



**RESOLUTION OF THE GOVERNING BODY OF THE
THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD INDIAN RESERVATION**

A Resolution Entitled, “*Enactment of the MHA Nation Limited Liability Code*”

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and By-laws pursuant to said Act; and

WHEREAS, Article III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and

WHEREAS, The Constitution of the Three Affiliated Tribes authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

WHEREAS, The Tribe currently has no law on the creation of limited liability companies; and

WHEREAS, Adopting a uniform law authorizing the creation of Limited Liability Companies will help promote economic development on the Fort Berthold Indian Reservation; and

WHEREAS, The Tribal Business Council has considered the proposed ordinance based on the Uniform Limited Liability Company Act, which is attached to this Resolution.

NOW THEREFORE BE IT RESOLVED, The Tribal Business Council of the Three Affiliated Tribes hereby enacts as law the Three Affiliated Tribes Limited Liability Code.

BE IT FURTHER RESOLVED, That all readings are waived, and the ordinance shall go into effect immediately.

BE IT FINALLY RESOLVED, The Tribal Chairman and Secretary are authorized to take all necessary action to implement this Resolution.

(SIGNATURE PAGE TO FOLLOW)



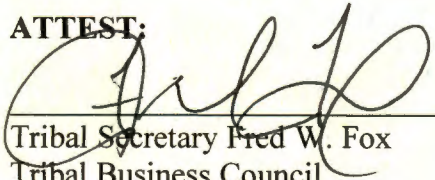
CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 12th day of April, 2019, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 1 members not voting, and that said Resolution has not been rescinded or amended in any way.

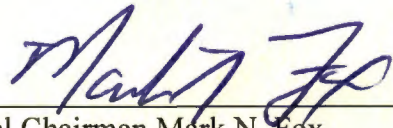
Chairman [X] Voting. [] Not Voting.

Dated this 12th day of April, 2019.

ATTEST:



Tribal Secretary Fred W. Fox
Tribal Business Council
Three Affiliated Tribes



Tribal Chairman Mark N. Fox
Tribal Business Council
Three Affiliated Tribes

**THREE AFFILIATED TRIBES
LIMITED LIABILITY COMPANY CODE**

**CHAPTER I
GENERAL PROVISIONS**

1.1 Short Title.

This Ordinance shall be known and cited as the “Three Affiliated Tribes Limited Liability Company Code.”

1.2 Purpose.

The purpose of this Three Affiliated Tribes Limited Liability Company Code (the “Code”) is to permit, pursuant to laws of the Three Affiliated Tribes of the Fort Berthold Reservation (the “Tribe”), the formation of limited liability companies, and to regulate such companies so as to promote growth and further the exercise of tribal sovereignty over the lands of the Fort Berthold Reservation (the “Reservation”).

1.3 Reservation of Power.

The Tribal Business Council shall have the power to amend, repeal or modify this Title at its pleasure.

1.4 Sovereign Immunity.

By the adoption of this Title, the Tribe does not waive its sovereign immunity or consent to suit in any court, federal, tribal, or state, and neither the adoption of this Title, nor the organization of any limited liability company hereunder, shall by itself be construed to be a waiver of the sovereign immunity of the Tribe or a consent to suit against the Tribe in any court.

Further, the Tribe’s sovereign immunity shall not extend to limited liability companies formed under this Code, except as expressly provided section 8.3. The Tribe shall not be liable for the debts or obligations of any description or kind, including pre-filing activities, of such limited liability companies.

1.5 Tribal Jurisdiction.

The companies organized and created under this Code shall be subject to this Code, and all other laws of the Tribe. 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.

1.6 Definitions.

As used in this Title, the following words and phrases shall have the set forth meaning.

- (1) “Tribal Secretary ” means the Tribal Secretary of the Tribal Business Council or his/her designated representative.
- (2) “Articles of Organization” means the original articles of organization and all amendments thereto or alterations thereof.
- (3) “Bankruptcy” means bankruptcy under federal bankruptcy law.
- (4) “Business” means every trade, occupation or profession.
- (5) “Company” or “Limited Liability Company” means a limited liability company organized under this Title.
- (6) “Constituent” means a party to a plan of merger, including the survivor.
- (7) “Contribution” means anything of value that a person contributes to the limited liability company as a prerequisite for, or in connection with, membership, including cash, property, services performed, a promissory note or other binding obligation to contribute cash or property, or to perform services.
- (8) “Corporation” means any of the following:
 - (a) A corporation formed under the Three Affiliated Tribes Tribal Business Corporation Act (Resolution No. 11-126-VJB),
 - (b) A corporation formed under another statute of the Tribe for purpose for which a corporation may be formed, and
 - (c) A corporation formed under the laws of any State.
- (9) “Court” means the courts of the Three Affiliated Tribes of the Fort Berthold Reservation.
- (10) “Distribution” means a direct or indirect transfer of money or other property or the incurrence of indebtedness by a limited liability company to or for the benefit of its members or assignees of its members in respect of the members’ membership interests.
- (11) “Majority in Interest” means a majority of votes as allocated by an Operating Agreement, or by this Title in the absence of an allocation by Operating Agreement and held by members entitled to vote on a matter submitted for a vote by members.
- (12) “Manager” or “Managers” means a person or persons designated to manage the limited liability company pursuant to a provision in the Articles of Organization stating that the business is to be managed by or under the authority of Managers.

(13) “Member” or “Owner” means a Person that is a member of a limited liability company or has ownership interest in a limited liability company.

(14) “Membership Interest” or “Interest” means a member’s right in the limited liability company, including, but not limited to, any right to receive distributions of the limited liability company’s assets and any right to vote or participate in management.

(15) “Operating Agreement” means a written agreement by the member(s) of a limited liability company, pertaining to the affairs of the limited liability company and the conduct of its business. The term includes any provision in the Articles of Organization pertaining to the affairs of the limited liability company and the conduct of its business.

(16) “Organizer(s)” means the person, persons, entity, or entities which signs and delivers the Article of Organization for filing to the Tribal Secretary .

(17) “Person” means an individual, partnership, limited liability company, trust, custodian, estate, association, corporation, governmental entity, or any other legal entity.

(18) “Successor Limited Liability Company” or “Successor Company” means the surviving or resulting limited liability company existing following a merger or consolidation of two or more limited liability companies.

(19) “Tribal Business Council” means the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation.

(20) “Tribal corporation” means a corporation incorporated under the Three Affiliated Tribes Tribal Business Corporation Act. Tribal corporations can include corporations wholly owned by the Tribe, corporations wholly owned by a tribal member or members, and corporations owned by a Tribal entity.

(21) “Tribal Entity” includes the Tribe, the Tribal Council, a general partnership, limited partnership, a 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.

(22) “Tribe” means the Three Affiliated Tribes of the Fort Berthold Reservation.

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

CHAPTER 2

FORMATION, REGISTERED AGENT, POWERS, AND TAXATION

2.1 Limited Liability Company; Purpose.

A limited liability company may be formed under this Code for any lawful purpose for which a corporation or a partnership could be formed, except as otherwise provided by law.

2.2 Limited Liability Company; Formation.

(1) Two (2) copies of the articles of organization, shall be delivered to the Tribal Secretary. The documents to be filed shall be executed by an Organizer or any member of the limited liability company.

(2) a person who executes articles of organization or a certificate of amendment as an attorney-in-fact or fiduciary need not exhibit evidence of the person's authority as a prerequisite to filing.

(3) Unless it finds that the articles of organization or an amendment of the articles do not conform to law as to their form, the Tribal Secretary, upon receipt of the \$100-dollar filing fee, shall:

(a) place a stamp or seal on both copies, indicating the time, day, month, and year of the filing, the name of the Tribal Secretary, the signature of the Tribal Secretary, and the Tribal Secretary's seal, or facsimiles of them,

(b) file one copy in its office, and

(c) return the second copy to the person who filed it or as directed by the person who filed it.

(4) The existence of a limited liability company begins on the effective date of the articles of organization. Filing is conclusive evidence that all conditions precedent required to be performed under this Code are fulfilled and the company is formed under this Code.

2.3 Limited Liability Company; Duration.

The maximum duration of a limited liability company is perpetual unless otherwise provided in the articles of organization.

2.4 Limited Liability Company; Preformation Activities.

A limited liability company may not transact business or incur indebtedness, except that which is incidental to its organization, until the articles of organization have been filed with the Tribal Secretary. Persons engaged in pre-filing activities other than those authorized by this Section shall be jointly and severally liable for any debts or liabilities incurred in the course of those activities. Nevertheless, this Section may not be interpreted to invalidate any debts, contracts, or liabilities of the limited liability company incurred on behalf of the company prior to the filing of its articles of organization with the Tribal Secretary .

2.5 Limited Liability Company; Names and Reserving a Name.

(1) The name of the limited liability company must contain the words “limited liability company” or the abbreviation “L.L.C.”. The name must also comply with all the following:

(a) the name shall not contain a word or phrase, or abbreviation or derivative of a word or phrase, that indicates or implies that the company is formed for a purpose other than the purpose or purposes permitted by its articles of organization,

(b) the name shall not contain the word “corporation” or “incorporated” or any abbreviation pertaining to corporations,

(c) the name shall not contain the words “association,” “corporation,” “incorporated,” “limited partnership,” “limited,” “L.P.,” “Ltd.” or words or any abbreviation with a similar meaning in any other language,

(d) the name shall not contain a word or phrase, an abbreviation, or derivative of a word or phrase, the use of which is prohibited or restricted by any other statute of the Tribe, and

(e) The name shall be distinguishable from all records in the office of the Tribal Secretary concerning the following:

(i) the name of another limited liability company,

(ii) the name of a corporation subject to the Tribal Business Corporation Act, and

(iii) the name shall not contain words “MHA Nation”, “Three Affiliated Tribes” or “Tribe”, nor in any way imply that it is associated with the Tribe, its government or is an entity of the Tribe, or words or any abbreviation with a similar meaning in any other language, unless the Tribe is the member holding and owning a majority interest in such limited liability company;

(2) The fact that a limited liability company name complies with this section does not create substantive rights to the use of that name.

(3) A person may reserve the right to use of a limited liability company name by executing and filing with the Tribal Secretary an application to reserve the name. If the Tribal Secretary finds that the name is available for use, the Tribal Secretary shall reserve it for exclusive use of the applicant for a period expiring at the end of the sixth full calendar month following the month in which the application was filed.

(4) The right to exclusive use of a reserved name may be transferred to another person by filing a notice of transfer, executed by the applicant for whom the name was reserved, and stating the name and address of the transferee.

2.6 Articles of Organization; Contents; Amendment.

- (1) The articles of organization shall contain all the following:
 - (a) the name of the limited liability company,
 - (b) the purpose for which the limited liability company is formed,
 - (c) the street address, and mailing address if different, of the limited liability company's initial registered office and the name of its initial resident agent at that address,
 - (d) an election to be member manager or manager managed, and
 - (e) the maximum duration of the limited liability company, if other than perpetual.
- (2) The articles of organization may contain any provision not inconsistent with this Code or another statute of the Tribe.
- (3) The articles need not set out of the powers of the limited liability company.
- (4) The articles must be amended when there is a change in:
 - (a) the registered office,
 - (b) the registered agent,
 - (c) the name of the limited liability company;
 - (d) there is a change in the character of the business of the company specified in the articles of organization;
 - (e) there is a false or erroneous statement in the articles of organization;
 - (f) there is a change in the time, as stated in the articles of organization, for the dissolution of the company,
 - (g) the members determine to fix a time, not previously specified in the articles of organization, for the dissolution of the company, or
 - (h) the members desire to make a change in any other statement in the articles of organization for the articles to accurately represent the agreement among them.
- (5) Each limited liability company shall file with the Tribal Secretary a copy of any amendment to the articles within sixty (60) days after the event making amendment necessary, unless such amendments relate to disclosures in the annual report shall render amendment of the articles of organization unnecessary.

2.7 Certificate of Good Standing.

(1) Except as provided in this section, from the effective date of the articles of organization until dissolution, a limited liability company is entitled to issuance by the Tribal Secretary , upon request and receipt of a fifty dollar (\$50) processing fee, a certificate of good standing. Such a certificate shall state that it has been validly organized as a limited liability company, that it is validly in existence under the laws of the Tribe, and that it has satisfied its annual filing obligations.

(2) If a limited liability company fails to file an annual statement required by section 2.8, the Tribal Secretary shall notify the company of such shortcomings and further inform the company of continued failure to file as provided by section 2.11.

(3) If a limited liability company is issued a notice of suspension as provided for under Section 2.10 the limited liability company is not in good standing is not entitled to issuance by the Tribal Secretary of a certificate of good standing described in subsection (1), the name of the company is available for use by another entity filing with the Tribal Secretary , and the Tribal Secretary shall not accept for filing any document submitted by the limited liability company other than the documents required by section 2.11 to cure deficiencies.. A limited liability company that is not in good standing remains in existence and may continue to transact business until involuntarily or voluntarily dissolved.

2.8 Annual Report.

(1) Each company authorized to transact business under this Title shall file an annual report with the Tribal Secretary during the month of its anniversary date of formation. The annual report forms shall include a statement notifying the company that failure to file the annual report may result in the dissolution of the company.

(2) The annual report required by Subsection (1)(a) shall set forth:

(a) the name of the company, and

(b) any change in:

(i) the street address of its designated office,

(ii) the street address of its registered office either within the Reservation,

(iii) the name of the agent for service of process, or

(iv) the street address or legal name of any manager in a manager-managed company, or of any member in a member-managed company.

(3) The annual report required by Subsection (1) shall:

(a) be made on forms prescribed and furnished by the Tribal Secretary,

- (b) contain information that is given as of the date of signing the annual report, and
 - (c) require payment of a fifty dollar (\$50) processing fee to the Tribe.
- (4) The annual report shall be signed by:
- (a) any manager in a manager-managed company;
 - (b) any member in a member-managed company; or
 - (c) any other person with management authority; and
 - (d) If the registered agent has changed since the filing of the articles of organization or last annual report, by the new registered agent.
- (5) If the annual report conforms to the requirements of this Section, the Tribal Secretary shall file the report.
- (6) If the annual report does not conform to the requirements of this Section, the Tribal Secretary shall deliver the report to the registered agent of the company for any necessary corrections at the street address for the registered agent most recently furnished to the Tribal Secretary by notice, annual report or other document.
- (7) If the Tribal Secretary returns an annual report in accordance with Subsection (6), the annual report must be refiled within thirty (30) days. If the report is not refiled within thirty days, or is refiled with identical errors, then it shall be subject to an additional fifty-dollar (\$50) processing fee.

2.9 Registered Office and Registered Agent.

- (1) Each limited liability company shall continuously maintain a registered agent and registered office on the Reservation for service of process on the company.
- (2) The registered agent shall be either the duly elected and currently serving Manager of the limited liability company, or a person appointed by the Member(s) who resides on the Reservation and who is at least eighteen years of age. A registered agent must consent in writing to serve in such capacity. A limited liability company or entity having its usual place of business on the Reservation may serve as its own registered agent. In the event that the agent has resigned, the authority of the agent has been revoked, or the agent cannot be found or served with the exercise of reasonable diligence, the current and acting Tribal Secretary shall act as agent of the company for service of process.
- (3) Failure to maintain a registered agent or registered office on the Reservation shall be grounds for involuntary dissolution of the limited liability company by the Tribal Secretary under section 6.4.

(4) The registered agent of a limited liability company may resign by submitting a notice of resignation to the limited liability company and filing an original and one copy of a signed written notice of resignation with the Tribal Secretary. The limited liability company shall promptly appoint a new resident agent. The appointment of the registered agent shall end thirty (30) days after the Tribal Secretary receives notice of the resignation or upon appointment of a new resident agent, whichever occurs first.

(5) A limited liability company may change its registered office, registered agent, or both upon filing with the Tribal Secretary an executed statement setting forth:

- (a) the name of the limited liability company,
- (b) the address of its then registered office and the new address if the registered office is to be changed,
- (c) the name of its then resident agent and the name of the successor if the resident agent is to be changed, and
- (d) a statement that the change was authorized in accordance with an operating agreement, or if by an affirmative vote of a majority of the members if no operating agreement is in place.

(5) If a resident agent changes its business or residence address to another place within the Reservation, the resident agent may change the address of the registered office of the limited liability company of which the person is a resident agent by filing a statement as required in subsection (5) and mailing a copy of the statement to the limited liability company. The statement need only to be signed by the resident agent and need not contain the statement required by subsection (5)(d).

2.10 Registered Office or Principal Place of Business; Documents Required to Be Kept.

(1) A limited liability company shall keep at its registered office or principal place of business the following:

- (a) a current list of the full name and address of each member and/or manager,
- (b) a copy of the articles or restated articles of organization, together with any amendments to the articles,
- (c) copies of the limited liability company's federal, state, and local tax returns and reports, if any, for the 3 most recent years,
- (d) copies of any financial statements of the limited liability company for the 3 most recent years,
- (e) copies of operating agreements,

(f) copies of records that would enable a member to determine the members' relative shares of the limited liability company's distributions and the members' relative voting rights, and

(g) Unless otherwise set forth in the articles of organization, a written statement setting forth:

(i) the amount of cash and a description and statement of the agreed value of the other property or services contributed and agreed to be contributed by each member,

(ii) the times at which, or events on the happening of which, any additional contributions agreed to be made by each member are to be made,

(iii) any right of a member to receive distributions which include a return of all or any of the member's contributions, and

(iv) any event upon the happening of which the company is to be dissolved and its affairs wound up.

(2) Records kept under this Section are subject to inspection and copying at the reasonable request and at the expense of any member during ordinary business hours. The Tribal Secretary or Court may subpoena any of these records if a limited liability company denies any member access to the records.

2.11 Failure to File Annual Report or Maintain Registered Agent.

(1) Delinquency. A limited liability company is delinquent if it fails to maintain a registered agent on the Reservation for sixty (60) consecutive days. A company is delinquent if it fails to file an annual report with the Tribal Secretary no later than thirty (30) days following the anniversary date of its organization. The annual report shall provide the information required in section 2.8. A company that has acquired a new manager or registered agent or has changed the address of its registered office may file such changes on an annual report in lieu of filing Articles of Amendment, provided that the disclosure of such changes falls within sixty (60) days prior to or thirty (30) days following the date that the annual report is due.

(2) Notice of Delinquency. Unless the limited liability company's certificate of organization is already suspended for any reason, the Tribal Secretary shall mail a notice of delinquency of each delinquent company, to the managers of the limited liability company at the addresses set forth in the company's articles of organization, if the limited liability company is managed by its members, or to the members at the addresses set forth in the company's articles of organization. The notice of delinquency shall be mailed first class, postage prepaid, shall include any forms necessary to correct the delinquency and shall state:

(a) the nature of the delinquency, and

(b) that the limited liability company shall be suspended, unless it corrects the delinquency, pays a notification fee of twenty-five dollars (\$25), and a five hundred dollar (\$500) reinstatement fee within thirty (30) days of the mailing of the notice of delinquency.

(3) Notice of Suspension. A limited liability company that remains delinquent for more than thirty (30) days after the mailing of the notice of delinquency under this Section shall be suspended.

(a) Unless the limited liability company's certificate of organization is already suspended for any reason, if a company is suspended under this Section, the Tribal Secretary shall mail a notice of suspension to the managers of the limited liability company at the addresses set forth in the articles of organization, or, if the company is managed by its members, then to the members at the addresses set forth in the limited liability company's articles of organization. The notice of suspension shall state:

(i) that the certificate of organization has been suspended,

(ii) the reason for the suspension,

(iii) the date of the suspension,

(iv) that the limited liability company may remove the suspension by correcting the delinquency, paying the notification fee, and paying the reinstatement fee, and

(v) that the limited liability company will be involuntarily dissolved sixty days from the date of the notice of suspension.

(4) Reinstatement. Any limited liability company whose certificate of organization has been suspended may be reinstated upon application and payment of all penalties and reinstatement fees prior to involuntary dissolution.

(5) Member Liability. A member of a limited liability company has no personal liability solely by reason of the limited liability company having had its certificate of organization suspended or canceled.

(6) Maintenance of Actions. A limited liability company that has had its certificate suspended or canceled may not maintain any action, suit, or proceeding in the court until it has removed the suspension or reinstated its certificate following cancellation.

2.12 Operating Agreements.

- (1) Operating agreements may contain any provision, requirement, and/or agreements so long as they do not contradict any provision of this Code or any other statute of the Tribe.
- (2) An operating agreement is not unenforceable due to a limited liability company having a single member.
- (3) If there is a conflict between the articles of organization and an operating agreement of a limited liability company, the articles of organization shall control.
- (4) A limited liability company shall have all the powers provided by section 2.12 unless specifically curtailed by the operating agreement.

2.13 Limited Liability Company; Powers.

Subject to the limitations provided in this Code, any other statute of the Tribe, or its articles of organization, a limited liability company has all powers necessary or convenient to effect any purpose for which the company is formed, including all powers granted to corporations in the Tribal Business Corporation Act, including to consent to be sued, complain, and defend in its name; provided, however, that if an limited liability company is Tribally owned, or wholly owned by another entity which itself is wholly owned by the Tribe, it shall be entitled to and shall enjoy the Tribe's sovereign immunity from suit unless the operating agreement otherwise provides.

2.14 Liability Companies; Taxation.

For purposes of taxation by the Tribe or another governmental entity, if any, a limited liability company transacting business on the Reservation shall be classified in the same manner as it is classified for federal income tax purposes.

CHAPTER 3

CONTRIBUTIONS AND DISTRIBUTIONS

3.1 Members; Contribution.

- (1) A contribution of a member to a limited liability company may consist of any tangible or intangible property or benefit to the company, including cash, property, services performed, promissory notes, contracts for services to be performed, or other binding obligation to contribute cash or property or to perform services
- (2) Unless otherwise provided in an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability,

or other reason. If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value of the stated contribution that is not made.

3.2 Contribution; Promises and Enforcement.

(1) A promise by a member to contribute to the limited liability company is not enforceable unless the promise is in writing and signed by the member.

(2) Unless otherwise provided in an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability, or other reason. If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value of the stated contribution that is not made.

(3) The rights of the limited liability company under subsection (2) are in addition to any other rights that the limited liability company may have under an operating agreement or applicable law.

(4) Unless otherwise provided in an operating agreement, a member's obligation to make a contribution or to return money or other property paid or distributed in violation of this Code may be compromised only upon the unanimous vote of the members of the limited liability company entitled to vote. Notwithstanding a compromise of a member's obligation, a creditor of a limited liability company who extends credit or otherwise acts in reliance on the member's obligation after the member signs a writing that reflects the obligation and before the amendment of the writing to reflect the compromise may enforce the member's original obligation.

3.3 Distribution of Assets.

(1) Distributions of cash or other assets of a limited liability company shall be allocated among the members and among classes of members in the manner provided in an operating agreement. If an operating agreement does not provide for allocation, distributions shall be allocated on the basis of ownership of shares and/or percentage of ownership of the company.

3.4 Distribution; Withdrawal.

Until the effective date of withdrawal, a withdrawing member shall share in any properly made distribution under this Code or under the limited liability companies operating agreement. If an operating agreement allows withdrawal but is silent on an additional withdrawal distribution, a member withdrawing in accordance with the operating agreement is entitled to receive as a distribution, within a reasonable time after withdrawal, the fair value of the member's interest in the limited liability company as of the date of withdrawal based upon the member's share in the company.

3.5. Distributions; Demand, Acceptance, and Receipt of Distribution.

Except as provided in an operating agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive a distribution from a limited liability company in any form other than cash, and a member may not be compelled to accept from a limited liability company a distribution of an asset in kind to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

3.6 Distributions; Prohibitions, Exceptions, and Remedies

(1) Except as otherwise provided in subsection (5) a distribution shall not be made if after giving the distribution effect 1 or more of the following situations would occur:

(a) the limited liability company would not be able to pay its debts as they become due in the usual course of business, or

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

(2) The limited liability company may base a determination that a distribution is not prohibited under subsection (1) on financial statements prepared on accounting practices and principles that are reasonable under the circumstance, on fair valuation, or on another method that is reasonable under the circumstances.

(3) The effect of a distribution under subsection (1) is measured at the following times:

(a) except as provided in subsection (5), in the case of a distribution to a withdrawing member, as of the earlier of the date money or other property is transferred or debt incurred by the limited liability company, or the date the member ceases to be a member,

(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is authorized if distribution occurs within 120 days after the date of authorization, or the date of indebtedness is distributed if it occurs more than 120 days after the date of authorization, or

(c) in all other cases as of the date the distribution is authorized if the payment occurs within 120 days after the date of authorization or the date the payment is made if it occurs more than 120 days after the date of authorization

(4) At the time a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution. A company's indebtedness to a member incurred by reason of

a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors except as otherwise agreed.

(5) If the limited liability company distributes an obligation to make future payments to a withdrawing member, and distribution of the obligation would otherwise be prohibited under subsection (1) at the time it is made, the company may issue the obligation and the following apply:

(a) the portion of the obligation that could have been distributed without violating subsection (1) is indebtedness to the withdrawing member under subsection (4),

(b) all of the following apply to the portion of the obligation that exceeds the amount of the obligation that is indebtedness to the withdrawing member under subdivision (a):

(i) at any time prior to the due date of the obligation, payments of principal and interest may be made as a distribution to the extent that a distribution may then be made under this section, and

(ii) at any time on or after the due date the obligation to pay principal and interest is considered distributed and treated as indebtedness described in subsection (4) to the extent that a distribution may then be made under this section.

(c) unless otherwise provided in an agreement with the withdrawing member, the obligation is considered a liability or debt for purposes of determining whether distributions other than payments on the obligation may be made under this section, except for purposes of determining whether distributions may be made to members having preferential rights superior to the rights of the withdrawing member.

(6) The enforceability of a guaranty or other undertaking by a third party relating to a distribution is not affected by the prohibition of the distribution under subsection (1)

(7) If a claim is made to recover a distribution made contrary to subsection (1) or if a violation of subsection (1) is raised as a defense to a claim based upon a distribution, this section does not prevent the person receiving the distribution from asserting a right of rescission or other legal or equitable right.

3.8 Distribution; Violating the Operating Agreement, Liability of Member or Managers, Presumption of Assent, Knowledge of Violation, Commencement of Proceedings.

(1) A member or manager that votes for or assents to a distribution in violation of an operating agreement or this Code is personally liable, jointly and severally, to the limited liability company for the amount of the distribution that exceeds what could have been distributed without violating the operating agreement or this Code if it is established that the member or manager did not comply with the requirements of Section 3.6 or, if applicable, the operating agreement.

(2) For purposes of liability under subsection (1), a member or manager entitled to participate in a decision to make a distribution is presumed to have assented to a distribution unless the member or manager does 1 of the following:

(a) votes against the distribution, or

(b) files a written dissent with the limited liability company within a reasonable time after the member or manager has knowledge of the decision.

(3) A member that accepts or receives a distribution with knowledge of facts indicating it is in violation of an operating agreement or section 3.6 is liable to the limited liability company for the amount the member accepts or receives that exceeds the member's share of the amount that could have been distributed without violating section 3.6 or the operating agreement.

(4) A proceeding under this section is barred unless it is commenced within 2 years after the date on which the effect of the distribution is measured under section 3.6(3)

CHAPTER 4

MANAGEMENT

4.1 Management Vested in Members.

Unless the articles of organization state that the business of the limited liability company is to be managed by 1 or more managers, the business of the limited liability company shall be managed by the members, subject to any provision in an operating agreement restricting or enlarging the management rights and duties of any member or group of members. If management is vested in the members, both of the following apply:

(a) the members are considered managers for the purposes of applying this Code regarding the agency authority of managers, unless the context clearly requires otherwise, and

(b) the members have, and are subject to, all duties and liabilities of managers and to all limitations on liability and indemnification rights of managers.

4.2 Managers; Delegation, Qualifications, Number, and Notice of Delegation.

(1) The articles of organization may provide that the business of the limited liability company shall be managed by or under the authority of 1 or more managers. The delegation of the management of a limited liability company to managers is subject to any provision in the articles of organization or in an operating agreement restricting or enlarging the management rights and duties of any manager or group of managers.

(2) An operating agreement may provide qualifications for managers including a requirement that the managers be members.

(3) The number of managers shall be specified or fixed by the operating agreement.

(4) If the articles of organization delegate management of a limited liability company to managers, the articles of organization constitute notice to third parties that managers, not members, have the agency authority.

4.3 Managers; Election, Vote, Removal, Notice.

(1) A vote of a majority interest of the company is required to select 1 or more managers to fill initial position or vacancies.

(2) The member may remove 1 or more managers with or without cause unless an operating agreement provides that a manager can only be removed for cause.

(3) Unless an operating agreement provides otherwise, the members may only remove a manager for cause only at a meeting called expressly for that purpose, and the manager shall have reasonable advance notice of the allegations against that manager and an opportunity to be heard at the meeting.

4.4 Managers; Duties, Action for Failure to Perform Duties.

(1) A manager shall discharge the duties of manager in good faith with the care of an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the manager reasonably believes to be in the best interests of the limited liability company.

(2) This Code specifically invokes and places into statute the Business Judgment Rule, through subsections (3)-(5) below, as a defense for managers.

(3) In discharging the manager's duties, a manager may rely on information, opinions, reports, or statements, including but not limited to, financial statements or other financial data, if prepared or presented by:

(a) one or more other managers or members or employees of the limited liability company whom the manager reasonably believes to be reliable and competent in the matter presented,

(b) legal counsel, public accountants, engineers, or other persons as to matters the manager reasonably believes are within the person's profession or expert competence, or

(c) a committee of managers of which the manager is not a member if the manager reasonably believes the committee merits confidence.

(4) A manager is not entitled to rely on the information, opinions, reports, or statements described in subsection (3) if the manager has knowledge concerning the matter in question that makes reliance unwarranted.

(5) A manager is not liable for an action taken as manager or the failure to take an action if the manager performs their duties in compliance with this Code.

(6) Except as otherwise provided in an operating agreement a manager shall account to the limited liability company and hold as trustee for it any profit or benefit derived by the manager from any transaction connected with the conduct or winding up of the limited liability company from any personal use by the manager of its property.

(7) An action against a manager under this section shall be commenced within three years after the cause of action has accrued or within 2 years after the cause of action is discovery or should reasonably have been discovered by the aggrieved part, whichever occurs first.

4.5 Managers; Voting Requirements.

(1) Except as otherwise provided in the articles of organization or an operating agreement voting by manager shall be as provided in this section.

(2) If management of limited liability company is delegated to managers and the limited liability company has more than 1 manager, each manager has 1 vote and the vote of a majority of all managers is required to decide or resolve any difference on any matter connected with carrying on the business of the limited liability company that is within the scope of the manager's authority.

(3) If management of a limited liability company remains in the members voting shall be done according to the operating agreement.

4.6 Managers; Agency.

A manager is an agent of the limited liability company for the purpose of its business, and the act of a manager, including the execution in the limited liability company name of any instrument, that apparently carries on in the usual way the business of the limited liability company of which the manager is a manager binds the limited liability company, unless both of the following apply:

(a) the manager does not have the authority to act for the limited liability company in that matter, and

(b) the person with whom the manager is dealing has actual knowledge that the manager lacks authority to act or the article of organization or this Code establishes that the manager lacks the authority to act.

4.7 Managers; Eliminating or Limiting Liability; Exceptions.

A provision in the articles of organization or an operating agreement may eliminate or limit the monetary liability of a manager to the limited liability company or its members

for breach of any duty established in section 4.4, except that the provision does not eliminate or limit the liability of a manager for any of the following:

- (a) the receipt of a financial benefit to which the manager is not entitled,
- (b) a knowing violation of law, or
- (c) An act or omission occurring before the date when the provision becomes effective.

4.8 Manager or Agent with Interest in Company; Effect, Majority Vote by Members with No Interest in Transaction; Claims.

(1) Except as otherwise provided in an operating agreement, a transaction in which a manager or agent of a limited liability company is determined to have an interest shall not, because of the interest, be enjoined, be set aside, or give rise to an award of damages or other sanctions, in a proceeding by a member or by or in the right of the company, if the manager or agent interested in the transaction establishes any of the following:

- (a) the transaction was fair to the company at the time entered into,
- (b) the material facts of the transaction and the manager's or agent's interest were disclosed or known to the managers and the managers authorized, approved, or ratified the transaction, or
- (c) the material facts of the transaction and the manager's or agent's interest were disclosed or known to the members entitled to vote and they authorized, approved, or ratified the transaction .

(2) Except as otherwise provided in the articles of organization or an operating agreement, a transaction is authorized, approved, or ratified for purposes of subsection (1)(b) if it receives the affirmative vote of a majority of the managers that have no interest in the transaction. The presence of, or a vote cast by, a manager with an interest in the transaction does not affect the validity of an action taken under subsection (1)(b).

(3) Except as otherwise provided in the articles of organization or an operating agreement, a transaction is authorized, approved, or ratified for purposes of subsection (1)(c) if it receives a majority of votes cast by the members entitled to vote that do not have an interest in the transaction.

(4) Satisfying the requirements of subsection (1) does not preclude other claims relating to a transaction in which a manager or agent is determined to have an interest. Those claims shall be evaluated under principles of law applicable to a transaction in which a similarly situated person does not have an interest

CHAPTER 5 **MEMBERS**

5.1 Members: Admission, Liability for Acts, Debts, Obligations.

(1) A person may be admitted as a member of a limited liability company in connection with the formation of the limited liability company in any of the following ways:

(a) if an operating agreement includes requirements for admission, by complying with those requirements.

(b) if an operating agreement does not include requirements for admission, if either of the following are met:

(i) the person signs the initial operating agreement,

(ii) the person's status as a member is reflected in the records, tax filings, or other written statements of the limited liability company.

(c) in any manner established in a written agreement of the members.

(2) A person may be admitted as a member of a limited liability company after the formation of the limited liability company in any of the following ways:

(a) if the person is acquiring a membership interest directly from the limited liability company, by complying with the provisions of an operating agreement prescribing the requirements for admission or, in the absence of provisions prescribing the requirements for admission in an operating agreement, upon the unanimous vote of the members entitled to vote,

(b) if the person is an assignee of a membership interest, or

(c) if the person is becoming a member of a surviving limited liability company as the result of a merger or conversion approved under this Code, as provided in the plan of merger or plan of conversion.

(3) A limited liability company may admit a person as a member that does not make a contribution or incur an obligation to make a contribution to the limited liability company.

(4) Unless otherwise provided by law or in an operating agreement, a person that is a member or manager, or both, of a limited liability company is not liable for the acts, debts, or obligations of the limited liability company.

5.2 Members; Voting Rights.

(1) An operating agreement may establish and allocate the voting rights of members and may provide that certain members or groups of members have only limited or no voting

rights. If an operating agreement does not address voting rights, votes are allocated on the basis of ownership of shares and/or ownership of the company:

(2) If a membership interest that has voting rights is held by 2 or more persons, the voting of the interest shall be in accordance with the instrument or order appointing them or creating the relationship if a copy of that instrument or order is furnished to the limited liability company. If an instrument or order is not furnished to the limited liability company, 1 of the following applies to the voting of that membership interest:

(a) if an operating agreement applies to the voting of the membership interest, the vote shall be in accordance with that operating agreement,

(b) if an operating agreement does not apply to the voting of the membership interest and only 1 of the persons that hold the membership interest votes, that person's vote determines the voting of the membership interest,

(c) if an operating agreement does not apply to the voting of the membership interest and 2 or more of the persons that hold the membership interest vote, the vote of a majority determines the voting of the membership interest, and if there is no majority, the voting of the membership interest is divided among those voting.

(3) Only members of a limited liability company, and not its managers, may authorize the following actions:

(a) the dissolution of the limited liability company under section 6.2,

(b) merger of the limited liability company under chapter 7, or

(c) an amendment to the articles of organization.

(4) Except as otherwise provided in the articles of organization or an operating agreement, members have the voting rights provided in section 4.8 regarding transactions in which a manager or agent has an interest.

(5) Unless otherwise provided in an operating agreement, the sale, exchange, lease, or other transfer of all or substantially all of the assets of a limited liability company, other than in the ordinary course of business, may be authorized only by a vote of the members entitled to vote.

(7) The articles of organization or an operating agreement may provide for additional voting rights of members of the limited liability company.

(8) Unless the vote of a greater percentage of the voting interest of members is required by this Code, the articles of organization, or an operating agreement, a vote of a Majority in Interest of the members entitled to vote is required to approve any matter submitted for a vote of the members.

5.3 Withdrawal of Members; Distribution; Expulsion.

(1) A member may withdraw from a limited liability company only as provided in an operating agreement. A member withdrawing pursuant to an operating agreement may become entitled to a withdrawal distribution as described in section 3.4.

(2) An operating agreement may provide for the expulsion of a member or for other events the occurrence of which will result in a person ceasing to be a member of the limited liability company.

5.4. Members; Relationship and Duties.

(1) Each member of the limited liability company owes a duty of trust and loyalty to the other members. The duty of trust and loyalty may not be waived by the operating agreement or any other document of the limited liability company.

(2) If a member wishes to take an action which would violate the duty placed upon them by subsection (1) it may have such an action approved by the other members. The member, before taking any action, must present the plan of action and/or interest to the other members. Upon a majority vote in favor of such an action or interest the member shall be allowed to take such action or acquire such an interest. The majority vote by the other members shall act as a waiver of any claims that could be brought under subsection (3) below.

(3) A violation of the duties created by subsection (1) must be filed within two years of the date of the action which violated said duty.

CHAPTER 6 **DISSOCIATION, DISSOLUTION, AND WINDING UP**

6.1 Dissociation.

(1) A person ceases to be an owner of a limited liability company upon the occurrence of any of the following events:

(a) the owner withdraws by voluntary act,

(b) the owner is removed as an owner in accordance with the operating agreement or this Code,

(c) unless otherwise provided in the operating agreement or by the written consent of all owners at the time of the event, the owner does any of the following:

(i) makes an assignment for the benefit of the creditors,

(ii) files a petition in bankruptcy,

(iii) becomes the subject of an order for relief under the federal bankruptcy laws or state or tribal insolvency laws, or

(iv) fails to gain dismissal of any federal bankruptcy or state or tribal insolvency proceeding within 120 days of commencement of an involuntary proceeding.

(d) a owner's death or adjudication as incompetent shall be an action of dissociation unless the operating agreement provides otherwise or a majority of the living and/or competent members vote otherwise.

(2) The owners may provide in the operating agreement for other events the occurrence of which result in a person ceasing to be an owner of the limited liability company.

(3) Unless the operating agreement provides that an owner does not have the power to withdraw by voluntary act from a limited liability company, the owner may do so at any time by giving written notice to the other owners or as provided in the operating agreement. If the owner has the power to withdraw but the withdrawal is a breach of the operating agreement, the limited liability company may offset the damages against the amount otherwise distributable to the owner, in addition to pursuing any remedies provided for in the operating agreement or otherwise available under applicable law.

6.2 Voluntary Dissolution; Winding Up.

A limited liability company is dissolved and its affairs shall be wound up when the first of the following occurs:

(a) automatically, if a time specified in the articles of organization is reached,

(b) if a vote of the members or other event specified in the articles of organization or in an operating agreement takes place,

(c) the members entitled to vote unanimously vote for dissolution,

(d) if a decree of judicial dissolution is entered, or

(e) a majority of the organizers of the limited liability company vote for dissolution, if the limited liability company has not commenced business; has not issued any membership interests; has no debts or other liabilities; and has not received any payments, or has returned any payments it has received after deducting any amount disbursed for payment of expenses, for subscriptions for its membership interests.

6.3 Dissolution by Judicial Decree.

(1) In a proceeding by or for an owner, the Tribal Court or court of competent jurisdiction may order dissolution of an limited liability company if any of the following is established:

- (a) that it is not reasonably practicable to carry on the business of the limited liability company,
- (b) that the limited liability company is not acting in conformity with its operating agreement,
- (c) that one or more managers are acting or will act in a manner that is illegal, oppressive, or fraudulent,
- (d) that one or more owners in control of the limited liability company are acting or will act in a manner that is illegal, oppressive, or fraudulent, or
- (e) that limited liability company assets are being misapplied or wasted.

(2) If the Tribe is an owner of the limited liability company, 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 sovereign immunity from suit, and any waiver thereof must be provided explicitly in the limited liability company's operating agreement.

6.4 Involuntary Dissolution.

(1) A limited liability company, except for such companies as may be wholly owned by the Tribe or in which the Tribe owns and holds a majority interest, may be dissolved involuntarily by order of the Court in an action filed by the legal counsel for the Tribal Secretary when it is established that the limited liability company:

- (a) obtained the issuance of its certificate of organization or of its execution through fraud, in which case the certificate of organization shall be canceled as of the date of filing;
- (b) continually exceeded or abused the authority conferred upon it by law or by the operating agreement,
- (c) committed a violation of any provision of law whereby it has forfeited its charter,
- (d) carried on, conducted, or transacted its business in a persistently fraudulent or illegal manner, or
- (e) abused its powers contrary to the public policy of the Tribe; or

(2) A limited liability company may be unilaterally dissolved by the Tribal Secretary pursuant to Section 2.11(3)(b)(v).

6.5 Certificate of Dissolution; Filing and Contents.

(1) When it begins winding up its affairs, a limited liability company that dissolves under section 6.2 shall execute a notice of dissolution and file the notice with the Tribal Secretary . The certificate of dissolution shall contain all of the following:

- (a) the name of the limited liability company,
- (b) the reason for the dissolution, and
- (c) the effective date of the dissolution if later than the date of filing of the certificate of dissolution.

(2) In the event of a judicial or involuntarily dissolution the Tribal Secretary shall file the notice of dissolution. The contents shall be the same as subsection(1) above.

6.6 Winding Up.

(1) A dissolved limited liability company continues its legal existence during winding up but may not carry on any business except that which is appropriate to wind up and liquidate its business.

(2) Unless otherwise provided in its operating agreement:

(a) the business of the limited liability company may be wound up by any of the following:

- (i) the owners or managers who have authority to manage the limited liability company before dissolution, or
- (ii) 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 limited liability company may do all of the following in the name of and on behalf of the limited liability company:

- (i) collect its assets,
- (ii) prosecute and defend suits,
- (iii) take any action necessary to settle and close the business of the limited liability company,
- (iv) dispose of and transfer the property of the limited liability company,
- (v) discharge or make provision for discharging the liabilities of the limited liability company, and

(vi) distribute to the owners any remaining assets of the limited liability company.

(3) Dissolution of a limited liability company does not do any of the following:

- (a) transfer title to the limited liability company's property,
- (b) prevent transfer of all or part of an owner's interest,
- (c) prevent commencement of a civil, criminal, administrative, or investigatory proceeding by or against the limited liability company,
- (d) abate or suspend a civil, criminal, administrative, or investigatory proceeding pending by or against the limited liability company at the time of dissolution,
- (e) terminate the authority of the registered agent of the limited liability company, or
- (f) alter the limited liability of an owner.

6.7 Dissolution; Notice to Existing Claimants; Contents; Validity of Claim not Recognized; Claims Barred Under Certain Conditions; Existing Claim Defined; Effective Date of Notice.

(1) The dissolved limited liability company must notify its existing claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice shall include all of the following:

- (a) 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,
- (b) a mailing address where a claim may be sent,
- (c) the deadline, which may not be less than 6 months after the effective date of the written notice, by which the dissolved limited liability company must receive the claim, and
- (d) a statement that the claim will be barred if not received by the deadline.

(2) The giving of notice provided for in subsection (1) does not constitute recognition that a person to whom the notice is directed has a valid claim against the limited liability company.

(3) A claim against the dissolved limited liability company is barred if either of the following applies

- (a) if a claimant who was given written notice under subsection (1) does not deliver the claim to the dissolved limited liability company by the deadline, or
 - (b) if a claimant whose claim was rejected by a written notice of rejection by the dissolved limited liability company does not commence a proceeding to enforce the claim within 90 days after the effective date of the written notice of rejection.
- (4) For purposes of this section, "existing claim" means any claim or right against the limited liability company, liquidated or unliquidated. "Existing claim" does not mean a contingent liability or a claim based on an event occurring after the effective date of dissolution.
- (5) For purposes of this section, the effective date of the written notice is the earliest of the following:
- (a) the date it is received,
 - (b) five days after its deposit in the United States mail, as evidenced by the postmark, if it is mailed postpaid and correctly addressed, or
 - (c) the date shown on the return receipt, if the notice is sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

6.8 Dissolution; Publication of Notice; Requirements; Commencing Proceedings to Enforce Claims; Claimants with Known Existing Claims Not Receiving Notice.

- (1) A dissolved limited liability company in addition to the requirement of section 6.7 may also publish notice of dissolution and request that persons with claims against the company present them in accordance with the notice.
- (2) The notice shall be in accord with all the following:
- (a) be published 1 time in a newspaper of general circulation in the county in which the dissolved limited liability company's principal place of business, or if none in this state, its registered office, is or was located,
 - (b) describe the information that must be included in a claim and provide a mailing address where the claim may be sent. The limited liability company may demand sufficient information to permit it to make a reasonable judgment whether the claim should be accepted or rejected, and
 - (c) state that a claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced within 1 year after the publication date of the newspaper notice.

(3) If the dissolved limited liability company publishes a newspaper notice in accordance with subsection (2), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved company within 1 year after the publication date of the newspaper:

(a) a claimant who did not receive written notice under section 6.7,

(b) a claimant whose claim was timely sent to the dissolved limited liability company but not acted on, or

(c) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) Notwithstanding subsection (3), a claimant having an existing claim known to the limited liability company at the time of publication in accordance with subsection (2) and who did not receive written notice under section 6.7 is not barred from suit until 6 months after the claimant has actual notice of the dissolution.

6.9 Winding Up; Distribution of Assets.

Upon the winding up of an limited liability company, 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 limited liability company,

(b) to owners and former owners in satisfaction of liabilities for distributions under this Code, and then

(c) to owners and former owners first 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 limited liability company before dissolution.

CHAPTER 7 **MERGERS**

7.1 Merger.

(1) Unless otherwise provided in its organizational documents, one or more limited liability companies formed under this Code may merge with or into one or more limited liability companies as provided in the plan of merger.

(2) Interests or shares in a limited liability company that is a party to a merger may be exchanged for or converted into cash, property, obligations, or interest in the surviving limited liability company.

7.2 Approval of Merger.

- (1) Unless otherwise provided in the operating agreement, a limited liability company that is a party to a proposed merger shall approve the plan of merger by an affirmative vote by a majority of the owners.
- (2) Unless otherwise provided in the operating agreement, the manager or managers of a limited liability company may not approve a merger without also obtaining the approval of the limited liability company's owners under subsection (1), above.
- (3) All other Constituents shall approve the merger in the manner and by the vote required by the laws applicable to the Constituents and their respective organizational documents.
- (4) Each Constituent shall have any rights to abandon the merger as provided for in the plan of merger or in the laws applicable to the Constituent or its organizational documents.
- (5) Upon approval of a merger, the Constituent 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.

7.3 Plan of Merger.

Each limited liability company shall enter into a plan of merger to be approved under section 7.2.

7.4 Articles of Merger.

- (1) The surviving limited liability company shall deliver to the Tribal Secretary articles of merger, executed by each party to the plan of merger, that include all of the following:
 - (a) the name and state or jurisdiction of organization for each Constituent,
 - (b) the plan of merger,
 - (c) the name of the surviving or resulting limited liability company,
 - (d) a statement as to whether the management of the surviving limited liability company will be reserved to its owners or vested in one or more managers,
 - (e) the delayed effective date of the merger, if applicable,
 - (f) a statement as to whether the surviving limited liability company is tribally owned, and

(g) if tribally owned, a statement as to whether the surviving limited liability company enjoys the Tribe's sovereign immunity.

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

7.5 Effect of Merger.

A merger has the following effects:

(1) The Constituent must become a single entity, which shall be the entity designated in the plan of merger as the surviving limited liability company.

(2) Each Constituent, except the surviving limited liability company, ceases to exist.

(3) The surviving limited liability company possesses all of the rights, privileges, immunities, and powers of each merged Constituent and is subject to all of the restrictions, disabilities, and duties of each merged Constituent.

(4) All property and all debts, including contributions, and each interest belonging to or owed to each of the Constituents are vested in the surviving limited liability company without further act.

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

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

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

(8) The interests in a Constituent 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.

(9) The Articles of Organization of the surviving limited liability company is amended to the extent provided in the articles of merger.

7.6 Right to Object.

Unless otherwise provided in the operating agreement, , an owner who did not vote in favor of the merger may, within twenty (20) days after the date of the notice, voluntarily dissociate

from the limited liability company and receive fair value for the owner's limited liability company interest.

CHAPTER 8

TRIBALLY OWNED LIMITED LIABILITY COMPANIES

8.1 Tribally Owned Companies; Reports.

There are hereby authorized to be created limited liability companies wholly owned by the Tribe, with the Tribe as the sole owner. Tribally owned limited liability companies shall be created by a duly adopted resolution of the Tribal Council. The organizer shall file in accordance with this Code. When the organizer files the Articles of Organization and the operating agreement of a Tribally owned limited liability company, a certified copy of the resolution authorizing the formation of the limited liability company and approving the articles shall be included. Tribally owned limited liability company's shall be considered to be instrumentalities of the Tribe.

8.2 Tribally Owned Subsidiary.

There are hereby authorized to be created by resolution of the Board of Directors of a Tribally owned limited liability company or of a Tribal Corporation, or of a wholly owned subsidiary of such a Tribally owned limited liability company or Tribal Corporation, subsidiary limited liability companies to be wholly owned by the parent Tribally owned limited liability company or parent Tribal Corporation, which shall be instrumentalities of the Tribe. The organizer of such a Tribally owned subsidiary limited liability company shall file in accordance with this Code. When the organizer files the Articles of Organization and the Operating Agreement of the Tribally owned subsidiary limited liability company, a certified copy of a resolution of the Board of Directors of the parent Tribally owned limited liability company or parent Tribal Corporation authorizing the formation of the subsidiary limited liability company and approving the articles shall be included.

8.3 Privilege and Immunities.

The limited liability companies established under this chapter shall be considered to be instrumentalities of the 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 Council for economic development of the Tribe and the advancement of its tribal Owners. Such limited liability companies, their directors, officers and employees shall, therefore, be entitled to all of 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.

8.4 Ownership.

(1) No ownership interest in any limited liability company in which the Tribe is an owner may be alienated unless approved by the Tribal Council. Further, no ownership interest in any Tribally owned subsidiary limited liability company may be alienated unless approved

by a duly adopted resolution of the Board of Directors of the parent Tribally owned limited liability company or parent Tribal Corporation.

(2) All interests in any Tribally owned limited liability company shall be held by and for a Tribe, or in the case of a wholly owned subsidiary limited liability company, by the parent Tribally owned limited liability company or parent Tribal Corporation. No individual member of the Tribe shall have any personal ownership interest in any limited liability company organized under this Part, whether by virtue of such person's status as a member of a Tribe, as an officer of a Tribe's Government, or otherwise.

8.5 Nontribal Partners.

Any limited liability company created pursuant to this Part, including subsidiary limited liability companies, 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; provided, however, that the partial ownership interest in such Project Companies shall not diminish or affect the privileges and immunities of the Tribally owned limited liability companies or Tribally owned subsidiary limited liability company's created pursuant to this Part.

8.6 Waiver of Sovereign Immunity.

The limited liability companies established under this chapter may only waive sovereign immunity in the following manner:

(1) The limited liability company 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 limited liability company's Operating Agreement; provided, however, that

(a) any such waiver or consent to suit granted pursuant to the limited liability company's Operating Agreement shall in no way extend to any 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,

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

- (c) any waiver of the limited liability company's immunities granted pursuant to the limited liability company's Operating Agreement shall be further limited or conditioned by the terms of such waiver.
- (2) The sovereign immunity of the limited liability company shall not extend to actions against the limited liability company by the Tribe acting as Owner, or, in the case of a subsidiary limited liability company created pursuant to this Part, by the parent limited liability company acting as Owner.
- (3) The limited liability company must follow the method mandated above.