

ARTICLE X. - MOHEGAN HOTEL HOLDING, LLC CODE

Sec. 1-431 - Citation

This Article shall be known and cited as the "Mohegan Hotel Holding LLC Code." The provisions of the Mohegan Hotel Holding LLC Code shall supersede any inconsistent provisions of the Limited Liability Company Code (Mohegan Code, Ch 7, Art II).

Sec. 1-432 - Establishment of Mohegan Hotel Holding, LLC, and its Characteristics

- (a) There is hereby authorized to be created pursuant to the Limited Liability Company Code a limited liability company initially named Mohegan Hotel Holding, LLC ("MHH"), which shall be formed under the laws of The Mohegan Tribe of Indians of Connecticut (the "Mohegan Tribe") upon the filing of Articles of Organization in compliance with the Limited Liability Company Code. MHH shall have all rights, powers and obligations of a limited liability company formed under the Limited Liability Company Code to the extent not inconsistent with this Code.
- (b) MHH shall be a nonprofit business entity, with none of its income, earnings, or profits ever to inure to the benefit of any private party. No dissolution of MHH shall occur until after all liabilities and obligations of MHH have been paid, satisfied and discharged, or adequate provision made therefor; and thereafter, upon such dissolution, all remaining property and assets of MHH shall be distributed to the Mohegan Tribe.
- (c) MHH shall be a wholly-owned and controlled subsidiary, directly or indirectly, of the Mohegan Tribe (including, without limitation, partially- or wholly-owned by Mohegan Earth Hotel, LLC, an instrumentality of the Mohegan Tribe and a subsidiary of the Mohegan Tribal Gaming Authority). Until MHH is dissolved and liquidated in accordance with this Code or, if later, until any indebtedness bearing interest excluded from gross income for federal income tax purposes that has been issued by the Mohegan Tribal Finance Authority with respect to the Earth Hotel has been fully paid, MHH always shall be governed by a Management Board comprised of the same individuals who, from time to time, comprise the members of the Tribal Council of the Mohegan Tribe.
- (d) MHH shall be (a) a "constituted authority" within the meaning of the Internal Revenue Code ("Code") and the regulations thereunder, including Treas. Reg §1.103-1(b), for the issuance, directly or indirectly, of debt obligations on behalf of the Mohegan Tribe to finance or refinance costs related to the development, construction, furnishing, financing, leasing and operation of an approximately 400 room hotel (together with any expansions, renovations or improvements thereto and any related or ancillary facilities and amenities, the "Earth Hotel"), located on the reservation of the Mohegan Tribe and (b) an "instrumentality" of the Mohegan Tribe within the meaning of the Code and regulations thereunder, including § 7871(f)(2)(B) of the Code. MHH shall incur indebtedness solely to carry out the purposes of this Code. All such indebtedness shall be payable solely out of assets of MHH or assets, including revenues and receipts, related to the Earth Hotel, and neither the Mohegan Tribe nor any instrumentality of the Mohegan Tribe (including the Mohegan Tribal Gaming Authority) other than MHH, by reason of this Code, shall be liable for any payments with respect to such indebtedness. Interest on such indebtedness of MHH shall be excluded from gross income for federal income tax purposes to the same extent that interest on indebtedness of the Mohegan Tribe is excluded.
- (e) As an arm and instrumentality of the Mohegan Tribe, MHH and its assets and activities shall enjoy the same privileges and immunities as the Mohegan Tribe, including but not limited to

sovereign immunity from suit and legal proceedings, and exceptions or exemptions to or immunities from federal, state, and local government regulation or taxation.

- (f) The income and property of MHH shall be exempt from all taxation by the Mohegan Tribe, but such exemption shall not preclude the Mohegan Tribe or its agencies from imposing sales, entertainment or similar taxes on patrons or activities at the Earth Hotel.

MHH shall have the authority and power to acquire, hold and transfer or release ownership and/or control of any governmental instrumentality of the Mohegan Tribe, regardless of its legal entity form, including the Mohegan Tribal Finance Authority, subject to the governing law or documentation of such entity; and any such entity shall constitute a subsidiary of MHH

Sec. 1-433 - Purposes.

MHH shall be organized to promote economic development, self-sufficiency, strong tribal government and the continuation and enhancement of essential governmental functions of the Mohegan Tribe and to maintain and further the welfare of the members of the Mohegan Tribe, by, directly or indirectly (through instrumentalities of the Mohegan Tribe constituting subsidiaries of MHH, including the Mohegan Tribal Finance Authority), acquiring a leasehold interest in the land underlying the Earth Hotel; engaging in the development, construction, furnishing, financing, and operation of the Earth Hotel; and engaging in any other act or activity in which limited liability companies formed under the Limited Liability Company Code may engage that is not inconsistent with the provisions of this Code, all of which purposes shall constitute public purposes of the Mohegan Tribe.

(Res. No. 2020-19, 1-15-20; Res. No. TGA 2020-06, 1-15-20)

ARTICLE VII. - FINANCE AUTHORITY

Sec. 1-413. Establishment.

- (a) The Mohegan Tribal Finance Authority ("Authority") is hereby created as an instrumentality of The Mohegan Tribe of Indians of Connecticut, hereinafter referred to as the "Mohegan Tribe. On and after January 21, 2020, it shall also constitute a subsidiary wholly-owned and controlled by Mohegan Hotel Holding, LLC, an instrumentality and a subsidiary of the Mohegan Tribe.
- (b) The Authority created hereby is and shall be a governmental instrumentality, subject to the control of its governing board as provided in this Article, and it shall have legal existence separate and apart from that of the government of the Mohegan Tribe except that the Authority and its assets and activities shall enjoy the same privileges and immunities as the Mohegan Tribe, including but not limited to exceptions or exemptions to or immunities from federal, state, and local government regulation or taxation to the same extent if it were not separate and apart from the Mohegan Tribe.
- (c) The debts, obligations, liabilities, contracts, bonds, notes, receipts, expenditures, accounts, funds, undertakings, property, and any other assets of the Authority shall be deemed to be those of the Authority only and not to be those of the Mohegan Tribe or any office, division, department, committee, commission or any other instrumentality or wholly-owned entity thereof (each, a "Tribal Party"), other than the Authority.
- (d) The Authority is intended to be (a) a "constituted authority" within the meaning of the Internal Revenue Code ("Code") and the regulations thereunder, including Treas. Reg. §1.103-1(a), for the issuance of debt obligations on behalf of the Mohegan Tribe to finance or refinance costs related to the development and construction of the Earth Hotel, and (b) an "instrumentality" within the meaning of the Code and regulations thereunder, including § 7871(f)(2)(B) of the Code.
- (e) The interest on any bonds or indebtedness of the Authority shall be exempt from taxation to the same extent if the bonds or indebtedness constituted bonds or indebtedness of the Mohegan Tribe.
- (f) Subject to any contractual or legal limitations, all assets and net profits of the Authority shall be available at the direction of the Tribal Council for distribution to the Mohegan Tribe or as otherwise directed by the Tribal Council. No earnings, net profits or assets of the Authority shall ever inure to the benefit of any private party.

(Res. No. 2014-79, 8-6-2014; Res. No. 2019-17, 1-30-2019; Res. No. TGA 2019-10, 2-27-2019; Res. No. 2020-19, 1-15-20; Res. No. TGA 2020-06, 1-15-20)

Sec. 1-414. Name, Location and Place of Business.

- (a) The official name of the Authority is the "Mohegan Tribal Finance Authority".
- (b) The principal place of business and the office of the Authority shall be at 13 Crow Hill Road, Uncasville, Connecticut 06382.
- (c) The Authority may also have offices at such other place or places as the Management Board, hereafter defined, may from time to time direct, or as the operation of the Authority may require.
- (d) The Authority shall have perpetual succession, unless and until dissolved in accordance with this Article.

(Res. No. 2014-79, 8-6-2014; Res. No. 2019-17, 1-30-2019; Res. No. TGA 2019-10, 2-27-2019; Res. No. 2020-19, 1-15-20; Res. No. TGA 2020-06, 1-15-20)

Sec. 1-415. Definitions.

For the purpose of this Article, the following words and terms shall have the meanings respectively ascribed:

“Earth Hotel” shall mean the approximately 400 room hotel and related amenities to be developed by the Authority on the Mohegan Reservation, the operation of which constitutes a governmental function provided on behalf of the Mohegan Tribe to fulfill one or more public purposes.

(Res. No. 2014-79, 8-6-2014)

Sec. 1-416. Purposes.

(a) *General.* The purposes for which the Authority is organized are as follows:

- (1) To promote economic development, self-sufficiency, strong tribal government and the continuation and enhancement of essential governmental functions of the Mohegan Tribe and to maintain and further the welfare of the members of the Mohegan Tribe.
- (2) To satisfy the requirements and further the purposes of Article XIII, Section 1 of the Constitution of the Mohegan Tribe, all of which have been determined by the Tribal Council to constitute governmental purposes.
- (3) To lease from the Mohegan Tribe the Tribe's interest in land within the Mohegan Reservation and own, develop, finance and construct the Earth Hotel on that land, and to have custody of, inventory, and hold all assets of the Authority on behalf of the Mohegan Tribe.
- (4) To enter into one or more leases (whether operating or capital) to lease the Earth Hotel to the Mohegan Tribal Gaming Authority, but only to the extent consistent with the obligations (contractual or otherwise) of the Mohegan Tribal Gaming Authority.
- (5) On behalf of the Mohegan Tribe, to issue bonds or incur other indebtedness of any nature (including refinancing bonds or indebtedness) with any terms or conditions in furtherance of the public purposes described in Subsection (1) above; to sell, place or offer such bonds or indebtedness, whether publicly or privately; and to provide security for the payment of amounts due with respect to such bonds or other indebtedness through the procurement of third party credit enhancement, the pledge or encumbrance of any of the foregoing agreements, rents, or any other assets of the Authority, or in any other lawful manner; provided, however, that no Tribal Party (other than the Authority) shall ever be liable with respect to such bonds or other indebtedness and none of the assets of any Tribal Party (other than the Authority) shall ever be subject to any levy, lien, judgment or encumbrance to pay or secure the payment of such bonds or indebtedness, except as may be otherwise expressly approved by the Tribal Council.
- (6) To negotiate with state and local governments and private entities, and to enter into and implement contracts or other commitments in furtherance of the purposes described in this Article.

(b) *Ancillary.* To do all things necessary, proper, advisable, or convenient for the accomplishment of the purposes for which the Authority is established and to do all things incidental thereto or connected therewith, which are not inconsistent with or prohibited by any applicable Federal or Mohegan Tribal law or regulation.

(Res. No. 2014-79, 8-6-2014; Res. No. 2019-17, 1-30-2019; Res. No. TGA 2019-10, 2-27-2019; Res. No. 2020-19, 1-15-20; Res. No. TGA 2020-06, 1-15-20)

Sec. 1-417. Management Board; Establishment; Duties and Powers.

- (a) *Establishment.* There is hereby established the Management Board of the Authority, the purpose of which is to carry out the duties and powers set forth herein. The Management Board shall consist of the same persons who serve as members of the Tribal Council from time to time.
- (b) *Exercise of Powers by Management Board.* Subject to applicable Federal and Mohegan Tribal laws and regulations, the Management Board shall exercise the following powers and duties:
 - (1) The Management Board of the Authority is hereby delegated full and complete authority and responsibility of the Tribal Council and the Mohegan Tribe for the ownership, development, financing and construction of the Earth Hotel in furtherance of Article XIII, Section 1 of the Constitution of the Mohegan Tribe and the public purposes described in this Chapter.
 - (2) The Management Board is authorized to implement the policies and purposes set forth in this Article and to exercise the powers set forth in Subsection (c) below without any further authorization or subsequent approval by the Tribal Council or the Mohegan Tribe.
 - (3) The Management Board shall exercise its powers in the best interests of the Mohegan Tribe within the limits of responsible business judgment.
 - (4) The Management Board shall adopt such rules as it may determine necessary for the orderly conduct of its business.
 - (5) No member of the Management Board may vote on any matter before the Management Board in which such member has a specific and peculiar direct or indirect financial interest.
- (c) *Enumerated Powers.* The Management Board shall have the following powers to implement the purposes set forth in this Chapter and Article XIII, Section 1 of the Constitution of the Mohegan Tribe:
 - (1) *To take actions regarding the Earth Hotel.* To own, develop, finance and construct the Earth Hotel and to take of any and all usual, necessary or convenient actions incident thereto, including, should it be deemed advisable or desirable, to borrow funds, and to make contracts or commitments necessary to the functioning of the Authority.
 - (2) *To hire consultants, employees and agents.* To hire employees and agents, including but not limited to, engineers, counsel and such professional consultants as in the opinion of the Management Board may be needed from time to time, and to define their duties and fix their compensation.
 - (3) *To act as agent.* To act in any state, territory, district, or possession of the United States, or in any foreign country for and on behalf of the Authority.
 - (4) *To deal in real property.* To negotiate the acquisition of (by purchase, exchange, lease, hire or otherwise), utilize, improve, manage, operate, and to negotiate the lease, mortgage or sale of, either alone or in conjunction with others, real estate of every kind, character and description and any interest therein, necessary or incidental to the ownership, development, financing and construction of the Earth Hotel except as prohibited by Mohegan Tribal or Federal law.
 - (5) *To deal in personal property, generally.* To acquire (by purchase, exchange, lease, hire or otherwise), hold, own, manage, operate, mortgage, pledge, hypothecate, exchange, sell, deal in and dispose of, either alone or in conjunction with others, personal property, and interests therein and commodities of every kind, character and description necessary or incidental to the ownership, development, financing and construction of the Earth Hotel.
 - (6) *To deal in inventions, copyrights, and trademarks.* To acquire (by application, assignment, purchase, exchange, lease, hire or otherwise), hold, own, use, license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letters patent and applications therefor, licenses, formulas, privileges, processes, copyrights and applications therefor, trademarks and applications therefor, and trade names.
 - (7) *To designate depositories.* To designate and approve all depositories used for the deposit of funds of the Authority.

- (8) *To make contracts.* To enter into, make, perform, modify, and carry out or cancel and rescind contracts for any lawful purpose pertaining to its business that is necessary or incidental to the ownership, development, financing and construction of the Earth Hotel.
 - (9) *To approve budgets.* To approve annual Authority budgets.
 - (10) *To grant limited waivers of sovereign immunity.* To grant limited waivers of sovereign immunity solely of the Authority and with recourse only to its assets, revenue or income. No waiver shall waive the sovereign immunity of the Mohegan Tribe or any other Tribal Party (including, without limitation, the Mohegan Tribal Gaming Authority) or extend liability to any assets, revenue, or income of the Mohegan Tribe or any other Tribal Party, without their prior authorized and written consent, and any attempted waiver without such consent shall be void and of no effect. By adoption of this Article and establishment of the Authority, the Mohegan Tribe is not waiving its sovereign immunity in any respect or consenting to the jurisdiction of any court.
- (d) *Ancillary Powers.* To have and exercise all powers necessary or convenient to affect any or all of the purposes for which the Authority is organized.

(Res. No. 2014-79, 8-6-2014; Res. No. 2019-17, 1-30-2019; Res. No. TGA 2019-10, 2-27-2019; Res. No. 2020-19, 1-15-20; Res. No. TGA 2020-06, 1-15-20)

Sec. 1-418. Indemnification of Officers, Employees and Members of the Management Board of the Authority.

The sovereign immunity of the Authority shall attach to the actions of its officers and employees and to members of the Management Board acting within the scope of their authority. The Authority shall indemnify any officer or employee of the Authority or member of the Management Board or any person who may have served as an officer or employee of the Authority or member of the Management Board, against reasonable expenses, actually and necessarily incurred by that person in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being, or having been, such officer or employee of the Authority or member of the Management Board acting in the discharge of his duties and within the scope of his authority except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence, willful misconduct or recklessness in the performance of duty. The Authority shall also reimburse any member of the Management Board the reasonable costs of settlement of any such action, suit or proceeding if it shall be found by a majority of the Management Board other than member(s) involved in the matter or controversy, that it is in the best interest of the Authority and the Mohegan Tribe that such settlement be made and that such member of the Management Board was not guilty of gross negligence, willful misconduct or recklessness. Any officer or employee of the Authority or member of the Management Board shall give to the Chairman and Secretary of the Authority prompt written notice of any action, suit or proceeding for which indemnification hereunder may be sought, and the Authority at its option, may defend against such action, suit or proceeding with counsel of its choosing.

(Res. No. 2014-79, 8-6-2014; Res. No. 2019-17, 1-30-2019; Res. No. TGA 2019-10, 2-27-2019; Res. No. 2020-19, 1-15-20; Res. No. TGA 2020-06, 1-15-20)

Sec. 1-419. Membership of Management Board.

The Management Board shall consist of all members of the Tribal Council as they may serve from time to time. The officers of the Management Board shall be the same persons who serve in such capacities on the Tribal Council from time to time and they shall serve in the same offices with equivalent responsibilities on the Management Board.

(Res. No. 2014-79, 8-6-2014; Res. No. 2019-17, 1-30-2019; Res. No. TGA 2019-10, 2-27-2019; Res. No. 2020-19, 1-15-20; Res. No. TGA 2020-06, 1-15-20)

Sec. 1-420. - Meeting of Management Board.

- (a) *Annual Meeting.* The annual meeting of the Management Board shall be held at 10:00 a.m. on the second Tuesday of October at the principal place of business, or at such other date, time or place as the Management Board shall fix.
- (b) *Special Meetings.* Special meetings of the Management Board may be called by the Chairman.
- (c) *Notice.*
 - (1) Notice of meetings shall state the time, date and place of the meeting and shall be given in writing to each member according to the latest available Authority records (including e-mail). Notice shall be given no later than two (2) days or more than thirty (30) days immediately preceding the meeting, excluding the day of the meeting.
 - (2) Notice may be waived in writing signed by the member or members entitled to such notices; whether before or after the time stated therein, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any member at the annual or special meeting shall constitute a waiver of notice.
- (d) *Quorum.* Five (5) voting members of the Management Board shall constitute a quorum for the transaction of any business. The act of the majority of the members present and voting at a meeting at which a quorum is present shall be the official act of the Management Board, binding on it in all respects and for all purposes.

(Res. No. 2014-79, 8-6-2014; Res. No. 2019-17, 1-30-2019; Res. No. TGA 2019-10, 2-27-2019; Res. No. 2020-19, 1-15-20; Res. No. TGA 2020-06, 1-15-20)

Sec. 1-421. - Accounting; Fiscal Year.

The Management Board shall establish and install an accounting system in conformity with accounting principles generally accepted in the relevant field in order to manage the Authority's assets. Financial and operating statements shall be provided to the Management Board not less often than annually. The accounting system shall ensure the availability of information as may be necessary to comply with applicable regulatory requirements. The fiscal year of the Authority shall be October 1 to September 30.

(Res. No. 2014-79, 8-6-2014; Res. No. 2019-17, 1-30-2019; Res. No. TGA 2019-10, 2-27-2019; Res. No. 2020-19, 1-15-20; Res. No. TGA 2020-06, 1-15-20)

Sec. 1-422 - Insurance.

Insurance, including liability, adequate and sufficient to protect the interests of the United States, the Mohegan Tribe, and the Authority from losses by fire or other disaster, claims for liability as to personal or

property damage, and other normal and customary risks attendant to the purposes stated herein for which the Authority has been established, shall be carried on all property of the Authority.

(Res. No. 2014-79, 8-6-2014; Res. No. 2019-17, 1-30-2019; Res. No. TGA 2019-10, 2-27-2019; Res. No. 2020-19, 1-15-20; Res. No. TGA 2020-06, 1-15-20; Res. No. 2020-19, 1-15-20; Res. No. TGA 2020-06, 1-15-20)

Sec. 1-423. - Dissolution and Liquidation.

If at any time following the completion of construction of the Earth Hotel, the Mohegan Tribal Gaming Authority is no longer leasing the Earth Hotel from the Authority, the Authority shall be dissolved, subject to the following:

- (a) No dissolution shall occur until after all liabilities and obligations of the Authority have been paid, satisfied and discharged, or adequate provision made therefor;
- (b) After all liabilities and obligations of the Authority have been paid, satisfied and discharged, or adequate provision made therefor, all remaining property and assets of the Authority shall be distributed to the Mohegan Tribe; and
- (c) None of the property of the Authority, nor any proceeds thereof, shall be distributed to or divided among any of the members or officers of the Management Board, nor inure to the benefit of any individual.

(Res. No. 2014-79, 8-6-2014; Res. No. 2019-17, 1-30-2019; Res. No. TGA 2019-10, 2-27-2019; Res. No. 2020-19, 1-15-20; Res. No. TGA 2020-06, 1-15-20)

Sec. 1-424. - Reserved.