following information:
  - a. A statement that the LLC is organized under this Ordinance.
  - b. A name for the LLC that satisfies the provisions of this Ordinance.
  - c. A statement that the LLC is wholly owned by the Tribe or by an entity itself wholly owned by the Tribe.
  - d. A statement that the LLC is to enjoy the Tribe's sovereign immunity and the scope of any waiver of that immunity granted pursuant to Section 1.6 of this Ordinance and the LLC's Operating Agreement.
  - e. A statement setting forth the purpose of the LLC as provided in Section 1.2 of this Ordinance.
2. A Resolution of Approval passed by a majority vote of the Executive Council and signed by the Chairperson with an attestation by the Secretary for LLCs formed pursuant to Section 1.3 or Section 1.4, or a resolution passed by a majority vote of the Board of Directors or Manager of the parent LLC forming a subsidiary LLC pursuant to Section 1.4.
3. The Board of Directors or Manager of each LLC shall file with the Secretary of the Tribe: (a) an LLC Operating Agreement within thirty (30) days of formation of the LLC; and (b) any amendments to such LLC Operating Agreement within ten (10) days of the effective date of any such amendments.

## **SECTION 1.6 PRIVILEGES AND IMMUNITIES**

The LLCs established under Sections 1.3 and 1.4 are instrumentalities and arms of the Tribe, and their officers and employees are considered officers and employees of the Tribe, created for the purpose of carrying out authorities and responsibilities of the Tribe for economic development of the Tribe and the advancement of its members as further outlined in Section 1.2. The Tribe explicitly intends that all LLCs chartered under this Ordinance shall be disregarded entities for federal tax purposes with all having the attributes of their ultimate parent, the Tribe. Such LLCs, their directors, officers, and employees shall, as

instrumentalities and arms of the Tribe, be entitled to all the privileges and immunities enjoyed by the Tribe, including, but not limited to, immunities from suit in Federal, State and Tribal courts and from Federal, State, and local taxation or regulation, except that:

1. An LLC formed pursuant to this Ordinance may specifically grant limited waivers of its immunity from suit and consent to be sued in Tribal Court or another court of competent jurisdiction; provided, however, that:
  - a. any such waiver or consent to suit granted by an LLC shall in no way extend to any direct action against the Tribe, nor shall it in any way be deemed a waiver of any of the rights, privileges and immunities of the Tribe of any other entity or instrumentality of the Tribe;
  - b. any recovery against the LLC shall be limited to the Tribe's assets contained in the LLC (or such portion of the LLC's assets as further limited by the waiver or consent), and, unless allowed by written consent of the Executive Council as authorized by the General Membership, other assets owned by either the Tribe or any other entity or instrumentality of the 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 other Tribal assets or revenues beyond the assets of the LLC in order to satisfy the obligations of the LLC including assets of the Tribe leased, loaned, or assigned to the LLC for its use, without transfer of title;
  - c. any waiver of the LLC's immunities granted pursuant to the LLC's Operating Agreement shall be further limited or conditioned by the terms of such waiver;
  - d. any waiver must be contained in a written contract or commercial document to which the LLC is a party;
  - e. any waivers shall be limited to actual damages suffered and in no way provide for any exemplary damages, punitive damages or attorney's fees to be assessed against the LLC;
  - f. any waiver must be granted by resolution of the Board of Directors or Manager of the LLC as appropriate which requests approval of the waiver by the Executive Council as authorized by the General Membership and must set forth duration, grantee, transaction, property or funds of the Tribe held by the LLC subject to the waiver, the court having jurisdiction, and any applicable law;
  - g. No waiver shall be effective unless approved by a resolution of the Executive Council as authorized by the General Membership at the request of the Board of Directors or Manager of the LLC waiving immunity.

## **SECTION 1.7 OWNERSHIP**

All LLC ownership interests (known as "Units") in any LLC wholly owned by the Tribe shall be held by and for the Tribe, or in the case of a subsidiary LLC, by an LLC ultimately wholly owned by the Tribe. No individual citizen of the Tribe shall have any personal ownership interest in any LLC organized under this Ordinance, whether by virtue of such person's status as a member of the Tribe, as an officer of

the government of the Tribe, or otherwise. No LLC Units in any LLC formed pursuant to this Ordinance may be alienated unless approved by a duly adopted resolution of the Executive Council. Tribal law hereby strictly prohibits direct or indirect ownership by any person or entity that does not result in ultimate ownership of all Units by the Tribe in any LLC formed under this Ordinance.

### **SECTION 1.8 PROJECT COMPANIES WITH NON-TRIBAL OWNERS**

Any LLC created pursuant to this Ordinance, including any subsidiary LLCs, may form or own interests or shares in any entity with other governmental or non-governmental persons or entities 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 LLC or subsidiary LLC created pursuant to this Ordinance which owns interest in the Project Company.

### **SECTION 1.9 REGISTERED OFFICE AND REGISTERED AGENT**

For each LLC formed under this Ordinance, the registered agent shall be the Secretary of the Tribe with the registered office being that of the Secretary. Any service of process on the registered agent must follow all applicable laws of the Tribe.

## **PART 2. FORMATION REQUIREMENTS FOR LLCs WHOLLY OWNED BY THE TRIBE**

### **SECTION 2.1. FORMATION**

1. The Chairperson of the Executive Council shall be the Organizer of any LLC formed by the Executive Council pursuant to Section 1.3 or Section 1.4. Unless a delayed effective date is specified, the existence of an LLC formed by the Executive Council is when the Articles of Organization have been approved by a duly adopted resolution of the Executive Council.
2. The Chairperson of the Board of Directors, or his or her designee, or the Manager shall be the Organizer of any LLC formed by a Board of Directors pursuant to Section 1.4. Unless a delayed effective date is specified, the existence of such subsidiary LLC begins when the Articles of Organization have been approved by a resolution of the Board of Directors or Manager of the parent LLC, and the Articles of Organization have been filed with the Secretary of the Tribe.

## **PART 3. MANAGEMENT OF LLCs UNDER THIS ORDINANCE**

### **SECTION 3.1 MANAGER**

1. All LLCs formed pursuant to this Ordinance shall be managed either by a Board of Directors, the majority of which shall be Tribal members, deriving their ultimate authority from the Tribal Executive Council or by a Manager which may be another LLC formed under this Ordinance. For LLCs managed by a Manager, the LLC's Operating Agreement shall establish the Manager and any changes in Manager must receive approval of the Executive Council.



2. The number, terms, and method for selecting and removing Directors or Manager of any LLC formed pursuant to this Ordinance shall be specified in the LLC's Operating Agreement.
3. All delegations of authority must be accomplished in writing and be approved by the appropriate Board of Directors or Manager.

## **PART 4. DISTRIBUTIONS**

### **SECTION 4.1 DISTRIBUTIONS OF INCOME**

An LLC formed pursuant to Sections 1.3 or Section 1.4 may distribute a portion of the net income of the LLC as set forth in a dividend plan adopted in accordance with the Articles of Organization and the Operating Agreement or may retain reserves necessary to carry on the LLC's business in a reasonably prudent manner with the goal of growing the Tribe's assets as recommended by its Board of Directors or Manager. It shall be against Tribal policy to make any distribution that would violate debt or other contractual covenants. Tribal law hereby prohibits any distribution that is not an ultimate distribution to the Tribe.

## **PART 5. ADDITIONAL REPORTS AND AUDITS**

### **SECTION 5.1 AUDIT**

The Tribe may at any time, by a commercially-reasonable process, require that any LLC formed pursuant to Section 1.3 or Section 1.4 be audited by an independent auditor hired by the Tribe who shall have the absolute right to require access to all the LLC's records and documents necessary for such an audit.

### **SECTION 5.2 FINANCIAL, BUSINESS, AND BUDGET INFORMATION FOR THE TRIBE**

At the request of the Executive Council, all LLCs formed pursuant to this Ordinance shall submit all or a portion of the following information to the Executive Council or its designees upon such reasonable timelines as set forth in the request (which the Executive Council shall deem confidential and proprietary upon request of the LLC's Board of Directors or Manager):

1. 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;
2. A full report of the business activities of the LLC after the close of each fiscal quarter;
3. A proposed annual budget for the upcoming fiscal year of the Tribe, including any proposed funding from the Tribe or anticipated distributions to the Tribe, and a final annual budget adopted by each Board of Directors or Manager; and
4. Such other information as the Executive Council may request.

## **PART 6. DISSOLUTION**

### **SECTION 6.1 GENERAL DISSOLUTION.**

An LLC formed pursuant to this Ordinance is dissolved and its affairs shall be wound up upon the happening of the first of the following:

1. The occurrence of events specified in the Operating Agreement which result in the dissolution of the LLC; and
2. By Resolution of the Executive Council for LLCs formed pursuant to Section 1.3 or Section 1.4; or the governing Board of Directors or Manager for LLCs formed pursuant to Section 1.4, as applicable.

### **SECTION 6.2 WINDING UP**

1. A dissolved LLC continues its legal existence for such time as is required to wind up and liquidate its business but may not carry on any business other than that which is appropriate to wind up and liquidate its business.
2. Unless otherwise provided for in the Operating Agreement, the business of the LLC may be wound up by the Executive Council, the Board of Directors or Manager who had authority to manage the LLC before dissolution.
3. The Persons winding up the business of the LLC as authorized by the Board of Directors or Manager for the LLC or by the Executive Council may do all of the following in the name of and on behalf of the LLC:
  - a. Collect its assets.
  - b. Prosecute and defend suits.
  - c. Take any action necessary to settle and close the business of the LLC.
  - d. Dispose of and transfer the property of the LLC.
  - e. Discharge or make provision for discharging the liabilities of the LLC.
  - f. Distribute to the Tribal entity which owns the Units of the LLC any remaining assets of the LLC.
4. Dissolution of an LLC does not do any of the following:
  - a. Transfer title to any property of the LLC.

- b. Prevent transfer of all or part of the Units or other interests owned by the Tribe or a Tribal entity.
- c. Prevent commencement of a civil, criminal, administrative, or investigatory proceeding by or against the LLC by the Tribe.
- d. Abate or suspend a civil, criminal, administrative, or investigatory proceeding of the Tribe pending by or against the LLC at the time of dissolution.
- e. Terminate the authority of the registered agent of the LLC.
- f. Alter the limited liability of the Tribe or any other Tribal entity.

### **SECTION 6.3 DISTRIBUTION OF ASSETS**

Upon the winding up of an LLC after a decision for dissolution, the assets shall be distributed to creditors, including to the extent permitted by applicable Tribal law, the Tribe or parent entity in satisfaction of liabilities of the LLC.

### **SECTION 6.4 ARTICLES OF DISSOLUTION**

After the dissolution of an LLC under Section 6.1, the LLC may file Articles of Dissolution with the Secretary that include the following:

1. The name of the LLC.
2. The date of filing of its Articles of Organization.
3. The delayed effective date of the Articles of Dissolution, if applicable.

### **SECTION 6.5. CLAIMS AGAINST DISSOLVED LLC**

1. A dissolved LLC may notify its known claimants in writing of the dissolution which must include:
  - a. the amount that the dissolved LLC believes will satisfy the claim;
  - b. inform the creditor that it has the right to dispute the amount of the claim and describe the procedure for disputing the amount of the claim;
  - c. provide a mailing address where a dispute of the amount of the claim may be sent;
  - d. state the deadline, which may not be fewer than forty-five (45) days after the effective date of the written notice, by which the dissolved LLC must receive the dispute of the amount of the claim; and

- e. state that the claim will be fixed at the amount specified by the dissolved LLC if a dispute of the amount of the claim is not received by the deadline.
2. A dissolved LLC may also publish notice of its dissolution and request that persons with claims against the LLC present them in accordance with the notice which must:
  - a. be published one (1) time in a newspaper of general circulation in Lake County, California;
  - b. describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
  - c. state that a claim against the LLC will be barred unless a proceeding to enforce the claim is commenced forty-five (45) days after the publication of the notice.
3. A claim against the LLC is barred if:
  - a. A claimant who was given written notice under subsection 1 above, does not deliver the claim, in writing, to the LLC by the deadline specified in the notice; or
  - b. An unknown claimant who was provided notice under subsection 2 above does not deliver a claim, in writing, to the LLC within forty-five (45) days of such notice;
  - c. A claimant whose claim is rejected by the LLC does not commence a proceeding to enforce the claim within forty-five (45) days after receipt of the rejection notice;
  - d. A claim is not made within six (6) months of dissolution regardless of whether any notice is given.
4. This Section 6.5 does not negate nor limit the immunity of any LLC under Section 1.6.

## **PART 7. MERGER AND CONSOLIDATIONS**

### **SECTION 7.1 PROCESS AND EFFECT.**

LLCs under this Ordinance may merge with other business entities formed under Tribal law or the law of any foreign jurisdiction into a single surviving business entity (which may be either of the constituent business entities) or consolidate into a new resulting business entity formed by the consolidation, pursuant to an agreement of merger or consolidation (the "Agreement").

The Board of Directors or Manager of the Tribal LLC and the governing body of the business entity with which the Tribal LLC is merging or consolidating shall each adopt a resolution approving the Agreement and declaring its advisability. If the surviving entity is not a Tribal LLC, the Board of Directors or Manager of the business entity proposing the merger must obtain the approval of the Executive Council. The Agreement shall state:

1. The terms and conditions of the merger or consolidation;

2. The mode of carrying the same into effect;
3. In the case of a merger, any amendments or changes in the charter of the surviving business entity;
4. In the case of a consolidation, the charter of the resulting business entity;
5. The manner, if any, of converting the units of each of the constituent business entities into cash, property, and/or units or other securities of the surviving or resulting business entity; and
6. Such other details or provisions as are deemed desirable.

The executed Agreement must be approved by the appropriate ownership of all business entities involved in a merger or consolidation. Tribal law as enacted through this Ordinance hereby requires that if the surviving entity is a Tribal entity, it must be ultimately owned completely by the Tribe and no other third party.

#### **SECTION 7.2 FILINGS WITH THE TRIBE.**

If the surviving business entity is a Tribal LLC, it shall file with the Secretary of the Tribe a certificate of merger or consolidation (“the certificate”) by an authorized representative of the surviving business entity which shall include:

1. The name, jurisdiction of formation and type of entity of each of the business entities which are to merge or consolidate;
2. That an agreement of merger or consolidation has been approved and executed by each of the business entities which is to merge or consolidate;
3. The name of the surviving or resulting business entity;
4. In the case of a merger in which the Tribal LLC is the surviving entity, such amendments, if any, to the Articles of Organization of the Tribal LLC to change its name as are desired to be affected by the merger;
5. The future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation with the Secretary of the Tribe;
6. That the agreement of merger or consolidation is on file at a place of business of the surviving business entity.

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



## **PART 8. LIABILITIES & INDEMNIFICATIONS**

### **SECTION 8.1 LIABILITY OF TRIBE AS MEMBER.**

The Tribe, any member of the Executive Council, any member of the Board of Directors for the LLC or any other Tribal business entity shall not be under any obligation to an LLC wholly owned, directly or indirectly, by the Tribe or to the creditors of any such LLC, and the Tribe shall not be deemed to have waived any of the Tribe's privileges or immunities if the Tribe forms, owns or operates an LLC, directly or indirectly through other Tribal entities.

### **SECTION 8.2 LIABILITY UPON MERGER OR DISSOLUTION.**

Subject to Section 6.5 or unless otherwise approved by the Executive Council or required by contract, in any merger or dissolution wherein an LLC wholly owned, directly or indirectly, by the Tribe ceases to exist, all liabilities associated with the non-surviving entity are thereby immediately terminated. Unless otherwise approved by the Executive Council, no liability, no personal jurisdiction or service of process shall inure or pass to the successor business entity in a merger nor the parent of an LLC dissolved by virtue of such merger or dissolution.

### **SECTION 8.3 INDEMNIFICATIONS.**

Although it is the intent of Tribe for any member of the Executive Council, any member of the Board of Directors or Manager for the LLC and any employee of the LLC to possess sovereign immunity from unconsented suit when any of those parties are acting within the scope of their employment and compliant with Tribal law, the Tribe believes it must protect those acting within the scope of their employment and compliant with Tribal law from harassment and financial burden and thereby agrees that the applicable LLC shall defend and indemnify any member of the Executive Council, any member of its Board of Directors, any Manager and any employee of the LLC from any costs associated with litigation and other legal actions against such party. The Tribe finds that as a matter of Tribal law that any litigation against an Executive Council member, any member of the Board of Directors or Manager for the LLC or any employee of the LLC effectively strikes a blow against the Tribal treasury.

## **PART 9. CORRECTIONS AND CHANGES TO FILINGS**

### **SECTION 9.1 CORRECTION DOCUMENTS.**

Any document, including Certificates and Article of Organization, containing a mistake may be corrected by filing with the Secretary of the Tribe a corrected document which shall be executed and filed as if the corrected document were the original document being corrected. The corrected document shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected and shall set forth the entire document in corrected form. A document corrected in accordance with this section shall be effective as of the date the original document was filed.

**SECTION 9.2 AMENDMENT TO ARTICLES OF ORGANIZATION.**

1. The Articles of Organization are amended by filing a Certificate of Amendment with the Secretary of the Tribe. The certificate of amendment shall set forth:
  - a. The name of the limited liability company; and
  - b. The amendment to the Articles of Organization.
2. Either the Manager of the LLC (if the LLC has a Manager) or the Executive Council voting as the Member of an LLC is authorized to file a Certificate of Amendment.
3. Articles of Organization may be amended at any time for any proper purpose.

Unless a later effective date or time (which shall be a date or time certain) is provided for in the Certificate of Amendment, a Certificate of Amendment shall be effective at the time of its filing with the Secretary of the Tribe, and an amended version of the Articles of Organization may be filed with the Secretary dated the original date of formation.


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**CERTIFICATION**

We the undersigned Officers of the Habematolel Pomo of Upper Lake (the "Tribe"), being the Chairperson and Secretary of the Executive Council (EC) of the Tribe, do hereby certify that the Executive Council is composed of seven (7) Council Members, of which 7 were present, constituting a quorum, at a monthly meeting thereof, duly called, noticed and conducted on this day of NOVEMBER 8, 2019 and that this Ordinance was adopted by an affirmative vote of 6 YEAS, 0 NAY, and 1 ABSTENTION. We further certify that since its adoption by way of Resolution has not been rescinded, amended, or modified in any way.

DATED SIGNED: November 15<sup>th</sup>, 2019

ATTEST:

  
\_\_\_\_\_  
SHERRY TREPPA,  
Executive Council (EC) Chairperson

  
\_\_\_\_\_  
IRIS PICTON,  
Executive Council (EC) Secretary

