

SISSETON-WAHPETON OYATE OF THE LAKE TRAVERSE RESERVATION

**CHAPTER 80B
LIMITED LIABILITY COMPANY ORDINANCE**

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SISSETON-WAHPETON OYATE

CHAPTER 80B LIMITED LIABILITY COMPANY ORDINANCE

PART 1 GENERAL PROVISIONS

80B-1-1. Short Title.

This Title shall be known as the “Sisseton-Wahpeton Oyate Tribal Limited Liability Company Ordinance.”

80B-1-2. Authority; Purposes; Sovereign Immunity.

- (A) This Ordinance is enacted pursuant to the Sisseton-Wahpeton Oyate’s (the “Tribe”) inherent governmental power, fiscal authority, and tribal sovereignty, and as specifically authorized by the Revised Constitution and Bylaws of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation (the “Tribal Constitution”).
- (B) The purpose of this Ordinance is to provide for economic development of the Sisseton-Wahpeton Oyate and its members by:
- (1) Providing the legal framework for organizing individually-owned business entities in order to expand the private business sector on Tribal Lands; and
 - (2) Authorizing the formation of business entities wholly-owned by the Tribe or the Tribe’s Economic Development Authority for the purpose of managing the Tribe’s economic activities separate from the general affairs of its Tribal Council, with the ability to enter into legally-binding contracts and commercial relationships without the need for formal Tribal Council action.
- (C) By the adoption of this Ordinance, the Tribe does not waive its sovereign immunity or consent to suit in any court, whether federal, tribal or state, and neither the adoption of this Ordinance, nor the formation of any Limited Liability Company hereunder, shall be construed to be a waiver of the sovereign immunity of the Tribe or a consent to suit against the Tribe in any court.

80B-1-3. Scope.

This Ordinance shall apply to all limited liability companies organized under its provisions or that elect to accept the provisions of this Ordinance.

80B-1-4. Applicable Law.

Companies organized and created under this Ordinance shall be subject to this Ordinance, and all other laws of the Tribe. To the extent that any provisions of this Ordinance conflict with

any other provisions of the Codes of the Sisseton-Wahpeton Oyate, this Title supersedes those conflicting provisions. The preceding sentence does not apply in situations involving a Limited Liability Company wholly-owned by the Tribe's Economic Development authority under Part 9 of this Ordinance, in which cases the provisions of the Economic Development Authority Ordinance shall supersede any conflicting provisions herein. By organizing and creating a Limited Liability Company under this Ordinance, the Limited Liability Company and its Owners shall be considered to have entered into a consensual relationship with the Tribe and agree to be subject to the full extent of the Tribe's legislative, regulatory, and adjudicatory jurisdiction. Unless displaced by particular provisions of this Ordinance or other Tribal law, the principles of law and equity supplement this Ordinance.

80B-1-5. Definitions.

Terms used in this Ordinance have the following meanings:

- (A) **Articles of Organization.** "Articles of Organization" means the Articles filed under Section 80B-2-1 and those Articles as amended or restated.
- (B) **Corporation.** "Corporation" means a domestic Corporation organized under the laws of the Tribe or a foreign Corporation formed under the laws of any other jurisdiction.
- (C) **Distribution.** "Distribution" means a direct or indirect transfer by a Limited Liability Company of money or other property to or for the benefit of its Owners in respect of their interests.
- (D) **Entity.** "Entity" includes an individual, a general partnership, limited partnership, a Limited Liability Company, a trust, an estate, an association, a Corporation, or any other legal or commercial entity.
- (E) **Foreign.** "Foreign" means an Entity organized under the laws of a jurisdiction other than the Tribe.
- (F) **Limited Liability Company.** "Limited Liability Company" or "Domestic Limited Liability Company" means an organization formed under this Ordinance, except as provided for in Section 80B-8-1(A).
- (G) **Limited Liability Company Interest.** "Limited Liability Company Interest" or "Interest in the Limited Liability Company" or "Owner's Interest" means an Owner's rights in the Limited Liability Company, including rights to distributions, profits and losses, and to participate in management, as specified in the Operating Agreement.
- (H) **LLC.** "LLC" means a Limited Liability Company.
- (I) **Majority in Interest.** "Majority in Interest" means an Owner or Owners holding more than fifty percent (50%) of the total voting interests in the Limited Liability Company

excluding any interest which is not to be counted as voting on a matter as described elsewhere in this Ordinance.

- (J) **Majority of Owners.** “Majority of Owners” means more than fifty percent (50%) of the Owners, irrespective of how many interests each Owner holds.
- (K) **Managers.** “Manager(s)” means the person(s) or entity(ies) designated to manage the LLC pursuant to the Articles of Organization and Operating Agreement.
- (L) **Operating Agreement.** “Operating Agreement” means an agreement in writing among all of the Owners as to the conduct of the business of a Limited Liability Company and its relationships with its Owners.
- (M) **Organizational Documents.** “Organizational Documents” means records that create a Business Entity’s organization and determine its internal governance and relations among persons that own it, have an interest in it, or are Owners of it, and it includes, but is not limited to, Articles of Organization, Operating Agreements, Articles of Incorporation, Bylaws, partnership agreements, agreements of trust, and declarations of trust.
- (N) **Organizer.** “Organizer(s)” means the person(s) or entity(ies) which signs and delivers the Articles of Organization for filing to the Tribal Vice Chairman.
- (O) **Owner.** “Owner” means a Person that is an owner of a Limited Liability Company or has an ownership interest in a Limited Liability Company. The term does not include a person that has dissociated as an owner under Section 80B-3-7.
- (P) **Person.** “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
- (Q) **Reservation; Tribal Lands.** “Reservation” or “Tribal Lands” means all lands under the jurisdiction of the Tribe pursuant to the Tribal Constitution, individual tribal member allotments, restricted fee lands, and all lands held in trust by the United States of America for the benefit of the Tribe or its members.
- (R) **State.** “State” includes a state, territory, or possession of the United States, and the District of Columbia.
- (S) **Tribal Corporation.** “Tribal Corporation” means a Corporation wholly owned by the Tribe and duly formed pursuant to a Tribal Resolution, the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation Business Corporation Ordinance, or other law.
- (T) **Tribal Council.** “Tribal Council” means the Tribal Council as established by Article III, Section I of the Tribal Constitution as the governing body of the Tribe.

- (U) **Tribal Court.** “Tribal Court” means the Tribal Court of the Sisseton-Wahpeton Oyate as established by Article III, Section 5 of the Tribal Constitution.
- (V) **Tribal Entity.** “Tribal Entity” includes the Tribe, the Tribal Council, the Tribe’s Economic Development Authority, a general partnership, limited partnership, a Domestic or Foreign Limited Liability Company, a trust, an estate, an association, a Corporation, a program, a department, an administrative agency, a resolution-based entity or any other legal, commercial or governmental entity of the Tribe.
- (W) **Tribally-Owned LLC.** “Tribally-Owned LLC” means a Limited Liability Company wholly owned by the Tribe or the Tribe’s Economic Development Authority, with the Tribe or the Tribe’s Economic Development Authority as its sole Owner.
- (X) **Tribally-Owned Second Tier Subsidiary LLC.** “Tribally-Owned Second Tiered Subsidiary LLC” means a Limited Liability Company wholly owned by a Tribally-Owned Subsidiary LLC.
- (Y) **Tribally-Owned Subsidiary LLC.** “Tribally-Owned Subsidiary LLC” means a Limited Liability Company wholly owned by a Tribally-Owned LLC.
- (Z) **Tribe.** “Tribe” means the Sisseton Wahpeton Oyate including any of its political subdivisions, or any of its departments, agencies, instrumentalities, governmental entities, or commercial entities.
- (AA) **Tribal Vice Chairman.** “Tribal Vice Chairman” means the Vice Chairman of the Tribal Council as established by Article III, Section 1 of the Tribal Constitution, and Article I, Section 3(f) of the By-Laws. The Tribal Vice Chairman may delegate any responsibilities and/or duties designated under this Code to an officer of the Tribe under the supervision of the Tribal Vice Chairman.
- (BB) **Trust Land.** “Trust Land” means land held in trust by the United States for the benefit of the Tribe or its members.

80B-1-6. Name.

- (A) The name of a Limited Liability Company as set forth in its Articles of Organization must contain the words “Limited Liability Company” or end with the abbreviation “L.L.C.” or “LLC.” The name may not contain language stating or implying that the Limited Liability Company is organized for any purpose other than that permitted under Section 80B-1-9, below.
- (B) The name of a Domestic LLC shall be distinguishable from any LLC or Corporation previously organized under the laws of the Tribe.

80B-1-7. Registered Office and Registered Agent.

- (A) A Limited Liability Company's registered agent is the Limited Liability Company's agent for receiving service of process, notice, or demand required or permitted by law to be served on the Limited Liability Company under the laws of the Tribe.
- (B) Each LLC shall continuously maintain a registered office and a registered agent. The registered office may, but need not, be the same as any of its places of business. The agent may be the same person then serving in a designated office of the Tribe rather than a specified person if the Tribe is an Owner in the LLC of which the Tribe's officer is the appointed agent.
- (C) An LLC may change its registered office or registered agent, or both, by filing a written notice of change containing the name of its registered agent and the street address of its registered office, as changed, with the Tribal Vice Chairman and paying the filing fee.
- (D) The registered agent of an LLC may resign as a registered agent by delivering to the Tribal Vice Chairman for filing a written statement of resignation and the appointment by the LLC of another registered agent.

80B-1-8. Tribe as an Owner.

- (A) The Tribe or the Tribe's Economic Development Authority shall form or become an Owner of a Tribally-Owned LLC formed under this Ordinance only upon approval of such action by duly enacted resolution of the Tribal Council, or similar action by the Board of Directors of the Tribe's Economic Development Authority.
- (B) If the Tribe, the Tribe's Economic Development Authority, or a Tribal Entity is an Owner of an LLC formed under this Ordinance, any action that the Tribe is required or permitted to take with respect to any vote, approval, consent, appointment, direction, or other matter shall be taken as specified in Section 9-4(A) of this Ordinance or, as to actions related to the Managers of a Manager-managed LLC, as stated in the LLC's Operating Agreement approved by the Tribal Council or the Board of Directors of the Tribe's Economic Development Authority.
- (C) If the Tribe, the Tribe's Economic Development Authority, or a Tribal Entity is the sole Owner of an LLC formed under this Ordinance, such LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit.
- (D) If a Tribally-Owned LLC, of which the Tribe, the Tribe's Economic Development Authority, or a Tribal Entity is the sole Owner, forms a Tribally-Owned Subsidiary LLC, of which the Tribally-Owned LLC is the sole Owner, such Tribally-Owned Subsidiary LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit.

- (E) If a Subsidiary Tribally-Owned LLC, of which the Tribally-Owned LLC is the sole Owner, forms a Tribally-Owned Second Tier Subsidiary LLC, such Tribally-Owned Second Tier Subsidiary LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit.
- (F) If the Tribe or a Tribal Entity is an Owner with a Majority in Interest in an LLC formed under this Ordinance, such LLC may possess the privileges and immunities of the Tribe, including sovereign immunity from suit, to the extent allowed by federal law, this Ordinance or its Operating Agreement.
- (G) In no event shall any Manager not an Owner of an LLC in which the Tribe or the Tribe's Economic Development Authority is an Owner, bind the Tribe in any manner; provided that the Tribe's or the Tribe's Economic Development Authority's interest(s) as an Owner may be bound by Manager or Owner actions as stated in this Ordinance and/or the Operating Agreement of the LLC.
- (H) Nothing contained in this Ordinance shall be construed as creating any liability or waiving the sovereign immunity of the Tribe in any manner; provided that the assets of the LLC in which the Tribe or the Tribe's Economic Development Authority holds an interest may be subject to liabilities and claims unless otherwise provided herein. In no event shall any action taken by the Tribe or the Tribe's Economic Development Authority as Owner concerning the exercise of any right or privilege or discharge of any duty with respect to an interest in an LLC be construed as a waiver of immunity or creation of a liability on the part of the Tribe or the Tribe's Economic Development Authority separate and apart from its interests as an Owner of the LLC.
- (I) For all Limited Liability Companies wholly-owned by the Tribe or the Tribe's Economic Development Authority, the additional provisions of Part 9 of this Ordinance shall apply.

80B-1-9. Nature of Business.

A Limited Liability Company may be organized under this Ordinance for any lawful purpose. Unless otherwise provided in its Operating Agreement, an LLC organized and existing under this Ordinance has the same powers as an individual to do all things necessary and convenient to carry out its business, including but not limited to, all of the following:

- (A) Consent to be sued, complain and defend in its name; provided, however, that if an LLC is Tribally-Owned, or wholly-owned by another entity which itself is wholly-owned by the Tribe, it shall be entitled to and shall enjoy the Tribe's sovereign immunity from suit unless the Operating Agreement otherwise provides.
- (B) Purchase, take, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal in or with real, or personal property or any legal or equitable interest in real or personal property, wherever situated.
- (C) Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, or otherwise dispose of all or any part of its property.

- (D) Purchase, take, receive, subscribe for, or otherwise acquire and own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in, or obligations of, any other enterprise or entity.
- (E) Make contracts and guarantees; incur liabilities; borrow money; issue notes, bonds, and other obligations; and secure any of its obligations by mortgage or pledge of all or part of its property, franchises, and income.
- (F) Lend money, invest and reinvest its funds, and receive and hold real or personal property as security for repayment.
- (G) Conduct its business, locate offices, and exercise the powers granted by this Ordinance inside or outside of Tribal Lands.
- (H) Be a promoter, incorporator, partner, Owner, associate, or Manager of any enterprise or entity.
- (I) Elect or appoint Managers, agents, and employees, define their duties, and fix their compensation.
- (J) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, and benefit or incentive plans for any or all of its current or former Owners, Managers, employees, and agents.
- (K) Make donations to and otherwise devote its resources for the public welfare or for charitable, scientific, educational, humanitarian, philanthropic, or religious purposes.
- (L) Indemnify an Owner, Manager, employee, officer, or agent, or any other person.
- (M) Provide benefits or payments to Owners, Managers, employees, and agents of the LLC, and to their estates, families, dependents, or beneficiaries in recognition of the past services of the Owners, Managers, employees, and agents of the LLC.
- (N) Make payments or donations, or do any other act not prohibited by law, that furthers the business of the LLC.
- (O) Transact any lawful business that the Owners or the Managers find to be appropriate to promote and further the business and affairs of the Limited Liability Company.

80B-1-10. Interstate Application and Application in Other Foreign Jurisdictions.

An LLC may conduct its business, carry on its operations and have and exercise the powers granted by this Ordinance in any foreign jurisdiction, including but not limited to, any jurisdiction of an Indian tribe, any foreign nation, and any state, territory, district or possession of the United States.

PART 2
OPERATING AGREEMENT AND DEALING WITH LLC

80B-2-1. Articles of Organization.

- (A) One or more persons may organize a Limited Liability Company by signing and delivering the Articles of Organization to the Tribal Vice Chairman for filing. The organizer(s) need not be Owners of the LLC at the time of organization or thereafter.
- (B) A Limited Liability Company shall have one or more Owners.
- (C) The Articles of Organization shall contain all of and only the following information:
 - (1) A statement that the LLC is organized under this Ordinance.
 - (2) A name for the LLC that satisfies the provisions of this Ordinance.
 - (3) The street address of the registered office and the name of the registered agent at that office. For all LLCs formed pursuant to this Ordinance and for all Foreign LLCs operating within Tribal Lands, such office and agent shall be located on Tribal Lands.
 - (4) If management of the LLC is vested in one or more Managers, a statement to that effect.
 - (5) The name and address of each person organizing the LLC.
 - (6) Whether the LLC is Tribally-Owned.
 - (7) If Tribally-Owned, the scope of any waiver of sovereign immunity.
- (D) The Tribal Vice Chairman shall assign each filed Articles of Organization an identification number.
- (E) Amendment. An LLC may amend its Articles of Organization at any time by delivering an amendment, with filing fee, for filing to the Tribal Vice Chairman.
- (F) Effect of Delivery or Filing.
 - (1) An LLC is formed when the Articles of Organization become effective under Section 80B-11-3(D).
 - (2) The Tribal Vice Chairman's filing of the Articles of Organization is conclusive proof that the LLC is organized and formed under this Ordinance.

80B-2-2. Agency Power of Owners and Managers.

- (A) Except as provided in subsection (B), below:

- (1) Each Owner is an agent of the LLC, but not of any of the other Owners, for the purpose of its business.
 - (2) The act of any Owner, including the execution in the name of the LLC of any instrument for apparently carrying on in the ordinary course of business the business of the LLC, binds the LLC in the particular matter, unless the person with whom the Owner is dealing has knowledge that the Owner has no authority to act in such matter.
 - (3) If the Tribe is an Owner, the Tribe's authority shall be exercised pursuant to Section 80B-9-4.
- (B) If management of the LLC is vested in one or more Managers:
- (1) No Owner, solely by being an Owner, is an agent of the LLC or of the other Owners.
 - (2) Each Manager is an agent of the LLC, but not for the other Owners, for the purpose of LLC business. The act of any Manager, including the execution in the name of the LLC of any instrument for apparently carrying on the ordinary course of business of the LLC, binds the LLC unless the Manager has, in fact, no authority to act for the LLC in the particular matter, and the person with whom the Manager is dealing has knowledge that the Manager has no authority to act in the matter.
- (C) No act of an Owner or, if management of the LLC is vested in one or more Managers, of a Manager that is not apparently authorized for the carrying on in the ordinary course of business the business of the LLC, shall bind the LLC unless in fact authorized at the time of the transaction or at any other time.

80B-2-3. Admissions of Owners and Managers.

- (A) Except as provided in Section 80B-2-3 (B)(2), an admission or representation made by any Owner concerning the business of an LLC within the scope of the Owner's actual authority may be used as evidence against the LLC in any legal proceeding.
- (B) If management of the LLC is vested in one or more Managers:
 - (1) An admission or representation made by a Manager concerning the business of an LLC within the scope of the Manager's authority may be used as evidence against the LLC in any legal proceeding.
 - (2) The admission or representation of any Owner, acting solely in the Owner's capacity as an Owner, is not evidence against the LLC in any legal proceeding.

80B-2-4. Knowledge of or Notice to Owner or Manager.

- (A) Except as provided in Section 80B-2-4 (B)(2), notice to any Owner of any matter relating to the business of an LLC, and the knowledge of an Owner acting in the particular matter, acquired while an Owner or known by the person at the time of becoming an Owner, and the knowledge of any Owner who reasonably could and should have communicated it to the acting Owner, operate as notice to or knowledge of the LLC.
- (B) If management of the LLC is vested in one or more Managers:
- (1) Notice to any Manager of any matter relating to the business of the LLC, and the knowledge of the Manager acting in the particular matter acquired while a Manager or known by the person at the time of becoming a Manager and the knowledge of any other Manager who reasonably could and should have communicated it to the acting Manager, operate as notice to or knowledge of the LLC.
 - (2) Notice to or knowledge of any Owner while the Owner is acting solely in the capacity of an Owner is not notice to or knowledge of the LLC.

80B-2-5. Liability of Owners to Third Parties.

The debts, obligations, and liabilities of an LLC, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the LLC. Except as otherwise specifically provided in this Ordinance, an Owner or Manager of an LLC is not personally liable for any debt, obligation, or liability of an LLC, as such debt, obligation or liability may be defined in the Operating Agreement.

80B-2-6. Parties to Action.

An Owner of an LLC is not a proper party to a proceeding by or against an LLC solely by reason of being an Owner of the LLC, except if any of the following exist:

- (A) The object of the proceeding is to enforce an Owner's right against or liability to the LLC.
- (B) The action is brought by an Owner under Section 80B-2-7.

80B-2-7. Authority to Sue.

Unless otherwise provided in the Operating Agreement, an action on behalf of an LLC may be brought in the name of the LLC by:

- (A) One or more Owners of the LLC, if authorized by a Majority in Interest of Owners, excluding the vote of any Owner who has an interest in the outcome of the action that is adverse to the interest of the LLC.
- (B) One or more Managers of an LLC if the management of the LLC is vested in one or more Managers, or if the Managers are authorized to sue by a Majority in Interest of Owners.

Nothing contained herein shall be construed as authorizing actions of any kind whatsoever against the Tribe as Owner unless otherwise provided in the Operating Agreement.

PART 3 OWNERS AND MANAGERS

80B-3-1. Management.

- (A) Unless the Articles of Organization vest management in one or more Managers, management of the LLC shall be vested in the Owners subject to any provision in the Operating Agreement or this Ordinance restricting or enlarging the management rights and duties of any Owner or group of Owners.
- (B) In an Owner-managed LLC, the following rules shall apply, subject to the provisions of the Operating Agreement or this Ordinance:
 - (1) A difference arising among Owners as to a matter in the ordinary course of the activities of the LLC may be decided by a Majority of the Owners.
 - (2) An act outside the ordinary course of activities of a Limited Liability Company may be undertaken only with the consent of all the Owners.
- (C) If the Articles of Organization vest management in one or more Managers, management of the business or affairs of the LLC shall be vested in the Manager or Managers subject to any provisions in the Operating Agreement or this Ordinance restricting or enlarging the management rights and duties of any Manager or group of Managers. Unless otherwise provided in the Operating Agreement, the Manager, or Managers:
 - (1) Shall be designated, appointed, elected, removed, or replaced by a vote of a Majority in Interest of the Owners.
 - (2) Need not be Owners of the LLC nor individuals.
 - (3) Unless earlier removed or earlier resigned, shall hold office until a successor is elected and qualified.

80B-3-2. Duties.

- (A) All Owners and Managers shall have and owe fiduciary duties to the LLC and to the Owner(s).
- (B) No Owner or Manager shall act in a manner that constitutes any of the following:
 - (1) A willful failure to deal fairly with the LLC or its Owners in connection with a matter in which the Owner or Manager has a material conflict of interest.

- (2) A violation of criminal law involving moral turpitude.
 - (3) A transaction from which the Owner or Manager derived an improper personal profit.
 - (4) Willful misconduct.
- (C) Every Owner and Manager shall account to the LLC and hold as trustee for it any improper personal profit derived by that Owner or Manager without the consent of a majority of the disinterested Owners 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 an Owner or Manager of the property of an LLC, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as Owner or Manager.
- (D) An LLC's Operating Agreement may impose duties on its Owners and Managers that are in addition to, but not in abrogation of, those provided in this Section 80B-3-2.

80B-3-3. Limitation of Liability and Indemnification.

- (A) In this Section, "expenses" mean expenses of defending a lawsuit, including attorney's fees, and any civil judgment or penalty, or settlement payment in lieu thereof, paid in connection with a lawsuit against an Owner or Manager in such capacity.
- (B) An LLC shall indemnify or allow expenses to each Owner and each Manager for all reasonable expenses incurred with respect to a lawsuit if that Owner or Manager was a party to the lawsuit in the capacity of an Owner or Manager.
- (C) The Operating Agreement may alter or provide additional rights to indemnification or allowance of expenses to Owners and Managers.
- (D) Notwithstanding subsections (B) and (C) above, an LLC may not indemnify an Owner or Manager unless it is determined that the Owner or Manager did not breach or fail to perform a duty to the LLC as provided in Section 80B-3-2.
- (E) Unless otherwise provided in the Operating Agreement:
 - (1) An Owner or Manager shall be conclusively presumed not to have breached or failed to perform a duty to the LLC to the extent that the Owner or Manager has been successful on the merits or otherwise in the defense of the lawsuit.
 - (2) In situations not described in paragraph (1), above, the determination of whether Owner or Manager has breached or failed to perform a duty to the LLC shall be

made by the vote of a Majority in Interest of the Owners, excluding any Owner who is a party to the same or related proceeding unless all Owners are parties.

80B-3-4. Voting.

- (A) Unless otherwise provided in the Operating Agreement or this Section, and subject to subsection (B) below, an affirmative vote, approval, or consent as follows shall be required to decide any matter connected with the business of an LLC.
- (1) If management of an LLC is reserved to the Owners, an affirmative vote, approval, or consent by a Majority in Interest of Owners.
 - (2) If the management of an LLC is vested in one or more Managers, the affirmative vote, consent, or approval of more than fifty percent (50%) of the Managers.
- (B) Unless otherwise provided in the Operating Agreement or this Ordinance, the affirmative vote, approval, or consent of all Owners shall be required to do any of the following:
- (1) Amend the Articles of Organization.
 - (2) Issue an interest in an LLC to any person.
 - (3) Adopt, amend, or revoke the Operating Agreement.
 - (4) Allow an LLC to accept any additional contribution from an Owner.
 - (5) Allow a partial redemption of an interest in an LLC under Section 80B-5-3.
 - (6) Value contributions of Owners under Section 80B-4-1.
 - (7) Authorize a Manager, Owner, or other person to do any act on behalf of the LLC that contravenes the Operating Agreement.
- (C) Unless otherwise provided in the Operating Agreement, if any Owner is precluded from voting with respect to a given matter, the value of the contribution represented by the interest in the LLC with respect to which the Owner would otherwise have been entitled to vote shall be excluded from the total contributions made to the LLC for purposes of determining the fifty percent (50%) threshold under Section 80B-1-5 (I) for that matter.
- (D) Unless otherwise provided in the Operating Agreement or this Section, if all or part of an interest in the LLC is assigned under Section 80B-6-4, the assigning Owner shall be considered the owner of the assigned interest for purposes of determining the fifty percent (50%) threshold under Section 80B-1-5 (I) until the assignee of the interest in the LLC becomes an Owner under Section 80B-6-6.

80B-3-5. Records and Information.

- (A) An LLC shall keep at its principal place of business all of the following:
- (1) A list, in alphabetical order, of each past and present Owner 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 copy of the Operating Agreement and all amendments thereto.
 - (4) A record of all matters referred to in this Ordinance as maintained in such records which are not otherwise specified in the Operating Agreement.
- (B) Upon reasonable request, an Owner may, at the Owner's own expense, inspect and copy during ordinary business hours any LLC record unless otherwise provided in the Operating Agreement.
- (C) Owners 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 Owners to any Owner or to the legal representative of any Owner upon reasonable request of the Owner or the legal representative.
- (D) Failure of an LLC to keep or maintain any of the records or information required under this Section shall not be grounds for imposing liability on any person for the debts and obligations of the LLC.

80B-3-6. Admission of Owners.

- (A) In connection with the formation of an LLC, a person acquiring an LLC interest is admitted as an Owner upon formation unless the Operating Agreement otherwise provides.
- (B) After the formation of an LLC, a person acquiring an LLC interest is admitted as an Owner of the LLC as specified in the Operating Agreement or, if not so specified, by consent of all the other Owners, or, if the person is an assignee of another person's LLC interest, only pursuant to Section 80B-6-6.

80B-3-7. Dissociation.

- (A) A person ceases to be an Owner of an LLC upon the simultaneous occurrence of and at the same time as any of the following events:
- (1) The Owner withdraws by voluntary act.
 - (2) The Owner is removed as an Owner in accordance with the Operating Agreement or this Code.

- (3) Unless otherwise provided in the Operating Agreement or by the written consent of all Owners at the time of the event, the Owner does any of the following:
- (a) Makes an assignment for the benefit of the creditors.
 - (b) Files a petition in bankruptcy.
 - (c) Becomes the subject of an order for relief under the federal bankruptcy laws or state or tribal insolvency laws.
 - (d) 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 Owners, if the Owner is an individual, either of the following occurs:
- (a) The Owner's death.
 - (b) The entry of an order by a court of competent jurisdiction adjudicating the Owner incompetent to manage the Owner's person or estate.
- (5) Unless otherwise provided in the Operating Agreement or by written agreement or by the written consent of all Owners at the time, if the Owner is a trust, Corporation, partnership, or Limited Liability Company, upon liquidation, dissolution, or termination.
- (B) The Owners may provide in the Operating Agreement for other events the occurrence of which result in a person ceasing to be an Owner of the LLC.
- (C) Unless the Operating Agreement provides that an Owner does not have the power to withdraw by voluntary act from an LLC, the Owner may do so at any time by giving written notice to the other Owners or as provided in the Operating Agreement. If the Owner has the power to withdraw but the withdrawal is a breach of the Operating Agreement, the LLC may offset the damages against the amount otherwise distributable to the Owner, in addition to pursuing any remedies provided for in the Operating Agreement or otherwise available under applicable law.

PART 4 FINANCE

80B-4-1. Contributions.

- (A) An Owner's contributions to an 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 an Owner's contribution shall be determined in the manner provided in the Operating Agreement. If the Operating Agreement does not fix a value to a contribution,

the value of a contribution shall be approved by a Majority in Interest of the Owners, and shall be properly reflected in the records and information kept by the LLC under Section 80B-3-5 (A). The value of contributions so determined shall be binding and conclusive on the LLC and its Owners.

80B-4-2. Liability for Contribution.

- (A) An obligation of an Owner to provide cash or property or to perform services as a contribution to an LLC is not enforceable unless specified in a writing signed by the Owner.
- (B) Unless otherwise provided in the Operating Agreement, an Owner is obligated to an LLC to perform any enforceable promise to provide cash or property or to perform services, even if the Owner is unable to perform because of death, disability, or any other reason. If an Owner does not provide cash, property, or services as promised, the Owner 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 the Operating Agreement, an Owner'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 Owners.

80B-4-3. Allocation of Profits and Losses.

The profits and losses of an LLC shall be allocated among the Owners in the manner provided in the Operating Agreement. If the Owners do not enter into an Operating Agreement or the Operating Agreement does not provide otherwise, profits and losses shall be allocated on the basis of value of the contributions made by each Owner.

**PART 5
NON-LIQUIDATING DISTRIBUTIONS**

80B-5-1. Interim Distributions.

Except as provided in this Part, an Owner is entitled to receive Distributions from an LLC before the Owner's dissociation from the LLC and before its dissolution and winding up to the extent and at the times or upon the events specified in the Operating Agreement, or to the extent and at the times determined by the Owners or Managers.

80B-5-2. Allocation of Distributions.

Distributions of cash or other assets of an LLC shall be allocated among the Owners as provided in Operating Agreement, or if the Operating Agreement does not so provide, on the basis of the value of the contributions made by each Owner.

80B-5-3. Distribution upon Partial Redemption.

Except as provided in this Part, upon the Distribution in partial liquidation of an Owner's interest, the redeeming Owner is entitled to receive the amount to which the Owner is entitled under the Operating Agreement and, if not otherwise provided in the Operating Agreement, the fair value of the redeemed interest based on the Owner's right to share in Distributions from the LLC.

80B-5-4. Distribution upon Dissociation.

Except as otherwise provided in this Part, upon an event of dissociation under Section 80B-3-7 that does not cause dissolution of the LLC, a dissociating Owner is entitled to receive any Distribution to which Owner is entitled under the Operating Agreement and, if not otherwise provided in the Operating Agreement, the fair market value of the Owner's interest in the LLC based on the Owner's rights to share in Distributions from the LLC.

80B-5-5. Distribution in Kind.

Unless otherwise provided in the Operating Agreement:

- (A) An Owner may not demand and receive any Distribution from an LLC in any form other than cash.
- (B) An Owner may not be compelled to accept a Distribution of any asset in kind except for a liquidating Distribution made proportionately.

80B-5-6. Right to Distribution.

At the time that an Owner becomes entitled to receive a Distribution from an LLC, the Owner has the status of and is entitled to all remedies available to a creditor of the LLC with respect to the Distribution; provided, however, that such right shall not in any way limit any other remedy available to such Owner under any other provision of applicable law or the Operating Agreement.

80B-5-7. Limitations of Distributions.

- (A) An LLC may not declare or make a Distribution to any of its Owners, 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 Operating Agreement provides otherwise, the amount that would be needed for the preferential rights of Owners upon dissolution, if any.

- (B) An LLC may base a determination that a Distribution is not prohibited by subsection (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 an Owner 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 an LLC's property that is created to secure the indebtedness to the Owner.

80B-5-8. Liability for Wrongful Distribution.

- (A) Except as provided in subsection (B) below, an Owner (other than the Tribe or Tribal Entity) or Manager who votes or assents to a Distribution in violation of Section 80B-5-7 or of the Operating Agreement is personally liable to the LLC for the amount of the excess Distribution, subject to contribution from all other Managers or Owners participating in such action.
- (B) An action to recover under this Section may be brought in the Tribal Court; however, a proceeding under this Section is barred unless it is brought within two (2) years after the date of the distribution.
- (C) Nothing in this Ordinance serves to waive any aspect of the Tribe's sovereign immunity, and any waiver thereof must be provided explicitly in the LLC's Operating Agreement.

**PART 6
OWNERSHIP AND TRANSFER OF PROPERTY**

80B-6-1. Ownership of LLC Property.

- (A) All property originally transferred to or acquired by an LLC is property of the LLC and not the Owners 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.

80B-6-2. Transfer of Property.

The property of an LLC may be transferred by an instrument of transfer executed by any Owner 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 Operating Agreement.

80B-6-3. Nature of Interest.

An LLC interest is personal property.

80B-6-4. Assignment of LLC Interest.

(A) Unless otherwise provided in the Operating Agreement:

- (1) An LLC interest is assignable in whole or in part.
- (2) An assignment of an LLC interest entitles the assignee to receive only the distributions and to share in the allocations of profits and losses to which the assignor would be entitled with respect to the assigned interest.
- (3) An assignment of an LLC interest does not dissolve the LLC.
- (4) Unless and until the assignee becomes an Owner of the LLC under Section 80B-6-6, the assignment of an LLC interest does not entitle the assignee to participate in the management or exercise rights of an Owner.
- (5) Unless and until the assignee of an LLC interest becomes an Owner of the LLC under Section 80B-6-6, the assignor continues to be an Owner.
- (6) The assignor of an LLC interest is not released from any personal liability arising under this Code as an Owner of the LLC solely as a result of the assignment.

(B) Unless otherwise provided in the Operating Agreement, the granting of a security interest, lien, or other encumbrance in or against any or all of an Owner's LLC interest is not assignable and shall not cause the Owner to cease to have the power to exercise any rights or powers of an Owner.

80B-6-5. Rights of Judgment Creditor.

Upon application to a court of competent jurisdiction, including a court other than the Tribal Court having valid jurisdiction over an Owner, by any judgment creditor of the Owner, the court may charge the LLC interest of any Owner (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 Owner's LLC interest in Distributions made by the LLC to Owners and other assigned interest holders in the usual course of business. This Section does not deprive any Owner of the benefit of any exemption laws applicable to the LLC interest. In no event shall the Tribe's interest be attachable without the Tribe's express consent or otherwise in abrogation of its sovereign immunity.

80B-6-6. Right of Assignee to Become an Owner.

- (A) Unless otherwise provided in the Operating Agreement, an assignee of an LLC interest may become an Owner only if the other Owners unanimously consent.
- (B) An assignee of an LLC interest who becomes an Owner has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of the assignor under the Operating Agreement and this Ordinance.
- (C) Unless otherwise provided in the Operating Agreement, an assignor of an LLC interest is not released from any liability to the LLC without the written consent of all the Owners, whether or not the assignee becomes an Owner.

80B-6-7. Powers of Legal Representative.

If an Owner who is an individual dies or a court of competent jurisdiction adjudges the Owner to be incompetent to manage his or her person or property, the Owner's personal representative, administrator, guardian, conservator, trustee, or other legal representative shall have all the rights of an assignee of the Owner's interest. If an Owner is a Corporation, trust, partnership, Limited Liability Company, or other entity and is dissolved or terminated, the powers of that Owner may be exercised by its legal representative or successor.

**PART 7
DISSOLUTION**

80B-7-1. Dissolution.

A Limited Liability Company is dissolved and its affairs shall be wound up upon the happening of the first of the following:

- (A) The occurrence of events specified in the Operating Agreement.
- (B) The written consent of all Owners.
- (C) An event of dissociation of an Owner, unless otherwise provided in the Operating Agreement or continuation is consented to by all remaining Owners.
- (D) Entry of a decree of judicial dissolution under Section 80B-7-2.

80B-7-2. Judicial Dissolution.

- (A) In a proceeding by or for an Owner, the Tribal Court may order dissolution of an 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 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 Owners 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.
- (B) If the Tribe is an Owner of the LLC, any action under this Section must be brought in the Tribal Court, unless explicitly otherwise provided in the Operating Agreement. No tribal member or other individual may bring an action for or on behalf of the Tribe as Owner under this Section and only the Tribal Council may authorize a suit by the Tribe as Owner under this Section. 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 LLC's Operating Agreement.

80B-7-3. Winding Up.

- (A) 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.
- (B) Unless otherwise provided in its Operating Agreement:
 - (1) The business of the LLC may be wound up by any of the following:
 - (a) The Owners or Managers who have authority to manage the LLC before dissolution.
 - (b) 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 LLC may do all of the following in the name of and on behalf of the LLC:
 - (a) Collect its assets.
 - (b) Prosecute, settle, and defend suits.
 - (c) Take any action necessary to settle and close the business of the LLC.
 - (d) Dispose of and transfer the property of the LLC.
 - (e) Discharge or make provision for discharging the liabilities of the LLC.
 - (f) Distribute to the Owners any remaining assets of the LLC.
- (C) Dissolution of an LLC does not do any of the following:

- (1) Transfer title to the LLC's property.
- (2) Prevent transfer of all or part of an Owner'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 an Owner.

80B-7-4. Distribution of Assets.

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

- (A) To creditors, including to the extent permitted by law, Owners, and former Owners in satisfaction of liabilities of the LLC.
- (B) Unless otherwise provided in the Operating Agreement, to Owners and former Owners in satisfaction of liabilities for Distributions under Sections 80B-5-1, 80B-5-3 and 80B-5-4.
- (C) Unless otherwise provided in the Operating Agreement, to Owners and former Owners first for the return of their contributions in proportion to their respective values and, thereafter, in proportion to their respective rights to share in distributions from the LLC before dissolution.

80B-7-5. Articles of Dissolution.

After the dissolution of an LLC under Section 80B-7-1, the LLC may file Articles of Dissolution with the Tribal Vice Chairman that include the following:

- (A) The name of the LLC.
- (B) The date of filing of its Articles of Organization.
- (C) The statutory grounds under Section 80B-7-1 for dissolution.
- (D) The delayed effective date of the Articles of Dissolution under Section 80B-11-3(D), if applicable.

80B-7-6. Known Claims against Dissolved LLC.

- (A) A dissolved LLC shall 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 subsection (A) above, does not deliver the claim, in writing, to the LLC by the deadline specified in the notice; or
 - (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.

80B-7-7. Unknown or Contingent Claims.

A claim not barred under Section 80B-7-6 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 an Owner of the LLC, other than the Tribe, to the extent of the Owner's proportionate share of the claim or of the assets of the LLC distributed to the Owner in liquidation, whichever is less, but an Owner's total liability for all claims under this Section may not exceed the total value of assets at the time distributed to the Owner.

PART 8

**LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE
OR THE TRIBE'S ECONOMIC DEVELOPMENT AUTHORITY**

80B-8-1. General Provisions for Tribally-Owned LLCs

- (A) **Tribally-Owned Companies.** There are hereby authorized to be created Limited Liability Companies wholly-owned by the Tribe or the Tribe's Economic Development Authority, with the Tribe or the Tribe's Economic Development Authority as the sole Member. Tribally-Owned Limited Liability Companies shall be created by a duly adopted resolution of the Tribal Council or the Board of Directors of the Tribe's Economic Development Authority. The organizer shall file in accordance with Section 80B-11-3. When the organizer files the Articles of Organization and the Operating Agreement of a Tribally-Owned LLC, a certified copy of the resolution authorizing the formation of the LLC and approving the Articles shall be included. Tribally-Owned LLCs shall be considered to be instrumentalities of the Tribe.
- (B) **Tribally-Owned Subsidiary Companies.** There are hereby authorized to be created by resolution of the Board of Directors of a Tribally-Owned LLC or of a Tribal Corporation or of a tribally-chartered unincorporated instrumentality of the Tribe, or of a resolution-based Tribal Entity, or of a wholly-owned subsidiary of such a Tribally-Owned LLC or Tribal Corporation or tribally chartered unincorporated instrumentality of the Tribe, subsidiary LLCs to be wholly-owned by the parent Tribally-Owned LLC or parent Tribal Corporation or parent resolution-based Tribal Entity or parent tribally-chartered unincorporated instrumentality of the Tribe, which shall be instrumentalities of the Tribe. The organizer of such a Tribally-Owned Subsidiary LLC shall file in accordance with Section 80B-11-3. When the organizer files the Articles of Organization and the

Operating Agreement of the Tribally-Owned Subsidiary LLC, a certified copy of a resolution of the Board of Directors of the parent Tribally-owned LLC or parent Tribal Corporation or tribally-chartered unincorporated instrumentality of the Tribe authorizing the formation of the subsidiary LLC and approving the Articles shall be included.

- (C) **Privileges and Immunities.** The Limited Liability Companies established under Sections 80B-9-1 (A) and 80B-9-1 (B) shall be considered to be instrumentalities of the Tribe, and their officers and employees considered officers and employees of the Tribe, created for the purpose of carrying out authorities and responsibilities of the Tribal Council or the Tribe's Economic Development Authority for economic development of the Tribe and the advancement of its Tribal members. Such LLCs, their directors, officers, managers and employees shall, therefore, be entitled to all of the privileges and immunities enjoyed by the Tribe, including but not limited to immunities from suit in Federal, State and Tribal courts and from Federal, State, and local taxation or regulation.
- (D) **Membership.**
- (1) No Membership interest in any LLC in which the Tribe or the Tribe's Economic Development Authority is a Member may be alienated unless approved by the Tribal Council or the Board of Directors of the Tribe's Economic Development Authority. Further, no Membership interest in any Tribally-Owned Subsidiary LLC may be alienated unless approved by a duly adopted resolution of the Board of Directors of the parent Tribally-Owned LLC or parent Tribal Corporation.
- (2) All interests in any Tribally-Owned LLC shall be held by and for the Tribe or the Tribe's Economic Development Authority, or in the case of a wholly-owned subsidiary LLC, by the parent Tribally-Owned LLC or parent Tribal Corporation or parent resolution-based Tribal Entity or parent tribally chartered unincorporated instrumentality of the Tribe. No individual member of the Tribe shall have any personal ownership interest in any LLC organized under this Part, whether by virtue of such person's status as a member of a Tribe, as an officer of the Tribe's Government, or otherwise.
- (E) **Project Companies with Non-Tribal members.** Any LLC created pursuant to this Part , including subsidiary LLCs, 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 Membership interest in such Project Companies shall not diminish or affect the privileges and immunities of the Tribally-Owned LLCs or Tribally-Owned Subsidiary LLCs created pursuant to this Part .
- (F) **Purpose of Tribally-Owned LLCs.** All Tribally-Owned LLCs, whether directly or indirectly owned, shall state in their Operating Agreement the purpose of the LLC that relates to the overall needs, priorities, goals, and objectives of the Tribe's government, including how the LLC will contribute to the tribal economic policy and further the goals of self-determination and economic self-sufficiency.

(G) **Waiver of Sovereign Immunity.** A Limited Liability Company established under Sections 80B-9-1 (A) and 80B-9-1 (B) may only waive the privileges and immunities granted under Section 80B-9-1 (C) in the following manner:

- (1) The LLC may specifically grant limited waivers of its immunity from suit and consent to be sued in Tribal Court or another court of competent jurisdiction pursuant to the procedures and authorities set forth herein:
 - (a) Any such waiver or consent to suit granted shall include written language in any contract or agreement explicitly limiting said waiver to the specific dollar amount of the agreement;
 - (b) Any contract or agreement with such waiver or consent to suit language shall be submitted for review to an attorney representing the Tribe, the Tribe's Economic Development Authority, or the Tribally-Owned LLC prior to contract execution;
 - (c) Any such waiver or consent to suit granted shall in no way extend to any action against the Tribe, nor shall it in any way be deemed a waiver of any of the rights, privileges and immunities of the Tribe;
 - (d) Any recovery against the LLC shall be limited to the assets of the LLC (or such portion of the LLC's assets as further limited by the waiver or consent) and the Tribe shall not be liable for the payment or performance of any of the obligations of the LLC, and no recourse shall be had against any assets or revenues of the Tribe in order to satisfy the obligations of the LLC; including assets of the Tribe leased, loaned, or assigned to the LLC for its use, without transfer of title, and
 - (e) Any waiver of the LLC's immunities granted shall be further limited or conditioned by the terms of such waiver.
 - (f) The limited waiver may only be enforceable in the Sisseton-Wahpeton Oyate Tribal Court; however, such a limited waiver may be enforceable in another court of competent jurisdiction if the Tribal Council or Board of the Tribe's Economic Development Authority determine that agreeing to such an outside tribunal is necessary to secure a substantial benefit or advantage to the Tribe or the Tribe's Economic Development Authority.
- (2) The sovereign immunity of the LLC shall not extend to actions against the LLC by the Tribe or the Tribe's Economic Development Authority acting as Member, or, in the case of a subsidiary LLC created pursuant to this Article, by the parent acting as Member, pursuant to Section 80B-9-1(A).
- (3) The LLC must follow the method mandated by Section 80B-9-2 (B).

- (4) Notwithstanding subsection (G)(1) above, the LLC may also specifically grant a limited waiver of its immunity from suit for participation in the United States Small Business Administration (“SBA”) 8a Program in the manner required by federal regulations governing the program, if authorization to do so is granted by the Tribal Council or the Board of Directors of the Tribe’s Economic Development Authority.

80B-8-2. Special Requirements for Tribally Owned LLCs.

(A) Formation.

- (1) **Tribally-Owned LLCs.** Except as may be provided otherwise in the resolution authorizing the creation of the Tribally-Owned LLC, the Chairperson of the Tribal Council, or the Executive Officer of the Tribe’s Economic Development Authority (if authorized by the Board of Directors of the Tribe’s Economic Development Authority), shall be the organizer of any Tribally-Owned Limited Liability Company.
- (2) **Subsidiaries of Tribally-Owned LLCs.** A Board Member of the parent Tribally-Owned LLC or parent Tribal Corporation or parent resolution-based Tribal Entity or parent tribally chartered unincorporated instrumentality of the Tribe shall be the organizer of any Tribally-Owned Subsidiary LLC. If practicable, such Board Member shall also be a member of the Tribe. The C.E.O. of the parent Tribally-Owned LLC or Manager of a Tribally-Owned Subsidiary LLC shall be the organizer of any Tribally-Owned Second Tier Subsidiary LLC.
- (3) Unless a delayed effective date is specified:
- (a) The existence of a Tribally-owned LLC begins when the Articles of Organization have been approved by resolution of the Tribal Council or the Board of Directors of the Tribe’s Economic Development Authority, in accordance with Section 80B-9-1 (A) and have been filed with the Tribal Vice Chairman in accordance with Section 80B-11-3.
- (b) The existence of a subsidiary LLC owned by a Tribally-Owned LLC or Tribal Corporation begins when the Articles of Organization have been approved by a resolution of the Directors of the parent Tribally-Owned LLC or Tribal Corporation or resolution-based Tribal Entity or tribally chartered unincorporated instrumentality of the Tribe and have been filed with the Tribal Vice Chairman in accordance with Section 80B-11-3.
- (c) The existence of a Tribally-Owned Second Tier Subsidiary LLC owned by a Tribally-Owned Subsidiary begins when the Articles of Organization have been approved by the C.E.O. or Manager of the Tribally-Owned Subsidiary or C.E.O. of the parent Tribally-Owned LLC.

- (d) The Articles of Organization of any Tribally-owned LLC or subsidiary thereof, and any amendments thereto, shall be filed with the Tribal Vice Chairman in accordance with Section 80B-11-3, and shall state at a minimum the items set forth in Section 80B-9-2 (B) below.

(B) **Additional Requirements for the Articles of Organization.** As set forth in Section 80B-9-1 (G), Tribally-Owned LLCs established under Sections 80B-9-1 (A) and 80B-9-1 (B) may grant a limited waiver of sovereign immunity in order to promote economic development through commercial transactions for which such a waiver is necessary and beneficial to the Tribe. The method for granting a limited waiver of sovereign immunity through the above mentioned entities is as follows:

- (1) The sovereign immunity of a Tribally-Owned LLC may be waived only by:
- (a) A resolution adopted by the Board of Directors of the Tribally-Owned LLC for the specific purpose of granting a waiver, or in the case of Member-managed Tribally-Owned Subsidiary LLC, by the Member's Board of Directors; and
 - (b) The language of the waiver must be explicit and state that said waiver be specifically limited to the dollar amount of the agreement; and
 - (c) The waiver must be contained in a written contract or commercial document to which the LLC is a party.
- (2) Waivers of sovereign immunity by resolution of the Tribal Council or the Tribe's Economic Development Authority may be granted only when necessary to secure a substantial advantage or benefit to the Tribally-Owned LLC. Waivers of sovereign immunity by resolution may not be general but must be specific and limited as to duration, grantee, transaction, property, court having jurisdiction, applicable law, and shall be specifically limited to the dollar amount of the agreement.

80B-8-3. Management of Tribally-Owned LLCs.

(A) Management.

- (1) All Tribally-Owned LLC's formed pursuant to Section 80B-9-1 (A) of this Ordinance shall be managed by a Board of Directors in the manner described in the Company's Operating Agreement. The qualifications, number, terms and method for selecting and removing Directors of any Tribally-Owned LLC shall be specified in the LLC's Operating Agreement.
- (2) All Tribally-Owned Subsidiary LLCs formed pursuant to Section 80B-9-2 (B) of this Ordinance, including Tribally-Owned Second Tier Subsidiary LLCs, may be

Member managed or Manager managed. If Manager managed, the Company's Operating Agreement shall set forth the qualifications, number, terms, and method for selecting and removing such managers. If Member managed, the LLC shall have one or more persons exercising the functions of Chief Executive Officer.

(B) Board of Directors.

- (1) Appointment of Directors.** The Tribal Council or the Tribe's Economic Development Authority shall retain the power to appoint the Board of Directors for LLCs wholly-owned by the Tribe. The Board of Directors of a parent LLC shall have the power to appoint the Board of Directors of any Tribally-Owned Subsidiary LLCs. For all such subsidiary LLCs, the Board Members shall comprised of members of the Tribal Council, Tribal members, and/or individuals experiences in business and Tribal government.
- (2) Removal of Directors.** A Director of an LLC wholly-owned by the Tribe may be removed with or without cause by the Tribal Council or the Tribe's Economic Development Authority; or as specified in the LLC's Operating Agreement. A director of any Tribally-Owned Subsidiary LLC may be removed as specified in the LLC's Operating Agreement.
- (3) Loans to Directors.** An LLC wholly-owned, directly or indirectly, by the Tribe or the Tribe's Economic Development Authority may not lend money to or guarantee the personal obligation of a Director, officer, or employee of the Corporation under any circumstance.

80B-8-4. Decisions and Voting for Tribally-Owned and Tribally-Owned Subsidiary LLCs.

- (A)** The Membership interests in all Tribally-Owned LLCs shall be voted in the accordance with the Tribal Council's procedures for voting and passing Tribal resolutions, or as set forth in the Economic Development Authority Ordinance.
- (B)** The Membership interests in a Tribally-Owned Subsidiary LLC, including Tribally-Owned Second Tier Subsidiary LLC's, shall be voted as provided in the Company's Operating Agreement.

80B-8-5. Distributions for Tribally-Owned LLCs

- (A)** Subject to the Tribe's ultimate ownership right to all income generated by its Tribally-Owned LLCs, a Tribally-Owned LLC shall distribute the net income of the LLC to the Tribe or the Tribe's Economic Development Authority as set forth in a dividend plan adopted in accordance with the Operating Agreement and duly approved by the Tribal Council or the Tribe's Economic Development Authority, except that a Tribally-Owned LLC may retain reserves necessary to carry on the LLC's business in a reasonably

prudent manner and as recommended by the Board of Directors, subject to further limitations set forth in Section 80B-5-7 and in the Operating Agreement.

- (B) Subject to the parent Tribally-Owned LLCs or parent Tribal Corporation's or parent resolution-based Tribal Entity's or parent tribally chartered unincorporated instrumentality of the Tribe's ultimate ownership right to all income generated by its subsidiary LLCs, a subsidiary LLC created pursuant to Section 80B-9-1 (B) shall distribute the net income of the LLC to the parent Tribally-owned LLC or parent Tribal Corporation as set forth in a dividend plan adopted in accordance with the Operating Agreement and duly approved by its Board of Directors, except that a Tribally-Owned LLC may retain reserves necessary to carry on the LLC's business in a reasonably prudent manner and as recommended by the Board of Directors, subject to further limitations set forth in Section 80B-5-7 and in the Operating Agreement.

80B-8-6. Additional Reports and Audits.

- (A) Audit. In addition to any Member inspection rights provided in the Operating Agreement of a Tribally-owned LLC, the Tribal Council or the Tribe's Economic Development Authority may at any time, by process in the manner required to be provided in the Operating Agreement, require that any LLC wholly-owned by the Tribe or the Tribe's Economic Development Authority, whether directly or indirectly, or an LLC in which the Tribe owns the majority interest, be audited by an independent auditor hired by the Tribe or the Tribe's Economic Development Authority who shall have the absolute right to require access to all of the LLC's records and documents necessary for such audit.
- (B) Financial, Business, and Planning Information. In addition to any reports to the Member required by the Operating Agreement, the Board of Directors of each Tribally-owned LLC, whether owned directly or indirectly, shall submit the following information to the Tribal Council or the Board of Directors of the Tribe's Economic Development Authority:
- (1) Copies of any periodic financial statements (including monthly or quarterly balance sheets, profit and loss statements, and cash flow statements) as may be prepared in the ordinary course of business, promptly after such statements are furnished to the LLC's Board of Directors.
 - (2) A full report of the business activities of the company within 120 days after the close of each fiscal year; and
 - (3) A proposed annual plan for the following year, including any proposed funding from the Tribe or anticipated distributions to the Tribe.

80B-8-7. Actions Against Tribally-Owned LLCs

- (A) Court Actions By the Tribe Authorized. The Tribe or the Tribe's Economic Development Authority, as Member of any Tribally-Owned Limited Liability Company

organized pursuant to this Ordinance, or in the case of a subsidiary LLC created pursuant to this Article, the parent Tribally-Owned LLC or Tribal Corporation or resolution-based Tribal Entity or tribally chartered unincorporated instrumentality of the Tribe acting as Member, may bring a civil action against the LLC to:

- (1) Enjoin temporarily or permanently any action of the LLC that is an ultra vires act outside the authority of the LLC and that is either:
 - (a) Unlawful; or
 - (b) Has or could cause material harm to the assets of the LLC or the Tribe if no immediate action is taken.
 - (2) Require the distribution of the LLC's surplus net income, to the extent permitted by Section 80B-5-7.
 - (3) An action against an LLC pursuant to this Section by the Tribe, the Tribe's Economic Development Authority, or by the parent LLC or Corporation or resolution-based Tribal Entity or tribally chartered unincorporated instrumentality of the Tribe, acting as Member, shall not act as a waiver of the Tribe's, or the parent's, sovereign immunity from suit of any kind, including a countersuit by the Tribally-Owned LLC, its Board of Directors or its officers.
 - (4) In accordance with Section 80B-9-1 (C), the sovereign immunity of the LLC shall not extend to actions against the LLC by the Tribe or the Tribe's Economic Development Authority acting as Member, or, in the case of a subsidiary LLC created pursuant to this Article, by the parent acting as Member.
 - (5) Nothing contained herein shall be construed as authorizing actions of any kind whatsoever against the Tribe or the Tribe's Economic Development Authority.
- (B) Tribal Approval Required. The filing of any court action against a Tribally-Owned LLC pursuant to this Article must be authorized by the Tribe or the Tribe's Economic Development Authority as Member in the same manner as required in Section 80B-9-4 (A) for voting on any item properly coming before the Tribe or the Tribe's Economic Development Authority as Member. The request for consideration of the proposed court action may be made by any member of the Tribal Council or the Board of Directors of the Tribe's Economic Development Authority.
- (C) Relief Available. In any action brought under this Article, the Tribal Court may, based on clear and convincing evidence set forth in its findings of fact and conclusions of law:
- (1) Issue a temporary restraining order, preliminary injunction, and permanent injunctive relief pursuant to the procedures and standards applicable in the Tribal Court, except that no bond need be posted for any preliminary injunctive relief; or

- (2) Order that funds of the LLC be distributed to the Tribe or the Tribe's Economic Development Authority to the extent permitted by the Operating Agreement and Section 80B-5-7 of this Code.

PART 9
FOREIGN LIMITED LIABILITY COMPANIES

80B-9-1. Governing Law.

- (A) The laws of the jurisdiction under which a Foreign Limited Liability Company is organized shall govern its organization and internal affairs and the liability and authority of its managers and owners, regardless of whether the Foreign LLC obtained or should have obtained a certificate of registration under this Part.
- (B) A Foreign LLC may not be denied a certificate of registration by reason of any difference between the laws of the other jurisdiction under which it is organized and the laws of the Tribe.
- (C) A Foreign LLC holding a valid certificate of registration under this Part shall have no greater rights and privileges than a Domestic LLC. Registration may not be considered to authorize a Foreign LLC to exercise any powers or purposes that a Domestic LLC is forbidden by law to exercise.

80B-9-2. Registration Required.

- (A) A Foreign Limited Liability Company may not transact business on Tribal Lands until it obtains a certificate of registration from the Tribal Vice Chairman.

80B-9-3. Consequences of Transacting Business without Registration.

- (A) A Foreign LLC transacting business without a certificate of registration may not maintain a proceeding in Tribal Court relating to or involving such transacted business until the Foreign LLC obtains a certificate of registration.
- (B) Neither the successor to a Foreign LLC that transacted business on Tribal Lands without a certificate of registration nor the assignee of a cause of action arising out of that business may maintain a proceeding based on that cause of action in Tribal Court until the Foreign LLC or its successor obtains a certificate of registration.
- (C) The Tribal Court may stay a proceeding commenced by a Foreign LLC, or its successor or assignee, until the Tribal Court determines if the Foreign LLC or its successor requires

a certificate of registration. If the Tribal Court determines that a certificate is required, the Tribal Court may further stay the proceedings until the Foreign LLC or its successor obtains the certificate of registration.

- (D) The failure of a Foreign LLC to obtain a certificate of registration does not do any of the following:
- (1) Impair the validity of any contract or act of the Foreign LLC or its title to property on Tribal Lands.
 - (2) Affect the right of any other party to contract to maintain any action, suit or proceeding on a contract.
 - (3) Prevent the Foreign LLC from defending any proceeding in Tribal Court.

80B-9-4. Civil penalty.

- (A) A Foreign LLC that transacts business on Tribal Lands without a certificate of registration is liable to the Tribe, for each year or any part of a year during which it transacted business on Tribal Lands without a certificate of registration, in an amount equal to the sum of the following:
- (1) All fees that would have been imposed by this Part upon the Foreign LLC had it applied for and received a certificate of registration.
 - (2) Fifty percent of the amount owed under subsection (E)(1)(a) above or \$5,000.00, whichever is less.
- (B) The Foreign LLC shall pay the amount owed under subsection (E)(1) to the Tribal Vice Chairman. The Vice-Chairman may not issue a certificate of registration to the Foreign LLC until the amount owed is paid.
- (C) An Owner or Manager of a Foreign LLC is not liable for the debts and obligations of the LLC solely because the LLC transacted business on Tribal Lands without a certificate of registration.

80B-9-5. Application for Certificate of Registration.

A Foreign LLC may apply for a certificate of registration to transact business on Tribal Lands by delivering an application to the Tribal Vice Chairman for filing signed by a person with authority to do so under the laws of the State or other jurisdiction of its organization. The application shall include all of the following:

- (A) The name of the Foreign Limited Liability Company and, if different, the name under which it proposes to transact business on Tribal Lands.

- (B) The name of the State or other jurisdiction under whose laws it is organized.
- (C) The date of its organization.
- (D) The street address of its registered office on Tribal Lands and the name of its registered agent at that office.
- (E) If management of the LLC is vested in one or more Managers, a statement to that effect.
- (F) The street address of the office required to be maintained in the State or other jurisdiction of its organization by the laws of that State or jurisdiction or, if no office is required, its principal office.
- (G) A statement that the applicant is a Foreign Limited Liability Company.
- (H) A statement that the Foreign Limited Liability Company is in good standing in the State or other jurisdiction under whose laws it is organized.

80B-9-6. Name.

A certificate of registration may not be issued to a Foreign LLC unless its name satisfies Section 80B-1-6. If the name under which a Foreign LLC is registered in the jurisdiction of its formation does not satisfy Section 80B-1-6, the Foreign LLC may obtain a certificate of registration to transact business on Tribal Lands under a trade name registered pursuant to this Part that is available and that satisfies Section 80B-1-6.

80B-9-7. Amended Certificate of Registration.

- (A) A Foreign LLC authorized to transact business on Tribal Lands shall obtain an amended certificate of registration from the Tribal Vice Chairman if the Foreign LLC changes any of the following:
 - (1) Its name or the fictitious or trade name under which it has been issued a certificate of registration.
 - (2) The State or jurisdiction under whose laws it is organized or its date of organization.
 - (3) Whether management of the Foreign LLC is vested in one or more Managers.
- (B) The requirements of Section 80B-10-4 for obtaining an original certificate of registration apply to obtaining an amended certificate of registration.

80B-9-8. Registered Office and Registered Agent of a Foreign LLC.

- (A) A Foreign LLC authorized to transact business on Tribal Lands shall continuously maintain on Tribal Lands a registered office and registered agent. The registered office may, but need not, be the same as any of its places of business on Tribal Lands, if any.
- (B) A Foreign LLC may change its registered office or registered agent, or both, by filing a written notice of change containing the name of its registered agent and the street address of its registered office, as changed with the Tribal Vice Chairman and paying the filing fee.
- (C) The registered agent of a Foreign LLC may resign as a registered agent by delivering to the Tribal Vice Chairman for filing a written statement of registration and the appointment by the Foreign LLC of another registered agent.

80B-9-9. Service of Foreign Limited Liability Company.

- (A) Except as otherwise provided in subsection (B) and (C), the registered agent of a Foreign LLC authorized to transact business on Tribal Lands is the Foreign LLC's agent for service of process, notice, or demand required or permitted by law to be served on the Foreign LLC.
- (B) A Foreign LLC authorized to transact business on Tribal Lands may be served in the manner provided in subsection (D) if the Foreign LLC has no registered agent or its registered agent cannot with reasonable diligence be served.
- (C) A Foreign LLC formerly authorized to transact business on Tribal Lands may be served in the manner provided in subsection (D) in any civil, criminal, administrative or investigatory proceeding based on a cause of action arising while it was authorized to transact business on Tribal Lands, if the Foreign LLC has withdrawn its registration under Section 80B-10-9.
- (D) With respect to a Foreign LLC described in subsection (B) or (C), the Foreign LLC may be served by registered or certified mail, return receipt requested, addressed to the Foreign LLC at its principal office as shown on the records of the Tribal Vice Chairman. Service is perfected under this paragraph at the earliest of the following:
 - (1) The date on which the Foreign LLC receives the mail.
 - (2) The date shown on the return receipt, if signed on behalf of the Foreign LLC.
 - (3) Five days after the mail is deposited in the U.S. mail, if mailed postpaid and correctly addressed.
- (E) This Section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a Foreign LLC in any other manner permitted by law.

80B-9-10. Withdrawal of Registration.

- (A) A Foreign LLC authorized to transact business on Tribal Lands may not withdraw until it obtains a certificate of withdrawal from the Tribal Vice Chairman.

**PART 10
FORMS AND FILING**

80B-10-1. Forms.

- (A) The Tribal Vice Chairman shall have the authority to prescribe certain forms for documents required by this Ordinance to be filed in the office of the Tribal Vice Chairman.
- (B) In the event that the Tribal Vice Chairman shall prescribe certain forms or documents required by this Ordinance to be filed in the office of the Tribal Vice Chairman, such forms shall be furnished by the Tribal Vice Chairman and used by the LLC for such filing.
- (C) The Tribal Vice Chairman may prescribe and furnish on request forms for other documents required or permitted to be filed by this Ordinance.
- (D) If the Tribal Vice Chairman has prescribed a mandatory form for a document, the document must conform to the prescribed form.

80B-10-2. Execution of Documents.

- (A) Except as otherwise provided in this Ordinance, any document required or permitted by this Code to be delivered for filing in accordance with Section 80B-11-3 shall be executed by any of the following:
- (1) Any Manager, if management of the LLC is vested in a Manager or Managers, or by an Owner, if management of the LLC is reserved to the Owners.
 - (2) All individuals listed or to be listed as organizers of the LLC in the documents filed pursuant to Section 80B-11-3. The name and address of each organizer shall be provided.
 - (3) The drafter of the document.
- (B) The person executing the document shall sign it and state beneath or opposite the signature the person's name and capacity in which the person signs.
- (C) The person executing the document may do so as an attorney-in-fact. Powers-of-attorney relating to the execution of the document need not be shown to nor filed with the Tribal Vice Chairman.

80B-10-3. Filing.

- (A) The Tribal Vice Chairman shall receive all filings required under this Ordinance and maintain the records of such filings pursuant to this Section, including but not limited to, the Articles of Organization, amended or restated Articles, annual reports, names and addresses of registered offices and agents, and, in the case of Tribally-Owned LLCs, the Operating Agreement and amendments thereto, and other reports required by this Ordinance.
- (B) Upon receipt of a document for filing under this Ordinance, the Tribal Vice Chairman shall ensure it meets the requirements herein and then shall stamp or otherwise endorse the date and time of receipt of the original, the duplicate copy, and, upon request, any additional copy received.
- (C) If the Tribal Vice Chairman refuses to file a document, the Tribal Vice Chairman shall return it to the person tendering the document for filing within five (5) business days after the date on which the document is received for filing, together with a brief written explanation of the reason for refusal.
- (D) Any document accepted by the Tribal Vice Chairman and accompanied by the correct fee shall be effective when filed unless a delayed effective date and/or time not more than ninety (90) days after receipt is specified in the document.

80B-10-4. Execution by Judicial Act.

Any person who is adversely affected by the failure or refusal the Tribal Vice Chairman to execute and file any Articles or other document required to be filed under this Ordinance may petition the Tribal Court solely for the purpose of requesting an order that directs the execution and filing of the Articles or other document. Review by the Tribal Court shall be limited to a determination of whether the Articles or document comply with the requirements for the Articles or document set forth in this Ordinance. Nothing in this Ordinance, however, serves to waive any aspect of the Tribe's sovereign immunity. Nothing in this Ordinance authorizes lawsuits against the Tribal Vice Chairman for damages or any relief other than the order described in this section.

80B-10-5. Correcting Filed Documents.

- (A) An LLC may correct a document filed by the Tribal Vice Chairman if the document:
 - (1) Contains an incorrect statement; or
 - (2) Was defectively executed, attested, sealed, verified, or acknowledged.
- (B) A document is corrected by preparing Articles of Correction that:

- (1) Describe the document, including its filing date, or attach a copy of it to the Articles of Correction;
 - (2) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective;
 - (3) Correct the incorrect statement or defective execution; and
 - (4) By delivering the Articles of Correction to the Tribal Vice Chairman.
- (C) Articles of Correction are effective on the date of correction except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, Articles of Correction are effective when filed.

80B-10-6. Fees for Filing Documents and Issuing Certificates.

- (A) The Tribal Vice Chairman shall impose a reasonable filing fee for each document filed, and an annual renewal fee, subject to any uniform schedule of fees as may hereafter be adopted by the Tribal Vice Chairman, with approval of the Tribal Council, from time to time.
- (B) The Tribal Council is authorized to make regulations providing for reasonable fees for other services not specifically stated in the title of this Chapter or to make changes in any and all fees for services set out in this Chapter. These changes shall be available through the Tribal Vice Chairman.

80B-10-7. Certificate of Good Standing

Any person may obtain from the Tribal Vice Chairman, upon request, a certificate of status for either a Domestic or a Foreign LLC.

**PART 11
EFFECTIVE DATE AND AUTHORITY**

80B-11-1. Severability; Effect of Invalidity of Part of this Ordinance.

If the Tribal Court shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this Ordinance, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the clause, sentence, paragraph, section, or part of this Ordinance as adjudged to be invalid or unconstitutional.

80B-11-2. Effective Date.

This Ordinance shall be in full force and effect according to its terms upon adoption by the Tribal Council.

80B-11-3. Amendments.

The Tribal Council reserves the right to repeal or amend the provisions of this Ordinance, subject to the limitation of Section 80B-11-4. Any amendment to this Ordinance shall be by resolution of the Tribal Council.

80B-11-4. No Impairment of Contracts.

Otherwise lawful contracts and other obligations of any LLC shall not be impaired by any subsequent action of the Tribe or the Tribal Council. Actions to restrain any attempts to impair contracts of Tribal LLCs, or to declare such actions null and void, shall be available to any interested party before the Tribal Court. Nothing in this Section shall be construed to restrict the general application of law or of this Ordinance to the acts and contracts of Tribal LLCs.

80B-11-5. Certificates and Certified Copies to be Received into Evidence.

All certificates or documents issued by the Tribal Vice Chairman in accordance with the provisions of this Ordinance and all copies of documents filed in his or her office in accordance with the provisions of this Ordinance, when certified by him or her, shall be taken and received in all Courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Tribal Vice Chairman under the seal of his or her office, as to the existence or non-existence of the facts relating to LLCs which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the existence or non-existence of the facts therein stated.

80B-11-6. Repealer.

All prior Codes, Ordinances or Resolutions generally authorizing and regulating the organization of LLCs under the laws of the Tribe, are hereby repealed.

FEES ADDENDUM

- (A) The Tribal Vice Chairman shall charge and collect for:
- (1) Filing Articles of Organization and issuing a Certificate of Organization \$150.00;
 - (2) Filing Articles of Amendment and issuing a Certificate of Amendment \$60.00;
 - (3) Filing a statement of change of address of registered office or change of registered agent, or both \$55.00;
 - (4) Filing Articles of Dissolution \$55.00;
 - (5) Filing a statement of election to accept this Chapter and issuing Certificate of Acceptance \$25.00
 - (6) Filing any other statement or report, including an annual report of a domestic or foreign limited liability company \$50.00;
 - (7) Indexing each document filed, except an annual report \$50.00;
 - (8) Furnishing a certified copy of any document, instrument, or paper relating to a limited liability company \$55.00; and
 - (9) Furnishing a Certificate of Existence as to the fact that a limited liability company has been formed \$0.00, This is covered in the Articles of Organization.

WEIGHTED VOTE ON MOTION NO. 84: 13 For: Kevin Roberts (3); Jerry Eastman (2); Edmund Johnson Jr. (2); Francis Crawford (2); Virginia Max (2); Tribal Vice-Chairman (1); Tribal Secretary (1). 3 Opposed: Marc Beaudreau (3). 0 Abstained. 1 Absent From Vote: Kenneth Johnson (1). 1 Not Voting: Tribal Chairman.

MOTION PASSED.

Resolution No. SWO-16-130

MOTION NO. 85: made by Jerry Eastman, second by Francis Crawford, question by Virginia Max, in resolution form, to repeal Chapter 8 – Sisseton-Wahpeton Sioux Business Corporation Ordinance from the SWO Codes of Law, effective immediately.

WEIGHTED VOTE ON MOTION NO. 85: 14 For: Kevin Roberts (3); Jerry Eastman (2); Edmund Johnson Jr. (2); Francis Crawford (2); Kenneth Johnson (1); Virginia Max (2); Tribal Vice-Chairman (1); Tribal Secretary (1). 3 Opposed: Marc Beaudreau (3). 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.

MOTION PASSED.

Resolution No. SWO-16-131

MOTION NO. 86: made by Jerry Eastman, second by Francis Crawford, question by Kevin Roberts, in resolution form, to approve and adopt Chapter 80A – Business Corporation Ordinance into the SWO Codes of Law, effective immediately, as presented by the Judicial Committee.

WEIGHTED VOTE ON MOTION NO. 86: 14 For: Kevin Roberts (3); Jerry Eastman (2); Edmund Johnson Jr. (2); Francis Crawford (2); Kenneth Johnson (1); Virginia Max (2); Tribal Vice-Chairman (1); Tribal Secretary (1). 3 Opposed: Marc Beaudreau (3). 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.

MOTION PASSED.

Resolution No. SWO-16-132

MOTION NO. 87: made by Francis Crawford, second by Jerry Eastman, question by Kevin Roberts, in resolution form, to approve and adopt Chapter 80B – Limited Liability Company Ordinance into the SWO Codes of Law, effective immediately, as presented by the Judicial Committee.

WEIGHTED VOTE ON MOTION NO. 87: 14 For: Kevin Roberts (3); Jerry Eastman (2); Edmund Johnson Jr. (2); Francis Crawford (2); Kenneth Johnson (1); Virginia Max (2); Tribal Vice-Chairman (1); Tribal Secretary (1). 3 Opposed: Marc Beaudreau (3). 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.

MOTION PASSED.

Resolution No. SWO-16-133

MOTION NO. 88: made by Jerry Eastman, second by Francis Crawford, question by Kenneth Johnson, in resolution form, to repeal Chapter 9 – Nonprofit Corporation Ordinance from the SWO Codes of Law, effective immediately.

