

**CROW TRIBAL LEGISLATURE
MARCH 13, 2007 SPECIAL SESSION**

BILL NO. CLB07-06

INTRODUCED BY CARL E. VENNE, CHAIRMAN
CROW TRIBAL EXECUTIVE BRANCH

A BILL FOR AN ACT ENTITLED:

“APSAALOOKE LIMITED LIABILITY COMPANY ACT”

WHEREAS, under Article IV, Section 3 of the Constitution and Bylaws of the Crow Tribe of Indians (the “Constitution”), the Executive Branch has the power and responsibility to represent the Crow Tribe in negotiations with Federal, State and local governments and other agencies, corporations, associations, or individuals in matters of welfare affecting the Crow Tribe, to administer and oversee all functions of the Executive Branch, to protect and preserve the property, wildlife and natural resources of the Tribe in accordance with ordinances adopted by the Legislative Branch; and

WHEREAS, under Article V, Section 2(a) of the Constitution, the Legislative Branch has the power and the duty to promulgate and adopt laws, resolutions, ordinances, codes, regulations and guidelines in accordance with the Constitution and federal laws for the governance of the Crow Tribe, providing for the manner of sale disposition, lease or encumbrance of Tribal assets and providing for the licensing of members and non-members for various purposes; and

WHEREAS, under Article V, Section 2(c) of the Constitution, the Legislative Branch has the power and the duty to adopt legislation chartering instrumentalities of the Crow Tribe for the purposes of economic development, housing, education or other purposes not inconsistent with the Constitution; and

WHEREAS, under Article V, Section 2(f) of the Constitution, the Legislative Branch has the power and the duty to “grant final approval or disapproval of limited waivers of sovereign immunity by the Executive Branch when waivers are necessary for business purposes provided that a process for such approval or disapproval may be established by legislation;” and

WHEREAS, in order to promote economic development for the Crow Tribe and its members, to raise the standard of living and education for all Tribal members, and to obtain the highest value possible for the Tribe's natural resources, it is necessary and desirable to establish a legal framework for organizing individually-owned business entities under Tribal law in order to expand the private business sector on the Reservation, and to authorize the formation of Tribally-owned business entities, under Tribal law, for managing the Tribe's business activities separate from the affairs of Tribal Government, with the ability to enter into legally-binding contracts and commercial relationships without the need for Tribal Government action; and

WHEREAS, the Tribe has worked with the National Conference of Commissioners on Uniform State Laws (NCCUSL) to adapt the 2006 Revised Uniform Limited Liability Act for the above purposes, and the Apsaalooke Limited Liability Act therefore substantially conforms to the uniform act with the addition of the provisions for Tribal LLC's in Part 11;

NOW, THEREFORE, BE IT ENACTED BY THE CROW TRIBAL LEGISLATURE:

Section 1. Adoption. The "Apsaalooke Limited Liability Company Act" attached hereto and incorporated herein by reference is hereby adopted as the law of the Crow Tribe.

Section 2. Effective Date. Upon approval of this Bill, the Act shall become effective immediately.

Section 3. Codification Instructions. Upon approval, the Act shall be codified as Title 18, Chapter 5 of the Crow Law and Order Code.

CERTIFICATION

I hereby certify that this Bill for an Act entitled "APSAALOOKE LIMITED LIABILITY COMPANY ACT" was duly enacted by the Crow Tribal Legislature with a vote of 10 in favor, 7 opposed, and 0 abstained and that a quorum was present on this 13TH day of March, 2007.


Speaker of the House
Crow Tribal Legislature

ATTEST:


Secretary, Crow Tribal Legislature



EXECUTIVE ACTION

I hereby

☒ approve

☐ veto

this Bill for an Act entitled "APSAALOOKE LIMITED LIABILITY ACT" pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 of the Constitution and Bylaws of the Crow Tribe of Indians, on this 19 day of April, 2007.


Carl E. Venne, Chairman
Crow Tribal Executive Branch

"Apsáalooke Limited Liability Company Act"

Bill or Resolution Number CLB07-06 Introduced by Executive Branch Date of Vote March 13, 2007

Representative:	Yes	No	Abstained
L. Plain Bull		✓	
O. Costa		✓	
V. Crooked Arm	✓		
M. Not Afraid	✓		
R. Iron		✓	
B. House	✓		
E. Fighter	✓		
L. Costa	✓		
L. Hogan		✓	
S. Fitzpatrick	✓		
K. Real Bird	✓		
M. Covers Up		✓	
L. Not Afraid		✓	
B. Shane	✓		
J. Stone	✓		
D. Wilson			
R. Old Crow <i>Secretary of the House</i>	✓		
D. Goes Ahead <i>Speaker of the House</i>		✓	
Totals:	<u>10</u>	<u>7</u>	<u>0</u>

Result of Vote:

Passed

Not Passed

Tabled

Veto Override

Signature Officer: Carlson Eric Ahn Date: 3-13-07

CROW LAW AND ORDER CODE

TITLE 18. BUSINESS ORGANIZATIONS

CHAPTER 5.

APSAALOOKE LIMITED LIABILITY COMPANY ACT

PART 1

GENERAL PROVISIONS

SECTION 18-5-101. SHORT TITLE, AUTHORITY AND PURPOSES.

(a) This Chapter may be cited as the Apsaalooke Limited Liability Company Act.

(b) This Chapter is enacted pursuant to the Crow Tribe's inherent sovereign powers and as specifically authorized by the Constitution and Bylaws of the Crow Tribe of Indians adopted July 14, 2001 (the "Constitution"), Article V, Section 2(a), which provides for the adoption of laws, ordinances and codes for the governance of the Tribe and the licensing of members and non-members for various purposes; and Article V, Section 2(c), which provides for the adoption of legislation chartering instrumentalities of the Crow Tribe for the purposes of economic development and other purposes. Additional authority for this Chapter is provided in Article IV, Sections 3(a), (b), (c) and (k) and Article V, Sections 2(b), and (f) of the Constitution.

(c) The purposes of this Chapter are to provide for the economic development for the Crow Tribe and its members, to raise the standard of living and education for all Tribal members, and to obtain the highest value possible for the Tribe's natural resources by:

(1) providing the legal framework for organizing individually-owned business entities under Tribal law in order to expand the private business sector on the Reservation, and

(2) authorizing the formation of Tribally-owned business entities for managing the Tribe's business activities separate from the affairs of Tribal Government, with the ability to enter into legally-binding contracts and commercial relationships without the need for formal Tribal Government action.

SECTION 18-5-102. DEFINITIONS. In this Chapter:

(1) "Certificate of organization" means the certificate required by Section 18-5-201. The term includes the certificate as amended or restated.

(2) "Contribution" means any benefit provided by a person to a limited liability company:

(A) in order to become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company;

(B) in order to become a member after formation of the company and in accordance with an agreement between the person and the company; or

(C) in the person's capacity as a member and in accordance with the operating agreement or an agreement between the member and the company.

(3) "Debtor in bankruptcy" means a person that is the subject of:

(A) an order for relief under Title 11 of the United States Code or a successor statute of general application; or

(B) a comparable order under federal, tribal, state, or foreign law governing insolvency.

(4) "Designated office" means:

(A) the office that a limited liability company is required to designate and maintain under Section 18-5-113; or

(B) the principal office of a foreign limited liability company.

(5) "Distribution", except as otherwise provided in Section 18-5-405(g), means a transfer of money or other property from a limited liability company to another person on account of a transferable interest.

(6) "Effective", with respect to a record required or permitted to be delivered to the Tribal Secretary for filing under this Chapter, means effective under Section 18-5-205(c).

(7) "Foreign limited liability company" means an unincorporated entity formed under the law of a jurisdiction other than the Crow Tribe and denominated by that law as a limited liability company.

(8) "Limited liability company", except in the phrase "foreign limited liability company", means an entity formed under this Chapter.

(9) “Manager” means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in Section 18-5-407(c).

(10) “Manager-managed limited liability company” means a limited liability company that qualifies under Section 18-5-407(a).

(11) “Member” means a person that has become a member of a limited liability company under Section 18-5-401 and has not dissociated under Section 18-5-602.

(12) “Member-managed limited liability company” means a limited liability company that is not a manager-managed limited liability company.

(13) “Operating agreement” means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in Section 18-5-110(a). The term includes the agreement as amended or restated.

(14) “Organizer” means a person that acts under Section 18-5-201 to form a limited liability company.

(15) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(16) “Principal office” means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located within the Crow Indian Reservation.

(17) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(18) “Sign” means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(19) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(20) “Transfer” includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(21) “Transferable interest” means the right, as originally associated with a person’s capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right.

(22) “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member.

(23) “Tribal,” “Tribe” and “Crow Tribe” refer to the Crow Tribe of Montana, a federally-recognized Indian Tribe, whose people refer to themselves as “Apsaalooke.”

(24) “Tribal Court” means the Crow Tribal Court, including any division of the Court which may be established to adjudicate commercial disputes and appellate courts.

(25) “Tribally-controlled company” means any limited liability company that is wholly owned by the Crow Tribe, or wholly owned by any LLC, corporation, or other entity or instrumentality that is wholly owned by the Crow Tribe or wholly-owned subsidiaries thereof.

(26) “Tribal Secretary” means the office of the Secretary of the Executive Branch of the Crow Tribe, including the Office of Business Entity Registration.

(27) “Reservation” means the Crow Indian Reservation in Montana, including all lands within the exterior boundaries of the Reservation, all Tribally-owned lands and interests in lands in the “ceded area,” and all other lands within the jurisdiction of the Crow Tribe.

SECTION 18-5-103. KNOWLEDGE; NOTICE.

(a) A person knows a fact when the person:

- (1) has actual knowledge of it; or
- (2) is deemed to know it under subsection (d)(1) or law other than this Chapter.

(b) A person has notice of a fact when the person:

- (1) has reason to know the fact from all of the facts known to the person at the time in question; or
- (2) is deemed to have notice of the fact under subsection (d)(2).

(c) A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(d) A person that is not a member is deemed:

(1) to know of a limitation on authority to transfer real property as provided in Section 18-5-302(g); and

(2) to have notice of a limited liability company's:

(A) dissolution, 90 days after a statement of dissolution under Section 18-5-702(b)(2)(A) becomes effective;

(B) termination, 90 days after a statement of termination Section 18-5-702(b)(2)(F) becomes effective; and

(C) merger, conversion, or domestication, 90 days after articles of merger, conversion, or domestication under Part 10 become effective.

SECTION 18-5-104. NATURE, PURPOSE, AND DURATION OF LIMITED LIABILITY COMPANY.

(a) A limited liability company is an entity distinct from its members.

(b) A limited liability company may have any lawful purpose, regardless of whether for profit.

(c) A limited liability company has perpetual duration.

SECTION 18-5-105. POWERS. A limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities; except that a Tribally-controlled company shall have the same sovereign immunity from suit as the Crow Tribe unless otherwise effectively waived under Part 11 of this Chapter.

SECTION 18-5-106. GOVERNING LAW. The law of the Crow Tribe governs:

(1) the internal affairs of a limited liability company; and

(2) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of a limited liability company.

SECTION 18-5-107. SUPPLEMENTAL PRINCIPLES OF LAW. Unless displaced by particular provisions of this Chapter or other codified Tribal law, the principles of law and equity supplement this Chapter.

SECTION 18-5-108. NAME.

(a) The name of a limited liability company must contain the words "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C.", or "LC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co.".

(b) Unless authorized by subsection (c), the name of a limited liability company must be distinguishable in the records of the Tribal Secretary from:

- (1) the name of each person that is not an individual and that is incorporated, organized, or authorized to transact business within the Crow Indian Reservation;
- (2) the limited liability company name stated in each certificate of organization that contains the statement as provided in Section 18-5-201(b)(3) and that has not lapsed; and
- (3) each name reserved under Section 18-5-109 and any other codified Tribal law allowing the reservation or registration of business names, including fictitious or assumed name statutes.

(c) A limited liability company may apply to the Tribal Secretary for authorization to use a name that does not comply with subsection (b). The Tribal Secretary shall authorize use of the name applied for if, as to each noncomplying name:

- (1) the present user, registrant, or owner of the noncomplying name consents in a signed record to the use and submits an undertaking in a form satisfactory to the Tribal Secretary to change the noncomplying name to a name that complies with subsection (b) and is distinguishable in the records of the Tribal Secretary from the name applied for; or
- (2) the applicant delivers to the Tribal Secretary a certified copy of the final judgment of the Crow Tribal Court establishing the applicant's right under Tribal law to use the name applied for.

(d) Subject to Section 18-5-805, this section applies to a foreign limited liability company transacting business within the Crow Indian Reservation which has a certificate of authority to transact business within this Reservation or which has applied for a certificate of authority.

SECTION 18-5-109. RESERVATION OF NAME.

(a) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious or assumed name for a foreign limited liability company whose name is not available, by delivering an application to the Tribal Secretary for filing. The application must state the name and address of the applicant and the name proposed to be reserved. If the Tribal Secretary finds that the name applied for is available, it must be reserved for the applicant's exclusive use for a 120-day period.

(b) The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the Tribal Secretary for filing a signed notice of the transfer which states the name and address of the transferee.

SECTION 18-5-110. OPERATING AGREEMENT; SCOPE, FUNCTION, AND LIMITATIONS.

(a) Except as otherwise provided in subsections (b) and (c), the operating agreement governs:

- (1) relations among the members as members and between the members and the limited liability company;
- (2) the rights and duties under this Chapter of a person in the capacity of manager;
- (3) the activities of the company and the conduct of those activities; and
- (4) the means and conditions for amending the operating agreement.

(b) To the extent the operating agreement does not otherwise provide for a matter described in subsection (a), this Chapter governs the matter.

(c) Except as otherwise provided for Tribally-controlled companies under Part 11 of this Chapter, an operating agreement may not:

- (1) vary a limited liability company's capacity under Section 18-5-105 to sue and be sued in its own name;
- (2) vary the law applicable under Section 18-5-106;
- (3) vary the power of the court under Section 18-5-204;
- (4) subject to subsections (d) through (g), eliminate the duty of loyalty, the duty of care, or any other fiduciary duty;
- (5) subject to subsections (d) through (g), eliminate the contractual obligation of good faith and fair dealing under Section 18-5-409(d);
- (6) unreasonably restrict the duties and rights stated in Section 18-5-410;
- (7) vary the power of a court to decree dissolution in the circumstances specified in Section 18-5-701(a)(4) and (5);
- (8) vary the requirement to wind up a limited liability company's business as specified in Section 18-5-702(a) and (b)(1);
- (9) unreasonably restrict the right of a member to maintain an action under Part 9;
- (10) restrict the right to approve a merger, conversion, or domestication under Section 18-5-1014 to a member that will have personal liability with respect to a surviving, converted, or domesticated organization; or

(11) except as otherwise provided in Section 18-5-112(b), restrict the rights under this Chapter of a person other than a member or manager.

(d) If not manifestly unreasonable, the operating agreement may:

(1) restrict or eliminate the duty:

(A) as required in Section 18-5-409(b)(1) and (g), to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business, from a use by the member of the company's property, or from the appropriation of a limited liability company opportunity;

(B) as required in Section 18-5-409(b)(2) and (g), to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and

(C) as required by Section 18-5-409(b)(3) and (g), to refrain from competing with the company in the conduct of the company's business before the dissolution of the company;

(2) identify specific types or categories of activities that do not violate the duty of loyalty;

(3) alter the duty of care, except to authorize intentional misconduct or knowing violation of law;

(4) alter any other fiduciary duty, including eliminating particular aspects of that duty; and

(5) prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under Section 18-5-409(d).

(e) The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

(f) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this Chapter and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

(g) The operating agreement may alter or eliminate the indemnification for a member or manager provided by Section 18-5-408(a) and may eliminate or limit a member or manager's liability to the limited liability company and members for money damages, except for:

- (1) breach of the duty of loyalty;
- (2) a financial benefit received by the member or manager to which the member or manager is not entitled;
- (3) a breach of a duty under Section 18-5-406;
- (4) intentional infliction of harm on the company or a member; or
- (5) an intentional violation of criminal law.

(h) The Tribal Court shall decide any claim under subsection (d) that a term of an operating agreement is manifestly unreasonable. The court:

- (1) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and
- (2) may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:
 - (A) the objective of the term is unreasonable; or
 - (B) the term is an unreasonable means to achieve the provision's objective.

SECTION 18-5-111. OPERATING AGREEMENT; EFFECT ON LIMITED LIABILITY COMPANY AND PERSONS BECOMING MEMBERS; PREFORMATION AGREEMENT.

(a) A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.

(b) A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

(c) Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.

SECTION 18-5-112. OPERATING AGREEMENT; EFFECT ON THIRD PARTIES AND RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF LIMITED LIABILITY COMPANY.

(a) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under Section 18-5-503(b)(2) to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

(c) If a record that has been delivered by a limited liability company to the Tribal Secretary for filing and has become effective under this Chapter contains a provision that would be ineffective under Section 18-5-110(c) if contained in the operating agreement, the provision is likewise ineffective in the record.

(d) Subject to subsection (c), if a record that has been delivered by a limited liability company to the Tribal Secretary for filing and has become effective under this Chapter conflicts with a provision of the operating agreement:

(1) the operating agreement prevails as to members, dissociated members, transferees, and managers; and

(2) the record prevails as to other persons to the extent they reasonably rely on the record.

SECTION 18-5-113. OFFICE AND AGENT FOR SERVICE OF PROCESS.

(a) A limited liability company shall designate and continuously maintain within the Crow Indian Reservation:

(1) an office, which need not be a place of its activity on the Reservation; and

(2) an agent for service of process.

(b) A foreign limited liability company that has a certificate of authority under Section 18-5-802 shall designate and continuously maintain within the Crow Indian Reservation an agent for service of process.

(c) An agent for service of process of a limited liability company or foreign limited liability company must be an individual who is a resident of the Crow Indian Reservation or other person with authority to transact business within the Reservation.

SECTION 18-5-114. CHANGE OF DESIGNATED OFFICE OR AGENT FOR SERVICE OF PROCESS.

(a) A limited liability company or foreign limited liability company may change its designated office, its agent for service of process, or the address of its agent for service of process by delivering to the Tribal Secretary for filing a statement of change containing:

- (1) the name of the company;
- (2) the street and mailing addresses of its current designated office;
- (3) if the current designated office is to be changed, the street and mailing addresses of the new designated office;
- (4) the name and street and mailing addresses of its current agent for service of process; and
- (5) if the current agent for service of process or an address of the agent is to be changed, the new information.

(b) Subject to Section 18-5-205(c), a statement of change is effective when filed by the Tribal Secretary.

SECTION 18-5-115. RESIGNATION OF AGENT FOR SERVICE OF PROCESS.

(a) To resign as an agent for service of process of a limited liability company or foreign limited liability company, the agent must deliver to the Tribal Secretary for filing a statement of resignation containing the company name and stating that the agent is resigning.

(b) The Tribal Secretary shall file a statement of resignation delivered under subsection (a) and mail or otherwise provide or deliver a copy to the designated office of the limited liability company or foreign limited liability company and another copy to the principal office of the company if the mailing addresses of the principal office appears in the records of the Tribal Secretary and is different from the mailing address of the designated office.

(c) An agency for service of process terminates on the earlier of:

- (1) the 31st day after the Tribal Secretary files the statement of resignation; or
- (2) when a record designating a new agent for service of process is delivered to the Tribal Secretary for filing on behalf of the limited liability company and becomes effective.

SECTION 18-5-116. SERVICE OF PROCESS.

(a) An agent for service of process appointed by a limited liability company or foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served on the company.

(b) If a limited liability company or foreign limited liability company does not appoint or maintain an agent for service of process within the Crow Indian Reservation or the agent for service of process cannot with reasonable diligence be found at the agent's street address, the Tribal Secretary is an agent of the company upon whom process, notice, or demand may be served.

(c) Service of any process, notice, or demand on the Tribal Secretary as agent for a limited liability company or foreign limited liability company may be made by delivering to the Tribal Secretary duplicate copies of the process, notice, or demand. If a process, notice, or demand is served on the Tribal Secretary, the Tribal Secretary shall forward one of the copies by registered or certified mail, return receipt requested, to the company at its designated office.

(d) Service is effected under subsection (c) at the earliest of:

(1) the date the limited liability company or foreign limited liability company receives the process, notice, or demand;

(2) the date shown on the return receipt, if signed on behalf of the company; or

(3) five days after the process, notice, or demand is deposited with the United States Postal Service, if correctly addressed and with sufficient postage.

(e) The Tribal Secretary shall keep a record of each process, notice, and demand served pursuant to this section and record the time of, and the action taken regarding, the service.

(f) This section does not affect the right to serve process, notice, or demand in any other manner provided by law.

PART 2

FORMATION; CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

SECTION 18-5-201. FORMATION OF LIMITED LIABILITY COMPANY; CERTIFICATE OF ORGANIZATION.

(a) One or more persons may act as organizers to form a limited liability company by signing and delivering to the Tribal Secretary for filing a certificate of organization.

(b) A certificate of organization must state:

(1) the name of the limited liability company, which must comply with Section 18-5-108;

(2) the street and mailing addresses of the initial designated office and the name and street and mailing addresses of the initial agent for service of process of the company; and

(3) if the company will have no members when the Tribal Secretary files the certificate, a statement to that effect.

(c) Subject to Section 18-5-112(c), a certificate of organization may also contain statements as to matters other than those required by subsection (b). However, a statement in a certificate of organization is not effective as a statement of authority.

(d) Unless the filed certificate of organization contains the statement as provided in subsection (b)(3), the following rules apply:

(1) A limited liability company is formed when the Tribal Secretary has filed the certificate of organization and the company has at least one member, unless the certificate states a delayed effective date pursuant to Section 18-5-205(c).

(2) If the certificate states a delayed effective date, a limited liability company is not formed if, before the certificate takes effect, a statement of cancellation is signed and delivered to the Tribal Secretary for filing and the Tribal Secretary files the certificate.

(3) Subject to any delayed effective date and except in a proceeding by the Crow Tribe to dissolve a limited liability company, the filing of the certificate of organization by the Tribal Secretary is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

(e) If a filed certificate of organization contains a statement as provided in subsection (b)(3), the following rules apply:

(1) The certificate lapses and is void unless, within 90 days from the date the Tribal Secretary files the certificate, an organizer signs and delivers to the Tribal Secretary for filing a notice stating:

(A) that the limited liability company has at least one member; and

(B) the date on which a person or persons became the company's initial member or members.

(2) If an organizer complies with paragraph (1), a limited liability company is deemed formed as of the date of initial membership stated in the notice delivered pursuant to paragraph (1).

(3) Except in a proceeding by the Crow Tribe to dissolve a limited liability company, the filing of the notice described in paragraph (1) by the Tribal Secretary is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

SECTION 18-5-202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF ORGANIZATION.

(a) A certificate of organization may be amended or restated at any time.

(b) To amend its certificate of organization, a limited liability company must deliver to the Tribal Secretary for filing an amendment stating:

(1) the name of the company;

(2) the date of filing of its certificate of organization; and

(3) the changes the amendment makes to the certificate as most recently amended or restated.

(c) To restate its certificate of organization, a limited liability company must deliver to the Tribal Secretary for filing a restatement, designated as such in its heading, stating:

(1) in the heading or an introductory paragraph, the company's present name and the date of the filing of the company's initial certificate of organization;

(2) if the company's name has been changed at any time since the company's formation, each of the company's former names; and

(3) the changes the restatement makes to the certificate as most recently amended or restated.

(d) Subject to Sections 18-5-112(c) and 18-5-205(c), an amendment to or restatement of a certificate of organization is effective when filed by the Tribal Secretary.

(e) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate owing to changed circumstances, the member or manager shall promptly:

(1) cause the certificate to be amended; or

(2) if appropriate, deliver to the Tribal Secretary for filing a statement of change under Section 18-5-114 or a statement of correction under Section 18-5-206.

SECTION 18-5-203. SIGNING OF RECORDS TO BE DELIVERED FOR FILING TO TRIBAL SECRETARY.

(a) A record delivered to the Tribal Secretary for filing pursuant to this Chapter must be signed as follows:

(1) Except as otherwise provided in paragraphs (2) through (4), a record signed on behalf of a limited liability company must be signed by a person authorized by the company.

(2) A limited liability company's initial certificate of organization must be signed by at least one person acting as an organizer.

(3) A notice under Section 18-5-201(e)(1) must be signed by an organizer.

(4) A record filed on behalf of a dissolved limited liability company that has no members must be signed by the person winding up the company's activities under Section 18-5-702(c) or a person appointed under Section 18-5-702(d) to wind up those activities.

(5) A statement of cancellation under Section 18-5-201(d)(2) must be signed by each organizer that signed the initial certificate of organization, but a personal representative of a deceased or incompetent organizer may sign in the place of the decedent or incompetent.

(6) A statement of denial by a person under Section 18-5-303 must be signed by that person.

(7) Any other record must be signed by the person on whose behalf the record is delivered to the Tribal Secretary.

(b) Any record filed under this Chapter may be signed by an agent.

SECTION 18-5-204. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.

(a) If a person required by this Chapter to sign a record or deliver a record to the Tribal Secretary for filing under this Chapter does not do so, any other person that is aggrieved may petition the Crow Tribal Court to order:

(1) the person to sign the record;

(2) the person to deliver the record to the Tribal Secretary for filing; or

(3) the Tribal Secretary to file the record unsigned.

(b) If a petitioner under subsection (a) is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the company a party to the action.

SECTION 18-5-205. DELIVERY TO AND FILING OF RECORDS BY TRIBAL SECRETARY; EFFECTIVE TIME AND DATE.

(a) A record authorized or required to be delivered to the Tribal Secretary for filing under this Chapter must be captioned to describe the record's purpose, be in a medium permitted by the Tribal Secretary, and be delivered to the Tribal Secretary. If the filing fees have been paid, unless the Tribal Secretary determines that a record does not comply with the filing requirements of this Chapter, the Tribal Secretary shall file the record and:

(1) for a statement of denial under Section 18-5-303, send a copy of the filed statement and a receipt for the fees to the person on whose behalf the statement was delivered for filing and to the limited liability company; and

(2) for all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(b) Upon request and payment of the requisite fee, the Tribal Secretary shall send to the requester a certified copy of a requested record.

(c) Except as otherwise provided in Sections 18-5-114 and 18-5-206 and except for a certificate of organization that contains a statement as provided in Section 18-5-201(b)(3), a record delivered to the Tribal Secretary for filing under this Chapter may specify an effective time and a delayed effective date. Subject to Sections 18-5-114, 18-5-201(d)(1), and 18-5-206, a record filed by the Tribal Secretary is effective:

(1) if the record does not specify either an effective time or a delayed effective date, on the date and at the time the record is filed as evidenced by the Tribal Secretary's endorsement of the date and time on the record;

(2) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(3) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(A) the specified date; or

(B) the 90th day after the record is filed; or

(4) if the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(A) the specified date; or

(B) the 90th day after the record is filed.

SECTION 18-5-206. CORRECTING FILED RECORD.

(a) A limited liability company or foreign limited liability company may deliver to the Tribal Secretary for filing a statement of correction to correct a record previously delivered by the company to the Tribal Secretary and filed by the Tribal Secretary, if at the time of filing the record contained inaccurate information or was defectively signed.

(b) A statement of correction under subsection (a) may not state a delayed effective date and must:

(1) describe the record to be corrected, including its filing date, or attach a copy of the record as filed;

(2) specify the inaccurate information and the reason it is inaccurate or the manner in which the signing was defective; and

(3) correct the defective signature or inaccurate information.

(c) When filed by the Tribal Secretary, a statement of correction under subsection (a) is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:

(1) for the purposes of Section 18-5-103(d); and

(2) as to persons that previously relied on the uncorrected record and would be adversely affected by the retroactive effect.

SECTION 18-5-207. LIABILITY FOR INACCURATE INFORMATION IN FILED RECORD.

(a) If a record delivered to the Tribal Secretary for filing under this Chapter and filed by the Tribal Secretary contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from:

(1) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(2) subject to subsection (b), a member of a member-managed limited liability company or the manager of a manager-managed limited liability company, if:

(A) the record was delivered for filing on behalf of the company; and

(B) the member or manager had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:

(i) effected an amendment under Section 18-5-202;

(ii) filed a petition under Section 18-5-204; or

(iii) delivered to the Tribal Secretary for filing a statement of change under Section 18-5-114 or a statement of correction under Section 18-5-206.

(b) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the company to the Tribal Secretary for filing under this Chapter and imposes that responsibility on one or more other members, the liability stated in subsection (a)(2) applies to those other members and not to the member that the operating agreement relieves of the responsibility.

(c) An individual who signs a record authorized or required to be filed under this Chapter affirms under penalty of perjury that the information stated in the record is accurate.

SECTION 18-5-208. CERTIFICATE OF EXISTENCE OR AUTHORIZATION.

(a) The Tribal Secretary, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited liability company if the records filed in the office of the Tribal Secretary show that the company has been formed under Section 18-5-201 and the Tribal Secretary has not filed a statement of termination pertaining to the company. A certificate of existence must state:

(1) the company's name;

(2) that the company was duly formed under the laws of the Crow Tribe and the date of formation;

(3) whether all fees, taxes, and penalties due under this Chapter or other law to the Tribal Secretary have been paid;

(4) whether the company's most recent annual report required by Section 18-5-209 has been filed by the Tribal Secretary;

(5) whether the Tribal Secretary has administratively dissolved the company;

(6) whether the company has delivered to the Tribal Secretary for filing a statement of dissolution;

(7) that a statement of termination has not been filed by the Tribal Secretary; and

(8) other facts of record in the office of the Tribal Secretary which are specified by the person requesting the certificate.

(b) The Tribal Secretary, upon request and payment of the requisite fee, shall furnish to any person a certificate of authorization for a foreign limited liability company if the records filed in the office of the Tribal Secretary show that the Tribal Secretary has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state:

(1) the company's name and any alternate name adopted under Section 18-5-805(a) for use within the Crow Indian Reservation;

(2) that the company is authorized to transact business within the Reservation;

(3) whether all fees, taxes, and penalties due under this Chapter or other law to the Tribal Secretary have been paid;

(4) whether the company's most recent annual report required by Section 18-5-209 has been filed by the Tribal Secretary;

(5) that the Tribal Secretary has not revoked the company's certificate of authority and has not filed a notice of cancellation; and

(6) other facts of record in the office of the Tribal Secretary which are specified by the person requesting the certificate.

(c) Subject to any qualification stated in the certificate, a certificate of existence or certificate of authorization issued by the Tribal Secretary is conclusive evidence that the limited liability company is in existence or the foreign limited liability company is authorized to transact business within the Crow Indian Reservation.

SECTION 18-5-209. ANNUAL REPORT FOR TRIBAL SECRETARY.

(a) Each year, a limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the Tribal Secretary for filing a report that states:

(1) the name of the company;

(2) the street and mailing addresses of the company's designated office and the name and street and mailing addresses of its agent for service of process within the Crow Indian Reservation;

(3) the street and mailing addresses of its principal office; and

(4) in the case of a foreign limited liability company, the state or other jurisdiction under whose law the company is formed and any alternate name adopted under Section 18-5-805(a).

(b) Information in an annual report under this section must be current as of the date the report is delivered to the Tribal Secretary for filing.

(c) The first annual report under this section must be delivered to the Tribal Secretary between January 1 and April 1 of the year following the calendar year in which a limited liability company was formed or a foreign limited liability company was authorized to transact business. A report must be delivered to the Tribal Secretary between January 1 and April 1 of each subsequent calendar year.

(d) If an annual report under this section does not contain the information required in subsection (a), the Tribal Secretary shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) and delivered to the Tribal Secretary within 30 days after the effective date of the notice, it is timely delivered.

(e) If an annual report under this section contains an address of a designated office or the name or address of an agent for service of process which differs from the information shown in the records of the Tribal Secretary immediately before the annual report becomes effective, the differing information in the annual report is considered a statement of change under Section 18-5-114.

SECTION 18-5-210. FEES. The Tribal Secretary shall establish and publish a schedule of reasonable fees for the filings and certificates required and allowed under this Chapter; provided, that the maximum fee for filing a company's initial certificate of organization shall not exceed One Hundred Dollars (\$100.00), and the maximum fee for all other filings or certificates shall not exceed Twenty-Five Dollars (\$25.00); and provided, further, that Tribally-controlled LLC's shall not be required to pay any fees.

PART 3

RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

SECTION 18-5-301. NO AGENCY POWER OF MEMBER AS MEMBER.

(a) A member is not an agent of a limited liability company solely by reason of being a member.

(b) A person's status as a member does not prevent or restrict law other than this Chapter from imposing liability on a limited liability company because of the person's conduct.

SECTION 18-5-302. STATEMENT OF AUTHORITY.

(a) A limited liability company may deliver to the Tribal Secretary for filing a statement of authority. The statement:

(1) must include the name of the company and the street and mailing addresses of its designated office;

(2) with respect to any position that exists in or with respect to the company, may state the authority, or limitations on the authority, of all persons holding the position to:

(A) execute an instrument transferring real property held in the name of the company; or

(B) enter into other transactions on behalf of, or otherwise act for or bind, the company; and

(3) may state the authority, or limitations on the authority, of a specific person to:

(A) execute an instrument transferring real property held in the name of the company; or

(B) enter into other transactions on behalf of, or otherwise act for or bind, the company.

(b) To amend or cancel a statement of authority filed by the Tribal Secretary under Section 18-5-205(a), a limited liability company must deliver to the Tribal Secretary for filing an amendment or cancellation stating:

(1) the name of the company;

(2) the street and mailing addresses of the company's designated office;

(3) the caption of the statement being amended or canceled and the date the statement being affected became effective; and

(4) the contents of the amendment or a declaration that the statement being affected is canceled.

(c) A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.

(d) Subject to subsection (c) and Section 18-5-103(d) and except as otherwise provided in subsections (f), (g), and (h), a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.

(e) Subject to subsection (c), a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

- (1) the person has knowledge to the contrary;
- (2) the statement has been canceled or restrictively amended under subsection (b);
or
- (3) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

(f) Subject to subsection (c), an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company and that is recorded by certified copy in the office for recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

- (1) the statement has been canceled or restrictively amended under subsection (b) and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or
- (2) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective and a certified copy of the later-effective statement is recorded in the office for recording transfers of the real property.

(g) Subject to subsection (c), if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation. For the purposes of subsections (f) and (g), the office for recording transfers of real property, in the case of unrestricted fee land shall be the office for recording real estate transfers of the county and state in which the fee land is located, and in the case of land held in trust or restricted status by the United States of America for the benefit of individual Indians or the Crow Tribe shall be the office of the Bureau of Indian Affairs that has administrative responsibility for such trust or restricted land. Nothing in this Chapter shall be construed as affecting the procedures for and restrictions against alienating trust or restricted lands and provided in Federal or other Tribal law.

(h) Subject to subsection (i), an effective statement of dissolution or termination is a cancellation of any filed statement of authority for the purposes of subsection (f) and is a limitation on authority for the purposes of subsection (g).

(i) After a statement of dissolution becomes effective, a limited liability company may deliver to the Tribal Secretary for filing and, if appropriate, may record a statement of authority that is designated as a post-dissolution statement of authority. The statement operates as provided in subsections (f) and (g).

(j) Unless earlier canceled, an effective statement of authority is canceled by operation of law five years after the date on which the statement, or its most recent amendment, becomes effective. This cancellation operates without need for any recording under subsection (f) or (g).

(k) An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for the purposes of subsection (f)(1).

SECTION 18-5-303. STATEMENT OF DENIAL. A person named in a filed statement of authority granting that person authority may deliver to the Tribal Secretary for filing a statement of denial that:

(1) provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains; and

(2) denies the grant of authority.

SECTION 18-5-304. LIABILITY OF MEMBERS AND MANAGERS.

(a) The debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise:

(1) are solely the debts, obligations, or other liabilities of the company; and

(2) do not become the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager.

(b) The failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on the members or managers for the debts, obligations, or other liabilities of the company.

PART 4

RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

SECTION 18-5-401. BECOMING A MEMBER.

(a) If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

(b) If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.

(c) If a filed certificate of organization contains the statement required by Section 18-5-201(b)(3), a person becomes an initial member of the limited liability company with the consent of a majority of the organizers. The organizers may consent to more than one person simultaneously becoming the company's initial members.

(d) After formation of a limited liability company, a person becomes a member:

- (1) as provided in the operating agreement;
- (2) as the result of a transaction effective under Part 10;
- (3) with the consent of all the members; or
- (4) if, within 90 consecutive days after the company ceases to have any members:
 - (A) the last person to have been a member, or the legal representative of that person, designates a person to become a member; and
 - (B) the designated person consents to become a member.

(e) A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

SECTION 18-5-402. FORM OF CONTRIBUTION. A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed.

SECTION 18-5-403. LIABILITY FOR CONTRIBUTIONS.

(a) A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, or other inability to perform personally. If a person does not make a required contribution, the person or the person's estate is obligated to contribute

money equal to the value of the part of the contribution which has not been made, at the option of the company.

(b) A creditor of a limited liability company which extends credit or otherwise acts in reliance on an obligation described in subsection (a) may enforce the obligation.

SECTION 18-5-404. SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE DISSOLUTION.

(a) Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under Section 18-5-502 and any charging order in effect under Section 18-5-503.

(b) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(c) A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in Section 18-5-708(c), a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(d) If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

SECTION 18-5-405. LIMITATIONS ON DISTRIBUTION.

(a) A limited liability company may not make a distribution if after the distribution:

(1) the company would not be able to pay its debts as they become due in the ordinary course of the company's activities; or

(2) the company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under subsection (a) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(c) Except as otherwise provided in subsection (f), the effect of a distribution under subsection (a) is measured:

(1) in the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the company, as of the date money or other property is transferred or debt incurred by the company; and

(2) in all other cases, as of the date:

(A) the distribution is authorized, if the payment occurs within 120 days after that date; or

(B) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.

(d) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors.

(e) A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subsection (a) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section.

(f) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(g) In subsection (a), "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

SECTION 18-5-406. LIABILITY FOR IMPROPER DISTRIBUTIONS.

(a) Except as otherwise provided in subsection (b), if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of Section 18-5-405 and in consenting to the distribution fails to comply with Section 18-5-409, the member or manager is personally liable to the company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of Section 18-5-405.

(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subsection (a) applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

(c) A person that receives a distribution knowing that the distribution to that person was made in violation of Section 18-5-405 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 18-5-405.

(d) A person against which an action is commenced because the person is liable under subsection (a) may:

(1) implead any other person that is subject to liability under subsection (a) and seek to compel contribution from the person; and

(2) implead any person that received a distribution in violation of subsection (c) and seek to compel contribution from the person in the amount the person received in violation of subsection (c).

(e) An action under this section is barred if not commenced within two years after the distribution.

SECTION 18-5-407. MANAGEMENT OF LIMITED LIABILITY COMPANY.

(a) A limited liability company is a member-managed limited liability company unless the operating agreement:

(1) expressly provides that:

(A) the company is or will be “manager-managed”;

(B) the company is or will be “managed by managers”; or

(C) management of the company is or will be “vested in managers”; or

(2) includes words of similar import.

(b) In a member-managed limited liability company, the following rules apply:

(1) The management and conduct of the company are vested in the members.

(2) Each member has equal rights in the management and conduct of the company’s activities.

(3) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members.

(4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.

(5) The operating agreement may be amended only with the consent of all members.

(c) In a manager-managed limited liability company, the following rules apply:

(1) Except as otherwise expressly provided in this Chapter, any matter relating to the activities of the company is decided exclusively by the managers.

(2) Each manager has equal rights in the management and conduct of the activities of the company.

(3) A difference arising among managers as to a matter in the ordinary course of the activities of the company may be decided by a majority of the managers.

(4) The consent of all members is required to:

(A) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the company's property, with or without the good will, outside the ordinary course of the company's activities;

(B) approve a merger, conversion, or domestication under Part 10;

(C) undertake any other act outside the ordinary course of the company's activities; and

(D) amend the operating agreement.

(5) A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.

(6) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

(7) A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.

(d) An action requiring the consent of members under this Chapter may be taken without a meeting, and a member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.

(e) The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.

(f) This Chapter does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

SECTION 18-5-408. INDEMNIFICATION AND INSURANCE.

(a) A limited liability company shall reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a member of a member-managed company or the manager of a manager-managed company in the course of the member's or manager's activities on behalf of the company, if, in making the payment or incurring the debt, obligation, or other liability, the member or manager complied with the duties stated in Sections 18-5-405 and 18-5-409.

(b) A limited liability company may purchase and maintain insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under Section 18-5-110(g), the operating agreement could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability.

SECTION 18-5-409. STANDARDS OF CONDUCT FOR MEMBERS AND MANAGERS.

(a) A member of a member-managed limited liability company owes to the company and, subject to Section 18-5-901(b), the other members the fiduciary duties of loyalty and care stated in subsections (b) and (c).

(b) The duty of loyalty of a member in a member-managed limited liability company includes the duties:

(1) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member:

(A) in the conduct or winding up of the company's activities;

(B) from a use by the member of the company's property; or

(C) from the appropriation of a limited liability company opportunity;

(2) to refrain from dealing with the company in the conduct or winding up of the company's activities as or on behalf of a person having an interest adverse to the company; and

(3) to refrain from competing with the company in the conduct of the company's activities before the dissolution of the company.

(c) Subject to the business judgment rule, the duty of care of a member of a member-managed limited liability company in the conduct and winding up of the company's activities is to act with the care that a person in a like position would reasonably exercise under similar circumstances and in a manner the member reasonably believes to be in the best interests of the company. In discharging this duty, a member may rely in good faith upon opinions, reports, statements, or other information provided by another person that the member reasonably believes is a competent and reliable source for the information.

(d) A member in a member-managed limited liability company or a manager-managed limited liability company shall discharge the duties under this Chapter or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(e) It is a defense to a claim under subsection (b)(2) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

(f) All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(g) In a manager-managed limited liability company, the following rules apply:

(1) Subsections (a), (b), (c), and (e) apply to the manager or managers and not the members.

(2) The duty stated under subsection (b)(3) continues until winding up is completed.

(3) Subsection (d) applies to the members and managers.

(4) Subsection (f) applies only to the members.

(5) A member does not have any fiduciary duty to the company or to any other member solely by reason of being a member.

SECTION 18-5-410. RIGHT OF MEMBERS, MANAGERS, AND DISSOCIATED MEMBERS TO INFORMATION.

(a) In a member-managed limited liability company, the following rules apply:

(1) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained

by the company regarding the company's activities, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or this Chapter.

(2) The company shall furnish to each member:

(A) without demand, any information concerning the company's activities, financial condition, and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this Chapter, except to the extent the company can establish that it reasonably believes the member already knows the information; and

(B) on demand, any other information concerning the company's activities, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

(3) The duty to furnish information under paragraph (2) also applies to each member to the extent the member knows any of the information described in paragraph (2).

(b) In a manager-managed limited liability company, the following rules apply:

(1) The informational rights stated in subsection (a) and the duty stated in subsection (a)(3) apply to the managers and not the members.

(2) During regular business hours and at a reasonable location specified by the company, a member may obtain from the company and inspect and copy full information regarding the activities, financial condition, and other circumstances of the company as is just and reasonable if:

(A) the member seeks the information for a purpose material to the member's interest as a member;

(B) the member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(C) the information sought is directly connected to the member's purpose.

(3) Within 10 days after receiving a demand pursuant to paragraph (2)(B), the company shall in a record inform the member that made the demand:

(A) of the information that the company will provide in response to the demand and when and where the company will provide the information; and

(B) if the company declines to provide any demanded information, the company's reasons for declining.

(4) Whenever this Chapter or an operating agreement provides for a member to give or withhold consent to a matter, before the consent is given or withheld, the company shall, without demand, provide the member with all information that is known to the company and is material to the member's decision.

(c) On 10 days' demand made in a record received by a limited liability company, a dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements imposed on a member by subsection (b)(2). The company shall respond to a demand made pursuant to this subsection in the manner provided in subsection (b)(3).

(d) A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

(e) A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under subsection (g) applies both to the agent or legal representative and the member or dissociated member.

(f) The rights under this section do not extend to a person as transferee.

(g) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

PART 5

TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

SECTION 18-5-501. NATURE OF TRANSFERABLE INTEREST. A transferable interest is personal property.

SECTION 18-5-502. TRANSFER OF TRANSFERABLE INTEREST.

(a) A transfer, in whole or in part, of a transferable interest:

(1) is permissible;

(2) does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities; and

(3) subject to Section 18-5-504, does not entitle the transferee to:

(A) participate in the management or conduct of the company's activities;
or

(B) except as otherwise provided in subsection (c), have access to records or other information concerning the company's activities.

(b) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(c) In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.

(d) A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(e) A limited liability company need not give effect to a transferee's rights under this section until the company has notice of the transfer.

(f) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having notice of the restriction at the time of transfer.

(g) Except as otherwise provided in Section 18-5-602(4)(B), when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.

(h) When a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under Sections 18-5-403 and 18-5-406(c) known to the transferee when the transferee becomes a member.

SECTION 18-5-503. CHARGING ORDER.

(a) On application by a judgment creditor of a member or transferee, the Tribal Court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which