

St. Croix Chippewa Indians of Wisconsin

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ST. CROIX LIMITED LIABILITY COMPANY CODE

ARTICLE I. AUTHORITY, FINDINGS AND SCOPE

Section 1. Authority. The St. Croix Tribal Council is the recognized governing body of the St. Croix Tribe of Wisconsin ("Tribe" or "St. Croix") with the responsibility to exercise the privileges and powers of self-government, to conserve and develop Tribal resources, and to secure the social and economic wellbeing of our Tribe. This Title is enacted on the basis of inherent sovereign tribal powers delegated to the St. Croix Tribal Council under Article VI of the Tribe's Constitution and Bylaws.

Section 2. Findings and Purpose. The St. Croix Tribal Council hereby finds that:

- (a) The Tribe has a primary interest in exercising its inherent sovereign authority to provide for the establishment of a statutory framework for the creation of Limited Liability Companies subject to the statutory and regulatory jurisdiction of the St. Croix Tribe.
- (b) The specific purpose of this Title is to permit persons as defined within this Title to create Limited Liability Companies subject to Tribal jurisdiction.
- (c) As a sovereign government, the St. Croix Tribal Council finds that it is the Tribe's best interest to allow for the chartering of Limited Liability Companies independently of the State of Wisconsin in order to promote St. Croix governmental sovereign authority.

Section 3. This Title shall be known as the "St. Croix Limited Liability Company Code."

Section 4. The provisions of this Title shall apply to the St. Croix Tribe, its Tribal Council, any and all Tribal Entities, and any Limited Liability Company created pursuant to this Title, including those that exist after the adoption of this Title.

ARTICLE II. DEFINITIONS

Section 1. For the purposes of this Title, the following definitions apply:

- (a) "Articles of Organization" means the original documents filed to organize a Limited Liability Company, as amended or restated by certificates of correction, amendment, or merger, by restated articles, or by other instruments filed or issued under any statute.
- (b) "Constituent" means a party to a plan of merger, including the survivor.
- (c) "Contribution" means anything of value that a Person contributes to the Limited Liability Company as a prerequisite for, or in connection with, membership, including cash, property, services performed, or a promissory note or other binding obligation to contribute cash or property, or to perform services.

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- (d) "Distribution" means a direct or indirect transfer of money or other property or the incurrence of indebtedness by a Limited Liability Company to or for the benefit of its Members or assignees of its Members in respect of the Members' membership interests.
- (e) "Electronic transmission" or "electronically transmitted" means any form of communication that meets all of the following:
 - (1) It does not directly involve the physical transmission of paper.
 - (2) It creates a record that may be retained and retrieved by the recipient.
 - (3) It may be directly reproduced in paper form by the recipient through an automated process.
- (f) "Limited Liability Company" or "Company" means an entity that is an unincorporated membership organization formed under this Title.
- (g) "Majority in Interest" means a majority of votes as allocated by an Operating Agreement, or by the statute in the absence of an allocation by Operating Agreement, and held by Members entitled to vote on a matter submitted for a vote by Members.
- (h) "Manager" or "Managers" means a Person or Persons designated to manage the Limited Liability Company pursuant to a provision in the Articles of Organization stating that the business is to be managed by or under the authority of Managers or officers (e.g., president, vice-president, etc.).
- (i) "Member" or "Owner" means a Person that is a Member of a Limited Liability Company or has ownership interest in a Limited Liability Company.
- (j) "Membership interest" or "interest" means a Member's rights in the Limited Liability Company, including, but not limited to, any right to receive distributions of the Limited Liability Company's assets and any right to vote or participate in management.
- (k) "Operating Agreement" means a written agreement by the Member of a Limited Liability Company that has (one) 1 Member, or between all of the Members of a Limited Liability Company that has more than one (1) Member, pertaining to the affairs of the Limited Liability Company and the conduct of its business. The term includes any provision in the Articles of Organization pertaining to the affairs of the Limited Liability Company and the conduct of its business.
- (l) "Organizer(s)" means the Person(s) or entity(ies) which signs and delivers the Articles of Organization to the Tribe's Secretary for filing.
- (m) "Person" means an individual; partnership; Limited Liability Company; trust; custodian; estate; association; tribal, state or federally chartered corporation; tribal, state, or local governmental entity; or any other legal entity.

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- (n) "Services in a learned profession" means services rendered by a dentist, an osteopathic physician, a physician, a surgeon, a doctor of divinity or other clergy, or an attorney-at-law.
- (o) "Surviving company," "surviving entity," or "survivor" means the constituent that survives a merger, as identified in the certificate of merger.
- (p) "Tribe" or "St. Croix Tribe" or "Tribal" means the St. Croix Tribe of Wisconsin.
- (q) "Tribal Council" or "St. Croix Tribal Council" means the Tribal Council of the St. Croix Tribe of Wisconsin.
- (r) "Tribal Court" means the Tribal Court of the St. Croix Tribe of Wisconsin.
- (s) "Tribal Entity" includes the Tribe, the Tribal Council, an administrative agency or any other legal, commercial or governmental entity of the Tribe, or any corporation of Tribe, whether chartered under federal, state or Tribal law, or an enterprise of the Tribe, or any subdivision of any corporation or enterprise of the Tribe.
- (t) "Vote" means an affirmative vote, approval, or consent.

ARTICLE III. REQUIRED DOCUMENT FILING

Section 1. Documents; signatures; requirements.

- (a) One or more Persons organizing a Limited Liability Company shall sign the original Articles of Organization as organizers. The Articles shall state the names of the organizers beneath or opposite their signatures.
- (b) Any document other than original Articles of Organization required or permitted to be filed under this Title that this Title requires be executed on behalf of the Limited Liability Company shall be signed by a Manager of the company if management is vested in one (1) or more Managers, by at least one (1) Member if management remains in the Members, or by any authorized agent of the company.
- (c) A Person may sign a document under this section as an authorized agent of a Limited Liability Company. If the authorization is pursuant to a power of attorney, the power of attorney authorizing the signing of the document by the Person need not be sworn to, verified, acknowledged, or filed with the Tribe's Secretary. A document signed by a Person under this subsection as an authorized agent of a Limited Liability Company shall state the capacity of the Person signing the document.

Section 2. Documents; filing; delivery; endorsement; returning copy; inspection by public; copies admissible in evidence; effective date; form; fees.

- (a) A document required or permitted to be filed under this Title shall be submitted by delivering the document to the Tribe's Secretary, together with any fees and accompanying documents

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required by law. The Tribal Council may establish fees and a procedure for accepting delivery of a document submitted under this subsection by facsimile or other electronic transmission.

- (b) If a document submitted under subsection (a) substantially conforms to the requirements of this Title, the Tribe's Secretary shall endorse upon it the word "filed" with his or her official title and the date of receipt and of filing and shall file and index the document or other reproduced physical or digital copy in his or her office. If requested at the time of the delivery of the document to his or her office, the Tribe's Secretary shall include the hour of filing in the endorsement on the document.
- (c) The Tribe's Secretary shall return a copy of a document filed under subsection (b) to the Person who submitted it for filing. The Tribe's Secretary shall mark the filing date on the copy before returning it or, if the document was submitted by electronic mail or over the Internet, may provide proof of the filing date to the Person who submitted the document for filing in another manner determined by the Tribe's Secretary. The Tribe's Secretary shall retain the original copy of the document filed.
 - (1) A document filed under subsection (b) is effective at the time it is endorsed unless a subsequent effective time is set forth in the document that is not later than ninety (90) days after the date of delivery.
 - (2) The Tribe's Secretary may require that a Person submit a document described in subsection (a) on a form prescribed by the Tribe's Secretary.
 - (3) The Tribe's Secretary may charge additional nonrefundable fees if expedited filing of a document by the Tribe's Secretary is requested and the Tribe's Secretary shall retain the revenue collected under this subsection and the department shall use it to carry out its duties required by law.

Section 4.

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

- (a) If a document relating to a Limited Liability Company filed with the Tribe's Secretary under this Title was at the time of filing an inaccurate record of the action referred to in the document, or was defectively or erroneously executed, or was electronically transmitted and the electronic transmission was defective, the document may be corrected by filing with the Tribe's Secretary a certificate of correction on behalf of the company.
- (b) The certificate shall be signed as provided by this Title in the same manner as required for the document being corrected.
- (c) The certificate shall set forth the name of the company, the date the document to be corrected was filed by the Tribe's Secretary, the provision in the document as it should have originally appeared, and if the execution was defective, the proper execution.

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

ARTICLE IV. LIMITED LIABILITY COMPANIES: FORMATION AND MAINTENANCE

Section 1. Limited Liability Companies: Purpose. A Limited Liability Company may be formed under this Title for any lawful purpose for which a corporation or a partnership could be formed, except as otherwise provided by law.

Section 2. Formation; Filing as Evidence that all Conditions Performed; Duration.

- (a) One or more Persons, who may or may not become Members, may become the Organizers of a Limited Liability Company by filing executed Articles of Organization.
- (b) The existence of the Limited Liability Company begins on the effective date of the Articles of Organization. Filing is conclusive evidence that all conditions precedent required to be performed under this Title are fulfilled and that the company is formed under this Title.
- (c) The maximum duration of the Limited Liability Company is perpetual unless otherwise provided in the Articles of Organization.

Section 3. Contents of Articles of Organization.

- (a) The Articles of Organization must contain all of the following:
- (1) The name of the Limited Liability Company (which shall contain the words "Limited Liability Company," or the abbreviation "L.L.C.," with or without periods or other punctuation);
 - (2) The purposes for which the Limited Liability Company is formed. It is sufficient to state substantially, alone or with specifically enumerated purposes, that the Limited Liability Company may engage in any activity for which Limited Liability Companies may be formed under this Title;
 - (3) The street address, and the mailing address if different from the street address, of the Limited Liability Company's initial registered office and the name of its initial resident agent at that address;
 - (4) If the business of the Limited Liability Company is to be managed by Managers, a statement that the business is to be managed by or under the authority of Managers;
 - (5) The maximum duration of the Limited Liability Company, if other than perpetual.

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- (b) The Articles of Organization may contain any provision not inconsistent with this Title or another law of the St. Croix Tribe, including any provision that is required or permitted to be in an Operating Agreement under this Title.

Section 4. Amendments to Articles of Organization.

- (a) A Limited Liability Company may amend its Articles of Organization at any time by the method specified in the Articles, if the amendment contains only provisions that might lawfully be contained in original Articles of Organization filed at the time the amendment is made.
- (b) A Limited Liability Company shall amend its Articles of Organization if any of the following occur:
 - (1) A change in the name of the Limited Liability Company;
 - (2) A change in the purposes of the Limited Liability Company;
 - (3) A change to or from the management of the Limited Liability Company by Managers;
 - (4) A change in the maximum duration of the Limited Liability Company; or
 - (5) A statement in the Articles of Organization has become false or erroneous, except that a change in registered office or resident agent may be made as provided for in this Title.
- (c) The Articles of Organization are amended by filing a certificate of amendment that contains all of the following:
 - (1) The name of the Limited Liability Company;
 - (2) The date of filing of its original Articles of Organization;
 - (3) The entire article or articles being amended, or the section or sections being amended if the article being amended is divided into identified sections; and
 - (4) A statement that the amendment or amendments were approved by the unanimous vote of all of the Members entitled to vote or by a majority in interest if an Operating Agreement authorizes amendment of the Articles of Organization by majority vote.

Section 5. Registered Office and Resident Agent.

- (a) Each Limited Liability Company authorized to transact business within the St. Croix Reservation shall have and continuously maintain both of the following:
 - (1) A registered office that may, but need not be, the same as its place of business, located within the exterior boundaries of the St. Croix Reservation; and

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- (2) A resident agent. The resident agent must be either an individual resident of the St. Croix Reservation whose business office or residence is identical with the registered office.
- (b) A Limited Liability Company authorized to transact business under this Title may change its registered office or resident agent, or both, upon filing with the Tribe's Secretary a statement executed and setting forth all of the following:
 - (1) The name of the Limited Liability Company.
 - (2) The address of its then registered office and the new address if the registered office is to be changed.
 - (3) The name of its then resident agent and the name of the successor if the resident agent is to be changed.
 - (4) A statement that the address of the registered office and the address of the resident agent are identical.
 - (5) A statement that the change was authorized in accordance with an Operating Agreement, or, if not provided for in an Operating Agreement, by affirmative vote of a majority of the Members voting.

Section 6. Documents Required to be Kept at Registered Office. A Limited Liability Company shall keep at its registered office or principal place of business all of the following:

- (a) A current list of the full name and last known address of each Member and Manager.
- (b) A copy of the articles or restated Articles of Organization, together with any amendments to the Articles.
- (c) Copies of the Limited Liability Company's federal, state, and local tax returns and reports, if any, for the 3 most recent years.
- (d) Copies of any financial statements of the Limited Liability Company for the 3 most recent years.
- (e) Copies of Operating Agreements.
- (f) Copies of records that would enable a Member to determine the Members' relative shares of the Limited Liability Company's distributions and the Members' relative voting rights.

Section 7. Service of Process.

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

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- (b) If a Limited Liability Company fails to appoint or maintain an agent for service of process, or the agent for service of process cannot be found or served through the exercise of reasonable diligence, service of process may be made by delivering or mailing by registered mail to the Tribe's Secretary a summons and copy of the complaint.

Section 7. Annual Statements. A Limited Liability Company authorized to transact business under this Title shall file with the Tribe's Secretary an annual statement containing the name of its resident agent and the address of its registered office in this state. The statement shall be filed not later than February 15 of each year, except that a Limited Liability Company formed after September 30 need not file a statement on the February 15 immediately succeeding its formation or authorization.

Section 8. Certificate of Good Standing.

- (a) Except as provided in this section, from the effective date of the Articles of Organization until dissolution for a Limited Liability Company, a Limited Liability Company is entitled to issuance by the Tribe's Secretary, upon request, of a certificate of good standing. A certificate of good standing issued to a Limited Liability Company shall state that it has been validly organized as a Limited Liability Company, that it is validly in existence under the laws of the St. Croix Tribe, and that it has satisfied its annual filing obligations.
- (b) If a Limited Liability Company authorized to transact business under this Title fails to file an annual statement required by Article IV, Section 7 for two (2) consecutive years, the Tribe's Secretary shall notify the company of the consequences of the failure to file under subsection (c) below.
- (c) If a Limited Liability Company does not file all annual statements with the applicable fees, within sixty (60) days after the Tribe's Secretary's notice under subsection (b) is sent, the Limited Liability Company is not in good standing. A Limited Liability Company that is not in good standing is not entitled to issuance by the Tribe's Secretary of a certificate of good standing described in subsection (a) above, the name of the company is available for use by another entity filing with the Tribe's Secretary, and the Tribe's Secretary shall not accept for filing any document submitted by the Limited Liability Company other than a certificate of restoration of good standing provided for in subsection (d). A Limited Liability Company that is not in good standing remains in existence and may continue to transact business.
- (d) A Limited Liability Company authorized to transact business that is not in good standing under subsection (c) may file a certificate of restoration of good standing, accompanied by the annual statements and fees for all of the years for which they were not filed and paid, and the fee for filing the certificate of restoration of good standing. The certificate shall include all of the following:
 - (1) The name of the Limited Liability Company at the time it ceased to be in good standing. If that name is not available when the certificate of restoration of good standing is filed,

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the Limited Liability Company shall select a new name. The new name shall be the name of the Limited Liability Company.

- (2) The name of the Limited Liability Company's current resident agent and the address of the current registered office.
- (3) A statement that the certificate is accompanied by the annual statements and applicable fees for all of the years for which statements were not filed and fees were not paid.

ARTICLE V. LIMITED LIABILITY COMPANIES: POWERS AND LIABILITIES

- Section 1.** **Powers.** Subject to the limitations provided in this Title, any other law of the St. Croix Tribe, or a Limited Liability Company's Articles of Organization, a Limited Liability Company has all powers necessary or convenient to effect any purpose for which the Company is formed, including the decision to consent to be sued if granted in writing, and to sue and defend in its name; provided, however, that if a Limited Liability Company is Tribal Entity-owned, or wholly owned by another entity which itself is wholly owned by a Tribal Entity, it shall be entitled to and shall enjoy the Tribal Entity's sovereign immunity from suit unless the Operating Agreement otherwise provides.
- Section 2.** **Ultra vires.** An act of a Limited Liability Company and a transfer of real or Personal property to or by a Limited Liability Company, otherwise lawful, is not invalid because the company was without capacity or power to do the act or make or receive the transfer, except that the lack of capacity or power may be asserted in any of the following:
- (a) In an action by a Member against the Limited Liability Company to enjoin the doing of an act or the transfer of real or Personal property by or to the Limited Liability Company.
 - (b) In an action by or in the right of the Limited Liability Company to procure a judgment in its favor against an incumbent or former Member or Manager of the Limited Liability Company for loss or damage due to an unauthorized act of that Member or Manager.
 - (c) In an action or special proceeding by the attorney general to dissolve the Limited Liability Company or to enjoin it from the transaction of unauthorized business.
- Section 3.** **Conflict between Articles of Organization and Operating Agreement.** If there is a conflict between the Articles of Organization and an Operating Agreement of a Limited Liability Company, the Articles of Organization shall control.
- Section 4.** **Liability to Third Parties.** 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. Except as otherwise specifically provided in this Title, a Member or Manager of a Limited Liability Company is not Personally liable for any debt, obligation, or liability of a Limited Liability Company, as defined in the Operating Agreement.

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ARTICLE VI. ST. CROIX TRIBE AS OWNER OF LIMITED LIABILITY COMPANY

- Section 1. Authority to create Tribal Entity-owned LLCs.** There are hereby authorized to be created Limited Liability Companies wholly owned by a Tribal Entity, with the Tribal Entity as the sole or partial owner. The Tribal Entity shall form or become an Owner, whether wholly owned or through a Majority in Interest, of a Tribal Entity-owned Limited Liability Company formed under this Title only upon approval of such action by the St. Croix Tribal Council and as applicable by the Tribal Entity. Tribal Entity-owned Limited Liability Companies, whether wholly owned or through a Majority in Interest, shall be considered to be instrumentalities of the Tribe.
- Section 2. Tribal Entity as Sole Owner.** If the Tribal Entity is the sole Owner of a Limited Liability Company formed under this Title, such Tribal Entity-owned Limited Liability Company shall possess all of the privileges and immunities of the Tribe and the Tribal Entity, including the Tribe and the Tribal Entity's sovereign immunity from suit except to the extent otherwise provided in its Operating Agreement. The Limited Liability Companies established by the Tribal Entity under this chapter shall be considered to be instrumentalities of the Tribe, and their officers and employees considered officers and employees of the Tribal Entity, created for the purpose of carrying out authorities and responsibilities of the Tribal Council for economic development of the Tribe and the advancement of its Tribal Entity Owners. Such Limited Liability Companies, their directors, officers and employees shall, therefore, be entitled to all of the privileges and immunities enjoyed by the Tribe and the Tribal Entity, including but not limited to immunities from suit in federal, state and tribal courts and from federal, state, and local taxation or regulation, except to the extent otherwise provided in the company's Operating Agreement.
- Section 3. Tribal Entity as Majority Owner.** If the Tribal Entity is an Owner with a Majority in Interest in a Limited Liability Company formed under this Title, such Limited Liability Company may possess the privileges and immunities of the Tribe and the Tribal Entity, including sovereign immunity from suit, to the extent allowed by applicable law, this Title or the Limited Liability Company's Operating Agreement.
- Section 4. Manager Limitations.** In no event shall any Manager that is not an Owner of a Limited Liability Company in which the Tribal Entity is an Owner, bind the Tribal Entity in any manner; provided that the Tribal Entity's interest as an Owner may be altered in writing by the agreed upon Operating Agreement of the Limited Liability Company.
- Section 5. Sovereign Immunity.** Nothing contained in this Title shall be construed as creating any liability or waiving of sovereign immunity of the Tribal Entity in any manner. In no event shall any action taken by the Tribal Entity as Owner or as an Owner with a Majority in Interest concerning the exercise of any right or privilege or discharge of any duty with respect to an interest in an Limited Liability Company be construed as a waiver of immunity or creation of a liability on the part of the Tribal Entity separate and apart from any interests as an Owner or as an Owner with a Majority in Interest of the Limited Liability Company. A Tribal Entity-owned, whether wholly owned or through a Majority in Interest, Limited Liability Company may only waive its sovereign immunity as provided in the Tribal Entities Code, Section 106 as currently stated or as may be subsequently amended by the Tribe.

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- Section 6. Annual Reports.** A Tribal Entity-owned, whether wholly owned or through a Majority in Interest, Limited Liability Company shall file annual reports with the Tribal Council and any applicable Board or manager of a Tribal Entity concerning the company's actions, plans and objectives or any other topic as requested by the Tribal Council and the Tribal Entity.
- Section 7. Alienation of Ownership Interests.** No ownership interest in any Limited Liability Company in which the Tribal Entity is an Owner may be alienated unless approved by the Tribal Council and the respective Tribal Entity.
- Section 8. Project Companies Permitted.** Any Tribal Entity-owned Limited Liability Company may form or own interests or shares in partnerships, corporations, or other Limited Liability Companies with other governmental or non-governmental entities or Persons under the laws of the Tribe or any other jurisdiction ("Project Companies"); provided, however, that the partial ownership interest in such Project Companies shall not diminish or affect the privileges and immunities of the Tribal Entity-owned, whether wholly owned or through a Majority in Interest, Limited Liability Company created pursuant to this Article.

ARTICLE VII. LIMITED LIABILITY COMPANY MEMBERS

Section 1. Admission of Members.

- (a) A Person may be admitted as a Member of a Limited Liability Company in connection with the formation of the Limited Liability Company in any of the following ways:
- (1) If an Operating Agreement includes requirements for admission, by complying with those requirements.
 - (2) If an Operating Agreement does not include requirements for admission, if either of the following are met:
 - (i) The Person signs the initial Operating Agreement.
 - (ii) The Person's status as a Member is reflected in the records, tax filings, or other written statements of the Limited Liability Company.
 - (3) In any manner established in a written agreement of the Members.
- (b) A Person may be admitted as a Member of a Limited Liability Company after the formation of the Limited Liability Company in any of the following ways:
- (1) If the Person is acquiring a membership interest directly from the Limited Liability Company, by complying with the provisions of an Operating Agreement prescribing the requirements for admission or, in the absence of provisions prescribing the requirements for admission in an Operating Agreement, upon the unanimous vote of the Members entitled to vote; or

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- (2) If the Person is an assignee of a membership interest; or
- (3) If the Person is becoming a Member of a surviving Limited Liability Company as the result of a merger or conversion approved under this Title, as provided in the plan of merger or plan of conversion.
- (c) A Limited Liability Company may admit a Person as a Member that does not make a contribution or incur an obligation to make a contribution to the Limited Liability Company.
- (d) Unless otherwise provided by law or in an Operating Agreement, a Person that is a Member or Manager, or both, of a Limited Liability Company is not liable for the acts, debts, or obligations of the Limited Liability Company.

Section 2. Member Voting Rights.

- (a) An Operating Agreement may establish and allocate the voting rights of Members and may provide that certain Members or groups of Members have only limited or no voting rights. If an Operating Agreement does not address voting rights, each Member of a Limited Liability Company has (one) 1 vote. For purposes of this subdivision, a membership interest held by two (2) or more Persons, whether as fiduciaries, Members of a partnership, tenants in common, joint tenants, tenants by the entirety, or otherwise, is considered held by one (1) Member.
- (b) If a membership interest that has voting rights is held by two (2) or more Persons, whether as fiduciaries, Members of a partnership, tenants in common, joint tenants, tenants by the entirety, or otherwise, the voting of the interest shall be in accordance with the instrument or order appointing them or creating the relationship if a copy of that instrument or order is furnished to the Limited Liability Company. If an instrument or order is not furnished to the Limited Liability Company, one (1) of the following shall apply to the voting of that membership interest:
 - (1) If an Operating Agreement applies to the voting of the membership interest, the vote shall be in accordance with that Operating Agreement.
 - (2) If an Operating Agreement does not apply to the voting of the membership interest and only one (1) of the Persons that hold the membership interest votes, that Person's vote determines the voting of the membership interest.
 - (3) If an Operating Agreement does not apply to the voting of the membership interest and two (2) or more of the Persons that hold the membership interest vote, the vote of a majority determines the voting of the membership interest, and if there is no majority, the voting of the membership interest is divided among those voting.
- (c) Only Members of a Limited Liability Company, and not its Managers, may authorize the following actions:
 - (1) The dissolution of the Limited Liability Company.

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- (2) Merger of the Limited Liability Company.
- (3) An amendment to the Articles of Organization.
- (d) Except as otherwise provided in the Articles of Organization or an Operating Agreement, Members have the voting rights provided for in Article VII, Section 8 regarding transactions in which a Manager or agent has an interest.
- (e) Unless otherwise provided in an Operating Agreement, the sale, exchange, lease, or other transfer of all or substantially all of the assets of a Limited Liability Company, other than in the ordinary course of business, may be authorized only by a vote of the Members entitled to vote.
- (f) The Articles of Organization or an Operating Agreement may provide for additional voting rights of Members of the Limited Liability Company.
- (g) Unless the vote of a greater percentage of the voting interest of Members is required by this act, the Articles of Organization, or an Operating Agreement, a vote of a Majority in Interest of the Members entitled to vote is required to approve any matter submitted for a vote of the Members.

Section 3. Withdrawal or Expulsion of Member.

- (a) A Member may withdraw from a Limited Liability Company only as provided in an Operating Agreement. A Member withdrawing pursuant to an Operating Agreement may become entitled to a withdrawal distribution.
- (b) An Operating Agreement may provide for the expulsion of a Member or for other events the occurrence of which will result in a Person ceasing to be a Member of the Limited Liability Company.

Section 4. Member Contributions.

- (a) A contribution of a Member to a Limited Liability Company may consist of any tangible or intangible property or benefit to the company, including cash, property, services performed, promissory notes, contracts for services to be performed, or other binding obligation to contribute cash or property or to perform services.
- (b) A contribution of an obligation to contribute cash or property or to perform services may be in exchange for a present membership interest or for a future membership interest, including a future profits interest, as provided in an Operating Agreement.
- (c) The Operating Agreement may provide additional requirements regarding Member contributions that do not conflict with applicable law.

Section 5. Promises by Members to Contribute.

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- (a) A promise by a Member to contribute to the Limited Liability Company is not enforceable unless the promise is in writing and signed by the Member.
- (b) Unless otherwise provided in an Operating Agreement, a Member is obligated to the Limited Liability Company to perform any enforceable promise to contribute cash or property or to perform services, even if the Member is unable to perform because of death, disability, or other reason. If a Member does not make the required contribution of property or services, the Member is obligated, at the option of the Limited Liability Company, to contribute cash equal to that portion of value of the stated contribution that is not made.
- (c) The rights of the Limited Liability Company under subsection (b) are in addition to any other rights that the Limited Liability Company may have under an Operating Agreement or applicable law.
- (d) Unless otherwise provided in an Operating Agreement, a Member's obligation to make a contribution or to return money or other property paid or distributed in violation of this Title may be compromised only upon the unanimous vote of the Members of the Limited Liability Company entitled to vote. Notwithstanding a compromise of a Member's obligation, a creditor of a Limited Liability Company who extends credit or otherwise acts in reliance on the Member's obligation after the Member signs a writing that reflects the obligation and before the amendment of the writing to reflect the compromise may enforce the Member's original obligation.

Section 6. Distribution of Assets.

- (a) Distributions of cash or other assets of a Limited Liability Company shall be allocated among the Members and among classes of Members in the manner provided in an Operating Agreement. If an Operating Agreement does not provide for an allocation, distributions shall be allocated in equal shares to all Members. A membership interest held by two (2) or more Persons, whether as fiduciaries, Members of a partnership, tenants in common, joint tenants, tenants by the entirety, or otherwise, is considered as held by one (1) Member for an allocation under this subdivision.
- (b) Except as otherwise provided in this Title and subject to subsection (c), a Member is entitled to receive a distribution from a Limited Liability Company before the withdrawal of the Member from the Limited Liability Company or before the dissolution and winding up of the Limited Liability Company to the extent and at the times or upon the happening of the events specified in an Operating Agreement.
- (c) If an Operating Agreement does not address a Member's right to receive a distribution before the withdrawal of the Member from the Limited Liability Company or before the dissolution and winding up of the Limited Liability Company, the unanimous approval of the Members is required for any distribution to that Member.
- (d) Until the effective date of withdrawal, a withdrawing Member shall share in any distribution made in accordance with subsection (a). An Operating Agreement may provide for an

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additional distribution to a withdrawing Member. If a provision in an Operating Agreement permits withdrawal but is silent on an additional withdrawal distribution, a Member withdrawing in accordance with the Operating Agreement is entitled to receive as a distribution, within a reasonable time after withdrawal, the fair value of the Member's interest in the Limited Liability Company as of the date of withdrawal.

- (e) Except as provided in an Operating Agreement, a Member, regardless of the nature of the Member's contribution, has no right to demand and receive a distribution from a Limited Liability Company in any form other than cash, and a Member may not be compelled to accept from a Limited Liability Company a distribution of an asset in kind to the extent that the percentage of the asset distributed to the Member exceeds a percentage of that asset that is equal to the percentage in which the Member shares in distributions from the Limited Liability Company.
- (f) Except as otherwise provided in subsection (j), a distribution shall not be made if, after giving the distribution effect, one (1) or more of the following situations would occur:
 - (1) The Limited Liability Company would not be able to pay its debts as they become due in the usual course of business.
 - (2) The Limited Liability Company's total assets would be less than the sum of its total liabilities plus, unless an Operating Agreement provides otherwise, the amount that would be needed, if the Limited Liability Company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other Members upon dissolution that are superior to the rights of the Member or Members receiving the distribution.
- (g) The Limited Liability Company may base a determination that a distribution is not prohibited under subsection (f) on financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances, on a fair valuation, or on another method that is reasonable under the circumstances.
- (h) The effect of a distribution under subsection (f) is measured at the following times:
 - (1) Except as provided in subsection (j), in the case of a distribution to a withdrawing Member, as of the earlier of the date money or other property is transferred or debt incurred by the Limited Liability Company, or the date the Member ceases to be a Member.
 - (2) In the case of any other distribution of indebtedness, as of the date the indebtedness is authorized if distribution occurs within one-hundred and twenty (120) days after the date of authorization, or the date the indebtedness is distributed if it occurs more than one-hundred and twenty (120) days after the date of authorization.
 - (3) In all other cases, as of the date the distribution is authorized if the payment occurs within one-hundred and twenty (120) days after the date of authorization, or the date the payment is made if it occurs more than one-hundred and twenty (120) days after the date of authorization.

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- (i) At the time a Member becomes entitled to receive a distribution, the Member has the status of, and is entitled to all remedies available to, a creditor of the Limited Liability Company with respect to the distribution. A company's indebtedness to a Member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors except as otherwise agreed.
- (j) If the Limited Liability Company distributes an obligation to make future payments to a withdrawing Member, and distribution of the obligation would otherwise be prohibited under subsection (f) at the time it is made, the company may issue the obligation and the following apply:
 - (1) The portion of the obligation that could have been distributed without violating subsection (a) is indebtedness to the withdrawing Member under subsection (d).
 - (2) All of the following apply to the portion of the obligation that exceeds the amount of the obligation that is indebtedness to the withdrawing Member under subsection (j)(1):
 - (i) At any time prior to the due date of the obligation, payments of principal and interest may be made as a distribution to the extent that a distribution may then be made under this Section.
 - (ii) At any time on or after the due date, the obligation to pay principal and interest is considered distributed and treated as indebtedness described in subsection (d) to the extent that a distribution may then be made under this Section.
 - (3) Unless otherwise provided in an agreement with the withdrawing Member, the obligation is considered a liability or debt for purposes of determining whether distributions other than payments on the obligation may be made under this section, except for purposes of determining whether distributions may be made to Members having preferential rights superior to the rights of the withdrawing Member.
- (k) The enforceability of a guaranty or other undertaking by a third party relating to a distribution is not affected by the prohibition of the distribution under subsection (f).
- (l) If a claim is made to recover a distribution made contrary to subsection (f) or if a violation of subsection (f) is raised as a defense to a claim based upon a distribution, this section does not prevent the Person receiving the distribution from asserting a right of rescission or other legal or equitable rights.
- (m) A Member or Manager that votes for or assents to a distribution in violation of an Operating Agreement or subsection (f) is Personally liable, jointly and severally, to the Limited Liability Company for the amount of the distribution that exceeds what could have been distributed without violating the Operating Agreement or subsection (f) if it is established that the Member or Manager did not comply with subsection (j).

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- (n) For purposes of liability under subsection (m), a Member or Manager entitled to participate in a decision to make a distribution is presumed to have assented to a distribution unless the Member or Manager does one (1) of the following:
 - (1) Votes against the distribution; or
 - (2) Files a written dissent with the Limited Liability Company within a reasonable time after the Member or Manager has knowledge of the decision.
- (o) A Member that accepts or receives a distribution with knowledge of facts indicating it is in violation of an Operating Agreement or subsection (f) is liable to the Limited Liability Company for the amount the Member accepts or receives that exceeds the Member's share of the amount that could have been distributed without violating subsection (f) or the Operating Agreement.
- (p) Each Member or Manager held liable under subsection (m) for an unlawful distribution is entitled to contribution from each other Member or Manager who could be held liable under subsection (m) or (o). The contribution of a Person held liable under both subsections (m) and (o) shall not exceed the Person's liability under either subsection (m) or (o), whichever is greater.
- (q) A proceeding under this section is barred unless it is commenced within two (2) years after the date on which the effect of the distribution is measured under subsection (f).

ARTICLE VIII. MANAGEMENT

Section 1. Management Vested in Members. Unless the Articles of Organization state that the business of the Limited Liability Company is to be managed by one (1) or more Managers, the business of the Limited Liability Company shall be managed by the Members, subject to any provision in an Operating Agreement restricting or enlarging the management rights and duties of any Member or group of Members. If management is vested in the Members, both of the following apply:

- (a) The Members are considered Managers for purposes of applying this Title, unless the context clearly requires otherwise; and
- (b) The Members have, and are subject to, all duties and liabilities of Managers and to all limitations on liability and indemnification rights of Managers.

Section 2. Managers.

- (a) The Articles of Organization may provide that the business of the Limited Liability Company shall be managed by or under the authority of one (1) or more Managers. The delegation of the management of a Limited Liability Company to Managers is subject to any provision in the Articles of Organization or in an Operating Agreement restricting or enlarging the management rights and duties of any Manager or group of Managers.

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- (b) An Operating Agreement may prescribe qualifications for Managers, including a requirement that the Managers be Members.
- (c) The number of Managers shall be specified in or fixed in accordance with an Operating Agreement.
- (d) If the Articles of Organization delegate management of a Limited Liability Company to Managers, the Articles of Organization constitute notice to third parties that Managers, not Members, have agency authority.

Section 3. Managers: Selection and Removal

- (a) A vote of a Majority in Interest of the Members entitled to vote is required to select one (1) or more Managers to fill initial positions or vacancies.
- (b) The Members may remove one (1) or more Managers with or without cause unless an Operating Agreement provides that Managers may be removed only for cause.
- (c) The Members may remove a Manager for cause only at a meeting called expressly for that purpose, and the Manager shall have reasonable advance notice of the allegations against that Manager and an opportunity to be heard at the meeting.

Section 4. Manager Duties.

- (a) A Manager shall discharge the duties of Manager in good faith, with the care an ordinarily prudent Person in a like position would exercise under similar circumstances, and in a manner the Manager reasonably believes to be in the best interests of the Limited Liability Company.
- (b) In discharging the Manager's duties, a Manager may rely on information, opinions, reports, or statements, including, but not limited to, financial statements or other financial data, if prepared or presented by any of the following:
 - (1) One or more other Managers or Members or employees of the Limited Liability Company whom the Manager reasonably believes to be reliable and competent in the matter presented.
 - (2) Legal counsel, public accountants, engineers, or other Persons as to matters the Manager reasonably believes are within the Person's professional or expert competence.
 - (3) A committee of Managers of which the Manager is not a Member if the Manager reasonably believes the committee merits confidence.
- (c) A Manager is not entitled to rely on the information, opinions, reports, or statements described in subsection (b) if the Manager has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

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- (d) A Manager is not liable for an action taken as a Manager or the failure to take an action if the Manager performs the duties of the Manager's office in compliance with this section.
- (e) Except as otherwise provided in an Operating Agreement or by vote of the Members, a Manager shall account to the Limited Liability Company and hold as trustee for it any profit or benefit derived by the Manager from any transaction connected with the conduct or winding up of the Limited Liability Company or from any Personal use by the Manager of its property.
- (f) An action against a Manager for failure to perform the duties imposed by this Title shall be commenced within three (3) years after the cause of action has accrued or within two (2) years after the cause of action is discovered or should reasonably have been discovered by the complainant, whichever occurs first.

Section 5. Votes by Managers.

- (a) Except as otherwise provided in the Articles of Organization or an Operating Agreement, voting by Managers shall be as provided in this section.
- (b) If management of a Limited Liability Company is delegated to Managers and the Limited Liability Company has more than one (1) Manager, each Manager shall have one (1) vote and the vote of a majority of all Managers is required to decide or resolve any difference on any matter connected with carrying on the business of the Limited Liability Company that is within the scope of the Managers' authority.

Section 6. Managers as Agents. A Manager is an agent of the Limited Liability Company for the purpose of its business, and the act of a Manager, including the execution in the Limited Liability Company name of any instrument, that apparently carries on in the usual way the business of the Limited Liability Company of which the Manager is a Manager binds the Limited Liability Company, unless both of the following apply:

- (a) The Manager does not have the authority to act for the Limited Liability Company in that particular matter; and
- (b) The Person with whom the Manager is dealing has actual knowledge that the Manager lacks authority to act or the Articles of Organization or this Title establishes that the Manager lacks authority to act.

Section 7. Manager Liabilities and Exceptions. A provision in the Articles of Organization or an Operating Agreement may eliminate or limit the monetary liability of a Manager to the Limited Liability Company or its Members for breach of any applicable duty, except that the provision does not eliminate or limit the liability of a Manager for any of the following:

- (a) The receipt of a financial benefit to which the Manager is not entitled.
- (b) A knowing violation of any applicable law.

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- (c) An act or omission occurring before the date when the provision becomes effective.

Section 8. Manager Conflicts of Interest.

- (a) A conflict of interest transaction is a transaction with the nonprofit corporation in which a Manager of the Limited Liability Company has a direct or indirect interest.
- (b) A Manager has a duty to disclose to the Members and to other Managers when the Manager has a conflict of interest with a transaction due to the Manager's association with:
- (1) Another entity in which the Member has a material financial interest or in which the Member is a director or trustee; or
 - (2) Another entity in which a Person in the Manager's immediate family has a material financial interest, or is a director or trustee (immediate family being parents, step-parents, siblings (and or their spouse), step- or half-siblings (or their spouse), children, step-children, grandparents, aunts or uncles, and first cousins).
- (c) A transaction in which a Manager has a conflict of interest may be approved by a majority vote of the Managers who have no direct or indirect interest in the transaction, if the material facts of the transaction and the Manager's interests are disclosed or known to the other Managers and to the Members. The presence of a Manager with a direct or indirect interest in the transaction does not affect the validity of an action taken by the uninterested Managers.
- (d) The Articles or Bylaws may impose additional requirements on conflict of interest transactions.

ARTICLE IX: DISASSOCIATION

Section 1. Disassociation, Generally.

- (a) A Person ceases to be a Member of a Limited Liability Company immediately upon the occurrence of any of the following events:
- (1) The Member withdraws by voluntary act.
 - (2) The Member is removed as a Member in accordance with the Operating Agreement or this Title.
 - (3) Unless otherwise provided in the Operating Agreement or by the written consent of all Members at the time of the event, the Member does any of the following:
 - (i) Makes an assignment for the benefit of the creditors;
 - (ii) Files a petition in bankruptcy;

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- (iii) Becomes the subject of an order for relief under the federal bankruptcy laws or state or tribal insolvency laws; or
- (iv) Fails to gain dismissal of any federal bankruptcy or state or tribal insolvency proceeding within one-hundred and twenty (120) days of commencement of an involuntary proceeding.
- (4) Unless provided in the Operating Agreement or by the written consent of all Members, if the Member is an individual, either of the following occurs:
 - (i) The Member's death; or
 - (ii) The entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's Person or estate.
- (5) Unless otherwise provided in the Operating Agreement or by written agreement or by the written consent of all Members at the time, if the Member is a trust, corporation, partnership, or Limited Liability Company upon liquidation, dissolution, or termination.
- (b) The Members may provide in the Operating Agreement for other events the occurrence of which result in a Person ceasing to be a Member of the Limited Liability Company.
- (c) Unless the Operating Agreement provides that a Member does not have the power to withdraw by voluntary act from a Limited Liability Company, the Member may do so at any time by giving written notice to the other Members or as provided in the Operating Agreement. If the Member has the power to withdraw but the withdrawal is a breach of the Operating Agreement, the Limited Liability Company may offset the damages against the amount otherwise distributable to the Member, in addition to pursuing any remedies provided for in the Operating Agreement or otherwise available under applicable law.

ARTICLE X: DISSOLUTION

Section 1. **Dissolution, generally.** A Limited Liability Company is dissolved and its affairs shall be wound up when the first of the following occurs:

- (a) Automatically, if a time specified in the Articles of Organization is reached;
- (b) If a vote of the Members or other event specified in the Articles of Organization or in an Operating Agreement takes place;
- (c) The Members entitled to vote unanimously vote for dissolution;
- (d) Automatically, if a decree of judicial dissolution is entered; or
- (e) A majority of the organizers of the Limited Liability Company vote for dissolution, if the Limited Liability Company has not commenced business; has not issued any membership

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interests; has no debts or other liabilities; and has not received any payments, or has returned any payments it has received after deducting any amount disbursed for payment of expenses, for subscriptions for its membership interests.

Section 2. Dissolution by Judicial Decree.

- (a) In a proceeding by or for a Manager, the Tribal Court or court of competent jurisdiction may order dissolution of a Limited Liability Company if any of the following is established:
- (1) That it is not reasonably practicable to carry on the business of the Limited Liability Company;
 - (2) That the Limited Liability Company is not acting in conformity with its Operating Agreement;
 - (3) That one or more Managers are acting or will act in a manner that is illegal, oppressive, or fraudulent;
 - (4) That one or more Managers in control of the Limited Liability Company are acting or will act in a manner that is illegal, oppressive, or fraudulent; or
 - (5) That Limited Liability Company assets are being misapplied or wasted.
- (b) If the Tribe is an owner of the Limited Liability Company, any action under this Section must be brought in the Tribal Court, unless explicitly otherwise provided in the Operating Agreement. Nothing in this Section may be construed as a waiver of the Tribe's sovereign immunity from suit, and any waiver thereof must be provided explicitly in the Limited Liability Company's Operating Agreement.

Section 3.

Certificate of Dissolution. When it begins winding up its affairs, a Limited Liability Company shall execute a certificate of dissolution and file the certificate with the Tribe's Secretary. The certificate of dissolution shall contain all of the following:

- (a) The name of the Limited Liability Company;
- (b) The reason for the dissolution; and
- (c) The effective date of the dissolution, if later than the date of filing of the certificate of dissolution.

Section 4. Winding Up of Affairs.

- (a) A dissolved Limited Liability Company continues its legal existence but may not carry on any business except that which is appropriate to wind up and liquidate its business.
- (b) Unless otherwise provided in its Operating Agreement:

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- (1) The business of the Limited Liability Company may be wound up by any of the following:
 - (i) The owners or Managers who have authority to manage the Limited Liability Company before dissolution; or
 - (ii) In a judicial dissolution, the Person(s) designated by the Tribal Court or court of competent jurisdiction.
- (2) The Persons winding up the business of the Limited Liability Company may do all of the following in the name of and on behalf of the Limited Liability Company:
 - (i) Collect its assets;
 - (ii) Prosecute and defend suits;
 - (iii) Take any action necessary to settle and close the business of the Limited Liability Company;
 - (iv) Dispose of and transfer the property of the Limited Liability Company;
 - (v) Discharge or make provision for discharging the liabilities of the Limited Liability Company; and
 - (vi) Distribute to the Managers any remaining assets of the Limited Liability Company.
- (c) Dissolution of a Limited Liability Company does not do any of the following:
 - (1) Transfer title to the Limited Liability Company's property;
 - (2) Prevent transfer of all or part of a Manager's interest;
 - (3) Prevent commencement of a civil, criminal, administrative, or investigatory proceeding by or against the Limited Liability Company;
 - (4) Abate or suspend a civil, criminal, administrative, or investigatory proceeding pending by or against the Limited Liability Company at the time of dissolution;
 - (5) Terminate the authority of the registered agent of the Limited Liability Company; or
 - (6) Alter the limited liability of a Manager.

Section 5. Notice to Existing Claimants.

- (a) The dissolved Limited Liability Company shall notify its existing claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice shall include all of the following:

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- (1) A description of the information that must be included in a claim. The Limited Liability Company may demand sufficient information to permit it to make a reasonable judgment whether the claim should be accepted or rejected;
 - (2) A mailing address where a claim may be sent;
 - (3) The deadline, which may not be less than six (6) months after the effective date of the written notice, by which the dissolved Limited Liability Company must receive the claim; and
 - (4) A statement that the claim will be barred if not received by the deadline.
- (b) The giving of notice provided for in subsection (a) does not constitute recognition that a Person to whom the notice is directed has a valid claim against the Limited Liability Company.
- (c) A claim against the dissolved Limited Liability Company is barred if either of the following applies:
- (1) If a claimant who was given written notice under subsection (a) does not deliver the claim to the dissolved Limited Liability Company by the deadline; or
 - (2) If a claimant whose claim was rejected by a written notice of rejection by the dissolved Limited Liability Company does not commence a proceeding to enforce the claim within ninety (90) days after the effective date of the written notice of rejection.
- (d) For purposes of this Section, "existing claim" means any claim or right against the Limited Liability Company, liquidated or unliquidated. "Existing claim" does not mean a contingent liability or a claim based on an event occurring after the effective date of dissolution.
- (e) For purposes of this Section, the effective date of the written notice is the earliest of the following:
- (1) The date it is received.
 - (2) Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if it is mailed postpaid and correctly addressed.
 - (3) The date shown on the return receipt, if the notice is sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

Section 6. Notice to Unknown Claimants.

- (a) A dissolved Limited Liability Company must also publish notice of dissolution and request that Persons with claims against the company present them in accordance with the notice.
- (b) The notice shall be in accord with all the following:

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- (1) Be published at least one (1) time in a newspaper of general circulation in the county in which the dissolved Limited Liability Company's principal place of business and its registered office, is or was located.
- (2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent. The Limited Liability Company may demand sufficient information to permit it to make a reasonable judgment whether the claim should be accepted or rejected.
- (3) State that a claim against the Limited Liability Company will be barred unless a proceeding to enforce the claim is commenced within one (1) year after the publication date of the newspaper notice.
- (c) If the dissolved Limited Liability Company publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved company within one (1) year after the publication date of the newspaper:
 - (1) A claimant who did not receive written notice;
 - (2) A claimant whose claim was timely sent to the dissolved Limited Liability Company but not acted on; or
 - (3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
- (d) Notwithstanding subsection (c), a claimant having an existing claim known to the Limited Liability Company at the time of publication in accordance with subsection (b) and who did not receive written notice is not barred from suit until six (6) months after the claimant has actual notice of the dissolution.

Section 7. Distribution of Assets. Upon the winding up of a Limited Liability Company, the assets shall be distributed in the following order:

- (a) To creditors, including to the extent permitted by law, Managers, and former owners in satisfaction of liabilities of the Limited Liability Company.
- (b) Unless otherwise provided in the Operating Agreement, to Managers and former owners in satisfaction of liabilities for distributions under this Title.
- (c) Unless otherwise provided in the Operating Agreement, to Managers and former owners first for the return of their contributions in proportion to their respective values and, thereafter, in proportion to their respective rights to share in distributions from the Limited Liability Company before dissolution.

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ARTICLE XI: MERGER

Section 1. Merger, Generally.

- (a) Unless otherwise provided in its organizational documents, one or more Limited Liability Companies formed under this Title may merge with or into one or more Limited Liability Companies as provided in the plan of merger.
- (b) Interests or shares in a Limited Liability Company that is a party to a merger may be exchanged for or converted into cash, property, obligations, or interest in the surviving Limited Liability Company.

Section 2. Approval of Merger.

- (a) Unless otherwise provided in the Operating Agreement, a Limited Liability Company that is a party to a proposed merger shall approve the plan of merger by an affirmative vote by all of the Managers.
- (b) Unless otherwise provided in the Operating Agreement, the Manager or Managers of a Limited Liability Company may not approve a merger without also obtaining the approval of the Limited Liability Company's owners under subsection (a), above.
- (c) All other Constituents shall approve the merger in the manner and by the vote required by the laws applicable to the Constituents and their respective organizational documents.
- (d) Each Constituent shall have any rights to abandon the merger as provided for in the plan of merger or in the laws applicable to the Constituent or its organizational documents.
- (e) Upon approval of a merger, the Constituent shall notify its Members, shareholders, and all others that have an ownership interest in it of the approval and of the effective date of the merger.

Section 3. Articles of Merger.

- (a) The surviving Limited Liability Company shall deliver to the Tribe's Secretary articles of merger, executed by each party to the plan of merger, that include all of the following:
 - (1) The name and state or jurisdiction of organization for each Constituent;
 - (2) The plan of merger;
 - (3) The name of the surviving or resulting Limited Liability Company;
 - (4) A statement as to whether the management of the surviving Limited Liability Company will be reserved to its Managers or vested in one or more Managers;

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- (5) The delayed effective date of the merger, if applicable;
 - (6) A statement as to whether the surviving Limited Liability Company is tribally owned; and
 - (7) If tribally owned, a statement as to whether the surviving Limited Liability Company enjoys the Tribe's sovereign immunity.
- (b) A merger shall take effect upon the effective date of the articles of merger.

Section 4. Effects of Merger. A merger has the following effects:

- (a) The Constituent must become a single entity, which shall be the entity designated in the plan of merger as the surviving Limited Liability Company.
- (b) Each Constituent, except the surviving Limited Liability Company, ceases to exist.
- (c) The surviving Limited Liability Company possesses all of the rights, privileges, immunities, and powers of each merged Constituent and is subject to all of the restrictions, disabilities, and duties of each merged Constituent.
- (d) All property and all debts, including contributions, and each interest belonging to or owed to each of the Constituents are vested in the surviving Limited Liability Company without further act.
- (e) Title to all real estate and any interest in real estate, vested in any Constituent, does not revert and is not in any way impaired because of the merger.
- (f) The surviving Limited Liability Company has all the liabilities and obligations of each of the Constituents and any claim existing or action or proceedings pending by or against any merged Constituent may be prosecuted as if the merger had not taken place, or the surviving Limited Liability Company may be substituted in the action.
- (g) The rights of creditors and any liens on the property of any Constituent survive the merger.
- (h) The interests in a Constituent that are to be converted or exchanged into interest, cash, obligations, or other property under the terms of the plan of merger are converted and the former interest holders are entitled only to the rights provided in the plan of merger of the rights otherwise provided by law.
- (i) The Articles of Organization of the surviving Limited Liability Company is amended to the extent provided in the articles of merger.

Section 5. Right to Object to Merger. Unless otherwise provided in the Operating Agreement, upon receipt of the notice of merger, a Manager who did not vote in favor of the merger may, within twenty (20) days after the date of the notice, voluntarily dissociate from the Limited Liability Company and receive fair value for the Manager's Limited Liability Company interest.

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ARTICLE XII: MISCELLANEOUS

- Section 1.** **Applicable Law.** The Limited Liability Companies organized and created under this Title shall be subject to this Title, and all other laws of the St. Croix Tribe. By organizing and creating a Limited Liability Company under this Title, the company and its Members shall be considered to have entered into a consensual relationship with the Tribe and agree to be subject to the full extent of the Tribe's legislative, regulatory and adjudicatory jurisdiction.
- Section 2.** **No Waiver of Sovereign Immunity.** Nothing in this Title shall be deemed or construed to be a waiver of the sovereign immunity of any Tribal Entity from suit, action, claim, controversy or process, or operate to consent any Tribal Entity, to the jurisdiction of the United States, any state, or the Tribal Court with regard to the business or affairs of the Tribe or any Tribal Entity or to any cause of suit, action, claim, controversy, or process.
- Section 3.** **Severability.** If any part of this Title or the application thereof to any Person or circumstance is declared to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other provisions or applications of this Title which may be given effect without the invalid provision. To these ends, the provisions of this Title are declared to be severable.
- Section 4.** **Effective Date.** This Title shall become effective immediately upon its adoption by the St. Croix Tribal Council.

CERTIFICATION

I, the undersigned as Secretary/Treasurer of the St. Croix Tribal Council hereby certify that the Tribal Council is composed of five (5) members of whom 4 were present, constituting a quorum at a meeting duly called, convened and held this 4th day of October, 2016 and that the foregoing resolution was adopted at said meeting by an affirmative vote of 4 members for 0 against and 0 member abstaining from the vote, and that said resolution has not been rescinded or amended in any way.



Secretary/Treasurer
St. Croix Tribal Council
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