

## MODEL TRIBAL LIMITED LIABILITY COMPANY CODE

A CODE for the organization and regulation of limited liability companies; to prescribe their duties, rights, powers, immunities, and liabilities; and to prescribe penalties for violations of this Code. **[NOTE: THIS CODE SERVES AS AN EXAMPLE LIMITED LIABILITY COMPANY CODE. IT IS NOT COMPREHENSIVE AND WILL NOT COMPLY WITH EACH TRIBE'S EXISTING LAWS AND CONSTITUTION. THE TRIBE'S LEGAL COUNSEL SHOULD REVIEW ANY PROPOSED CODE PRIOR TO ITS ADOPTION.]**

### CHAPTER 1 GENERAL PROVISIONS

#### **1.1 Short Title.**

This Code shall be known and cited to as "[TRIBE'S] Limited Liability Company Code."

#### **1.2 Definitions.**

(1) "Administrator" means the [TRIBAL SECRETARY/OTHER PERSON/ENTITY] authorized by law to administer this Code, or his or her designated representative.

(2) "Articles of organization" means the original documents filed to organize a limited liability company, as amended or restated by certificates of correction, amendment, or merger, by restated articles, or by other instruments filed or issued under any statute.

(3) "Constituent" means a party to a plan of merger, including the survivor.

(4) "Contribution" means anything of value that a person contributes to the limited liability company as a prerequisite for, or in connection with, membership, including cash, property, services performed, or a promissory note or other binding obligation to contribute cash or property, or to perform services.

(5) "Corporation" means any of the following:

(a) A corporation formed under the [TRIBE'S] Business Corporation Code.

(b) A corporation formed under another statute of the Tribe for a purpose for which a corporation may be formed under the business corporation act.

(6) "Distribution" means a direct or indirect transfer of money or other property or the inurrence 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.

(7) "Electronic transmission" or "electronically transmitted" means any form of communication that meets all of the following:

(a) It does not directly involve the physical transmission of paper.

(b) It creates a record that may be retained and retrieved by the recipient.

(c) It may be directly reproduced in paper form by the recipient through an automated process.

(8) "Limited liability company" or "Company" means an entity that is an unincorporated membership organization formed under this Code.

(9) "Majority in interest" means a majority of votes as allocated by an operating agreement, or by the statute 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.

(10) "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.

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

(12) "Membership interest" or "interest" means a member's rights 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.

(13) "Operating agreement" means a written agreement by the member of a limited liability company that has 1 member, or between all of the members of a limited liability company that has more than 1 member, 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.

(14) "Organizer(s)" means the person(s) or entity(ies) which signs and delivers the Articles of Organization for filing to the administrator.

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

(16) "Services in a learned profession" means services rendered by a dentist, an osteopathic physician, a physician, a surgeon, a doctor of divinity or other clergy, or an attorney-at-law.

(17) "Surviving company," "surviving entity," or "survivor" means the constituent that survives a merger, as identified in the certificate of merger.

(18) "Tribe" means the [TRIBE].

(19) "Tribal corporation" means a corporation incorporated under the Tribe's Business Corporation Code.

(20) "Tribal Council" means the Tribal Council of the [TRIBE].

(21) "Tribal Court" means the Tribal Court of the [TRIBE].

(22) "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.

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

### **1.3 Sovereign Immunity.**

By the adoption of this Code, 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 Code, nor the incorporation 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

### **1.4 Applicable Law.**

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.

### **1.5 Documents; signatures; requirements.**

(1) One or more persons organizing a limited liability company shall sign the original articles of organization as organizers. The articles shall state the names of the organizers beneath or opposite their signatures.

(2) Any document other than original articles of organization required or permitted to be filed under this Code that this Code requires be executed on behalf of the limited liability company shall be signed by a manager of the company if management is vested in 1 or more managers, by at least 1 member if management remains in the members, or by any authorized agent of the company.

(3) A person may sign a document under this section as an authorized agent of a limited liability company. If the authorization is pursuant to a power of attorney, the power of attorney authorizing the signing of the document by the person need not be sworn to, verified, acknowledged, or filed with the administrator. A document signed by a person under this subsection as an authorized agent of a limited liability company shall state the capacity of the person signing the document.

### **1.6 Documents; filing; delivery; endorsement; returning copy; inspection by public; copies admissible in evidence; effective date; form; fees.**

(1) A document required or permitted to be filed under this Code shall be submitted by delivering the document to the administrator together with the fees and accompanying

documents required by law. The administrator may establish a procedure for accepting delivery of a document submitted under this subsection by facsimile or other electronic transmission.

(2) If a document submitted under subsection (1) substantially conforms to the requirements of this Code, the administrator shall endorse upon it the word "filed" with his or her official title and the date of receipt and of filing and shall file and index the document or a photostatic, micrographic, photographic, optical disc media, or other reproduced copy in his or her office. If requested at the time of the delivery of the document to his or her office, the administrator shall include the hour of filing in the endorsement on the document.

(3) The administrator shall return a copy of a document filed under subsection (2), or, at his or her discretion, the original, to the person who submitted it for filing. The administrator shall mark the filing date on the copy or original before returning it or, if the document was submitted by electronic mail or over the Internet, may provide proof of the filing date to the person who submitted the document for filing in another manner determined by the administrator.

(4) The records and files of the administrator relating to limited liability companies shall be open to reasonable inspection by the public. The administrator may maintain the records or files either in their original form or in a photostatic, micrographic, photographic, optical disc media, or other reproduced form.

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

(6) A document filed under subsection (2) is effective at the time it is endorsed unless a subsequent effective time is set forth in the document that is not later than 90 days after the date of delivery.

(7) The administrator may require that a person submit a document described in subsection (1) on a form prescribed by the administrator.

(8) The administrator shall charge 1 of the following nonrefundable fees if expedited filing of a document by the administrator is requested and the administrator shall retain the revenue collected under this subsection and the department shall use it to carry out its duties required by law:

(a) For any filing that a person requests the administrator to complete within 1 hour on the same day as the day of the request, \$1,000.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(b) For any filing that a person requests the administrator to complete within 2 hours on the same day as the day of the request, \$500.00. The

department may establish a deadline by which a person must submit a request for filing under this subdivision.

(c) Except for a filing request under subdivision (a) or (b), for the filing of any formation or qualification document that a person requests the administrator to complete on the same day as the day of the request, \$100.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(d) Except for a filing request under subdivision (a) or (b), for the filing of any other document concerning a limited liability company that a person requests the administrator to complete on the same day as the day of the request, \$200.00. The administrator may establish a deadline by which a person must submit a request for filing under this subdivision.

(e) For the filing of any formation or qualification document that a person requests the administrator to complete within 24 hours of the time the administrator receives the request, \$50.00.

(f) For the filing of any other document concerning an existing limited liability company that a person requests the administrator to complete within 24 hours of the time the administrator receives the request, \$100.00.

### **1.7 Failure to promptly file document; notice of refusal to file; judicial review.**

(1) If the administrator fails promptly to file a document submitted for filing under this Code, the administrator, within 10 days after receipt from the person submitting the document for filing of a written request for the filing of the document, shall give to that person written notice of the refusal to file that states the reasons for the failure to file the document. If the document was originally submitted by electronic transmission, the administrator may give the written notice by electronic transmission.

(2) A person may seek judicial review of the administrator's decision from the Tribal Court.

### **1.8 Documents; inaccurate record or defective execution; certificate of correction; filing; signature; contents; effective date of corrected document.**

(1) If a document relating to a limited liability company filed with the administrator under this Code was at the time of filing an inaccurate record of the action referred to in the document, or was defectively or erroneously executed, or was electronically transmitted and the electronic transmission was defective, the document may be corrected by filing with the administrator a certificate of correction on behalf of the company.

(2) The certificate shall be signed as provided by this Code in the same manner as required for the document being corrected.

(3) The certificate shall set forth the name of the company, the date the document to be corrected was filed by the administrator, the provision in the document as it should have originally appeared, and if the execution was defective, the proper execution.

(4) The corrected document is effective in its corrected form as of its original filing date except as to a person who relied upon the inaccurate portion of the document and was as a result of the inaccurate portion of the document adversely affected by the correction.

## CHAPTER 2

### **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. A limited liability company formed to provide services in a learned profession, or more than 1 learned profession, shall comply with the tribe's learned profession code.

### **2.2 Limited liability company; formation; filing as evidence that all conditions performed; exception; duration.**

(1) One or more persons, who may or may not become members, may be the organizers of a limited liability company by filing executed articles of organization.

(2) The existence of the limited liability company begins on the effective date of the articles of organization under section 2.6. Filing is conclusive evidence that all conditions precedent required to be performed under this Code are fulfilled and that the company is formed under this Code. The maximum duration of the limited liability company is perpetual unless otherwise provided in the articles of organization.

### **2.3 Tribe as Owner.**

(1) The Tribe shall form or become an Owner of a Tribally owned limited liability company formed under this Code only upon approval of such action by the Tribal Council.

(2) If the Tribe or a Tribal Entity is an Owner of an limited liability company formed under this Code, any action which the Tribe is required or permitted to take with respect to any vote, approval, consent, appointment, direction, or other matter shall be taken in accordance with the Tribal Council's procedures and resolutions or, as to actions related to the managers of a manager-managed limited liability company, as stated in the limited liability company's Operating Agreement approved by the Tribal Council.

(3) If the Tribe is the sole Owner of an limited liability company formed under this Code, such Tribally owned limited liability company shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit except to the extent otherwise provided in its operating agreement.

(4) If the Tribe or a Tribal Entity is an Owner with a Majority in Interest in an limited liability company formed under this Code, such limited liability company may possess the

privileges and immunities of the Tribe, including sovereign immunity from suit, to the extent allowed by Federal law, this Code or the limited liability company's Operating Agreement.

(5) In no event shall any manager not an Owner of an limited liability company in which the Tribe is an Owner, bind the Tribe in any manner; provided that the Tribe's interest as an Owner may be bound by manager or Owner actions as stated in this Code and the operating agreement of the limited liability company.

(6) Nothing contained in this Code shall be construed as creating any liability or waiving of sovereign immunity of the Tribe in any manner; provided that the assets of the limited liability company in which the Tribe holds an interest may be subject to liabilities and claims unless otherwise provided herein. In no event shall any action taken by the Tribe as Owner concerning the exercise of any right or privilege or discharge of any duty with respect to an interest in an limited liability company be construed as a waiver of immunity or creation of a liability on the part of the Tribe separate and apart from its interests as an Owner of the limited liability company.

(7) For all Tribally owned limited liability companies, the additional provisions of Chapter 9 of this Code shall apply.

## **2.4 Articles of organization; contents.**

(1) The articles of organization shall contain all of the following:

(a) The name of the limited liability company.

(b) The purposes for which the limited liability company is formed. It is sufficient to state substantially, alone or with specifically enumerated purposes, that the limited liability company may engage in any activity for which limited liability companies may be formed under this Code.

(c) The street address, and the mailing address if different from the street address, of the limited liability company's initial registered office and the name of its initial resident agent at that address.

(d) If the business of the limited liability company is to be managed by managers, a statement that the business is to be managed by or under the authority of managers.

(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 this state, including any provision that is required or permitted to be in an operating agreement under this Code.

(3) The articles of organization need not set out the powers of the limited liability company as described in section 2.20.

## **2.5 Limited liability company; name; requirements; rights.**

(1) The name of a limited liability company shall contain the words "limited liability company," or the abbreviation "L.L.C." or "L.C.," with or without periods or other punctuation.

(2) The name of a limited liability company formed under or subject to this Code shall conform to all of the following:

(a) 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) Shall not contain the word "corporation" or "incorporated" or the abbreviation "corp." or "inc.".

(c) Shall distinguish the name in the records in the office of the administrator from all of the following:

(i) The name of a limited liability company.

(ii) The name of a corporation subject to the business corporation code.

(iii) A name reserved, registered, or assumed under this Code, under the business corporation code.

(d) 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 this state.

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

## **2.6 Reserving right to use of name; application; transfer of right.**

(1) A person may reserve the right to use of a limited liability company name by executing and filing with the administrator an application to reserve the name. If the administrator finds that the name is available for use, the administrator 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.

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



**2.7 Transacting business under assumed name; certificate; effective period; extension; notice of expiration; rights not created; same name assumed in partnership or joint venture; transfer of assumed name to survivor; use of name by surviving company; assumed name of converted company; certificate of conversion.**

(1) A limited liability company may transact business under an assumed name or names other than its name as set forth in its articles of organization or certificate of authority, if not precluded from use of the assumed name or names under this Code, by filing a certificate stating the true name of the company and the assumed name or names under which business is to be transacted.

(2) A certificate of assumed name is effective, unless terminated by filing a certificate of termination or by the dissolution or withdrawal of the company, for a period expiring on December 31 of the fifth full calendar year following the year in which the certificate of assumed name was filed. The certificate of assumed name may be extended for additional consecutive periods of 5 full calendar years each by filing a similar certificate of assumed name not earlier than 90 days before the expiration of the initial or any subsequent 5-year period.

(3) The administrator shall notify a limited liability company of the impending expiration of a certificate of assumed name not later than 90 days before the expiration of the initial or any subsequent 5-year period described in subsection (2).

(4) Filing a certificate of assumed name under this section does not create substantive rights to the use of a particular assumed name.

(5) The same name may be assumed by 2 or more limited liability companies or by 1 or more limited liability companies and 1 or more corporations, limited partnerships, or other enterprises participating together in a partnership or joint venture. Each participating limited liability company shall file a certificate of assumed name under this section.

(6) A limited liability company participating in a merger, or any other entity participating in a merger under chapter 8, may transfer to the survivor the use of an assumed name for which a certificate of assumed name is on file with the administrator before the merger, if the transfer of the assumed name is noted in the certificate of merger as provided in chapter 8, or other applicable statute. The use of an assumed name transferred under this subsection may continue for the remaining effective period of the certificate of assumed name on file before the merger and the survivor may terminate or extend the certificate in accordance with subsection (2).

(7) A limited liability company surviving a merger may use as an assumed name the name of a merging limited liability company, or the name of any other entity participating in the merger under chapter 8, by filing a certificate of assumed name under subsection (1) or by providing for the use of the assumed name in the certificate of merger. The surviving limited liability company may also file a certificate of assumed name under subsection (1) or provide in the certificate of merger for the use of an assumed name of a merging entity not transferred pursuant to subsection (6). A provision in the certificate of merger pursuant to this subsection is treated as a new certificate of assumed name.

**2.8 Maintaining registered office and resident agent; service of process, notice, or demand; appointment of agent; annual statement; service of process by mail.**

(1) Each limited liability company authorized to transact business in the [TRIBAL LAND/RESERVATION] shall have and continuously maintain in this state both of the following:

(a) A registered office that may, but need not be, the same as its place of business. [COULD REQUIRE TO BE WITHIN TERRITORIAL JURISDICTION]

(b) A resident agent. The resident agent may be either an individual resident in this [TRIBAL LAND/RESERVATION] whose business office or residence is identical with the registered office or any of the following having a business office identical with the registered office:

(i) A corporation.

(ii) A limited liability company.

(2) The resident agent appointed by a limited liability company is an agent of the company upon whom any process, notice, or demand required or permitted by law to be served upon the company may be served.

(3) A limited liability company authorized to transact business under this Code shall file with the administrator an annual statement executed as provided in section 2.16 containing the name of its resident agent and the address of its registered office in this state. The statement shall be filed not later than February 15 of each year, except that a limited liability company formed after September 30 need not file a statement on the February 15 immediately succeeding its formation or authorization.

(4) If a limited liability company fails to appoint or maintain an agent for service of process, or the agent for service of process cannot be found or served through the exercise of reasonable diligence, service of process may be made by delivering or mailing by registered mail to the administrator a summons and copy of the complaint.

**2.9 Certificate of good standing.**

(1) Except as provided in this section, from the effective date of the articles of organization as provided in section 2.6 until dissolution for a limited liability company, a limited liability company is entitled to issuance by the administrator, upon request, of a certificate of good standing. A certificate of good standing issued to a limited liability company shall state that it has been validly organized as a limited liability company, that it is validly in existence under the laws of this state, and that it has satisfied its annual filing obligations.

(2) If a limited liability company authorized to transact business in this state fails to file an annual statement required by section 2.16 for 2 consecutive years, the administrator shall notify the company of the consequences of the failure to file under subsection (3).

(3) If a limited liability company does not file all annual statements it has failed to file, and the applicable fees, within 60 days after the administrator's notice under subsection (2) is sent, the limited liability company is not in good standing. A limited liability company that is not in good standing is not entitled to issuance by the administrator 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 administrator, and the administrator shall not accept for filing any document submitted by the limited liability company other than a certificate of restoration of good standing provided for in subsection (4). A limited liability company that is not in good standing remains in existence and may continue to transact business in this state.

(4) A limited liability company authorized to transact business in this state that is not in good standing under subsection (3) may file a certificate of restoration of good standing, accompanied by the annual statements and fees for all of the years for which they were not filed and paid, and the fee for filing the certificate of restoration of good standing. The certificate shall include all of the following:

(a) The name of the limited liability company at the time it ceased to be in good standing. If that name is not available when the certificate of restoration of good standing is filed, the limited liability company shall select a new name that complies with section 2.13. The new name shall be the name of the limited liability company.

(b) The name of the limited liability company's current resident agent and the address of the current registered office in this state.

(c) A statement that the certificate is accompanied by the annual statements and applicable fees for all of the years for which statements were not filed and fees were not paid.

## **2.10 Resident agent; resignation; notice; appointment of successor; termination of appointment.**

(1) A resident agent of a limited liability company may resign as agent upon filing a written notice of resignation with the administrator and with a member or manager of the limited liability company.

(2) The company shall promptly appoint a successor resident agent.

(3) The appointment of the resigning agent terminates 30 days after the date the notice is filed with the administrator or upon the appointment of a successor, whichever occurs first.

## **2.11 Changing registered office or resident agent; statement; filing; contents; changing business or residence address of resident agent.**

(1) A limited liability company authorized to transact business under this Code may change its registered office or resident agent, or both, upon filing with the administrator a statement executed and setting forth all of the following:

- (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.
- (d) A statement that the address of the registered office and the address of the resident agent are identical.
- (e) A statement that the change was authorized in accordance with an operating agreement, or, if not provided for in an operating agreement, by affirmative vote of a majority of the members voting in accordance with section 2.47 or managers voting in accordance with section 2.48.

(2) If a resident agent changes its business or residence address to another place within this state, 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 (1) 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 (1)(e).

## **2.12 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 business corporation code, 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.

## **2.13 Validity of action or transfer of property; asserting lack of capacity or power.**

An act of a limited liability company and a transfer of real or personal property to or by a limited liability company, otherwise lawful, is not invalid because the company was without capacity or power to do the act or make or receive the transfer, except that the lack of capacity or power may be asserted in any of the following:

- (a) In an action by a member against the company to enjoin the doing of an act or the transfer of real or personal property by or to the company.
- (b) In an action by or in the right of the company to procure a judgment in its favor against an incumbent or former member or manager of the company for loss or damage due to an unauthorized act of that member or manager.

(c) In an action or special proceeding by the attorney general to dissolve the company or to enjoin it from the transaction of unauthorized business.

#### **2.14 Registered office or principal place of business; documents required to be kept.**

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

(a) A current list of the full name and last known address of each member and 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.

#### **2.15 Conflict between articles of organization and operating agreement.**

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.

#### **2.16 Operating agreement unenforceable.**

An operating agreement of a limited liability company that has 1 member is not unenforceable because only 1 person is a party to the operating agreement.

#### **2.17 Limited liability company; powers.**

Except as otherwise provided in an operating agreement, a limited liability company may do any of the following:

(a) Indemnify, hold harmless, and defend a member, manager, or other person from and against any and all losses, expenses, claims, and demands sustained by that person, except that the company may not indemnify a person for conduct described in section 2.41(a), (b), or (c).

(b) Purchase and maintain insurance on behalf of a member, manager, or other person against any liability or expense asserted against or incurred by that person, whether or not the company may indemnify that person under subdivision (a).

## **2.18 Liability to third parties.**

The debts, obligations, and liabilities of an limited liability company, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the limited liability company. Except as otherwise specifically provided in this Code, an Owner or manager of an limited liability company is not personally liable for any debt, obligation, or liability of an limited liability company, as defined in the operating agreement.

## CHAPTER3

### **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) A contribution of an obligation to contribute cash or property or to perform services may be in exchange for a present membership interest or for a future membership interest, including a future profits interest, as provided in an operating agreement.

### **3.2 Promise by member to contribute; enforcement; obligation to perform; rights of company; compromising obligation; enforcement by creditor of original member's obligation.**

(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; allocation; manner; basis.**

(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 an allocation, distributions shall be allocated as follows:

(a) Prior to the effective date of this Code, on the basis of the value, as stated in the records the limited liability company is required to keep or as determined by any other reasonable method, of the contributions made by each member to the extent that the contributions have been received by the limited liability company and have not been returned.

(b) After the effective date of this Code, except as otherwise provided in subsection (2), in equal shares to all members. A membership interest held by 2 or more persons, whether as fiduciaries, members of a partnership, tenants in common, joint tenants, tenants by the entirety, or otherwise, is considered as held by 1 member for an allocation under this subdivision.

(2) If a limited liability company in existence before the effective date of this Code allocated distributions on the basis of subsection (1)(a), the limited liability company shall continue to allocate distributions pursuant to subsection (1)(a) until the allocation is changed by an operating agreement.

### **3.4 Distribution; conditions for receiving.**

(1) Except as otherwise provided in this Code and subject to subsection (2), a member is entitled to receive a distribution from a limited liability company before the withdrawal of the member from the limited liability company or before the dissolution and winding up of the limited liability company to the extent and at the times or upon the happening of the events specified in an operating agreement.

(2) If an operating agreement does not address a member's right to receive a distribution before the withdrawal of the member from the limited liability company or before the dissolution and winding up of the limited liability company, the unanimous approval of the members is required for any distribution to that member.

### **3.5 Distributions to withdrawing member.**

Until the effective date of withdrawal, a withdrawing member shall share in any distribution made in accordance with section 2.30. An operating agreement may provide for an additional distribution to a withdrawing member. If a provision in an operating agreement

permits 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 of distributions as determined under section 2.29.

### **3.6 Distributions; demand, acceptance, and receipt of distribution; form.**

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.

### **3.7 Distributions prohibited under certain situations; exceptions; effect of distribution under subsection (1); remedies available; future payments to withdrawing members; effect of subsection (1) on third party; asserting legal or equitable rights.**

(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.

(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 the basis of accounting practices and principles that are reasonable under the circumstances, on a 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 the indebtedness is distributed if it occurs more than 120 days after the date of authorization.

(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.

(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 rights.

### **3.8 Distribution; violating operating agreement; liability of members or managers; presumption of assent; knowledge of violation; contribution; commencement of proceeding.**

(1) A member or manager that votes for or assents to a distribution in violation of an operating agreement or section 2.33 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 section 2.33 if it is established that the member or manager did not comply with section 2.38.

(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.

(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 2.33 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 2.33 or the operating agreement.

(4) Each member or manager held liable under subsection (1) for an unlawful distribution is entitled to contribution from each other member or manager who could be held liable under subsection (1) or (3). The contribution of a person held liable under both subsections (1) and (3) shall not exceed the person's liability under either subsection (1) or (3), whichever is greater.

(5) 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 2.33.

## CHAPTER 4

### **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 purposes of applying this Code, including section 2.40 regarding the agency authority of managers, unless the context clearly requires otherwise.

(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; 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 prescribe qualifications for managers, including a requirement that the managers be members.

(3) The number of managers shall be specified in or fixed in accordance with an 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 described in section 2.40.

#### **4.3 Managers; selection; vote; removal; notice.**

(1) A vote of a majority in interest of the members entitled to vote in accordance with section 502(1) is required to select 1 or more managers to fill initial positions or vacancies.

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

(3) The members may 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 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) 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 any of the following:

(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 professional or expert competence.

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

(3) A manager is not entitled to rely on the information, opinions, reports, or statements described in subsection (2) if the manager has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A manager is not liable for an action taken as a manager or the failure to take an action if the manager performs the duties of the manager's office in compliance with this section.

(5) Except as otherwise provided in an operating agreement or by vote of the members pursuant to section 2.45(4) and (7), 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 or from any personal use by the manager of its property.

(6) An action against a manager for failure to perform the duties imposed by this Code shall be commenced within 3 years after the cause of action has accrued or within 2 years after the cause of action is discovered or should reasonably have been discovered by the complainant, whichever occurs first.

#### **4.5 Managers; voting requirements.**

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

(2) If management of a limited liability company is delegated to managers under section 402 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 managers' authority.

(3) If management of a limited liability company remains in the members, section 2.45 applies to voting by the members.

#### **4.6 Manager as agent.**

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 particular matter.

(b) The person with whom the manager is dealing has actual knowledge that the manager lacks authority to act or the articles of organization or this Code establishes that the manager lacks 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 2.38, 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) Liability under section 2.34.

(c) A knowing violation of law.

(d) 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.

(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

### **5.1 Members; admission; liability for acts, debts, or 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.

(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 as follows:

(a) Before the effective date of this Code, the members of a limited liability company shall vote in proportion to their shares of distributions of the company, as determined under section 2.29.

(b) After the effective of this Code, except as otherwise provided in subsection (2), each member of a limited liability company has 1 vote. For purposes of this subdivision, a membership interest held by 2 or more persons, whether as fiduciaries, members of a partnership, tenants in common, joint tenants, tenants by the entirety, or otherwise, is considered held by 1 member.

(2) If a limited liability company in existence before the effective date of this Code allocated votes on the basis of subsection (1)(a), the company shall continue to allocate votes pursuant to subsection (1)(a) until the allocation is changed by an operating agreement.

(3) If a membership interest that has voting rights is held by 2 or more persons, whether as fiduciaries, members of a partnership, tenants in common, joint tenants, tenants by the entirety, or otherwise, 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.

(4) 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 2.50(c).
- (b) Merger of the limited liability company under chapter 8.
- (c) An amendment to the articles of organization.

(5) Except as otherwise provided in the articles of organization or an operating agreement, members have the voting rights provided in section 2.42 regarding transactions in which a manager or agent has an interest.

(6) 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 act, 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 member; 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 2.31.

(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.

## **CHAPTER 6**

### **6.1 Articles of organization; amendment.**

A limited liability company may amend its articles of organization if the amendment contains only provisions that might lawfully be contained in original articles of organization filed at the time the amendment is made.

### **6.2 Articles of organization; conditions requiring amendment.**



A limited liability company shall amend its articles of organization if any of the following occur:

- (a) A change in the name of the limited liability company.
- (b) A change in the purposes of the limited liability company.
- (c) A change to or from the management of the limited liability company by managers.
- (d) A change in the maximum duration of the limited liability company.

(e) A statement in the articles of organization has become false or erroneous, except that a change in registered office or resident agent may be made as provided for in this Code.

### **6.3 Articles of organization; certificate of amendment; filing; contents.**

The articles of organization are amended by filing a certificate of amendment signed as provided in section 2.5 that contains all of the following:

- (a) The name of the limited liability company.
- (b) The date of filing of its original articles of organization.
- (c) The entire article or articles being amended, or the section or sections being amended if the article being amended is divided into identified sections.
- (d) A statement that the amendment or amendments were approved by the unanimous vote of all of the members entitled to vote or by a majority in interest if an operating agreement authorizes amendment of the articles of organization by majority vote.

[CAN REQUIRE TRIBAL COUNCIL APPROVAL FOR ALL AMENDMENTS]

## CHAPTER 7

### **7.1 Dissociation.**

(1) A person ceases to be an owner of an limited liability company upon the simultaneous occurrence of and at the same time 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.
- (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) Unless provided in the operating agreement or by the written consent of all Owners, if the owner is an individual, either of the following occurs:

- (i) The owner's death.
- (ii) The entry of an order by a court of competent jurisdiction adjudicating the owner incompetent to manage the owner's person or estate.

(e) Unless otherwise provided in the operating agreement or by written agreement or by the written consent of all owners at the time, if the owner is a trust, corporation, partnership, or limited liability company upon liquidation, dissolution, or termination.

(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 an 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.

## **7.2 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) Automatically, if a decree of judicial dissolution is entered.

(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.

### **7.3 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.

(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.

### **7.4 Certificate of dissolution; filing; contents.**

(1) When it begins winding up its affairs, a limited liability company that dissolves under section 2.50(b) or (c) shall execute a certificate of dissolution as provided in section 2.5 and file the certificate with the administrator. The certificate of dissolution shall contain all of the following:

(a) The name of the limited liability company.

(b) The reason for the dissolution.

(c) The effective date of the dissolution if later than the date of filing of the certificate of dissolution.

(2) When it begins winding up its affairs, a limited liability company that dissolves under section 2.50(e) shall execute a certificate of dissolution as provided in section 2.5 and file the certificate with the administrator. The certificate of dissolution shall contain all of the following:

- (a) The name of the limited liability company.
- (b) A statement that includes all of the following:
  - (i) That the limited liability company has not commenced business, has not issued any membership interests, and has no debts or other liabilities.
  - (ii) That the limited liability company 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.
  - (iii) That a majority of the organizers of the limited liability company have approved the dissolution.

## **7.5 Winding up.**

(1) A dissolved limited liability company continues its legal existence 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.
  - (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.

(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.

(f) Alter the limited liability of an owner.

**7.6 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 may 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.

(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.

(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.

(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.

#### **7.7 Dissolution; publication of notice; requirements; commencing proceeding to enforce claims; claimants with known existing claims not receiving notice.**

(1) A dissolved limited liability company 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.

(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 2.54.
- (b) A claimant whose claim was timely sent to the dissolved limited liability company but not acted on.
- (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 2.54 is not barred from suit until 6 months after the claimant has actual notice of the dissolution.

## **7.8 Winding up; distribution of assets.**

Upon the winding up of an limited liability company, the assets shall be distributed in the following order:

- (1) To creditors, including to the extent permitted by law, owners, and former owners in satisfaction of liabilities of the limited liability company.
- (2) Unless otherwise provided in the operating agreement, to owners and former owners in satisfaction of liabilities for distributions under this Code.
- (3) Unless otherwise provided in the operating agreement, 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.

## CHAPTERS

### **8.1 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.

### **8.2 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 all 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.

### **8.3 Plan of merger.**

Each limited liability company shall enter into a plan of merger to be approved under section 2.58.

### **8.4 Articles of merger.**

(1) The surviving limited liability company shall deliver to the administrator 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.
- (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.

### **8.5 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 or 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.

## **8.6 Right to object.**

Unless otherwise provided in the operating agreement, upon receipt of the notice required by Section 2.54(5), 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 under Section 2.33(3) and receive fair value for the owner's limited liability company interest.

## **CHAPTER 9 WHOLLY OWNED LIMITED LIABILITY COMPANIES**

### **9.1 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. [A Tribally owned limited liability company shall file annual reports with the Tribal Council concerning the company's actions/plans/objectives.]

## **9.2 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 subsidi<sub>ary</sub> of such a Tribally owned limited liability company or Tribal Corporation, subsidi<sub>ary</sub> limited liability company's 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 subsidi<sub>ary</sub> 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 subsidi<sub>ary</sub> 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 subsidi<sub>ary</sub> limited liability company and approving the articles shall be included.

## **9.3 Privileges 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 company's, 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.

## **9.4 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 subsidi<sub>ary</sub> 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 subsidi<sub>ary</sub> 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.

### **9.5 Nontribal Partners.**

Any limited liability company created pursuant to this Part, including subsidi<sub>ary</sub> limited liability company's, may form or own interests or shares in partnerships, corporations, or other limited liability companies with other governmental or non-governmental entities or persons under the laws of the Tribe or any other jurisdiction ("Project Companies"); provided, however, that the partial ownership interest in such Project Companies shall not diminish or affect the privileges and immunities of the Tribally owned limited liability company's or Tribally owned subsidi<sub>ary</sub> limited liability company's created pursuant to this Part.

### **9.6 Waiver of Sovereign Immunity.**

The limited liability companies established under this chapter may only waive the privileges and immunities granted under Section 2.65 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 subsidi<sub>ary</sub> 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.