

TITLE 26

Limited Liability Company Code

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TITLE 26 LIMITED LIABILITY COMPANY CODE

Chapter 26.01 General Provisions

26.01.01 Short Title

This Code shall be known and may be cited as the Port Gamble S’Klallam Tribe Limited Liability Company Code.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.01.02 Authority

The Port Gamble S’Klallam Tribal Council is authorized to enact this Code pursuant to the Constitution of the Port Gamble S’Klallam Tribe, Articles IV.3.N and IV.3.O.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.01.03 Scope

The provisions of this Code shall apply to all limited liability companies authorized herein and formed under the laws and sovereign power of the Port Gamble S’Klallam Tribe, whether before or after the enactment hereof, and as more specifically prescribed herein.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.01.04 Purpose and Construction

- a) The purposes of this Title are:
- 1) To encourage commerce by allowing limitations on the liability of participants in tribally-authorized business enterprises;
 - 2) To allow greater flexibility in the organization and operation of business entities created under the sovereign authority of the Tribe;
 - 3) To ensure that business assets within the jurisdiction of the Tribe may be made available to satisfy valid claims of business creditors of tribally-authorized business enterprises; and

- 4) To simplify, clarify and modernize the laws applicable to businesses created under the sovereign powers of the Tribe.
- b) The provisions of this Code shall be liberally construed and applied to promote its underlying purposes and policies.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.01.05 Definitions

In this Code:

- a) “Articles of Operation” of “Operating Agreement” means an agreement in writing among all of the members as to the conduct of the business of the limited liability company and its relationship with its members.
- b) “Articles of Organization” means the Articles of Organization of an LLC formed pursuant to this Code.
- c) “Code” means this Limited Liability Company Code.
- d) “Controlled” as used in reference to limited liability companies controlled by the Tribe includes any limited liability company where the majority of its Board of Managers is chosen by the Tribal Council, as well as entities of the Tribe without boards of directors.
- e) “Distribution” means a direct or indirect transfer by a limited liability company of money or other property to or for the benefit of its members in respect to their interests.
- f) “Foreign limited liability company” means an entity that is formed under the limited liability company laws of any government other than this Tribal government.
- g) “Limited liability company” means an organization formed under this Code.
- h) “Manager” or “Managers” means the entity or entities designated to manage the company formed pursuant to this Code.
- i) “Member” means a person who has been admitted to membership in a limited liability company.
- j) “Membership interest” means the Member’s rights in the limited liability company, including all economic and governance interests therein.

- k) "Operating Agreement" means any written agreement made by the Member as to the affairs of a limited liability company and the conduct of its business in any manner not inconsistent with law or the articles of organization, including all amendments thereto.
- l) "Organizer(s)" means the individual person or entity(ies) which signs and delivers the articles of organization to the Tribal Secretary.
- m) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- n) "Tribal Council" means the governing body of the Tribe pursuant to Article IV of the Tribe's Constitution.
- o) "Tribal Court" means the Port Gamble S'Klallam Tribal Court.
- p) "Tribe" means the Port Gamble S'Klallam Tribe.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.01.06 Limited Liability Company Name

- a) The name of any limited liability company shall contain the words "Limited Liability Company," or shall contain the abbreviation "LLC".
- b) No limited liability company formed pursuant to this Code shall use any company name which is the same as, or deceptively similar to, any other limited liability company formed pursuant to this Code.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.01.07 Registered Agent

All limited liability companies formed pursuant to the sovereign power of the Tribe shall appoint a person to accept the service of judicial process on the company. All limited liability companies shall notify the Tribal Council of any change in the name or address of the company's registered agent. All limited liability companies formed pursuant to the sovereign powers of the Tribe are hereby deemed to consent to the appointment of the Tribal Council as their agent for the acceptance of service of process in the event the company shall have failed to notify the Tribal Council of any change in the name or the address of its registered agent. In such cases, service upon the Tribal Council shall be deemed to be service on such company effective 10 days after the date the Tribal Council is served;

provided, the Tribal Council shall mail notice of such service to any incorporator, director, officer or member of the company at the most recent address noted in the files of the Tribal Council.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

Chapter 26.02 Formation, Status, and Amendment

26.02.01 Articles of Organization

- a) One or more persons may organize a limited liability company by signing and delivering articles of organization to the Tribal Secretary for filing. The organizer(s) need not be members of the LLC at the time of organization or thereafter.
- b) The articles of organization shall contain all of and only the following information:
 - 1) A statement that the LLC is organized under this Code.
 - 2) The name of the limited liability company.
 - 3) The name and address of the initial agent for service of process on the limited liability company.
 - 4) A statement as to whether the LLC is member-managed or manager-managed.
 - 5) For LLCs wholly-owned by the Tribe, a statement as to whether the LLC enjoys the Tribe's sovereign immunity and other privileges and the scope of any waiver of that immunity from unconsented suit.
 - 6) For LLCs wholly-owned by the Tribe, a statement as to the authorization of the formation of the LLC by the Tribal Council including the authority under which the authorization is given, the person(s) designated as the organizer(s) of the LLC, and the tribal resolution number authorizing the formation of the LLC.
 - 7) The name, address and signature of the duly authorized organizer of the LLC.
- c) It is not necessary to set out in the articles any of the powers of a limited liability company enumerated in this Code.
- d) The LLC is formed and the effective date of the formation is the date when the articles of organization are filed by the organizer and

accepted by the Tribal Secretary. The Tribal Secretary shall assign an identification number to each article of organization.

- e) The existence of a limited liability company begins upon the filing of the articles. For all purposes, a copy of the articles duly certified by the Tribal Council is conclusive evidence of the formation of a limited liability company and prima facie evidence of its existence.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.02.02 Scope of Authority of Limited Liability Company

- a) Subject to any limitations contained in the articles or in any operating agreement and to compliance with any other applicable laws, a limited liability company may engage in any lawful business activity, except the banking business, the business of issuing policies of insurance and assuming insurance risks, or the trust company business.
- b) A limited liability company shall possess and may exercise all the powers and privileges granted by this Code 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.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.02.03 Status of Limited Liability Company

- a) For the sole purposes of taxation, regulatory jurisdiction and civil jurisdiction, any limited liability companies formed and owned by the Tribe shall be entitled to all of the privileges and immunities of a federally-recognized Indian tribe, including sovereign immunity.
- b) In the case of any limited liability company having its principal place of business on the Port Gamble S'Klallam Reservation or any property held by the United States for the benefit of the Tribe which has been formed under the laws of the Tribe, Tribal law shall control over any conflicting state laws or charter documents in any dispute concerning the status of the limited liability company or the rights and obligations of any persons with respect to the limited liability company.

- c) The Tribal Court shall have jurisdiction to decide all questions with respect to the status of limited liability companies formed pursuant to the sovereign powers of the Tribe.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.02.04 Amendment of Articles

- a) Subject to subdivision (b), the articles may be amended at any time and in any manner as the Tribe may determine, as long as the articles as amended contain only those provisions as it would be lawful to insert in original articles filed at the time of the filing of the amendment.
- b) The articles shall be amended by filing a certificate of amendment thereto executed by a duly authorized representative of the Tribe or by a representative of the limited liability company duly authorized in accordance with the provisions of the operating agreement or the articles. The certificate of amendment shall be filed with the Tribal Council, and shall set forth all of the following:
 - 1) The name and the Tribal Council's file number of the limited liability company.
 - 2) The text of the amendment to the articles.
- c) A certificate of amendment to the articles shall be filed to effect any of the following:
 - 1) A change in the name of the limited liability company;
 - 2) A change in the name or address of the agent for service of process on the limited liability company; or
 - 3) Any statement in the articles that is incorrect.
- d) The limited liability company shall cause to be filed a certificate of amendment to the articles within 30 days of the discovery of any false or erroneous material statement contained in the articles or any amendment thereto.
- e) Any person who executes a certificate of amendment shall be liable for any statement materially inconsistent with the operating agreement or any material misstatement of fact contained in the certificate of amendment if the manager knew or should have known that the statement was false when made or that the statement became false and an amendment required by subdivision (d) was not filed,

and the person suffering the loss relied on the statement or misstatement.

- f) Articles may be restated at any time. Restated articles shall: (i) be filed with and on a form prescribed by the Tribal Council; (ii) specifically designated as “restated” in the heading; (iii) set forth the limited liability company’s name and the Tribal Council’s file number; (iv) set forth the name and address of the agent for service of process; and, (v) set forth all other required matters and may set forth any other matters authorized by this Code. If restated articles include the agent for service of process, any previously filed statements are superseded as to the agent for service of process until another statement is filed subsequent to the filing of the restated articles. If the name of the limited liability company is to be changed by the filing of the restated articles, the old name shall also be set forth in the heading in a manner to indicate the intent to change the name.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.02.05 Authority to Adopt and Amend Articles

The power to adopt, alter, amend or repeal the operating agreement of a limited liability company shall be vested in the members. The articles or a written operating agreement may prescribe the manner in which the operating agreement may be altered, amended, or repealed.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

Chapter 26.03 Members

26.03.01 Admission of Member

- a) In connection with the formation of a LLC, a person acquiring a LLC interest is admitted as a member upon formation unless the articles of operation otherwise provides.
- b) After the formation of a LLC, a person acquiring a LLC interest is admitted as a member of the LLC as specified in the articles of operation or, if not so specified, by a majority in interest of members.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.03.02 Tribe as Member

- a) The Tribe shall form or become a member of an LLC formed pursuant to the Code only upon approval of such formation or membership by the Tribal Council, as evidenced by a duly authorized tribal resolution.
- b) If the Tribe is a member of an LLC formed pursuant to the Code, any action which the Tribe is required or permitted to take with respect to any vote, approval, consent, appointment, direction, or other matter shall be taken as stated by a duly enacted tribal resolution.
- c) If the Tribe is the sole member of a limited liability company formed pursuant to the Code, that LLC shall possess the Tribe's sovereign immunity from unconsented suit except to the extent otherwise provided for in the Articles of Operation as approved by the Tribal Council.
- d) Nothing contained in this Code shall be construed as creating any liability or waiving of the Tribe's sovereign immunity in any manner provided that the assets of an LLC in which the Tribe holds an interest may be subject to liabilities and claims unless otherwise provided herein.
- e) In no event shall any manager not a Member of a LLC in which the Tribe is a Member bind the Tribe in any manner; provided that, the Tribe's interest as Member may be bound by Member actions as stated in the Code and the Articles of Operation of the LLC.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.03.03 Dissociation

- a) A person ceases to be a member of a LLC upon the occurrence of and at the same time of any of the following events:
 - 1) The member withdraws by voluntary act.
 - 2) The member is removed as a member in accordance with articles of operation or this Code.
 - 3) Unless otherwise provided in articles of organization 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 voluntary petition in bankruptcy.

- iii) Becomes the subject of an order for relief under the federal bankruptcy laws or state or tribal insolvency laws.
 - iv) Fails to gain dismissal of any federal bankruptcy or state or tribal insolvency proceeding within 120 days of commencement of an involuntary proceeding.
 - 4) Unless provided in articles of operation or by the written consent of all members, if the member is an individual:
 - i) The member's death.
 - 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 articles of operation 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 articles of operation for other events the occurrence of which result in a person ceasing to be a member of the LLC.
- c) Unless articles of operation provide that a member does not have the power to withdraw by voluntary act from a LLC, the member may do so at any time by giving written notice to the other members or as provided in articles of operation. If the member has the power to withdraw but the withdrawal is a breach of the articles of operation, the LLC may offset the damages against the amount otherwise distributable to the member, in addition to pursuing any remedies provided for in articles of operation or otherwise available under applicable law.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.03.04 Duties

Unless otherwise provided in articles of operation:

- a) No member or manager shall act or fail to act in a manner that constitutes any of the following:

- 1) A willful failure to deal fairly with the LLC or its members in connection with a matter in which the member or manager has a material conflict of interest.
 - 2) A violation of criminal law, unless the member or manager had reasonable cause to believe that the person's conduct was lawful or no reasonable cause to believe that the conduct was unlawful.
 - 3) A transaction from which the member or manager derived an improper personal profit.
 - 4) Willful misconduct.
- b) Every member and manager shall account to the LLC and hold as trustee for it any improper personal profit derived by that member or manager without the consent of a majority of the disinterested members or managers, or other persons participating in the management of the LLC, from any of the following:
- 1) A transaction connected with the organization, conduct, or winding up of the LLC.
 - 2) A use by a member or manager of the property of a LLC, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as member or manager.
 - 3) Articles of operation may impose duties on its members and managers that are in addition to, but not in abrogation of, those provided in paragraph (a), above.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.03.05 Records and Information

- a) A LLC shall keep at its principal place of business all of the following:
- 1) A list, in alphabetical order, of each past and present member and, if applicable, manager.
 - 2) A copy of the articles of organization and all amendments to the articles, together with executed copies of any powers of attorney under which any articles were executed.

- 3) A record of all matters referred to in this Code as maintained in such records which are not otherwise specified in the articles of operation
- b) Upon reasonable request, a member may, at the member's own expense, inspect and copy during ordinary business hours any LLC record unless otherwise provided in articles of operation.
- c) Members or, if the management of the LLC is vested in one or more managers, managers shall provide true and full information of all things affecting the members to any member or to the legal representative of any member upon reasonable request of the member or the legal representative.
- d) Failure of a LLC to keep or maintain any of the records of information required under this Section shall not be grounds for imposing liability on any person for the debts and obligations of the LLC.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

Chapter 26.04 Management, Managers, and Officers

26.04.01 Management of Limited Liability Company

- a) The articles or operating agreement may provide that the business and affairs of the limited liability company shall be managed by or under the authority of one or more managers who may, but need not, be natural persons.
- b) The articles or operating agreement may prescribe the number and qualifications of managers.
- c) Unless the articles of organization vest management in one or more managers, management of the LLC shall be vested in the members subject to any provision in articles of operation or the Code restricting or enlarging the management rights and duties of any member or group of members.
- d) If the articles of organization vest management in one or more managers, management of the business or affairs of the LLC shall be invested in the manager or managers subject to any provisions in articles of operation or the Code restricting or enlarging the management rights and duties of any manager or group of managers. Unless otherwise provided in articles of operation, the manager or managers:

- 1) Shall be designated, appointed, elected, removed, or replaced by a vote of a majority in interest of the members.
- 2) Need not be members of the LLC nor individuals.
- 3) Unless earlier removed or earlier resigned, shall not hold office until a successor is elected and qualified.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.04.02 Appointment of Officers

- a) The Articles of Operation or a written operating agreement may provide for the appointment of officers, including, without limitation, a chairperson or a president, or both, a secretary, a chief financial officer, and any other officers with such titles, powers, and duties as shall be specified in the articles or operating agreement, or determined by the managers or members. An officer may, but need not, be a member or manager of the limited liability company, and any number off offices may be held by the same person.
- b) Officers, if any, shall be appointed in accordance with the written operating agreement or, if no such provision is made in the operating agreement, any officers shall be appointed by the managers and shall serve at the pleasure of the managers, subject to the rights, if any, of an officer under any contract of employment.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.04.03 Fiduciary Duties of Managers, Officers and Directors

- a) The fiduciary duties a manager, officer or director owes to the limited liability company and to its members are the duty of loyalty and the duty of care as set forth below.
- b) A manager's, officer's or director's duty of loyalty to the limited liability company includes all of the following:
 - 1) To account to the limited liability company and hold as trustee any property, profit or benefit derived by the manager, officer or director in the conduct and winding up of the limited liability company or derived from a use by the manager, officer or director of company property or information, including the appropriation of a company opportunity.

- 2) To refrain from dealing with the limited liability company in the conduct or winding up of the company business as or on behalf of a party having an interest adverse to the limited liability company.
 - 3) To refrain from competing with the company in the conduct of company business before the dissolution of the limited liability company.
- c) A manager's, officer's or director's duty of care to the limited liability company is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.
 - d) A manager, officer or director shall discharge his or her duties to the limited liability company consistently with the obligation of good faith and fair dealing and in a manner such manager, officer or director believes to be in the best interests of the company and its members and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.04.04 Indemnification of Officers

- a) Except for a breach of the duty set forth in Section 26.03.04, the articles or written operating agreement of a limited liability company may provide for indemnification of any person, including, without limitation, any manager, member, officer, employee, or agent of the limited liability company, against judgments, settlements, penalties, fines, or expenses of any kind incurred as a result of acting in that capacity.
- b) A limited liability company shall have power to purchase and maintain insurance on behalf of any manager, member, officer, employee, or agent of the limited liability company against any liability asserted against or incurred by the person in that capacity or arising out of the person's status as a manager, member, officer, employee, or agent of the limited liability company.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.04.05 Liability of Members, Managers and Officers

- a) No person who is a manager or officer or both a manager and officer of a limited liability company shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a manager or officer or both a manager and officer of the limited liability company.
- b) Notwithstanding subdivision a), a manager of a limited liability company may agree to be obligated personally for any or all of the debts, obligations, and liabilities of the limited liability company as follows:
 - 1) If the agreement to be so liable is set forth in the articles or in a written operating agreement that specifically references this subdivision.
 - 2) Pursuant to the terms of a written guaranty or other contractual obligation entered into by the manager, other than an operating agreement.
- c) No member of any limited liability company formed pursuant to this Code shall be liable to any creditor of the company by reason of his or her status as a member, except insofar as said member may be indebted to the company for unpaid loans or indebtedness.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

Chapter 26.05 Finance

26.05.01 Contributions

- a) A member's contributions to a LLC may consist of cash, property, or services rendered, or promissory notes or other written obligations to provide cash or property or to perform services.
- b) The value of a member's contribution shall be determined in the manner provided in articles of operation. If the articles of operation does not fix a value to a contribution, the value of a contribution shall be approved by a majority in interest of the members, shall be properly reflected in the records and information kept by the LLC. The value of contributions so determined shall be binding and conclusive on the LLC and its members.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.05.02 Liability for Contribution

- a) An obligation of a member to provide cash or property or to perform services as a contribution to a LLC is not enforceable unless specified in a writing signed by the member.
- b) Unless otherwise provided in articles of operation, a member is obligated to a LLC to perform any enforceable promise to provide cash or property or to perform services, even if the member is unable to perform because death, disability, or any other reason. If a member does not provide cash, property, or services as promised, the member is obligated at the option of the LLC to provide cash equal to that portion of the value of the stated contribution that has not been fulfilled.
- c) Unless otherwise provided in articles of operation, a member's obligation to provide cash or property or perform services as a contribution to the LLC may be compromised only by the written consent of all of the members.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.05.03 Allocation of Profits and Losses

The profits and losses of the LLC shall be allocated among the members in the manner provided in articles of operation. If the members do not enter into articles of operation or the articles of operation does not so provide, profits and losses shall be allocated on the basis of value of the contributions made by each member.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.05.04 Distributions

- a) Except as provided in this Section, a member is entitled to receive distributions from a LLC before the member's dissociation from the LLC and before its dissolution and winding up to the extent to the extent and at the times or upon the events specified in articles of organization, or to the extent and at the times determined by the members or managers.
- b) Distributions of cash or other assets of a LLC shall be allocated among the members as provided in articles of operation, or if the articles of operation does not provide, on the basis of the value of the contributions made by each member.

- c) Except as provided in this Section, upon the distribution in partial liquidation of a member's interest, the redeeming member is entitled to receive the amount to which the member is entitled under the articles of operation and, if not otherwise provided in the articles of operation, the fair value of the redeemed interest based on the member's right to share in distributions from the LLC.
- d) Except as otherwise provided in this Section, upon an event of dissociation that does not cause dissolution of the LLC, a dissociating member is entitled to receive any distribution to which member is entitled under articles of operation and, if not otherwise provided in the articles of operation the fair value of the member's interest in the LLC based on the member's rights to share in distributions from the LLC.
- e) Unless otherwise provided in the articles of operation:
 - 1) A member may not demand and receive any distribution from a LLC in any form other than cash.
 - 2) A member may not be compelled to accept a distribution of any asset in kind except for a liquidating distribution made proportionately.
- f) At the time that a member becomes entitled to receive a distribution from a LLC, the member has the status of and is entitled to all remedies available to a creditor of the LLC with respect to the distribution.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.05.05 Limitations of Distributions

- a) A LLC may not declare or make a distribution to any of its members, if after giving effect to the distribution, any of the following would occur:
 - 1) The LLC would be unable to pay its debts as they become due in the usual course of business.
 - 2) The fair market value of the LLC's total assets would be less than the sum of its total liabilities plus, unless the articles of operation provide otherwise, the amount that would be needed for the preferential rights upon dissolution of members, if any.
- b) An LLC may base a determination that a distribution is not prohibited by paragraph a, above, on any of the following:

- 1) Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable under the circumstances.
 - 2) A fair market valuation or other method that is reasonable under the circumstances.
- c) An LLC's indebtedness to a member incurred by reason of a distribution made in accordance with this Section is at parity with the LLC's indebtedness to its general unsecured creditors, except to the extent subordinated by written agreement. This Section does not affect the validity or priority of a security interest in a LLC's property that is created to secure the indebtedness to the member.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.05.06 Liability for Wrongful Distribution

- a) Other than the Tribe, a manager who votes or assents to a distribution in violation of Section 26.05.05 or of the articles of operation is personally liable to the LLC for the amount of the excess distribution, subject to contribution from all other managers or members participating in such action.
- b) A proceeding under this Section is barred unless it is brought within two 2) years after the date on which the effect of the distribution was measured under Section 26.05.05.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

Chapter 26.06 Limited Liability Company Interests

26.06.01 Ownership of LLC Property

- a) All property originally transferred to or acquired by a LLC is property of the LLC and not the members individually.
- b) Property acquired with LLC funds is presumed to be LLC property.
- c) Property may be acquired, held, and conveyed in the name of the LLC.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.06.02 Transfer of LLC Property

The property of a LLC may be transferred by an instrument of transfer executed by any member in the name of the LLC, unless management is vested in managers, in which case the document of transfer shall be executed by a manager, subject to any limitation that may be imposed by the articles of operation.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.06.03 Nature of LLC Interest

An LLC interest is personal property.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.06.04 Assignment of LLC Interest

- a) Unless otherwise provided in articles of operation:
- 1) An LLC interest is assignable in whole or in part.
 - 2) An assignment of a LLC interest entitles the assignee to receive only the distributions and to share in the allocations of profits and losses to which the assignee would be entitled with respect to the assigned interest.
 - 3) An assignment of a LLC interest does not dissolve the LLC.
 - 4) The assignment of a LLC interest does not entitle the assignee to participate in the management or exercise rights of a member.
 - 5) The assignor of a LLC interest is not released from any personal liability arising under this Code as a member of the LLC solely as a result of the assignment.
- b) Unless otherwise provided in articles of operation, the granting of a security interest, lien, or other encumbrance in or against any or all of a member's LLC interest is not assignable and shall not cause the member to cease to have the power to exercise any rights or powers of a member.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.06.05 Rights of Judgment Creditor

On application to a court of competent jurisdiction, including a court other than the Tribal Court having valid jurisdiction over the member by any judgment creditor of a member, the court may charge the LLC interest of any member other than the Tribe with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of an assignee of the member's LLC interest. This Section does not deprive any member of the benefit of any exemption laws applicable to the LLC interest. In no event shall the Tribe's interest be attachable in abrogation of its sovereign immunity.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

Chapter 26.07 Dissolution

26.07.01 Dissolution of Limited Liability Company

- a) A limited liability company is dissolved and its affairs shall be wound up upon the happening of the first of the following:
 - 1) The occurrence of events specified in articles of operation.
 - 2) The written consent of all members.
 - 3) An event of dissociation of a member, unless otherwise provided in articles of operation or continuation is consented to by all remaining members.
 - 4) Entry of a decree of judicial dissolution under subdivision b) below.
- b) In a proceeding by or for a member, the Court may order dissolution of a LLC if any of the following is established:
 - 1) That it is not reasonably practicable to carry on the business of the LLC.
 - 2) That the LLC is not acting in conformity with articles of operation.
 - 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 members in control of the LLC are acting or will act in a manner that is illegal, oppressive, or fraudulent.

- 5) That LLC assets are being misapplied or wasted.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.07.02 Winding Up

A dissolved LLC continues its legal existence but may not carry on any business except that which is appropriate to wind up and liquidate its business

- a) Unless otherwise provided in articles of operation:
 - 1) The business of the LLC may be wound up by any of the following:
 - i) The members or managers who have authority to manage the LLC before dissolution.
 - ii) In a judicial dissolution, the persons) designated by the Court.
 - 2) The persons winding up the business of the LLC may do all of the following in the name of and on behalf of the LLC:
 - i) Collect its assets.
 - ii) Prosecute and defend suits.
 - iii) Take any action necessary to settle and close the business of the LLC.
 - iv) Dispose of and transfer the property of the LLC.
 - v) Discharge or make provision for discharging the liabilities of the LLC.
 - vi) Distribute to the members any remaining assets of the LLC.
- b) Dissolution of a LLC does not do any of the following:
 - 1) Transfer title to the LLC's property.
 - 2) Prevent transfer of all or part of a member's interest.
 - 3) Prevent commencement of a civil, criminal, administrative, or investigatory proceeding by or against the LLC.

- 4) Abate or suspend a civil, criminal, administrative, or investigatory proceeding pending by or against the LLC at the time of dissolution.
- 5) Terminate the authority of the registered agent of the LLC.
- 6) Alter the limited liability of a member.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.07.03 Distribution of Assets

Upon the winding up of a LLC, the assets shall be distributed in the following order:

- a) To creditors, including to the extent permitted by law, members, and former members in satisfaction of liabilities of the LLC.
- b) Unless otherwise provided in articles of operation, to members and former members in satisfaction of liabilities for distributions.
- c) Unless otherwise provided in articles of operation, to members and former members 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 LLC before dissolution.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.07.04 Articles of Dissolution

After the dissolution of a LLC, the LLC may file articles of dissolution with the Tribal Council Secretary that includes the following:

- a) The name of the LLC.
- b) The date of filing of its articles of organization.
- c) The statutory grounds under Section 26.07.01 for dissolution.
- d) The delayed effective date of the articles of dissolution, if applicable.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.07.05 Known Claims Against Dissolved LLC

- a) A dissolved LLC may notify its known claimants in writing of the dissolution and specify a procedure for making claims.
- b) A claim against the LLC is barred if:
 - 1) A claimant who was given written notice under subdivision a, above, does not deliver the claim, in writing, to the LLC by the deadline specified in the notice.
 - 2) A claimant whose claim is rejected by the LLC does not commence a proceeding to enforce the claim within ninety (90) days after receipt of the rejection notice.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.07.06 Unknown or Contingent Claims

A claim not barred under Section 26.07.05 may be enforced:

- a) Against the dissolved LLC, to the extent of its undistributed assets.
- b) If the dissolved LLC's assets have been distributed in liquidation, against a member of the LLC, other than the Nation, to the extent of the member's proportionate share of the claim or of the assets of the LLC distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this Section may not exceed the total value of assets at the time distributed to the member.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

Chapter 26.08 Merger

26.08.01 Merger

- a) Unless the context requires otherwise, in this Chapter, LLC includes a domestic LLC and a foreign LLC.
- b) Unless otherwise provided in articles of operation one or more LLC's may merge with or into one or more LLC's or one or more other foreign LLC's provided in the plan of merger.
- c) Interests in a LLC that is a party to a merger may be exchanged for or converted into cash, property, obligations, or interest in the surviving LLC.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.08.02 Approval of Merger

- a) Unless otherwise provided in the articles of operation, a LLC that is a party to a proposed merger shall approve the plan of merger by an affirmative vote of a majority in interest of members.
- b) Unless otherwise provided in articles of operation, the manager or managers of a LLC may not approve a merger without also obtaining the approval of the LLC's members under paragraph a, above.
- c) Each foreign LLC that is a party to a proposed merger shall approve the merger in the manner and by the vote required by the laws applicable to the foreign LLC.
- d) Each LLC that is a party to the merger shall have any rights to abandon the merger that are provided for in the plan of merger or in the laws applicable to the LLC.
- e) Upon approval of a merger, the LLC shall notify each member of the approval and of the effective date of the merger.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.08.03 Plan of Merger

Each LLC that is a party to a proposed merger shall enter into a written plan of merger to be approved under Section 26.08.02.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.08.04 Articles of Merger

- a) The surviving LLC shall deliver to the Tribal 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 LLC that is to merge.
 - 2) The plan of merger.
 - 3) The name of the surviving or resulting LLC.

- 4) A statement as to whether the management of the surviving LLC will be reserved to its members or vested in one or more managers.
- 5) The delayed effective date of the merger, if applicable.
- 6) A statement whether the Tribe is the sole member.
- 7) If the Tribe is sole member, a statement as to whether the LLC enjoys the Tribe's sovereign immunity.
- 8) A statement that the plan of merger was approved under Section 26.08.02.

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

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.08.05 Effects of Merger

A merger has the following effects:

- a) The LLCs that are parties to the plan of merger become a single entity, which shall be the entity designated in the plan of merger as the surviving LLC.
- b) Each party to the plan of merger, except the surviving LLC, ceases to exist.
- c) The surviving LLC possesses all of the rights, privileges, immunities, and powers of each merged LLC and is subject to all of the restrictions, disabilities, and duties of each merged LLC.
- d) All property and all debts, including contributions, and each interest belonging to or owed to each of the parties to the merger are vested in the surviving LLC without further act.
- e) Title to all real estate and any interest in real estate, vested in any party to the merger, does not revert and is not in any way impaired because of the merger.
- f) The surviving LLC has all the liabilities and obligations of each of the parties to the plan of merger and any claim existing or action or proceedings pending by or against any merged LLC may be prosecuted as if the merger had not taken place, or the surviving LLC may be substituted in the action.

- g) The rights of creditors and any liens on the property of any party to the plan of merger survive the merger.
- h) The interests in a LLC 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 LLC are amended to the extent provided in the articles of merger.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.08.06 Right to Object

Unless otherwise provided in articles of operation, upon receipt of the notice of merger, a member who did not vote in favor of the merger may, within twenty (20) days after the date of the notice, voluntarily disassociate from the LLC and receive fair value for the member's LLC interest.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

Chapter 26.09 Conversion

26.09.01 Conversion to Tribal Limited Liability Company

- a) Any other business entity or foreign limited liability company that is wholly owned by the Tribe may be converted into a Tribal limited liability company pursuant to this Code if the converting entity is not prohibited by the law under which it is organized to effect the conversion.
- b) Any other business entity or a foreign limited liability company that desires to convert into a Tribal limited liability company shall approve a plan of conversion or such instrument as is required to be approved to effect the conversion pursuant to the laws under which that entity is organized.
- c) The conversion of any other business entity or a foreign limited liability company to a Tribal limited liability company shall be approved by the Tribe.
- d) The conversion by any other business entity or foreign limited liability company shall be effective at the time the conversion is effective in accordance with the law under which the converting

entity is organized as long as the articles have been filed with the Tribal Council. If the converting entity's governing law is silent as to the effectiveness of the conversion, the conversion shall be effective upon the completion of all acts required under this Code to form a limited liability company.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

26.09.02 Conversion to Tribal Corporation Subdivision

- a) Upon the approval of a Corporate Charter pursuant to 25 U.S.C. § 477 which authorizes the segregation of discrete Tribal corporate or business assets into subdivisions of the federally-chartered corporation, any Tribal limited liability company in which the Tribe is the sole member may be converted to a subdivision of the federally-chartered corporation formed pursuant to 25 U.S.C. § 477.
- b) The conversion to a subdivision of the federally-chartered corporation shall be effective upon the enactment of the Tribal resolution directing the conversion.
- c) The subdivision created by the conversion possesses all of the rights, privileges, immunities, and powers of the converted LLC and is subject to all of the restrictions, disabilities, and duties of the converted LLC.
- d) The subdivision created by the conversion may operate under the Articles of Operation of the tribal limited liability company.
- e) All property and all debts, including contributions, are vested in the subdivision created by the conversion without further act.
- f) Title to all real estate and any interest in real estate owned by the former LLC shall revert or be transferred to the subdivision created by the conversion.
- g) The subdivision created by the conversion has all the liabilities and obligations of the former LLC and any claim existing or action or proceedings pending by or against the former LLC may be prosecuted as if the merger had not taken place, or the subdivision created by the conversion may be substituted in the action.
- h) The rights of creditors and any liens on the property of the former LLC shall survive the conversion.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

Chapter 24.10 Miscellaneous

24.10.01 Savings Clause

In event that any provision of this Code shall be found or declared to be invalid, the remaining provisions of this Code shall be unaffected thereby, and shall remain in full force and effect.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]

24.10.02 Sovereign Immunity

- a) Nothing herein shall be construed as waiving or abrogating the sovereign immunity of the Tribe, its officials, employees, or agents from unconsented suit in any federal, state or tribal court.
- b) Notwithstanding any other provision contained in this Code, a limited liability company shall have the power to consent, on behalf of such limited liability company only, to being sued in courts or to have claims against it resolved through arbitration.
- c) Notwithstanding any other provision contained in this Code, a limited liability company may not dispose of, mortgage, or otherwise encumber real or personal property of the Tribe, except that such limited liability company may grant a leasehold mortgage or other security interest in such limited liability company's leasehold interest in any lease of real or personal property of the Tribe to such limited liability company.

[HIST: Source – Resolution No. 08-A-053 passed 03/25/08 on an emergency basis. Finalized after a public hearing on 3/14/2016 via resolution 16-A-020, passed at Tribal Council meeting on 3/28/16.]