

SHOALWATER BAY INDIAN TRIBE

CODE OF LAWS



TITLE 27

LIMITED LIABILITY COMPANY ORDINANCE

Adopted April 3, 2013

Tribal Council Resolution #04-03-13-23

SHOALWATER BAY INDIAN TRIBE
LIMITED LIABILITY COMPANY ORDINANCE

Effective April 03, 2013

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Chapter I. General Provisions.

§ 010. General

(1) Purpose: The Shoalwater Bay Indian Tribe a federally recognized Indian tribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians and is recognized as possessing powers of self-government, hereby establishes an ordinance for the formation of limited liability companies under tribal law.

§ 101. Definitions.

As used in this ordinance (the "Ordinance") unless the context otherwise requires:

- (1) "Bankruptcy" means an event that causes a person to cease to be a member as provided in § 304 of this Ordinance.
- (2) "Certificate of formation" means the certificate referred to in § 201 of this Ordinance, and the certificate as amended.
- (3) "Contribution" means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in the person's capacity as a member.
- (4) "Court" means the Tribal Court established by the Tribe.
- (5) "Court Clerk" means the clerk of the Court.
- (6) "Foreign limited liability company" means a limited liability company formed under laws other than the laws of the Tribe.
- (7) "Knowledge" means a person's actual knowledge of a fact, rather than the person's constructive knowledge of the fact.
- (8) "Limited liability company" and "domestic limited liability company" means a limited liability company formed under the laws of the Tribe and having one (1) or more members.
- (9) "Limited liability company agreement" means any agreement (whether referred to as a limited liability company agreement, operating agreement or otherwise), written, oral or implied, of the member or members as to the affairs of a limited liability company and the conduct of its business. A member or manager of a limited liability company or an assignee of a limited liability company interest is bound by the limited liability company

agreement whether or not the member or manager or assignee executes the limited liability company agreement. A limited liability company is not required to execute its limited liability company agreement. A limited liability company is bound by its limited liability company agreement whether or not the limited liability company executes the limited liability company agreement. A limited liability company agreement of a limited liability company having only 1 member shall not be unenforceable by reason of there being only 1 person who is a party to the limited liability company agreement. A limited liability company agreement is not subject to any statute of frauds. A limited liability company agreement may provide rights to any person, including a person who is not a party to the limited liability company agreement, to the extent set forth therein. A written limited liability company agreement or another written agreement or writing:

a. May provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned:

1. If such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) executes the limited liability company agreement or any other writing evidencing the intent of such person to become a member or assignee; or

2. Without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) complies with the conditions for becoming a member or assignee as set forth in the limited liability company agreement or any other writing; and

b. Shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in paragraph (7)a. of this section, or by reason of its having been signed by a representative as provided in this chapter.

(10) "Limited liability company interest" means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets.

(11) "Liquidating trustee" means a person carrying out the winding up of a limited liability company.

(12) "Manager" means a person who is named as a manager of a limited liability company in, or designated as a manager of a limited liability company pursuant to, a limited liability company agreement or similar instrument under which the limited liability company is formed.

(13) "Member" means a person who is admitted to a limited liability company as a member as provided in § 301 of this Ordinance or, in the case of a foreign limited liability company, in accordance with the laws of the state

or foreign country or other foreign jurisdiction under which the foreign limited liability company is formed.

- (14) "Person" means a natural person, partnership (whether general or limited), limited liability company, trust (including a common law trust, business trust, statutory trust, voting trust or any other form of trust), estate, association (including any group, organization, co-tenancy, plan, board, council or committee), corporation, government (including a country, state, county or any other governmental subdivision, agency or instrumentality), custodian, nominee or any other individual or entity (or series thereof) in its own or any representative capacity, in each case, whether domestic or foreign.
- (15) "Personal representative" means, as to a natural person, the executor, administrator, guardian, conservator or other legal representative thereof and, as to a person other than a natural person, the legal representative or successor thereof.
- (16) "Secretary" means the Secretary of the Tribal Council.
- (17) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession or other jurisdiction of the United States other than the Tribe.
- (18) "Tribal Council" means the Tribal Council of the Tribe.
- (19) "Reservation" means the land recognized by the United States as the Reservation of the Tribe, as well as any lands now or hereafter held by the United States in trust for the Tribe.
- (20) "Tribe" means the Shoalwater Bay Indian Tribe.

§ 102. Name set forth in certificate.

The name of each limited liability company as set forth in its certificate of formation:

- (1) Shall contain the words "Limited Liability Company" or the abbreviation "L.L.C." or the designation "LLC";
- (2) May contain the name of a member or manager;
- (3) Must be such as to distinguish it upon the records in the office of the Secretary from the name on such records of any corporation, partnership, limited partnership, statutory trust or limited liability company reserved, registered, formed or organized under the laws of the Tribe or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign statutory trust, foreign partnership, or foreign limited liability company within the Reservation; provided however, that a limited

liability company may register under any name which is not such as to distinguish it upon the records in the office of the Secretary from the name on such records of any domestic or foreign corporation, partnership, limited partnership, or statutory trust or foreign limited liability company reserved, registered, formed or organized under the laws of the Tribe with the written consent of the other corporation, partnership, limited partnership, statutory trust or foreign limited liability company, which written consent shall be filed with the Secretary; provided further, that, if on July 31, 2011, a limited liability company is registered (with the consent of another limited liability company) under a name which is not such as to distinguish it upon the records in the office of the Secretary from the name on such records of such other domestic limited liability company, it shall not be necessary for any such limited liability company to amend its certificate of formation to comply with this subsection;

- (4) May contain the following words: "Company," "Association," "Club," "Foundation," "Fund," "Institute," "Society," "Union," "Syndicate," "Limited" or "Trust" (or abbreviations of like import); and
- (5) Shall not contain the word "bank," or any variation thereof, except for the name of a bank reporting to and under the supervision of the State of Alaska Division of Banking and Securities or a subsidiary of a bank or savings association (as those terms are defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a limited liability company regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the Home Owners' Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided, however, that this section shall not be construed to prevent the use of the word "bank," or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business of the limited liability company or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or the Tribe as determined by the Tribal Council.

§ 103. Reservation of name.

- (a) The exclusive right to the use of a name may be reserved by:
 - (1) Any person intending to organize a limited liability company under this Ordinance and to adopt that name;
 - (2) Any domestic limited liability company or any foreign limited liability company registered within the Reservation which, in either case, proposes to change its name;
 - (3) [RESERVED]; and

- (4) Any person intending to organize a foreign limited liability company and intending to have it register within the Reservation and adopt that name:

(b) The reservation of a specified name shall be made by filing with the Secretary an application, executed by the applicant, specifying the name to be reserved and the name and address of the applicant. If the Secretary, in his sole discretion, finds that the name is available for use, the Secretary shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may again reserve the same name for successive 120-day periods. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be cancelled by filing with the Secretary a notice of cancellation, executed by the applicant or transferee, specifying the name reservation to be cancelled and the name and address of the applicant or transferee. Unless the Secretary finds that any application, notice of transfer, or notice of cancellation filed with the Secretary as required by this subsection does not conform to law, upon receipt of all filing fees required by law the Secretary shall prepare and return to the person who filed such instrument a copy of the filed instrument with a notation thereon of the action taken by the Secretary.

(c) A fee as set forth in § 1105(a)(1) of this Ordinance shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

§ 104. Registered office; registered agent.

- (a) Each limited liability company shall have and maintain within the Reservation:
- (1) A registered office, which may but need not be a place of its business within the Reservation; and
 - (2) A registered agent for service of process on the limited liability company, having a business office identical with such registered office, which agent may be any of:
 - a. The limited liability company itself,
 - b. An individual resident within the Reservation,
 - c. A domestic limited liability company (other than the limited liability company itself), a domestic corporation, a domestic partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), or a domestic statutory trust, or
 - d. A foreign corporation, a foreign partnership (whether general (including a limited liability partnership) or limited (including a

limited liability limited partnership)), a foreign limited liability company, or a foreign statutory trust.

(b) A registered agent may change the address of the registered office of the limited liability company(ies) for which it is registered agent to another address within the Reservation by paying a fee as set forth in § 1105(a)(2) of this Ordinance and filing with the Secretary a certificate, executed by such registered agent, setting forth the address at which such registered agent has maintained the registered office for each of the limited liability companies for which it is a registered agent, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the limited liability companies for which it is a registered agent. Upon the filing of such certificate, the Secretary shall furnish to the registered agent a certified copy of the same under the Secretary's hand and seal of office, and thereafter, or until further change of address, as authorized by law, the registered office within the Reservation of each of the limited liability companies for which the agent is a registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a limited liability company, such registered agent shall file with the Secretary a certificate executed by such registered agent setting forth the new name of such registered agent, the name of such registered agent before it was changed, and the address at which such registered agent has maintained the registered office for each of the limited liability companies for which it is a registered agent, and shall pay a fee as set forth in § 1105(a)(2) of this Ordinance. Upon the filing of such certificate, the Secretary shall furnish to the registered agent a certified copy of the certificate under the Secretary's hand and seal of office. A change of name of any person acting as a registered agent of a limited liability company as a result of a merger or consolidation of the registered agent with or into another person which succeeds to its assets and liabilities by operation of law shall be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby, and each such limited liability company shall not be required to take any further action with respect thereto to amend its certificate of formation under § 202 of this Ordinance. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each limited liability company affected thereby.

(c) The registered agent of 1 or more limited liability companies may resign and appoint a successor registered agent by paying a fee as set forth in § 1105(a)(2) of this Ordinance and filing a certificate with the Secretary, stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such limited liability companies as have ratified and approved such substitution, and the successor registered agent's address, as stated in such certificate, shall become the address of each such limited liability company's registered office within the Reservation. The Secretary shall then issue a certificate that the successor registered agent has become the registered agent of the limited liability companies so ratifying and

approving such change and setting out the names of such limited liability companies. Filing of such certificate of resignation shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby, and each such limited liability company shall not be required to take any further action with respect thereto to amend its certificate of formation under § 202 of this Ordinance.

(d) The registered agent of 1 or more limited liability companies may resign without appointing a successor registered agent by paying a fee as set forth in § 1105(a)(2) of this Ordinance and filing a certificate of resignation with the Secretary, but such resignation shall not become effective until 30 days after the certificate is filed. The certificate shall contain a statement that written notice of resignation was given to each affected limited liability company at least 30 days prior to the filing of the certificate by mailing or delivering such notice to the limited liability company at its address last known to the registered agent and shall set forth the date of such notice. After receipt of the notice of the resignation of its registered agent, the limited liability company for which such registered agent was acting shall obtain and designate a new registered agent, to take the place of the registered agent so resigning. If such limited liability company fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, the certificate of formation of such limited liability company shall be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against each limited liability company for which the resigned registered agent had been acting shall thereafter be upon the Secretary in accordance with § 105 of this Ordinance.

(e) Every registered agent shall:

(1) If an entity, maintain a business office within the Reservation which is generally open, or if an individual, be generally present at a designated location within the Reservation, at sufficiently frequent times to accept service of process and otherwise perform the functions of a registered agent;

(2) [RESERVED];

(3) Accept service of process and other communications directed to the limited liability companies and foreign limited liability companies for which it serves as registered agent and forward same to the limited liability company or foreign limited liability company to which the service or communication is directed; and

(4) [RESERVED].

(f) [RESERVED]

(g) [RESERVED].

(h) [RESERVED].

(i) [RESERVED].

(j) The Secretary is authorized to make a list of registered agents available to the public, and to establish such qualifications and issue such rules and regulations with respect to such listing as the Secretary deems necessary or appropriate.

(k) As contained in any certificate of formation, application for registration as a foreign limited liability company, or other document filed in the office of the Secretary under this chapter, the address of a registered agent or registered office shall include the street, number, city and postal code.

§ 105. Service of process on domestic limited liability companies.

(a) Service of legal process upon any domestic limited liability company shall be made by delivering a copy personally to any manager of the limited liability company within the Reservation or the registered agent of the limited liability company within the Reservation, or by leaving it at the dwelling house or usual place of abode within the Reservation of any such manager or registered agent (if the registered agent be an individual), or at the registered office or other place of business of the limited liability company within the Reservation. If the registered agent be a corporation, service of process upon it as such may be made by serving, within the Reservation, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of a manager or registered agent, or at the registered office or other place of business of the limited liability company within the Reservation, to be effective, must be delivered thereat at least six (6) days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in the officer's return thereto. Process returnable forthwith must be delivered personally to the manager or registered agent.

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the limited liability company upon the Secretary, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) of this section. Process may be served upon the Secretary under this subsection by means of electronic transmission but only as prescribed by the Secretary. The Secretary is authorized to issue such rules and regulations with respect to such service as the Secretary deems necessary or appropriate. In the event that service is effected through the Secretary in accordance with this subsection, the Secretary shall forthwith notify the limited liability company by letter, directed to the limited liability company at its address as it appears on the records relating to such limited liability company on file with the Secretary or, if no such address appears, at its last registered office. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process

and any other papers served on the Secretary pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary that service is being effected pursuant to this subsection, and to pay the Secretary the sum of \$50 for the use of the Tribe, which sum shall be taxed as part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary shall not be required to retain such information for a period longer than 5 years from the Secretary's receipt of the service of process.

§ 106. Nature of business permitted; powers.

(a) A limited liability company may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of banking.

(b) A limited liability company shall possess and may exercise all the powers and privileges granted by this chapter or by any other law or by its limited liability company agreement, together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited liability company.

(c) Notwithstanding any provision of this chapter to the contrary, without limiting the general powers enumerated in subsection (b) of this section, a limited liability company shall, subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, have the power and authority to make contracts of guaranty and suretyship and enter into interest rate, basis, currency, hedge or other swap agreements or cap, floor, put, call, option, exchange or collar agreements, derivative agreements, or other agreements similar to any of the foregoing.

(d) Unless otherwise provided in a limited liability company agreement, a limited liability company has the power and authority to grant, hold or exercise a power of attorney, including an irrevocable power of attorney.

§ 107. Business transactions of member or manager with the limited liability company.

Except as provided in a limited liability company agreement, a member or manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one (1) or more obligations of, provide collateral for, and transact other business with, a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

§ 108. Indemnification.

Subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever.

§ 109. Service of process on managers and liquidating trustees.

(a) A manager or a liquidating trustee of a limited liability company may be served with process in the manner prescribed in this section in all civil actions or proceedings brought within the Reservation involving or relating to the business of the limited liability company or a violation by the manager or the liquidating trustee of a duty to the limited liability company or any member of the limited liability company, whether or not the manager or the liquidating trustee is a manager or a liquidating trustee at the time suit is commenced. A manager's or a liquidating trustee's serving as such constitutes such person's consent to the appointment of the registered agent of the limited liability company (or, if there is none, the Secretary) as such person's agent upon whom service of process may be made as provided in this section. Such service as a manager or a liquidating trustee shall signify the consent of such manager or liquidating trustee that any process when so served shall be of the same legal force and validity as if served upon such manager or liquidating trustee within the Reservation and such appointment of the registered agent (or, if there is none, the Secretary) shall be irrevocable. As used in this subsection (a) and in subsections (b), (c) and (d) of this section, the term "manager" refers (i) to a person who is a manager as defined in § 101(10) of this Ordinance and (ii) to a person, whether or not a member of a limited liability company, who, although not a manager as defined in § 101(10) of this Ordinance, participates materially in the management of the limited liability company; provided however, that the power to elect or otherwise select or to participate in the election or selection of a person to be a manager as defined in § 101(10) of this Ordinance shall not, by itself, constitute participation in the management of the limited liability company.

(b) Service of process shall be effected by serving the registered agent (or, if there is none, the Secretary) with 1 copy of such process in the manner provided by law of the Tribe for service of writs of summons or, if there is no manner provided by law of the Tribe for service of a writ of summons, then by registered United States mail. In the event service is made under this subsection upon the Secretary, the plaintiff shall pay to the Secretary the sum of \$50 for the use of the Tribe, which sum shall be taxed as part of the costs of the proceeding if the plaintiff shall prevail therein. In addition, the Court Clerk in which the civil action or proceeding is pending shall, within seven (7) days of such service, deposit in the United States mails, by registered mail, postage prepaid, true and attested copies of the process, together with a statement that service is being made pursuant to this section, addressed to such manager or liquidating trustee at the registered office of the limited liability company and at the manager's or liquidating trustee's address last known to the party desiring to make such service.

(c) In an action in which any such manager or liquidating trustee has been served with process as hereinabove provided, the time in which a defendant shall be required to appear and file a responsive pleading shall be computed from the date of mailing by the Court Clerk as provided in subsection (b) of this section; however, the Court in which such action has been commenced may order such continuance or continuances as may be necessary to afford such manager or liquidating trustee reasonable opportunity to defend the action.

(d)

(1) Subject to paragraph 2 of this subsection, in a written limited liability company agreement or other writing, a manager or member must, at a minimum, consent to be subject to the non-exclusive jurisdiction of the Court and may, in addition, consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the Court, or the exclusivity of arbitration in a specified jurisdiction or within the Reservation, and to be served with legal process in the manner prescribed in such limited liability company agreement or other writing. Except by agreeing to arbitrate any arbitrable matter in a specified jurisdiction or within the Reservation, a member who is not a manager may not waive its right to maintain a legal action or proceeding in the Court with respect to matters relating to the organization or internal affairs of a limited liability company.

(2) Paragraph 1 of this subsection does not apply to any limited liability company in which the Tribe, a Section 17 Corporation wholly owned or partially owned by the Tribe ("Section 17 Corporation"), or an instrumentality of the Tribe or wholly-owned entity of the Tribe is a member. As to such limited liability companies, in a written limited liability company agreement or other writing, a manager or member must, at a minimum, consent to be subject to the non-exclusive jurisdiction of the Court and may, in addition, consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the Court, or the exclusivity of arbitration in a specified jurisdiction or within the Reservation, and to be served with legal process in the manner prescribed in such limited liability company agreement or other writing, but only as to suits or to arbitration between or among the limited liability company, its members, and/or the Tribe, and not as to any third parties. Any such limited liability company, or a member of such limited liability company that is the Tribe, a Section 17 Corporation, or an instrumentality of the Tribe or wholly-owned entity of the Tribe, may consent to suit by third parties pursuant to § 303(c) of this Ordinance.

(e) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(f) The Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof and such other rules which may be necessary to implement this section and are not inconsistent with this section.

§ 110. Contested matters relating to managers; contested votes.

(a) Upon application of any member or manager, the Court may hear and determine the validity of any admission, election, appointment, removal or resignation of a manager of a limited liability company, and the right of any person to become or continue to be a manager of a limited liability company, and, in case the right to serve as a manager is claimed by more than 1 person, may determine the person or persons entitled to serve as managers; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the limited liability company relating to the issue. In any such application, the limited liability company shall be named as a party and service of copies of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company and upon the person or persons whose right to serve as a manager is contested and upon the person or persons, if any, claiming to be a manager or claiming the right to be a manager; and the registered agent shall forward immediately a copy of the application to the limited liability company and to the person or persons whose right to serve as a manager is contested and to the person or persons, if any, claiming to be a manager or the right to be a manager, in a postpaid, sealed, registered letter addressed to such limited liability company and such person or persons at their post-office addresses last known to the registered agent or furnished to the registered agent by the applicant member or manager. The Court may make such order respecting further or other notice of such application as it deems proper under these circumstances.

(b) Upon application of any member or manager, the Court may hear and determine the result of any vote of members or managers upon matters as to which the members or managers of the limited liability company, or any class or group of members or managers, have the right to vote pursuant to the limited liability company agreement or other agreement or this Ordinance (other than the admission, election, appointment, removal or resignation of managers). In any such application, the limited liability company shall be named as a party and service of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company, and no other party need be joined in order for the Court to adjudicate the result of the vote. The Court may make such order respecting further or other notice of such application as it deems proper under these circumstances.

(c) As used in this section, the term "manager" refers to a person:

- a. Who is a manager as defined in § 101(10) of this Ordinance; and
- b. Whether or not a member of a limited liability company, who, although not a manager as defined in § 101(10) of this Ordinance, participates materially in the management of the limited liability company; provided however, that the power to elect or otherwise select or to participate in the

election or selection of a person to be a manager as defined in § 101(10) of this Ordinance shall not, by itself, constitute participation in the management of the limited liability company.

(d) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

§ 111. Interpretation and enforcement of limited liability company agreement.

Any action to interpret, apply or enforce the provisions of a limited liability company agreement, or the duties, obligations or liabilities of a limited liability company to the members or managers of the limited liability company, or the duties, obligations or liabilities among members or managers and of members or managers to the limited liability company, or the rights or powers of, or restrictions on, the limited liability company, members or managers, or any provision of this chapter, or any other instrument, document, agreement or certificate contemplated by any provision of this chapter, may be brought in the Court.

As used in this section, the term "manager" refers to a person:

(1) Who is a manager as defined in § 101(12) of this Ordinance; and

(2) Whether or not a member of a limited liability company, who, although not a manager as defined in § 101(12) of this Ordinance, participates materially in the management of the limited liability company;

provided however, that the power to elect or otherwise select or to participate in the election or selection of a person to be a manager as defined in § 101(12) of this Ordinance shall not, by itself, constitute participation in the management of the limited liability company.

Chapter II Formation; Certificate of Formation

§ 201. Certificate of formation.

(a) In order to form a limited liability company, one (1) or more authorized persons must execute a certificate of formation. The certificate of formation shall be filed in the office of the Secretary and set forth:

(1) The name of the limited liability company;

(2) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by § 104 of this Ordinance;

(3) The name of each Manager or Member;

- (4) Subject to § 109(d) of this Ordinance, a statement that the Company and each Manager or Member consents to at least be subject to the non-exclusive jurisdiction of the Court; and
 - (5) any other matters the members determine to include therein.
- (b) In order to establish a limited liability company:
- (1) The Secretary of the Tribal Council shall, at the next regular meeting or special meeting of the Tribal Council, request a motion determining whether or not such a limited liability company may be formed;
 - (2) The Tribal Council, in its sole discretion, may decide by a Tribal Council resolution or motion whether or not such a limited liability company may be formed; and
 - (3) A limited liability company is formed at the time of passage of a Tribal Council resolution approving the initial certificate of formation filed in the office of the Secretary of the Tribal Council or at any later date or time specified in the certificate of formation if, in either case, there has been substantial compliance with the requirements of this section. A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation.
- (c) [RESERVED]
- (d) A limited liability company agreement shall be entered into or otherwise existing either before, after or at the time of the filing of a certificate of formation and, whether entered into or otherwise existing before, after or at the time of such filing, may be made effective as of the effective time of such filing or at such other time or date as provided in or reflected by the limited liability company agreement.

§ 202. Amendment to certificate of formation.

- (a) A certificate of formation is amended by filing a certificate of amendment thereto in the office of the Secretary. The certificate of amendment shall set forth:
- (1) The name of the limited liability company; and
 - (2) The amendment to the certificate of formation.
- (b) A manager or, if there is no manager, then any member who becomes aware that any statement in a certificate of formation was false when made, or that any matter described has changed making the certificate of formation false in any material respect, shall promptly amend the certificate of formation.

(c) A certificate of formation may be amended at any time for any other proper purpose.

(d) Unless otherwise provided in this Ordinance or unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of amendment, a certificate of amendment shall be effective at the time of its filing with the Secretary.

§ 203. Cancellation of certificate.

(a) A certificate of formation shall be canceled upon the dissolution and the completion of winding up of a limited liability company, or as provided in § 104(d) of this Ordinance, or upon the filing of a certificate of merger or consolidation or a certificate of ownership and merger if the limited liability company is not the surviving or resulting entity in a merger or consolidation or upon the future effective date or time of a certificate of merger or consolidation or a certificate of ownership and merger if the limited liability company is not the surviving or resulting entity in a merger or consolidation, or upon the filing of a certificate of transfer or upon the future effective date or time of a certificate of transfer, or upon the filing of a certificate of conversion to non-tribal entity or upon the future effective date or time of a certificate of conversion to non-tribal entity. A certificate of cancellation shall be filed in the office of the Secretary to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company and shall set forth:

- (1) The name of the limited liability company;
- (2) The date of filing of its certificate of formation;
- (3) The future effective date or time (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate; and
- (4) Any other information the person filing the certificate of cancellation determines.

(b) A certificate of cancellation that is filed in the office of the Secretary prior to the dissolution or the completion of winding up of a limited liability company may be corrected as an erroneously executed certificate of cancellation by filing with the office of the Secretary a certificate of correction of such certificate of cancellation in accordance with § 211 of this Ordinance.

(c) The Secretary shall not issue a certificate of good standing with respect to a limited liability company if its certificate of formation is canceled.

§ 204. Execution.

(a) Each certificate required by this chapter to be filed in the office of the Secretary shall be executed by 1 or more authorized persons or, in the case of a certificate of conversion to limited liability company or certificate of limited liability company

domestication, by any person authorized to execute such certificate on behalf of the other entity or non-United States entity, respectively, except that a certificate of merger or consolidation filed by a surviving or resulting other business entity shall be executed by any person authorized to execute such certificate on behalf of such other business entity.

(b) Unless otherwise provided in a limited liability company agreement, any person may sign any certificate or amendment thereof or enter into a limited liability company agreement or amendment thereof by an agent, including an attorney-in-fact. An authorization, including a power of attorney, to sign any certificate or amendment thereof or to enter into a limited liability company agreement or amendment thereof need not be in writing, need not be sworn to, verified or acknowledged, and need not be filed in the office of the Secretary, but if in writing, must be retained by the limited liability company.

(c) For all purposes of the laws of the Tribe, a power of attorney with respect to matters relating to the organization, internal affairs or termination of a limited liability company or granted by a person as a member or assignee of a limited liability company interest or by a person seeking to become a member or an assignee of a limited liability company interest shall be irrevocable if it states that it is irrevocable and it is coupled with an interest sufficient in law to support an irrevocable power. Such irrevocable power of attorney, unless otherwise provided therein, shall not be affected by subsequent death, disability, incapacity, dissolution, termination of existence or bankruptcy of, or any other event concerning, the principal. A power of attorney with respect to matters relating to the organization, internal affairs or termination of a limited liability company or granted by a person as a member or an assignee of a limited liability company interest or by a person seeking to become a member or an assignee of a limited liability company interest and, in either case, granted to the limited liability company, a manager or member thereof, or any of their respective officers, directors, managers, members, partners, trustees, employees or agents shall be deemed coupled with an interest sufficient in law to support an irrevocable power.

(d) The execution of a certificate by a person who is authorized by this chapter to execute such certificate constitutes an oath or affirmation, under the penalties of perjury in the third degree, that, to the best of such person's knowledge and belief, the facts stated therein are true.

§ 205. Execution, amendment or cancellation by judicial order.

(a) If a person required to execute a certificate required by this chapter fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Court to direct the execution of the certificate. If the Court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the Secretary to record an appropriate certificate.

(b) If a person required to execute a limited liability company agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Court to direct the execution of the limited liability company agreement or amendment thereof. If the Court finds that the limited

liability company agreement or amendment thereof should be executed and that any person required to execute the limited liability company agreement or amendment thereof has failed or refused to do so, it shall enter an order granting appropriate relief.

§ 206. Filing.

(a) The signed copy of the certificate of formation and of any certificates of amendment, correction, amendment of a certificate with a future effective date or time, termination of a certificate with a future effective date or time or cancellation (or of any judicial decree of amendment or cancellation), and of any certificate of merger or consolidation, any certificate of ownership and merger, any restated certificate, any corrected certificate, any certificate of conversion to limited liability company, any certificate of conversion to a non-tribal entity, any certificate of transfer, any certificate of transfer and domestic continuance, any certificate of limited liability company domestication, and of any certificate of revival shall be delivered to the Secretary. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person's authority as a prerequisite to filing. Any signature on any certificate authorized to be filed with the Secretary under any provision of this chapter may be a facsimile, a conformed signature or an electronically transmitted signature. Upon delivery of any certificate, the Secretary shall record the date and time of its delivery. Unless the Secretary finds that any certificate does not conform to law, upon receipt of all filing fees required by law the Secretary shall:

- (1) Certify that the certificate of formation, the certificate of amendment, the certificate of correction, the certificate of amendment of a certificate with a future effective date or time, the certificate of termination of a certificate with a future effective date or time, the certificate of cancellation (or of any judicial decree of amendment or cancellation), the certificate of merger or consolidation, the certificate of ownership and merger, the restated certificate, the corrected certificate, the certificate of conversion to limited liability company, the certificate of conversion to a non-tribal entity, the certificate of transfer, the certificate of transfer and domestic continuance, the certificate of limited liability company domestication or the certificate of revival has been filed in the Secretary's office by endorsing upon the signed certificate the word "Filed" and the date and time of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud. Except as provided in subdivision (a)(5) or (a)(6) of this section, such date and time of filing of a certificate shall be the date and time of delivery of the certificate;
- (2) File and index the endorsed certificate;
- (3) Prepare and return to the person who filed it or that person's representative a copy of the signed certificate, similarly endorsed, and shall certify such copy as a true copy of the signed certificate; and

- (4) Cause to be entered such information from the certificate as the Secretary deems appropriate into the Corporation Information System or any system which is a successor thereto in the office of the Secretary, and such information and a copy of such certificate shall be permanently maintained as a public record on a suitable medium. The Secretary is authorized to grant direct access to such system to registered agents subject to the execution of an operating agreement between the Secretary and such registered agent. Any registered agent granted such access shall demonstrate the existence of policies to ensure that information entered into the system accurately reflects the content of certificates in the possession of the registered agent at the time of entry.
- (5) Upon request made upon or prior to delivery, the Secretary may, to the extent deemed practicable, establish as the date and time of filing of a certificate a date and time after its delivery. If the Secretary refuses to file any certificate due to an error, omission or other imperfection, the Secretary may hold such certificate in suspension, and in such event, upon delivery of a replacement certificate in proper form for filing and tender of the required fees within 5 business days after notice of such suspension is given to the filer, the Secretary shall establish as the date and time of filing of such certificate the date and time that would have been the date and time of filing of the rejected certificate had it been accepted for filing. The Secretary shall not issue a certificate of good standing with respect to any limited liability company with a certificate held in suspension pursuant to this subsection. The Secretary may establish as the date and time of filing of a certificate the date and time at which information from such certificate is entered pursuant to subdivision (a)(4) of this section if such certificate is delivered on the same date and within 4 hours after such information is entered.
- (6) If:
- a. Together with the actual delivery of a certificate and tender of the required fees, there is delivered to the Secretary a separate affidavit (which in its heading shall be designated as an affidavit of extraordinary condition) attesting, on the basis of personal knowledge of the affiant or a reliable source of knowledge identified in the affidavit, that an earlier effort to deliver such certificate and tender such fees was made in good faith, specifying the nature, date and time of such good faith effort and requesting that the Secretary establish such date and time as the date and time of filing of such certificate; or
 - b. Upon the actual delivery of a certificate and tender of the required fees, the Secretary in the Secretary's own discretion provides a written waiver of the requirement for such an affidavit stating that it appears to the Secretary that an earlier effort to deliver such

certificate and tender such fees was made in good faith and specifying the date and time of such effort; and

- c. The Secretary determines that an extraordinary condition existed at such date and time, that such earlier effort was unsuccessful as a result of the existence of such extraordinary condition, and that such actual delivery and tender were made within a reasonable period (not to exceed 2 business days) after the cessation of such extraordinary condition, then the Secretary may establish such date and time as the date and time of filing of such certificate. No fee shall be paid to the Secretary for receiving an affidavit of extraordinary condition. _For purposes of this subsection, an extraordinary condition means: any emergency resulting from an attack on, invasion or occupation by foreign military forces of, or disaster, catastrophe, war or other armed conflict, revolution or insurrection or rioting or civil commotion in, the United States or a locality in which the Secretary conducts its business or in which the good faith effort to deliver the certificate and tender the required fees is made, or the immediate threat of any of the foregoing; or any malfunction or outage of the electrical or telephone service to the Secretary's office, or weather or other condition in or about a locality in which the Secretary conducts its business, as a result of which the Secretary's office is not open for the purpose of the filing of certificates under this chapter or such filing cannot be effected without extraordinary effort. _The Secretary may require such proof as it deems necessary to make the determination required under this subparagraph of subdivision (a)(6), and any such determination shall be conclusive in the absence of actual fraud. _If the Secretary establishes the date and time of filing of a certificate pursuant to this subsection, the date and time of delivery of the affidavit of extraordinary condition or the date and time of the Secretary's written waiver of such affidavit shall be endorsed on such affidavit or waiver and such affidavit or waiver, so endorsed, shall be attached to the filed certificate to which it relates. _Such filed certificate shall be effective as of the date and time established as the date and time of filing by the Secretary pursuant to this subsection, except as to those persons who are substantially and adversely affected by such establishment and, as to those persons, the certificate shall be effective from the date and time endorsed on the affidavit of extraordinary condition or written waiver attached thereto.

(b) Notwithstanding any other provision of this chapter, any certificate filed under this chapter shall be effective at the time of its filing with the Secretary or at any later date or time (not later than a time on the one hundred and eightieth day after the date of its filing if such date of filing is on or after January 1, 2012) specified in the certificate. Upon the filing of a certificate of amendment (or judicial decree of amendment),

certificate of correction, corrected certificate or restated certificate in the office of the Secretary, or upon the future effective date or time of a certificate of amendment (or judicial decree thereof) or restated certificate, as provided for therein, the certificate of formation shall be amended, corrected or restated as set forth therein. Upon the filing of a certificate of cancellation (or a judicial decree thereof), or a certificate of merger or consolidation or a certificate of ownership and merger which acts as a certificate of cancellation or a certificate of transfer, or a certificate of conversion to a non-Tribal entity, or upon the future effective date or time of a certificate of cancellation (or a judicial decree thereof) or of a certificate of merger or consolidation or a certificate of ownership and merger which acts as a certificate of cancellation or a certificate of transfer, or a certificate of conversion to a non-Tribal entity, as provided for therein, or as specified in § 104(d) of this Ordinance, the certificate of formation is canceled. Upon the filing of a certificate of limited liability company domestication or upon the future effective date or time of a certificate of limited liability company domestication, the entity filing the certificate of limited liability company domestication is domesticated as a limited liability company. Upon the filing of a certificate of conversion to limited liability company or upon the future effective date or time of a certificate of conversion to limited liability company, the entity filing the certificate of conversion to limited liability company is converted to a limited liability company. Upon the filing of a certificate of revival, the limited liability company is revived with the effect provided in § 1109 of this Ordinance. Upon the filing of a certificate of transfer and domestic continuance, or upon the future effective date or time of a certificate of transfer and domestic continuance, as provided for therein, the limited liability company filing the certificate of transfer and domestic continuance shall continue to exist as a limited liability company.

(c) If any certificate filed in accordance with this chapter provides for a future effective date or time and if, prior to such future effective date or time set forth in such certificate, the transaction is terminated or its terms are amended to change the future effective date or time or any other matter described in such certificate so as to make such certificate false or inaccurate in any respect, such certificate shall, prior to the future effective date or time set forth in such certificate, be terminated or amended by the filing of a certificate of termination or certificate of amendment of such certificate, executed in accordance with § 204 of this Ordinance, which shall identify the certificate which has been terminated or amended and shall state that the certificate has been terminated or the manner in which it has been amended. Upon the filing of a certificate of amendment of a certificate with a future effective date or time, the certificate identified in such certificate of amendment is amended. Upon the filing of a certificate of termination of a certificate with a future effective date or time, the certificate identified in such certificate of termination is terminated.

(d) A fee as set forth in § 1105(a)(3) of this Ordinance shall be paid at the time of the filing of a certificate of formation, a certificate of amendment, a certificate of correction, a certificate of amendment of a certificate with a future effective date or time, a certificate of termination of a certificate with a future effective date or time, a certificate of cancellation, a certificate of merger or consolidation, a certificate of ownership and merger, a restated certificate, a corrected certificate, a certificate of conversion to limited

liability company, a certificate of conversion to a non- Tribal entity, a certificate of transfer, a certificate of transfer and domestic continuance, a certificate of limited liability company domestication or a certificate of revival.

(e) [RESERVED].

(f) A fee as set forth in § 1105(a)(4) of this Ordinance shall be paid for a certified copy of any paper on file as provided for by this chapter, and a fee as set forth in § 1105(a)(5) of this Ordinance shall be paid for each page copied.

(g) Notwithstanding any other provision of this Ordinance, it shall not be necessary for any limited liability company or foreign limited liability company to amend its certificate of formation, its application for registration as a foreign limited liability company, or any other document that has been filed in the office of the Secretary prior to August 1, 2011, to comply with § 104(k) of this title; notwithstanding the foregoing, any certificate or other document filed under this chapter on or after August 1, 2011, and changing the address of a registered agent or registered office shall comply with § 104(k) of this title.

§ 207. Notice.

The fact that a certificate of formation is on file in the office of the Secretary is notice that the entity formed in connection with the filing of the certificate of formation is a limited liability company formed under the laws of the Tribe and is notice of all other facts set forth therein which are required to be set forth in a certificate of formation by § 201(a)(1) and (2) of this Ordinance.

§ 208. Restated certificate.

(a) A limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its certificate of formation which are then in effect and operative as a result of there having theretofore been filed with the Secretary one (1) or more certificates or other instruments pursuant to any of the sections referred to in this chapter, and it may at the same time also further amend its certificate of formation by adopting a restated certificate of formation.

(b) If a restated certificate of formation merely restates and integrates but does not further amend the initial certificate of formation, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in this chapter, it shall be specifically designated in its heading as a "Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by an authorized person and filed as provided in § 206 of this Ordinance in the office of the Secretary. If a restated certificate restates and integrates and also further amends in any respect the certificate of formation, as theretofore amended or supplemented, it shall be specifically designated in its heading as an "Amended and Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by at least 1

authorized person, and filed as provided in § 206 of this Ordinance in the office of the Secretary.

(c) A restated certificate of formation shall state, either in its heading or in an introductory paragraph, the limited liability company's present name, and, if it has been changed, the name under which it was originally filed, and the date of filing of its original certificate of formation with the Secretary, and the future effective date or time (which shall be a date or time certain) of the restated certificate if it is not to be effective upon the filing of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If a restated certificate only restates and integrates and does not further amend a limited liability company's certificate of formation as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

(d) Upon the filing of a restated certificate of formation with the Secretary, or upon the future effective date or time of a restated certificate of formation as provided for therein, the initial certificate of formation, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated certificate of formation, including any further amendment or changes made thereby, shall be the certificate of formation of the limited liability company, but the original effective date of formation shall remain unchanged.

(e) Any amendment or change effected in connection with the restatement and integration of the certificate of formation shall be subject to any other provision of this Ordinance, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

§ 209. Merger and consolidation.

(a) As used in this section and in § 204 of this Ordinance, "other business entity" means a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust, or any other unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), and a foreign limited liability company, but excluding a domestic limited liability company. As used in this section and in § 210 and § 301 of this Ordinance, "plan of merger" means a writing approved by a domestic limited liability company, in the form of resolutions or otherwise, that states the terms and conditions of a merger under subsection (i) of this section.

(b) Pursuant to an agreement of merger or consolidation, 1 or more domestic limited liability companies may merge or consolidate with or into 1 or more domestic limited liability companies or 1 or more other business entities formed or organized under the laws of the Tribe or any other tribe or any state or the United States or any foreign country or other foreign jurisdiction, or any combination thereof, with such domestic limited liability company or other business entity as the agreement shall provide being the surviving or resulting domestic limited liability company or other business entity. Unless otherwise provided in the limited liability company agreement, an agreement of

merger or consolidation or a plan of merger shall be approved by each domestic limited liability company which is to merge or consolidate by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited liability company or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic limited liability company or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited liability company or other business entity which is not the surviving or resulting limited liability company or other business entity in the merger or consolidation or may be cancelled. Notwithstanding prior approval, an agreement of merger or consolidation or a plan of merger may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation or plan of merger.

(c) Except in the case of a merger under subsection (i) of this section, if a domestic limited liability company is merging or consolidating under this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation executed by 1 or more authorized persons on behalf of the domestic limited liability company when it is the surviving or resulting entity in the office of the Secretary. The certificate of merger or consolidation shall state:

- (1) The name, jurisdiction of formation or organization and type of entity of each of the domestic limited liability companies and other business entities which is to merge or consolidate;
- (2) That an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies and other business entities which is to merge or consolidate;
- (3) The name of the surviving or resulting domestic limited liability company or other business entity;
- (4) In the case of a merger in which a domestic limited liability company is the surviving entity, such amendments, if any, to the certificate of formation of the surviving domestic limited liability company to change its name, registered office or registered agent as are desired to be effected by the merger;
- (5) The future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

- (6) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof;
- (7) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic limited liability company or other business entity, on request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate; and
- (8) If the surviving or resulting entity is not a domestic limited liability company, or a corporation, partnership (whether general (including a limited liability partnership) or limited (including a limited liability partnership)) or statutory trust organized under the laws of the Tribe, a statement that such surviving or resulting other business entity agrees that it may be served with process within the Reservation in any action, suit or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate, irrevocably appointing the Secretary as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Secretary. Process may be served upon the Secretary under this subsection by means of electronic transmission but only as prescribed by the Secretary. The Secretary is authorized to issue such rules and regulations with respect to such service as the Secretary deems necessary or appropriate. In the event of service hereunder upon the Secretary, the procedures set forth in § 911(c) of this Ordinance shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary with the address specified in the certificate of merger or consolidation provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the Secretary, and the Secretary shall notify such surviving or resulting other business entity at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 911(c) of this Ordinance.

(d) Unless a future effective date or time is provided in a certificate of merger or consolidation, or in the case of a merger under subsection (i) of this section in a certificate of ownership and merger, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the office of the Secretary of a certificate of merger or consolidation or a certificate of ownership and merger.

(e) A certificate of merger or consolidation or a certificate of ownership and merger shall act as a certificate of cancellation for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation. A certificate of merger that sets forth any amendment in accordance with subsection (c)(4) of this section shall be deemed to be an amendment to the certificate of formation of the limited liability

company, and the limited liability company shall not be required to take any further action to amend its certificate of formation under § 202 of this Ordinance with respect to such amendments set forth in the certificate of merger. Whenever this section requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in the certificate of merger or consolidation.

(f) An agreement of merger or consolidation or a plan of merger approved in accordance with subsection (b) of this section may:

- (1) Effect any amendment to the limited liability company agreement; or
- (2) Effect the adoption of a new limited liability company agreement, for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation.

Any amendment to a limited liability company agreement or adoption of a new limited liability company agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation and shall be effective notwithstanding any provision of the limited liability company agreement relating to amendment or adoption of a new limited liability company agreement, other than a provision that by its terms applies to an amendment to the limited liability company agreement or the adoption of a new limited liability company agreement, in either case, in connection with a merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law, including that the limited liability company agreement of any constituent limited liability company to the merger or consolidation (including a limited liability company formed for the purpose of consummating a merger or consolidation) shall be the limited liability company agreement of the surviving or resulting limited liability company.

(g) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the Tribe, all of the rights, privileges and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said domestic limited liability companies and other business entities, as well as all other things and causes of action belonging to each of such domestic limited liability companies and other business entities, shall be vested in the surviving or resulting domestic limited liability company or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each of the domestic limited liability companies and other business entities that have merged or consolidated, and the ordinance to any real property vested by deed or otherwise, under the laws of the Tribe, in any of such domestic limited liability companies and other business entities, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of

said domestic limited liability companies and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the said domestic limited liability companies and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic limited liability company or other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic limited liability company to wind up its affairs under § 803 of this Ordinance or pay its liabilities and distribute its assets under § 804 of this Ordinance and the merger or consolidation shall not constitute a dissolution of such limited liability company.

(h) A limited liability company agreement may provide that a domestic limited liability company shall not have the power to merge or consolidate as set forth in this section.

(i) In any case in which (i) at least 90% of the outstanding shares of each class of the stock of a corporation or corporations, of which class there are outstanding shares that would be entitled to vote on such merger, is owned by a domestic limited liability company, (ii) 1 or more of such corporations is a corporation of the Tribe, and (iii) any corporation that is not a corporation of the Tribe is a corporation of any state or the District of Columbia or another jurisdiction, the laws of which do not forbid such merger, the domestic limited liability company having such stock ownership may either merge the corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other corporations, pursuant to a plan of merger. If a domestic limited liability company is causing a merger under this subsection, the domestic limited liability company shall file a certificate of ownership and merger executed by 1 or more authorized persons on behalf of the domestic limited liability company in the office of the Secretary. The certificate of ownership and merger shall certify that such merger was authorized in accordance with the domestic limited liability company's limited liability company agreement and this chapter, and if the domestic limited liability company shall not own all the outstanding stock of all the corporations that are parties to the merger, shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving domestic limited liability company or corporation upon surrender of each share of the corporation or corporations not owned by the domestic limited liability company, or the cancellation of some or all of such shares. If a corporation surviving a merger under this subsection is not a corporation organized under the laws of the Tribe, then the terms and conditions of the merger shall obligate such corporation to agree that it may be served with process in the Reservation in any proceeding for enforcement of any obligation of the domestic limited liability company or any obligation of any constituent corporation of the Tribe, as well as for enforcement of any obligation of the surviving corporation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings, and to irrevocably appoint the Secretary as its agent to accept service of process in any such suit or other proceedings, and to specify the address to which a copy of such process shall be

mailed by the Secretary. Process may be served upon the Secretary under this subsection by means of electronic transmission but only as prescribed by the Secretary. _The Secretary is authorized to issue such rules and regulations with respect to such service as the Secretary deems necessary or appropriate._ In the event of such service upon the Secretary in accordance with this subsection, the Secretary shall forthwith notify such surviving corporation thereof by letter, directed to such surviving corporation at its address so specified, unless such surviving corporation shall have designated in writing to the Secretary a different address for such purpose, in which case it shall be mailed to the last address so designated._ Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient._ Such letter shall enclose a copy of the process and any other papers served on the Secretary pursuant to this subsection._ It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary that service is being effected pursuant to this subsection and to pay the Secretary the sum of \$50 for the use of the Tribe and Reservation, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein._ The Secretary shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made._ The Secretary shall not be required to retain such information longer than 5 years from receipt of the service of process.

§ 210. Contractual appraisal rights.

A limited liability company agreement or an agreement of merger or consolidation or a plan of merger may provide that contractual appraisal rights with respect to a limited liability company interest or another interest in a limited liability company shall be available for any class or group or series of members or limited liability company interests in connection with any amendment of a limited liability company agreement, any merger or consolidation in which the limited liability company is a constituent party to the merger or consolidation, any conversion of the limited liability company to another business form, any transfer to or domestication or continuance in any jurisdiction by the limited liability company, or the sale of all or substantially all of the limited liability company's assets. _The Court shall have jurisdiction to hear and determine any matter relating to any such appraisal rights.

§ 211. Certificate of correction.

(a) Whenever any certificate authorized to be filed with the office of the Secretary under any provision of this Ordinance has been so filed and is an inaccurate record of the action therein referred to, or was defectively or erroneously executed, such certificate may be corrected by filing with the office of the Secretary a certificate of correction of such certificate. The certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the certificate in corrected form, and shall be executed and filed as required by this Ordinance. _The certificate of correction shall be effective as of the date the original certificate was filed, except as to those persons who

are substantially and adversely affected by the correction, and as to those persons the certificate of correction shall be effective from the filing date.

(b) In lieu of filing a certificate of correction, a certificate may be corrected by filing with the Secretary a corrected certificate which shall be executed and filed as if the corrected certificate were the certificate being corrected, and a fee equal to the fee payable to the Secretary if the certificate being corrected were then being filed shall be paid and collected by the Secretary for the use of the Tribe in connection with the filing of the corrected certificate. The corrected certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected and shall set forth the entire certificate in corrected form. A certificate corrected in accordance with this section shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons the certificate as corrected shall be effective from the filing date.

§ 212. [RESERVED]

§ 213. [RESERVED]

§ 214. **Conversion of certain entities to a limited liability company.**

(a) As used in this section and in § 204 of this Ordinance, the term "other entity" means a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust or any other unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) or a foreign limited liability company.

(b) Any other entity may convert to a domestic limited liability company by complying with subsection (h) of this section and filing in the office of the Secretary in accordance with § 206 of this Ordinance:

(1) A certificate of conversion to limited liability company that has been executed in accordance with § 204 of this Ordinance; and

(2) A certificate of formation that complies with § 201 of this Ordinance and has been executed by 1 or more authorized persons in accordance with § 204 of this Ordinance.

Each of the certificates required by this subsection (b) shall be filed simultaneously in the office of the Secretary and, if such certificates are not to become effective upon their filing as permitted by § 206(b) of this Ordinance, then each such certificate shall provide for the same effective date or time in accordance with § 206(b) of this Ordinance.

(c) The certificate of conversion to limited liability company shall state:

(1) The date on which and jurisdiction where the other entity was first created, incorporated, formed or otherwise came into being and, if it has changed,

its jurisdiction immediately prior to its conversion to a domestic limited liability company;

- (2) The name and type of entity of the other entity immediately prior to the filing of the certificate of conversion to limited liability company;
- (3) The name of the limited liability company as set forth in its certificate of formation filed in accordance with subsection (b) of this section; and
- (4) The future effective date or time (which shall be a date or time certain) of the conversion to a limited liability company if it is not to be effective upon the filing of the certificate of conversion to limited liability company and the certificate of formation.

(d) Upon the filing in the office of the Secretary of the certificate of conversion to limited liability company and the certificate of formation or upon the future effective date or time of the certificate of conversion to limited liability company and the certificate of formation, the other entity shall be converted into a domestic limited liability company and the limited liability company shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding § 201 of this Ordinance, the existence of the limited liability company shall be deemed to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first created, formed, incorporated or otherwise came into being.

(e) The conversion of any other entity into a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic limited liability company or the personal liability of any person incurred prior to such conversion.

(f) When any conversion shall have become effective under this section, for all purposes of the laws of the Tribe, all of the rights, privileges and powers of the other entity that has converted, and all property, real, personal and mixed, and all debts due to such other entity, as well as all other things and causes of action belonging to such other entity, shall remain vested in the domestic limited liability company to which such other entity has converted and shall be the property of such domestic limited liability company, and the title to any real property vested by deed or otherwise in such other entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has converted shall remain attached to the domestic limited liability company to which such other entity has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic limited liability company. The rights, privileges, powers and interests in property of the other entity, as well as the debts, liabilities and duties of the other entity, shall not be deemed, as a consequence of the conversion, to have been transferred to the domestic limited liability company to which such other entity has converted for any purpose of the laws of the Tribe.

(g) Unless otherwise agreed, for all purposes of the laws of the Tribe, the converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other entity. When an other entity has been converted to a limited liability company pursuant to this section, for all purposes of the laws of the Tribe, the limited liability company shall be deemed to be the same entity as the converting other entity and the conversion shall constitute a continuation of the existence of the converting other entity in the form of a domestic limited liability company.

(h) Prior to filing a certificate of conversion to limited liability company with the office of the Secretary, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate and a limited liability company agreement shall be approved by the same authorization required to approve the conversion.

(i) In connection with a conversion hereunder, rights or securities of or interests in the other entity which is to be converted to a domestic limited liability company may be exchanged for or converted into cash, property, or rights or securities of or interests in such domestic limited liability company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or rights or securities of or interests in another domestic limited liability company or other entity or may be cancelled.

(j) The provisions of this section shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, an other entity to the Tribe by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law, including by the amendment of a limited liability company agreement or other agreement.

§ 215. [RESERVED]

§ 216. Approval of conversion of a limited liability company.

(a) Upon compliance with this section, a domestic limited liability company may convert to a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust or any other unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) or a foreign limited liability company.

(b) If the limited liability company agreement specifies the manner of authorizing a conversion of the limited liability company, the conversion shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company and does not prohibit a conversion of the limited liability company, the conversion shall be authorized in the same manner as is specified in the limited liability company agreement for authorizing a merger or consolidation that involves the limited

liability company as a constituent party to the merger or consolidation. _If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company or a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit a conversion of the limited liability company, the conversion shall be authorized by the approval by the members or, if there is more than 1 class or group of members, then by each class or group of members, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate.

(c) Unless otherwise agreed, the conversion of a domestic limited liability company to another entity or business form pursuant to this section shall not require such limited liability company to wind up its affairs under § 803 of this Ordinance or pay its liabilities and distribute its assets under § 804 of this Ordinance, and the conversion shall not constitute a dissolution of such limited liability company. _When a limited liability company has converted to another entity or business form pursuant to this section, for all purposes of the laws of the Tribe, the other entity or business form shall be deemed to be the same entity as the converting limited liability company and the conversion shall constitute a continuation of the existence of the limited liability company in the form of such other entity or business form.

(d) In connection with a conversion of a domestic limited liability company to another entity or business form pursuant to this section, rights or securities of or interests in the domestic limited liability company which is to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the entity or business form into which the domestic limited liability company is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in another entity or business form or may be cancelled.

(e) If a limited liability company shall convert in accordance with this section to another entity or business form organized, formed or created under the laws of a jurisdiction other than the Tribe, a certificate of conversion to non-Tribal entity executed in accordance with § 204 of this Ordinance, shall be filed in the office of the Secretary in accordance with § 206 of this Ordinance. _The certificate of conversion to non-Tribal entity shall state:

- (1) The name of the limited liability company and, if it has been changed, the name under which its certificate of formation was originally filed;
- (2) The date of filing of its original certificate of formation with the Secretary;
- (3) The jurisdiction in which the entity or business form, to which the limited liability company shall be converted, is organized, formed or created, and the name of such entity or business form;

- (4) The future effective date or time (which shall be a date or time certain) of the conversion if it is not to be effective upon the filing of the certificate of conversion to non-Tribal entity;
- (5) That the conversion has been approved in accordance with this section;
- (6) The agreement of the limited liability company that it may be served with process within the Reservation in any action, suit or proceeding for enforcement of any obligation of the limited liability company arising while it was a limited liability company of the Tribe, and that it irrevocably appoints the Secretary as its agent to accept service of process in any such action, suit or proceeding;
- (7) The address to which a copy of the process referred to in paragraph (e)(6) of this section shall be mailed to it by the Secretary. Process may be served upon the Secretary under paragraph (e)(6) of this section by means of electronic transmission but only as prescribed by the Secretary. The Secretary is authorized to issue such rules and regulations with respect to such service as the Secretary deems necessary or appropriate. In the event of service hereunder upon the Secretary, the procedures set forth in § 911(c) of this Ordinance shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary with the address specified in this subdivision and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Secretary, and the Secretary shall notify the limited liability company that has converted out of the Reservation at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 911(c) of this Ordinance.

(f) Upon the filing in the office of the Secretary of the certificate of conversion to non-Tribal entity or upon the future effective date or time of the certificate of conversion to non-Tribal entity and payment to the Secretary of all fees prescribed in this chapter, the Secretary shall certify that the limited liability company has filed all documents and paid all fees required by this chapter, and thereupon the limited liability company shall cease to exist as a limited liability company of the Tribe. Such certificate of the Secretary shall be prima facie evidence of the conversion by such limited liability company out of the Reservation.

(g) The conversion of a limited liability company out of the Reservation in accordance with this section and the resulting cessation of its existence as a limited liability company of the Tribe pursuant to a certificate of conversion to non-Tribal entity shall not be deemed to affect any obligations or liabilities of the limited liability company incurred prior to such conversion or the personal liability of any person incurred prior to such conversion, nor shall it be deemed to affect the choice of law applicable to the limited liability company with respect to matters arising prior to such conversion.

(h) When any conversion shall have become effective under this section, for all purposes of the laws of the Tribe, all of the rights, privileges and powers of the limited liability company that has converted, and all property, real, personal and mixed, and all debts due to such limited liability company, as well as all other things and causes of action belonging to such limited liability company, shall remain vested in the other entity or business form to which such limited liability company has converted and shall be the property of such other entity or business form, and the title to any real property vested by deed or otherwise in such limited liability company shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such limited liability company shall be preserved unimpaired, and all debts, liabilities and duties of the limited liability company that has converted shall remain attached to the other entity or business form to which such limited liability company has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as such other entity or business form. The rights, privileges, powers and interests in property of the limited liability company that has converted, as well as the debts, liabilities and duties of such limited liability company, shall not be deemed, as a consequence of the conversion, to have been transferred to the other entity or business form to which such limited liability company has converted for any purpose of the laws of the Tribe.

(i) A limited liability company agreement may provide that a domestic limited liability company shall not have the power to convert as set forth in this section.

Chapter III. Members

§ 301. Admission of members.

(a) In connection with the formation of a limited liability company, a person is admitted as a member of the limited liability company upon the later to occur of:

- (1) The formation of the limited liability company; or
- (2) The time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when the person's admission is reflected in the records of the limited liability company.

(b) After the formation of a limited liability company, a person is admitted as a member of the limited liability company:

- (1) In the case of a person who is not an assignee of a limited liability company interest, including a person acquiring a limited liability company interest directly from the limited liability company and a person to be admitted as a member of the limited liability company without acquiring a limited liability company interest in the limited liability company at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so

provide, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company;

- (2) In the case of an assignee of a limited liability company interest, as provided in § 704(a) of this Ordinance and at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company; or
- (3) In the case of a person being admitted as a member of a surviving or resulting limited liability company pursuant to a merger or consolidation approved in accordance with § 209(b) of this Ordinance as provided in the limited liability company agreement of the surviving or resulting limited liability company or in the agreement of merger or consolidation, and in the event of any inconsistency, the terms of the agreement of merger or consolidation shall control; and in the case of a person being admitted as a member of a limited liability company pursuant to a merger or consolidation in which such limited liability company is not the surviving or resulting limited liability company in the merger or consolidation, as provided in the limited liability company agreement of such limited liability company.

(c) [RESERVED].

(d) A person may be admitted to a limited liability company as a member of the limited liability company and may receive a limited liability company interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in a limited liability company agreement, a person may be admitted to a limited liability company as a member of the limited liability company without acquiring a limited liability company interest in the limited liability company. Unless otherwise provided in a limited liability company agreement, a person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring a limited liability company interest in the limited liability company.

(e) Unless otherwise provided in a limited liability company agreement or another agreement, a member shall have no preemptive right to subscribe to any additional issue of limited liability company interests or another interest in a limited liability company.

§ 302. Classes and voting.

(a) A limited liability company agreement may provide for classes or groups of members having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of

members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members shall have no voting rights.

(b) A limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. Voting by members may be on a per capita, number, financial interest, class, group or any other basis.

(c) A limited liability company agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(d) Unless otherwise provided in a limited liability company agreement, meetings of members may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on, consented to or approved by members, the members may take such action without a meeting, without prior notice and without a vote if consented to, in writing or by electronic transmission, by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a limited liability company agreement, a consent transmitted by electronic transmission by a member or by a person or persons authorized to act for a member shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

(e) If a limited liability company agreement provides for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the limited liability company agreement or the satisfaction of conditions, it may be amended only in that manner or as otherwise permitted by law, including as permitted by § 209(f)

of this Ordinance (provided that the approval of any person may be waived by such person and that any such conditions may be waived by all persons for whose benefit such conditions were intended). _Unless otherwise provided in a limited liability company agreement, a supermajority amendment provision shall only apply to provisions of the limited liability company agreement that are expressly included in the limited liability company agreement. _As used in this section, "supermajority amendment provision" means any amendment provision set forth in a limited liability company agreement requiring that an amendment to a provision of the limited liability company agreement be adopted by no less than the vote or consent required to take action under such latter provision.

(f) If a limited liability company agreement does not provide for the manner in which it may be amended, the limited liability company agreement may be amended with the approval of all of the members or as otherwise permitted by law, including as permitted by § 209(f) of this Ordinance. _This subsection shall only apply to a limited liability company whose original certificate of formation was filed with the Secretary on or after January 1, 2012.

§ 303. Liability to 3rd parties; No waivers of Tribal sovereign immunity.

(a) Except as otherwise provided by this Ordinance, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company, and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

(b) Notwithstanding the provisions of subsection (a) of this section, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of the limited liability company.

(c) -Notwithstanding any other provision contained in this Ordinance:

(1) any limited liability company in which the Tribe, a Section 17 Corporation, or an instrumentality of the Tribe or wholly-owned entity of the Tribe is a member shall have the power to consent in writing to such limited liability company being sued in courts or to have claims against it resolved through arbitration, but shall not have the power to consent to suit against the Tribe or any other tribal entity, and

(2) no suit may be brought against any limited liability company in which the Tribe, a Section 17 Corporation, or an instrumentality of the Tribe or wholly-owned entity of the Tribe is a member except insofar as consent has been given in writing pursuant to this subsection of this Ordinance. Any such consent shall be strictly construed.

(d) Notwithstanding any other provision contained in this Ordinance, limited liability companies may not dispose of, mortgage, or otherwise encumber real or personal property of the Tribe, except that such limited liability companies may grant a leasehold mortgage or other security interest in such limited liability companies' leasehold interest in any lease of real or personal property of the Tribe to such limited liability company.

§ 304. Events of bankruptcy.

A person ceases to be a member of a limited liability company upon the happening of any of the following events:

- (1) Unless otherwise provided in a limited liability company agreement, or with the written consent of all members, a member:
 - a. Makes an assignment for the benefit of creditors;
 - b. Files a voluntary petition in bankruptcy;
 - c. Is adjudged a bankrupt or insolvent, or has entered against the member an order for relief, in any bankruptcy or insolvency proceeding;
 - d. Files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;
 - e. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature;
 - f. Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties; or
- (2) Unless otherwise provided in a limited liability company agreement, or with the written consent of all members, 120 days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within ninety (90) days after the appointment without the member's consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within ninety (90) days after the expiration of any such stay, the appointment is not vacated.

§ 305. Access to and confidentiality of information; records.

(a) Each member of a limited liability company has the right, subject to such reasonable standards (including standards governing what information and documents are to be furnished at what time and location and at whose expense) as may be set forth in a limited liability company agreement or otherwise established by the manager or, if there is no manager, then by the members, to obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member of the limited liability company:

- (1) True and full information regarding the status of the business and financial condition of the limited liability company;
- (2) Promptly after becoming available, a copy of the limited liability company's federal, tribal, state and local income tax returns for each year;
- (3) A current list of the name and last known business, residence or mailing address of each member and manager;
- (4) A copy of any written limited liability company agreement and certificate of formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the limited liability company agreement and any certificate and all amendments thereto have been executed;
- (5) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and
- (6) Other information regarding the affairs of the limited liability company as is just and reasonable.

(b) Each manager shall have the right to examine all of the information described in subsection (a) of this section for a purpose reasonably related to the position of manager.

(c) The manager of a limited liability company shall have the right to keep confidential from the members, for such period of time as the manager deems reasonable, any information which the manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business or which the limited liability company is required by law or by agreement with a 3rd party to keep confidential.

(d) A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(e) Any demand by a member under this section shall be in writing and shall state the purpose of such demand.

(f) Any action to enforce any right arising under this section shall be brought in the Court. If the limited liability company refuses to permit a member to obtain or a manager to examine the information described in subsection (a) of this section or does not reply to the demand that has been made within 5 business days (or such shorter or longer period of time as is provided for in a limited liability company agreement but not longer than 30 business days) after the demand has been made, the demanding member or manager may apply to the Court for an order to compel such disclosure. The Court is hereby vested with exclusive jurisdiction to determine whether or not the person seeking such information is entitled to the information sought. The Court may summarily order the limited liability company to permit the demanding member to obtain or manager to examine the information described in subsection (a) of this section and to make copies or abstracts therefrom, or the Court may summarily order the limited liability company to furnish to the demanding member or manager the information described in subsection (a) of this section on the condition that the demanding member or manager first pay to the limited liability company the reasonable cost of obtaining and furnishing such information and on such other conditions as the Court deems appropriate. When a demanding member seeks to obtain or a manager seeks to examine the information described in subsection (a) of this section, the demanding member or manager shall first establish (1) that the demanding member or manager has complied with the provisions of this section respecting the form and manner of making demand for obtaining or examining of such information, and (2) that the information the demanding member or manager seeks is reasonably related to the member's interest as a member or the manager's position as a manager, as the case may be. The Court may, in its discretion, prescribe any limitations or conditions with reference to the obtaining or examining of information, or award such other or further relief as the Court may deem just and proper. The Court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within the Reservation and kept within the Reservation upon such terms and conditions as the order may prescribe.

(g) The rights of a member or manager to obtain information as provided in this section may be restricted in an original limited liability company agreement or in any subsequent amendment approved or adopted by all of the members or in compliance with any applicable requirements of the limited liability company agreement. The provisions of this subsection shall not be construed to limit the ability to impose restrictions on the rights of a member or manager to obtain information by any other means permitted under this chapter.

§ 306. Remedies for breach of limited liability company agreement by member.

A limited liability company agreement may provide that:

- (1) A member who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences; and

- (2) At the time or upon the happening of events specified in the limited liability company agreement, a member shall be subject to specified penalties or specified consequences. Such specified penalties or specified consequences may include and take the form of any penalty or consequence set forth in § 502(c) of this Ordinance.

Chapter IV. Managers

§ 401. Admission of managers.

A person may be named or designated as a manager of the limited liability company as provided in § 101(10) of this Ordinance.

§ 402. Management of limited liability company.

Unless otherwise provided in a limited liability company agreement, the management of a limited liability company shall be vested in its members in proportion to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than 50 percent of the said percentage or other interest in the profits controlling; provided however, that if a limited liability company agreement provides for the management, in whole or in part, of a limited liability company by a manager, the management of the limited liability company, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager shall also hold the offices and have the responsibilities accorded to the manager by or in the manner provided in a limited liability company agreement. Subject to § 602 of this Ordinance, a manager shall cease to be a manager as provided in a limited liability company agreement. A limited liability company may have more than 1 manager. Unless otherwise provided in a limited liability company agreement, each member and manager has the authority to bind the limited liability company.

§ 403. Contributions by a manager.

A manager of a limited liability company may make contributions to the limited liability company and share in the profits and losses of, and in distributions from, the limited liability company as a member. A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as provided in a limited liability company agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of the manager's participation in the limited liability company as a member.

§ 404. Classes and voting.

(a) A limited liability company agreement may provide for classes or groups of managers having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be

established, including rights, powers and duties senior to existing classes and groups of managers. _A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

(b) A limited liability company agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. _Voting by managers may be on a per capita, number, financial interest, class, group or any other basis.

(c) A limited liability company agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(d) Unless otherwise provided in a limited liability company agreement, meetings of managers may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. _Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on, consented to or approved by managers, the managers may take such action without a meeting, without prior notice and without a vote if consented to, in writing or by electronic transmission, by managers having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all managers entitled to vote thereon were present and voted. Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on by managers, the managers may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. _Unless otherwise provided in a limited liability company agreement, a consent transmitted by electronic transmission by a manager or by a person or persons authorized to act for a manager shall be deemed to be written and signed for purposes of this subsection. _For purposes of this subsection, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

§ 405. Remedies for breach of limited liability company agreement by manager.

A limited liability company agreement may provide that:

- (1) A manager who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences; and
- (2) At the time or upon the happening of events specified in the limited liability company agreement, a manager shall be subject to specified penalties or specified consequences.

§ 406. Reliance on reports and information by member or manager.

A member, manager or liquidating trustee of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon information, opinions, reports or statements presented by another manager, member or liquidating trustee, an officer or employee of the limited liability company, or committees of the limited liability company, members or managers, or by any other person as to matters the member, manager or liquidating trustees reasonably believes are within such other person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited liability company, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the limited liability company or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to members or creditors might properly be paid.

§ 407. Delegation of rights and powers to manage.

Unless otherwise provided in the limited liability company agreement, a member or manager of a limited liability company has the power and authority to delegate to 1 or more other persons the member's or manager's, as the case may be, rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of a member or manager or the limited liability company, and to delegate by a management agreement or another agreement with, or otherwise to, other persons. Unless otherwise provided in the limited liability company agreement, such delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager, as the case may be, of the limited liability company or cause the person to whom any such rights and powers have been delegated to be a member or manager, as the case may be, of the limited liability company.

Chapter V. Finance

§ 501. Form of contribution.

The contribution of a member to a limited liability company may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

§ 502. Liability for contribution.

(a) Except as provided in a limited liability company agreement, a member is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or any 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 the agreed value (as stated in the records of the limited liability company) of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the limited liability company agreement or applicable law.

(b) Unless otherwise provided in a limited liability company agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this Ordinance may be compromised only by consent of all the members. _Notwithstanding the compromise, a creditor of a limited liability company who extends credit, after the entering into of a limited liability company agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. _A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. _Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

(c) A limited liability company agreement may provide that the interest of any member who fails to make any contribution that the member is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. _Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating the member's limited liability company interest to that of nondefaulting members, a forced sale of that limited liability company interest, forfeiture of the defaulting member's limited liability company interest, the lending by other members of the amount necessary to meet the defaulting member's commitment, a fixing of the value of the defaulting member's limited liability company interest by appraisal or by formula and redemption or sale of the limited liability company interest at such value, or other penalty or consequence.

§ 503. Allocation of profits and losses.

The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. _If the limited liability company agreement does not so provide, profits and losses shall be allocated on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member

to the extent they have been received by the limited liability company and have not been returned.

§ 504. Allocation of distributions.

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, distributions shall be made on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

§ 505. Defense of usury not available.

No obligation of a member or manager of a limited liability company to the limited liability company, or to a member or manager of the limited liability company, arising under the limited liability company agreement or a separate agreement or writing, and no note, instrument or other writing evidencing any such obligation of a member or manager, shall be subject to the defense of usury, and no member or manager shall interpose the defense of usury with respect to any such obligation in any action.

Chapter VI. Distributions and Resignation

§ 601. Interim distributions.

Except as provided in this chapter, to the extent and at the times or upon the happening of the events specified in a limited liability company agreement, a member is entitled to receive from a limited liability company distributions before the member's resignation from the limited liability company and before the dissolution and winding up thereof.

§ 602. Resignation of manager.

A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. A limited liability company agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company. Notwithstanding that a limited liability company agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager violates a limited liability company agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the limited liability company agreement and offset the damages against the amount otherwise distributable to the resigning manager.

§ 603. Resignation of member.

A member may resign from a limited liability company only at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. Notwithstanding anything to the contrary under applicable law, unless a limited liability company agreement provides otherwise, a member may not resign from a limited liability company prior to the dissolution and winding up of the limited liability company. Notwithstanding anything to the contrary under applicable law, a limited liability company agreement may provide that a limited liability company interest may not be assigned prior to the dissolution and winding up of the limited liability company.

§ 604. Distribution upon resignation.

Except as provided in this chapter, upon resignation any resigning member is entitled to receive any distribution to which such member is entitled under a limited liability company agreement and, if not otherwise provided in a limited liability company agreement, such member is entitled to receive, within a reasonable time after resignation, the fair value of such member's limited liability company interest as of the date of resignation based upon such member's right to share in distributions from the limited liability company.

§ 605. Distribution in kind.

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

§ 606. Right to distribution.

Subject to §§ 607 and 804 of this Ordinance, and unless otherwise provided in a limited liability company agreement, 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 a limited liability company with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

§ 607. Limitations on distribution.

(a) A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability. _For purposes of this subsection (a), the term “distribution” shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(b) A member who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to a limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution. Subject to subsection (c) of this section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(c) Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this Ordinance or other applicable law for the amount of the distribution after the expiration of three (3) years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said three (3) year period and an adjudication of liability against such member is made in the said action.

Chapter VII. Assignment of Limited Liability Company Interests

§ 701. Nature of limited liability company interest.

A limited liability company interest is personal property. _A member has no interest in specific limited liability company property.

§ 702. Assignment of limited liability company interest.

(a) A limited liability company interest is assignable in whole or in part except as provided in a limited liability company agreement. _The assignee of a member's limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in a limited liability company agreement or, unless otherwise provided in the limited liability company agreement, upon the affirmative vote or written consent of all of the members of the limited liability company.

- (b) Unless otherwise provided in a limited liability company agreement:
- (1) An assignment of a limited liability company interest does not entitle the assignee to become or to exercise any rights or powers of a member;
 - (2) An assignment of a limited liability company interest entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and
 - (3) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of the member's limited liability company interest. Unless otherwise provided in a limited liability company agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the limited liability company interest of a member shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

(c) Unless otherwise provided in a limited liability company agreement, a member's interest in a limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company. A limited liability company agreement may provide for the assignment or transfer of any limited liability company interest represented by such a certificate and make other provisions with respect to such certificates. A limited liability company shall not have the power to issue a certificate of limited liability company interest in bearer form.

(d) Unless otherwise provided in a limited liability company agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

(e) Unless otherwise provided in the limited liability company agreement, a limited liability company may acquire, by purchase, redemption or otherwise, any limited liability company interest or other interest of a member or manager in the limited liability company. Unless otherwise provided in the limited liability company agreement, any such interest so acquired by the limited liability company shall be deemed canceled.

§ 703. Member's limited liability company interest subject to charging order.

(a) On application by a judgment creditor of a member or of a member's assignee, the Court having jurisdiction may charge the limited liability company interest of the judgment debtor to satisfy the judgment. To the extent so charged, the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise have been entitled in respect of such limited liability company interest.

(b) A charging order constitutes a lien on the judgment debtor's limited liability company interest.

(c) This ordinance does not deprive a member or member's assignee of a right under exemption laws with respect to the judgment debtor's limited liability company interest.

(d) The entry of a charging order is the exclusive remedy by which a judgment creditor of a member or of a member's assignee may satisfy a judgment out of the judgment debtor's limited liability company interest.

(e) No creditor of a member or of a member's assignee shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

(f) The Court shall have jurisdiction to hear and determine any matter relating to any such charging order.

§ 704. Right of assignee to become member.

(a) An assignee of a limited liability company interest may become a member:

- (1) As provided in the limited liability company agreement; or
- (2) Unless otherwise provided in the limited liability company agreement, upon the affirmative vote or written consent of all of the members of the limited liability company.

(b) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under a limited liability company agreement and this Ordinance. Notwithstanding the foregoing, unless otherwise provided in a limited liability company agreement, an assignee who becomes a member is liable for the obligations of the assignor to make contributions as provided in § 502 of this Ordinance, but shall not be liable for the obligations of the assignor under Chapter VI of this Ordinance. However, the assignee is not obligated for liabilities, including the obligations of the assignor to make contributions as provided in § 502 of this Ordinance, unknown to the assignee at the time the assignee became a member and which could not be ascertained from a limited liability company agreement.

(c) Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from liability to a limited liability company under Chapters V and VI of this Ordinance.

§ 705. Powers of estate of deceased or incompetent member.

If a member who is an individual dies or a Court or a state court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the member's personal representative may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property, including any

power under a limited liability company agreement of an assignee to become a member. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its personal representative.

Chapter VIII. Dissolution

§ 801. Dissolution.

(a) A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

- (1) At the time specified in a limited liability company agreement, but if no such time is set forth in the limited liability company agreement, then the limited liability company shall have a perpetual existence;
- (2) Upon the happening of events specified in a limited liability company agreement;
- (3) Unless otherwise provided in a limited liability company agreement, upon the affirmative vote or written consent of the members of the limited liability company or, if there is more than 1 class or group of members, then by each class or group of members, in either case, by members who own more than two-thirds of the then-current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate;
- (4) At any time there are no members; provided, that the limited liability company is not dissolved and is not required to be wound up if:
 - a. Unless otherwise provided in a limited liability company agreement, within 90 days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; provided, that a limited liability company agreement may provide that the personal representative of the last remaining member shall be obligated to agree in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, or

- b. A member is admitted to the limited liability company in the manner provided for in the limited liability company agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, within 90 days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member, pursuant to a provision of the limited liability company agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company.

(5) The entry of a decree of judicial dissolution under § 802 of this Ordinance.

(b) Unless otherwise provided in a limited liability company agreement, the death, retirement, resignation, expulsion, bankruptcy or dissolution of any member or the occurrence of any other event that terminates the continued membership of any member shall not cause the limited liability company to be dissolved or its affairs to be wound up, and upon the occurrence of any such event, the limited liability company shall be continued without dissolution.

§ 802. Judicial dissolution.

On application by or for a member or manager the Court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement.

§ 803. Winding up.

(a) Unless otherwise provided in a limited liability company agreement, a manager who has not wrongfully dissolved a limited liability company or, if none, the members or a person approved by the members or, if there is more than 1 class or group of members, then by each class or group of members, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate, may wind up the limited liability company's affairs; but the Court, upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, or the member's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee.

(b) Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in § 203 of this Ordinance, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets

of the limited liability company, all without affecting the liability of members and managers and without imposing liability on a liquidating trustee.

§ 804. Distribution of assets.

(a) Upon the winding up of a limited liability company, the assets shall be distributed as follows:

- (1) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members and former members under § 601 or § 604 of this Ordinance;
- (2) Unless otherwise provided in a limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under § 601 or § 604 of this Ordinance; and
- (3) Unless otherwise provided in a limited liability company agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

(b) A limited liability company which has dissolved:

- (1) Shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured contractual claims, known to the limited liability company;
- (2) Shall make such provision as will be reasonably likely to be sufficient to provide compensation for any claim against the limited liability company which is the subject of a pending action, suit or proceeding to which the limited liability company is a party; and
- (3) Shall make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited liability company or that have not arisen but that, based on facts known to the limited liability company, are likely to arise or to become known to the limited liability company within ten (10) years after the date of dissolution.

If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in the limited liability company agreement, any remaining assets shall

be distributed as provided in this Ordinance. Any liquidating trustee winding up a limited liability company's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding up the limited liability company.

(c) A member who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to the limited liability company for the amount of the distribution. For purposes of the immediately preceding sentence, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution. Subject to subsection (d) of this section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(d) Unless otherwise agreed, a member who receives a distribution from a limited liability company to which this section applies shall have no liability under this Ordinance or other applicable law for the amount of the distribution after the expiration of three (3) years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said three (3) year period and an adjudication of liability against such member is made in the said action.

(e) Section 607 of this Ordinance shall not apply to a distribution to which this section applies.

§ 805. Trustees or receivers for limited liability companies; appointment; powers; duties.

When the certificate of formation of any limited liability company formed under this chapter shall be canceled by the filing of a certificate of cancellation pursuant to § 203 of this Ordinance, the Court, on application of any creditor, member or manager of the limited liability company, or any other person who shows good cause therefor, at any time, may either appoint 1 or more of the managers of the limited liability company to be trustees, or appoint 1 or more persons to be receivers, of and for the limited liability company, to take charge of the limited liability company's property, and to collect the debts and property due and belonging to the limited liability company, with the power to prosecute and defend, in the name of the limited liability company, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the limited liability company, if in being, that may be necessary for the final settlement of the unfinished business of the limited liability company. The powers of the trustees or receivers may be continued as long as the Court shall think necessary for the purposes aforesaid.

§ 806. Revocation of dissolution.

Notwithstanding the occurrence of an event set forth in § 801(a)(1), (2), (3) or (4) of this Ordinance, the limited liability company shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation in the office of the Secretary, the limited liability company is continued, effective as of the occurrence of such event, pursuant to the affirmative vote or written consent of all remaining members of the limited liability company or the personal representative of the last remaining member of the limited liability company if there is no remaining member (and any other person whose approval is required under the limited liability company agreement to revoke a dissolution pursuant to this section); provided, however, if the dissolution was caused by a vote or written consent, the dissolution shall not be revoked unless each member and other person (or their respective personal representatives) who voted in favor of, or consented to, the dissolution has voted or consented in writing to continue the limited liability company. _If there is no remaining member of the limited liability company and the personal representative of the last remaining member votes in favor of or consents to the continuation of the limited liability company, such personal representative shall be required to agree in writing to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member.

Chapter IX. Foreign Limited Liability Companies

[RESERVED]

Chapter X. Derivative Actions

§ 1001. Right to bring action.

Subject to § 303(c) of this Ordinance, a member or an assignee of a limited liability company interest may bring an action in the Court in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

§ 1002. Proper plaintiff.

In a derivative action, the plaintiff must be a member or an assignee of a limited liability company interest at the time of bringing the action and:

- (1) At the time of the transaction of which the plaintiff complains; or
- (2) The plaintiff's status as a member or an assignee of a limited liability company interest had devolved upon the plaintiff by operation of law or pursuant to the terms of a limited liability company agreement from a person who was a member or an assignee of a limited liability company interest at the time of the transaction.

§ 1003. Complaint.

In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort.

§ 1004. Expenses.

If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the Court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from a limited liability company.

Chapter XI. Miscellaneous

§ 1101. Construction and application of ordinance and limited liability company agreement.

- (a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Ordinance.
- (b) It is the policy of this Ordinance to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.
- (c) To the extent that, at law or in equity, a member or manager or other person has duties (including fiduciary duties) to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement, the member's or manager's or other person's duties may be expanded or restricted or eliminated by provisions in the limited liability company agreement; provided, that the limited liability company agreement may not eliminate the implied contractual covenant of good faith and fair dealing.
- (d) Unless otherwise provided in a limited liability company agreement, a member or manager or other person shall not be liable to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement for breach of fiduciary duty for the member's or manager's or other person's good faith reliance on the provisions of the limited liability company agreement.
- (e) A limited liability company agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties (including fiduciary duties) of a member, manager or other person to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement; provided, that a limited liability company agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

(f) Unless the context otherwise requires, as used herein, the singular shall include the plural and the plural may refer to only the singular. The use of any gender shall be applicable to all genders. The captions contained herein are for purposes of convenience only and shall not control or affect the construction of this chapter.

(g) Sections 9-406 and 9-408 of Article Nine of the Uniform Commercial Code (including that of the Tribe or any other jurisdiction) do not apply to any interest in a limited liability company, including all rights, powers and interests arising under a limited liability company agreement or this chapter. This provision prevails over §§ 9-406 and 9-408 of the Uniform Commercial Code.

(h) Action validly taken pursuant to 1 provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy 1 or more requirements prescribed by such other provision.

(i) A limited liability company agreement that provides for the application of Tribal law shall be governed by and construed under the laws of the Tribe in accordance with its terms.

§ 1102. Title.

This Ordinance may be cited as the “Limited Liability Company Ordinance”.

§ 1103. Severability.

If any provision of this Ordinance or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

§ 1104. Cases not provided for in this Ordinance and Persuasive Authority.

In any case not provided for in this Ordinance, the rules of law and equity, including the law merchant, shall constitute persuasive authority, and with the laws of the Tribe, shall govern. This Ordinance is based in large part on the Limited Liability Act of the State of Delaware in effect on January 1, 2013, and the judicial construction of such law shall also constitute persuasive authority in the interpretation and application of this Ordinance by the Court.

§ 1105. Fees.

(a) No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary for the use of the Tribe:

(1) Upon the receipt for filing of an application for reservation of name, an application for renewal of reservation or a notice of transfer or

cancellation of reservation pursuant to § 103(b) of this Ordinance, a fee in the amount of \$75.

- (2) Upon the receipt for filing of a certificate under § 104(b) of this Ordinance, a fee in the amount of \$200, upon the receipt for filing of a certificate under § 104(c) of this Ordinance, a fee in the amount of \$200, and upon the receipt for filing of a certificate under § 104(d) of this Ordinance, a fee in the amount of \$2.00 for each limited liability company whose registered agent has resigned by such certificate.
- (3) Upon the receipt for filing of a certificate of formation under § 201 of this Ordinance, a fee in the amount of \$70, a certificate of conversion to limited liability company under § 214 of this Ordinance, a certificate of conversion to a non-Tribal entity under § 216 of this Ordinance, a certificate of amendment under § 202 of this Ordinance (except as otherwise provided in paragraph (a)(11) of this section), a certificate of cancellation under § 203 of this Ordinance, a certificate of merger or consolidation or a certificate of ownership and merger under § 209 of this Ordinance, a restated certificate of formation under § 208 of this Ordinance, a certificate of amendment of a certificate with a future effective date or time under § 206(c) of this Ordinance, a certificate of termination of a certificate with a future effective date or time under § 206(c) of this Ordinance, a certificate of correction under § 211 of this Ordinance, or a certificate of revival under § 1109 of this Ordinance, a fee in the amount of \$180.
- (4) For certifying copies of any paper on file as provided for by this chapter, a fee in the amount of \$50 for each copy certified.
- (5) The Secretary may issue photocopies or electronic image copies of instruments on file, as well as instruments, documents and other papers not on file, and for all such photocopies or electronic image copies, whether certified or not, a fee of \$10 shall be paid for the 1st page and \$2 for each additional page. The Secretary may also issue microfiche copies of instruments on file as well as instruments, documents and other papers not on file, and for each such microfiche a fee of \$2 shall be paid therefor. Notwithstanding any Freedom of Information Act of the Tribe or other provision of this Code granting access to public records, the Secretary shall issue only photocopies, microfiche or electronic image copies of records in exchange for the fees described above.
- (6) [RESERVED]
- (7) [RESERVED]
- (8) For preclearance of any document for filing, a fee in the amount of \$250.

- (9) For preparing and providing a written report of a record search, a fee in the amount of \$50.
 - (10) For issuing any certificate of the Secretary, including but not limited to a certificate of good standing, other than a certification of a copy under paragraph (a)(4) of this section, a fee in the amount of \$50, except that for issuing any certificate of the Secretary that recites all of a limited liability company's filings with the Secretary, a fee of \$175 shall be paid for each such certificate.
 - (11) For receiving and filing and/or indexing any certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee in the amount of \$200. For filing any instrument submitted by a limited liability company or foreign limited liability company that only changes the registered office or registered agent and is specifically captioned as a certificate of amendment changing only the registered office or registered agent, a fee in the amount of \$50 provided that no fee shall be charged pursuant to § 206(e) of this Ordinance.
 - (12) The Secretary may in the Secretary's own discretion charge a fee of \$60 for each check received for payment of any fee that is returned due to insufficient funds or the result of a stop payment order.
- (b) In addition to those fees charged under subsection (a) of this section, there shall be collected by and paid to the Secretary the following:
- (1) For all services described in subsection (a) of this section that are requested to be completed within 30 minutes on the same day as the day of the request, an additional sum of up to \$7,500 and for all services described in subsection (a) of this section that are requested to be completed within 1 hour on the same day as the day of the request, an additional sum of up to \$1,000 and for all services described in subsection (a) of this section that are requested to be completed within 2 hours on the same day of the request, an additional sum of up to \$500;
 - (2) For all services described in subsection (a) of this section that are requested to be completed within the same day as the day of the request, an additional sum of up to \$300; and
 - (3) For all services described in subsection (a) of this section that are requested to be completed within a 24-hour period from the time of the request, an additional sum of up to \$150.

The Secretary shall establish (and may from time to time amend) a schedule of specific fees payable pursuant to this subsection.

(c) The Secretary may in his or her discretion permit the extension of credit for the fees required by this section upon such terms as the secretary shall deem to be appropriate.

(d) The Secretary shall retain from the revenue collected from the fees required by this section a sum sufficient to provide at all times a fund of at least \$500, but not more than \$1,500, from which the secretary may refund any payment made pursuant to this section to the extent that it exceeds the fees required by this section. The funds shall be deposited in a financial institution which is a legal depository of the Tribe's moneys to the credit of the Secretary and shall be disbursable on order of the Secretary.

(e) [RESERVED]

§ 1106. Reserved power of the Tribe to alter or repeal ordinance.

All provisions of this chapter may be altered from time to time or repealed and all rights of members and managers are subject to this reservation. Unless expressly stated to the contrary in this chapter, all amendments of this chapter shall apply to limited liability companies and members and managers whether or not existing as such at the time of the enactment of any such amendment.

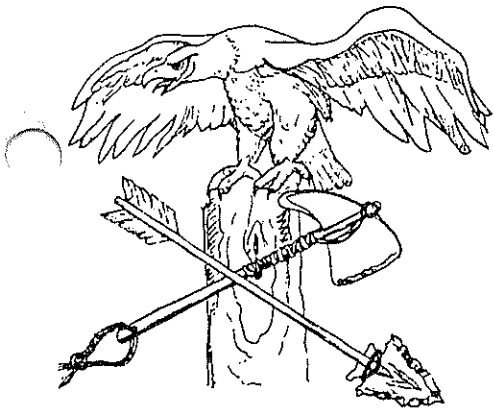
§ 1107. [RESERVED]

§ 1108. [RESERVED]

§ 1109. Revival of domestic limited liability company.

(a) A domestic limited liability company whose certificate of formation has been canceled pursuant to § 104(d) of this Ordinance may be revived by filing in the office of the Secretary a certificate of revival accompanied by the payment of the fee required by § 1105(a)(3) of this Ordinance. The certificate of revival shall set forth. The certificate of revival shall set forth:

- (1) The name of the limited liability company at the time its certificate of formation was canceled and, if such name is not available at the time of revival, the name under which the limited liability company is to be revived;
- (2) The date of filing of the original certificate of formation of the limited liability company;
- (3) The address of the limited liability company's registered office within the Reservation and the name and address of the limited liability company's registered agent within the Reservation;
- (4) A statement that the certificate of revival is filed by one (1) or more persons authorized to execute and file the certificate of revival to revive the limited liability company; and



SHOALWATER BAY INDIAN TRIBE

P.O. Box 130 • Tokeland, Washington 98590
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SHOALWATER BAY INDIAN TRIBE RESOLUTION # 04-03-13-23

RE: Limited Liability Company Ordinance Title 27

WHEREAS, the Shoalwater Bay Tribe is a federally recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; and,

WHEREAS, the Shoalwater Bay Tribal Council is the governing body of the Tribe in accordance with the Constitution of the Shoalwater Bay Indian Tribe; and,

WHEREAS, the Shoalwater Bay Tribal Council has discovered it necessary to approve Title 27: Limited Liability Company Ordinance for the protection of Tribal resources; and

THEREFORE BE IT RESOLVED that the Shoalwater Bay Tribal Council does hereby approve the attached Title 27: Limited Liability Company Ordinance.

CERTIFICATION

The Shoalwater Bay Tribal Council approved the above Resolution on the 3rd day of April, 2013 by a vote of 4 **FOR** 0 **AGAINST** 0 **ABSTAINING**

Charlene Nelson, Chairperson
Shoalwater Bay Tribal Council

ATTEST:

Lynn Clark, Secretary
Shoalwater Bay Tribal Council