

TITLE 11. COMMERCE

Chapter 11.11

SUQUAMISH LIMITED LIABILITY COMPANY ACT

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11.11.1. Purpose of this Chapter. The purpose of this chapter is to provide for expanded economic development of the Suquamish Indian Tribe of the Port Madison Reservation (“Suquamish Tribe” or “Tribe”) by providing the legal framework for the organizing of individually-owned and wholly or partially Tribally-owned business entities in order to expand both the private business sector on the Port Madison Reservation

and in the Tribe's Indian Country and Tribal businesses on the reservation and in the Tribe's Indian Country.

11.11.2. Sovereign Immunity. By adoption of this chapter and any amendments thereto, the Tribe does not waive its inherent sovereign immunity or consent to suit in any court, including but not limited to municipal, county, state, federal, or Tribal courts of the Suquamish or any court of another Tribe. The incorporation of any limited liability company hereunder will not be construed to be a waiver of the Suquamish Indian Tribe's inherent sovereign immunity or interpreted in any way as the Tribe's consent to be sued. Any rights of action included in this chapter do not constitute a waiver of Tribal sovereign immunity or any derived sovereign immunity. All and any rights of action included in this chapter are only available against sovereign defendants through the separate express consent of the sovereign defendant.

11.11.3. Title. This chapter is known as the "Suquamish Limited Liability Company Act."

11.11.4. Definitions. As used in this chapter, the following words and phrases each have the designated meaning unless a different meaning is expressly provided or context clearly indicated.

(a) "Certificate of formation" means the certificate referred to in §11.11.19, and the certificate as amended.

(b) "Event of dissociation" means an event that causes a person to cease to be a member as provided in §11.11.30.

(c) "Foreign limited liability company" means an entity that is formed under the law of another jurisdiction.

(d) "Indian Country" means the Suquamish Indian Tribe's Indian Country, as that term is defined by 18 USC §1151, and which means all lands within the Tribe's reservation and all lands held in trust or restricted fee status by the United States for the Tribe or its Tribal citizens.

(e) "Limited liability company," "domestic limited liability company," and "LLC" mean a limited liability company having one or more members that is organized and existing under this chapter.

(f) "Limited liability company agreement" means any written agreement of the members, or any written statement of the sole member, as to the affairs of a limited liability company and the conduct of its business which is binding upon the member or members.

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

(h) "Majority in interest" means a member or members holding more than fifty percent (50%) of the total voting interest in the limited liability company excluding any interest which is not to be counted for determining voting on a matter as described elsewhere in this chapter.

(i) "Manager" or "managers" mean, with respect to a limited liability company that has set forth in its certificate of formation that it is to be managed by managers, the person, or persons designated in accordance with §11.11.33.

(j) "Member" means a person who has been admitted to a limited liability company as a member as provided in §11.11.27 and who has not been dissociated from the limited liability company.

(k) "Operating agreement" means the legal document that establishes the rights and responsibilities of each LLC member and provides details about the LLC's internal management, including but not limited to how decisions are made, when meetings are held, how new members are admitted.

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

(m) "Reservation" or "the reservation" means the reservation of the Suquamish Indian Tribe of the Port Madison Reservation, including off-reservation lands which are in the Tribe's "Indian Country" as that term is defined herein.

(n) "Secretary" or "Office of the Secretary" for purposes of receiving Limited Liability Corporation filings and maintaining records of same under this chapter will mean the Secretary of the Suquamish Tribal Council, notwithstanding any delegation by the Secretary which the Secretary at the Secretary's discretion may make to other officials, employees, or agents to perform the specific duties and responsibilities assigned to the Secretary under this chapter.

(o) "Secretarial delegate" will mean the official, employee, or agent delegated by a writing signed by the Secretary to perform specifically-listed duties of the Secretary. This delegate must be in a position bound by confidentiality and preferably in an office near the Secretary's, such as one of the staff secretaries to the CBC.

(p) "State" means the District of Columbia, the Commonwealth of Puerto Rico, and any Indian tribal government, state, territory, possession, or other jurisdiction of the United States.

(q) "Tribally-owned LLC" means a limited liability company wholly owned by the Tribe with the Tribe as its sole member.

(r) "Tribally-owned second tier subsidiary LLC" means a limited liability company wholly owned by a Tribally-owned subsidiary LLC.

(s) "Tribally-owned subsidiary LLC" means a limited liability company wholly owned by a Tribally owned LLC.

(t) "Tribal entity" means an agency of the Tribe chartered pursuant to the Suquamish Tribal Code or Section 17 of the Indian Reorganization Act.

(u) "Tribal entity-owned LLC" means a limited liability company with greater than 50% ownership by a Tribal entity.

11.11.5. Standards for Electronic Filing – Rules. The Secretary may propose to the Suquamish Tribal Council, and the Suquamish Tribal Council may adopt by resolution, rules to facilitate electronic filing. The rules will detail the circumstances under which documents may be filed electronically, how the documents will be filed, and how the Secretary will return filed documents. The rules may also impose additional requirements related to implementation of electronic filing processes, including but not limited to file formats, signature technologies, delivery, and the types of entities, records, or documents permitted.

11.11.6. Name Set Forth in Certificate of Formation. (a) The name of each limited liability company as set forth in its certificate of formation:

(1) Must contain the words "Limited Liability Company," the words "Limited Liability" and abbreviation "Co.," or the abbreviation "L.L.C." or "LLC;"

(2) Except as provided in §11.11.6(a)(4), may contain the name of a member or manager;

(3) Must not contain language stating or implying that the limited liability company is organized for a purpose other than those permitted by §11.11.8;

(4) Must not contain any of the following words or phrases: "bank," "banking," "banker," "trust," "cooperative," "partnership," "corporation," "incorporated," or the abbreviations "corp.," "Ltd.," "inc.," "LP," "L.P.," "LLP," "L.L.P.," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any Suquamish Tribal statute.

11.11.7. Reserved Name – Registered Name. (a) Reserved Name – Individual Person.

(1) A person may reserve the exclusive use of a limited liability company name by delivering an application to the Secretary for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary finds that the limited liability company name applied for is available, the Secretary will reserve the name for the applicant's exclusive use for a nonrenewable one hundred eighty-day period.

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

(b) Registered Name – Foreign Limited Liability Company.

(1) A foreign limited liability company may register its name if the name is distinguishable upon the Secretarial records from the names specified in §11.11.6.

(2) A foreign limited liability company registers its name by delivering to the Secretary for filing an application that:

(A) Sets forth its name and the Indian tribal government, state, or country of organization and the date of its organization; and

(B) Is accompanied by a certificate of existence, or a document of similar import, from the Indian tribal government, state, or country of organization.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application and until the close of the calendar year in which the application for registration is filed.

(d) A foreign limited liability company whose registration is effective may renew it for successive years by delivering to the Secretary for filing a renewal application, which complies with the requirements of §11.11.7(b)(2), between October 1 and December 31 of the preceding year. The renewal application when filed renews the registration for the following calendar year.

11.11.8. Registered Office – Registered Agent. (a) Each limited liability company will continuously maintain on the Port Madison Reservation:

(1) A registered office, which may, but need not be, a place of its business on the Port Madison Reservation. The registered office will be at a specific geographic location on this reservation, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be

identified by post office box number or other non-geographic address. For purposes of communicating by mail, the Secretary may permit the use of a post office address in conjunction with the registered office address if the limited liability company also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(2) A registered agent for service of process on the limited liability company, which agent may be either an individual resident of this reservation whose business office is identical with the limited liability company's registered office, or a domestic corporation, limited partnership, or limited liability company, or a foreign corporation, limited partnership, or limited liability company authorized to do business in this state having a business office identical with such registered office; and

(3) A registered agent who will not be appointed without having given prior written consent to the appointment. The written consent will be filed with the Secretary in such form as the Secretary may prescribe. The written consent will be filed with or as a part of the document first appointing a registered agent.

(b) A limited liability company may change its registered office or registered agent by delivering to the Secretary for filing a statement of change that sets forth:

(1) The name of the limited liability company;

(2) If the current registered office is to be changed, the street address of the new registered office in accord with subsection (a) of this section;

(3) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(4) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(c) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any limited liability company for which the agent is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary for filing a statement that complies with the requirements of subsection (b) of this section and recites that the limited liability company has been notified of the change.

(d) A registered agent may resign as agent by signing and delivering to the Secretary for filing a statement that the registered office is also discontinued. After filing the statement, the Secretary will mail a copy of the statement to the limited liability company at its principal office. The agency appointment is terminated, and the

registered office discontinued is so provided, on the thirty-first day after the date on which the statement was filed.

11.11.9. Service of Process on Domestic Limited Liability Companies. (a) A limited liability company's registered agent is its agent for service of process, notice, or demand required or permitted by law to be served on the limited liability company.

(b) The Secretary is an agent of a limited liability company upon whom any such process, notice, or demand may be served if:

(1) The limited liability company fails to appoint or maintain a registered agent in this reservation; or

(2) The registered agent cannot with reasonable diligence be found at the registered office.

(c) Service on the Secretary of any such process, notice, or demand must be made by delivering to and leaving with the Secretary, or with any duly authorized clerk of the Secretary's office, the process, notice, or demand.

In the event any such process, notice, or demand is served on the Secretary, the Secretary must immediately cause a copy thereof to be forwarded by certified mail, addressed to the limited liability company at its principal place of business as it appears on the Secretary's records. Any service so had on the Secretary is returnable in not less than thirty (30) days.

(d) The Secretary will keep a record of all processes, notices, and demands served upon the Secretary under this section, and will record in that record the time of such service and the Secretary's action with reference to the process, notice, or demand.

(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 limited liability company in any other manner now or later permitted by law.

11.11.10. Nature of Business Permitted – Powers. (a) Every limited liability company formed under this chapter may carry on any lawful business or activity unless a more limited purpose is set forth in the certificate of formation. A limited liability company may not be formed under this chapter for the purposes of banking or engaging in business as an insurer.

(b) Unless this chapter, its certificate of formation, or its limited liability company agreement provides otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs.

11.11.11. Business Transactions of Member or Manager with the Limited Liability Company. Except as provided in a limited liability company agreement, a member or manager may lend money to; act as a surety, guarantor, or endorser for; guarantee or assume one or more specific obligations of; provide collateral for; and transact other business with a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

11.11.12. Limitation of Liability and Indemnification. (a) The limited liability company agreement may contain provisions not inconsistent with law that:

(1) Eliminate or limit the personal liability of a member or manager to the limited liability company or its members for monetary damages for conduct as a member or manager, provided that such provisions must not eliminate or limit the liability of a member or manager for acts or omissions that involve intentional misconduct or a knowing violation of law by a member or manager, for conduct of the member or manager violating any duties or laws, or for any transaction from which the member or manager will personally receive a benefit in money, property, or services to which the member or manager is not legally entitled; or

(2) Indemnify any member or manager from and against any judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which an individual is a party because that individual is, or was, a member or a manager, provided that no such indemnity may indemnify a member or a manager from or on account of acts or omissions of the member or manager finally adjudged to be intentional misconduct or a knowing violation of law by the member or manager, conduct of the member or manager adjudged to be in violation of any duties or laws, or any transaction with respect to which it was finally adjudged that such member or manager received a benefit in money, property, or services to which such member or manager was not legally entitled.

(b) To the extent that, at law or in equity, a member or manager has duties (including fiduciary duties) and liabilities relating to such duties to a limited liability company or to another member or manager (a) any such member or manager acting under a limited liability company agreement will not be liable to the limited liability company or to any such other member or manager for the member's or manager's good faith reliance on the provisions of the limited liability company agreement, and (b) the member's or manager's duties and liabilities may be expanded or restricted by provisions in a limited liability company agreement.

11.11.13. Suquamish Indian Tribe as Member. (a) The Tribe may form a Tribally-owned LLC under this chapter upon approval by Suquamish Tribal Council resolution.

(b) If the Tribe is the sole member of an LLC formed under this chapter, such Tribally-owned LLC will be considered to possess all the derived privileges and immunities of the Tribe, including the Tribe's inherent sovereign immunity from suit,

except to the extent otherwise provided in its contracts with other entities for goods or services; however, such a waiver would require approval by the LLC member.

(c) If a Tribally-owned LLC, in which the Tribe is the sole member, forms a Tribally-owned subsidiary LLC in which the Tribally-owned LLC is the sole member, such Tribally-owned subsidiary LLC will possess all of the privileges and immunities of the Tribe, including any derived sovereign immunity from suit, except to the extent otherwise provided for in this chapter or in its formation documents.

(d) If a subsidiary Tribally-owned LLC, in which the Tribally-owned LLC is the sole member, forms a Tribally-owned second tier subsidiary LLC, such Tribally-owned second tier subsidiary LLC will possess all of the privileges and immunities of the Tribe, including derived sovereign immunity from suit, except to the extent otherwise provided for in this chapter.

(e) If the Tribe has a majority interest in an LLC formed under this chapter, such LLC will be deemed to possess the privileges and immunities of the Tribe, including its inherent sovereign immunity from suit except to the extent otherwise provided for in this chapter.

(f) Nothing contained in this chapter creates any liability or waiving the inherent sovereign immunity of the Tribe or any tribal entity in any manner. In no event may any action taken by the Tribe as member concerning the exercise of any right or privilege or discharge of any duty with respect to an interest in an LLC be construed as waiving immunity or creating liability on the Tribe's part separate and apart from its interests as a member of the LLC.

11.11.14. Suquamish Entity as Member. (a) A Suquamish Tribe owned Tribal entity may form a Tribal entity-owned LLC under this chapter upon approval by Suquamish Tribal Council resolution, provided that the Tribal entity is Port Madison Enterprises (PME), Suquamish Seafoods Enterprises (SSE), or a Suquamish-owned Indian Reorganization Act Section 17 corporation chartered pursuant to 25 U.S.C. 5124.

(b) If the Tribal Entity is the sole member of an LLC formed under this Chapter, such Tribal entity-owned LLC will possess all the derived privileges and immunities of the Tribal entity, including any derived sovereign immunity from suit.

(c) If a Tribal entity-owned LLC, in which the Tribal entity is the sole member, forms an entity-owned subsidiary LLC in which the entity-owned LLC is the sole member, such entity-owned subsidiary LLC will possess all of the derived privileges and immunities of the entity-owned LLC, including any derived sovereign immunity from suit, except to the extent otherwise provided for in this chapter or in LLC governing documents.

(d) If a subsidiary entity-owned LLC in which the entity-owned LLC is the sole member, forms a Tribally-owned second tier subsidiary LLC, such Tribally-owned

second tier subsidiary LLC will possess all of the derived privileges and immunities of the entity-owned subsidiary LLC, including any derived sovereign immunity from suit, except to the extent otherwise provided for in this chapter or in LLC governing documents.

(e) If the Tribal entity has a majority interest in an LLC formed under this chapter, such LLC will possess derived privileges and immunities of the Tribal entity, including any derived sovereign immunity except to the extent otherwise provided for in this chapter or in LLC governing documents.

(f) Nothing contained in this chapter will be considered as creating any liability or waiving the Tribe's inherent sovereign immunity or that of any Tribal entity in any manner. In no event will any action taken by a Tribal entity as member or manager concerning the exercise of any right or privilege or discharge of any duty with respect to an interest in an LLC be considered as waiving immunity or creating liability on the part of the Tribal entity separate and apart from its interests as a member or manager of the LLC.

11.11.15. Applicable Law. Companies organized and created under this chapter will be subject to this chapter and all other laws and regulations of the Tribe.

11.11.16. Member Agreements. In addition to agreeing among themselves with respect to this chapter's provisions, the members of a limited liability company may agree among themselves to any otherwise lawful provision governing the company that is not in conflict with this chapter. Such agreements include, but are not limited to, buy-sell agreements among the members and agreements relating to expulsion of members.

11.11.17. Membership Residency. Nothing in this chapter requires a limited liability company to restrict membership to persons residing in or engaging in business on the Port Madison Reservation.

11.11.18. Piercing the Veil. Members of a limited liability company will be personally liable for any act, debt, obligation, or liability of the limited liability company to the extent that shareholders of a Suquamish business corporation would be liable in analogous circumstances. In this regard, the court may consider the factors and policies set forth in established case law with regard to piercing the corporate veil, except that the failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings will not be considered a factor tending to establish that the members have personal liability for any act, debt, obligation, or liability of the limited liability company if the certificate of formation and limited liability company agreement do not expressly require the holding of meetings of members or managers. Nothing in this chapter or this section constitutes any waiver of sovereign immunity.

FORMATION: CERTIFICATE OF FORMATION, AMENDMENT, FILING AND EXECUTION

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

(1) The name of the limited liability company;

(2) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by §11.11.8;

(3) The address of the principal place of business of the limited liability company;

(4) If the limited liability company is to have a specific date of dissolution, the latest date on which the limited liability company is to dissolve;

(5) If management of the limited liability company is vested in a manager or managers, a statement to that effect;

(6) Any other matters the members decide to include in the certificate of formation; and

(7) The name and address of each person executing the certificate of formation.

(b) Effect of filing. (1) Unless a delayed effective date is specified, a limited liability company is formed when its certificate of formation is filed with the Secretary. A delayed effective date for a certificate of formation may be no later than the ninetieth (90th) day after the date it is filed.

(2) The Secretary's filing of the certificate of formation is conclusive proof that the persons executing the certificate satisfied all conditions precedent to the formation except in a proceeding by the Tribe to cancel the certificate.

(3) A limited liability company formed under this chapter will be a separate legal entity, the existence of which as a separate legal entity will continue until cancellation of the limited liability company's certificate of formation.

11.11.20. Amendment to Certificate of Formation. (a) A certificate of formation is amended by filing with the Secretary a certificate of amendment thereto. The certificate of amendment will state:

(1) The name of the limited liability company; and

(2) The amendment to the certificate of formation.

(b) A manager or, if there is no manager, then any member who becomes aware that any statement in a certificate of formation was false when made, or that any matter described has changed making the certificate of formation false in any material respect, will promptly amend the certificate of formation.

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

(d) Unless otherwise provided in this chapter or unless a later effective date (which will be a date not later than the ninetieth (90th) day after the date it is filed) is provided for in the certificate of amendment, a certificate of amendment will be effective when filed with the Secretary.

11.11.21. Cancellation of Certificate. A certificate of formation will be canceled upon the effective date of the certificate of cancellation or upon the filing of articles of merger if the limited liability company is not the surviving or resulting entity in a merger. A certificate of cancellation will be filed with the Secretary's office to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company and will set forth:

(a) The limited liability company's name;

(b) The date its certificate of formation was filed;

(c) The reason for filing the certificate of cancellation;

(d) The future effective date (which will be a date not later than the ninetieth (90th) day after the date it is filed) of cancellation if it is not to be effective upon the certificate's filing; and

(e) Any other information the person filing the certificate of cancellation determines.

11.11.22. Execution. (a) Each document required by this chapter to be filed with the Secretary's office will be executed in the following manner, or in compliance with the rules established to facilitate electronic filing under §11.11.5, except as set forth in §11.11.26(d)(1):

(1) Each original certificate of formation must be signed by the person or persons forming the limited liability company;

(2) A reservation of name may be signed by any person;

(3) A transfer of reservation of name must be signed by, or on behalf of, the applicant for the reserved name;

(4) A registration of name must be signed by any member or manager of the foreign limited liability company;

(5) A certificate of amendment or restatement must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members;

(6) A certificate of cancellation must be signed by the person or persons authorized to wind up the limited liability company's affairs pursuant to §11.11.59;

(7) If a surviving domestic limited liability company is filing articles of merger, the articles of merger must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members, or if the articles of merger are being filed by a surviving foreign limited liability company, limited partnership, or corporation, the articles of merger must be signed by a person authorized by such foreign limited liability company, limited partnership, or corporation; and

(8) A foreign limited liability company's application for registration as a foreign limited liability company doing business within the Port Madison Reservation must be signed by any member or manager of the foreign limited liability company.

(b) Any person may sign a certificate, articles of merger, limited liability company agreement, or other document by an attorney-in-fact or other person acting in a valid representative capacity, so long as each document signed in such manner identifies the capacity in which the signatory signed.

(c) The person executing the document will sign it and state beneath or opposite the signature the name of the person and capacity in which the person signs. The document must be typewritten or printed, and must meet such legibility or other standards as the Secretary may prescribe.

(d) The execution of a certificate or articles of merger by any person constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

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

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

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

11.11.24. Filing. (a) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or conformed copy, of the certificate of formation or any other document required to be filed according to this chapter, except as set forth under §11.11.26 will be delivered to the Secretary. If the Secretary determines that the documents conform to the filing provisions of this chapter, the Secretary will, when all required filing fees have been paid:

(1) Endorse on each signed original and duplicate copy the word "filed" and the date of its acceptance for filing;

(2) Retain the signed original in the Secretary's files; and

(3) Return the duplicate copy to the person who filed it or the person's representative.

(b) If the Secretary is unable to make the determination required for filing by subsection (a) of this section at the time any documents are delivered for filing, the documents are considered to have been filed at the time of delivery if the Secretary subsequently determines that:

(1) The documents as delivered conform to the filing provisions of this chapter; or

(2) Within twenty (20) days after the Secretary gives notification of nonconformance to the person who delivered the documents for filing or the person's representative, the documents are brought into conformance.

(c) If this chapter's filing and determination requirements are not satisfied completely within the time prescribed in subsection (b)(2) of this section, the documents will not be filed.

(d) Upon the filing of a certificate of amendment (or judicial decree of amendment) or restated certificate in the Secretary's office, or upon the future effective date or time of a certificate of amendment (or judicial decree thereof) or restated certificate, as provided for therein, the certificate of formation will be amended or restated as set forth therein. Upon the filing of a certificate of cancellation (or a judicial decree thereof), or articles of merger which act as a certificate of cancellation, or upon the future effective date or time of a certificate of cancellation (or a judicial decree thereof) or of articles of merger which act as a certificate of cancellation, as provided for therein, or as specified in §11.11.58, the certificate of formation is canceled.

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

(b) If a restated certificate of formation merely restates and integrates but does not amend the initial certificate of formation, as theretofore amended or supplemented by any instrument that was executed and filed according to any of the sections in this chapter, it will be specifically designated in its heading as a "Restated Certificate of Formation" together with such other words as the limited liability company may determine appropriate and will be executed by at least one manager, or by a member if management of the limited liability company is reserved to its members, and filed as provided in §11.11.24 in the Secretary's office. If a restated certificate restates and integrates and also amends in any respect the certificate of formation, as theretofore amended or supplemented, it will be specifically designated in its heading as an "Amended and Restated Certificate of Formation" together with such other words as the limited liability company may determine appropriate and will be executed by at least one manager, or by a member if management of the limited liability company is reserved to its members, and filed as provided in §11.11.24 in the Secretary's office.

(c) A restated certificate of formation will state, either in its heading or in an introductory paragraph, the limited liability company's present name, and, if it has been changed, the name under which it was originally filed, and the date of filing of its original certificate of formation with the Secretary, and the future effective date (which will be a date not later than the ninetieth (90th) day after the date it is filed) of the restated certificate if it is not to be effective upon the filing of the restated certificate. A restated certificate will also state that it was duly executed and is being filed in accordance with this section. If a restated certificate only restates and integrates and does not further amend a limited liability company's certificate of formation as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it will state that fact as well.

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

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

11.11.26. Initial and Annual Reports. (a) Each domestic limited liability company, and each foreign limited liability company authorized to transact business on the reservation, will deliver to the Secretary for filing, both initial and annual reports that set forth:

(1) The name of the company and the tribal government or country under whose law it is organized;

(2) The street address of its registered office and the name of its registered agent at that office on the reservation;

(3) In the case of a foreign company, the address of its principal office on the reservation, state, or country under the laws of which it is organized;

(4) The address of the principal place of business of the company on the reservation;

(5) The names and addresses of the company's members, or if the management of the company is vested in a manager or managers, then the name and address of its manager or managers; and

(6) A brief description of the nature of its business.

(b) Information in an initial report or an annual report must be current as of the date the report is executed on behalf of the company.

(c) A company's initial report must be delivered to the Secretary within one hundred twenty (120) days of the date on which a domestic company's certificate of formation was filed, or on which a foreign company's application for registration was submitted. Subsequent annual reports must be delivered to the Secretary on a date the Secretary will determine, and at such additional times as the company elects.

(d) The Secretary may allow a company to file an annual report through electronic means. If allowed, the Secretary will adopt rules detailing the circumstances under which the electronic filing of such reports will be permitted and how such reports may be filed.

(e) For purposes of this section only, a person executing an electronically filed annual report may deliver the report to the Secretary's office without a signature and without an exact or conformed copy, but the person's name must appear in the electronic filing as the person executing the filing, and the filing must state the capacity in which the person is executing the filing.

MEMBERS

11.11.27. Admission of Members. (a) In connection with the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company upon the later to occur of:

(1) The formation of the limited liability company; or

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

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

(1) In the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company; or

(2) In the case of an assignee of a limited liability company interest who meets the conditions for membership set forth in §11.11.53(a), at the time provided in and upon compliance with the limited liability company operating agreement or, if the limited liability company agreement does not so provide or does not exist, when any such assignee's admission as a member is reflected in the records of the limited liability company.

11.11.28. Voting and Classes of Membership. (a) Except as provided in this statute, or in the limited liability company operating agreement, and subject to subsection (b) of this section, the affirmative vote, approval, or consent of members contributing, or required to contribute, more than fifty percent (50%) of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to §11.11.31) of the contributions made, or required to be made, by all members will be necessary for actions requiring member approval.

(b) Except as provided in the limited liability company agreement, the affirmative vote, approval, or consent of all members will be required to:

(1) Amend the limited liability company operating agreement; or

(2) Authorize a manager, member, or other person to do any act on behalf of the limited liability company that contravenes the limited liability company operating agreement, including any provision thereof which expressly limits the purpose, business, or affairs of the limited liability company or the conduct thereof.

(c) A limited liability company operating agreement may provide for classes or groups of members having such relative rights, powers, and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

(d) A limited liability company operating agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. If the limited liability company operating agreement so provides, voting by members may be on a per capita, number, profit share, class, group, or any other basis.

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

11.11.29. Liability of Members and Managers to Third Parties. (a) Except as otherwise provided by this chapter, the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort or otherwise, will be solely the debts, obligations, and liabilities of the limited liability company; and no member or manager of a limited liability company will be obligated personally for any such debt, obligation, or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

(b) A member or manager of a limited liability company is personally liable for his or her own torts.

11.11.30. Events of Dissociation. (a) A person ceases to be a member of a limited liability company, and the person or its successor in interest attains the status of an assignee as set forth in §11.11.51(b), upon the occurrence of one or more of the following events:

(1) The member dies or withdraws by voluntary act from the limited liability company as provided in subsection (3) of this section;

(2) The member ceases to be a member as provided in §11.11.51(b)(2) following an assignment of all the member's limited liability company interest;

(3) The member is removed as a member in accordance with the limited liability company agreement;

(4) Unless otherwise provided in the limited liability company operating agreement, or with the written consent of all other members at the time, the member:

(A) makes a general assignment for the benefit of creditors;

(B) files a voluntary petition in bankruptcy;

(C) becomes the subject of an order for relief in bankruptcy proceedings;

(D) files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(E) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him or her in any proceeding of the nature described in (4)(A) through (D) of this subsection; or

(F) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties;

(5) Unless otherwise provided in the limited liability company operating agreement, or with the consent of all other members at the time, one hundred twenty days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within ninety (90) days after the appointment without his or her consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within ninety days after the expiration of any stay, the appointment is not vacated;

(6) Unless otherwise provided in the limited liability company operating agreement, or with written consent of all other members at the time, in the case of a member who is an individual, the entry of an order by a court of competent jurisdiction adjudicating the member incapacitated, as used and defined under the laws of the state of Washington, RCW 11.88, as to the member's estate;

(7) Unless otherwise provided in the limited liability company operating agreement, or with written consent of all other members at the time, in the case of a member that is another limited liability company, the dissolution and commencement of winding up of such limited liability company;

(8) Unless otherwise provided in the limited liability company operating agreement, or with written consent of all other members at the time, in the case of a member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the administrative dissolution of the corporation and the lapse of any period authorized for application for reinstatement; or

(9) Unless otherwise provided in the limited liability company operating agreement, or with written consent of all other members at the time, in the case of a member that is a limited partnership, the dissolution and commencement of winding up of such limited partnership.

(b) The limited liability company operating agreement may provide for other events the occurrence of which result in a person ceasing to be a member of the limited liability company. A member may withdraw from a limited liability company at the time or upon the happening of events specified in and in accordance with the limited liability company agreement. If the limited liability company agreement does not specify the time or the events upon the happening of which a member may withdraw, a member may not withdraw prior to the time for the dissolution and commencement of winding up of the limited liability company, without the written consent of all other members at the time.

11.11.31. Records and Information. (a) A limited liability company will keep at its principal place of business the following:

(1) A current and a past list, setting forth the full name and last known mailing address of each member and manager, if any;

(2) A copy of its certificate of formation and all amendments thereto;

(3) A copy of its current limited liability company operating agreement and all amendments thereto, and a copy of any prior agreements no longer in effect;

(4) Unless contained in its certificate of formation or limited liability company operating agreement, a written statement of:

(A) The amount of cash and a description of the agreed value of the other property or services contributed by each member (including that member's predecessors in interest), and which each member has agreed to contribute;

(B) The times at which or events on the happening of which any additional contributions agreed to be made by each member are to be made; and

(C) Any right of any member to receive distributions which include a return of all or any part of the member's contribution.

(5) A copy of the limited liability company's tribal, federal, state, and local tax returns and reports, if any, for the three most recent years; and

(6) A copy of any financial statements of the limited liability company for the three most recent years.

(b) The records required by subsection (a) of this section to be kept by a limited liability company are subject to inspection and copying at the reasonable request, and at the expense, of any member during ordinary business hours. A member's agent or attorney has the same inspection and copying rights as the member.

(c) Each manager will have the right to examine all of the information described in subsection (a) of this section for a purpose reasonably related to his or her position as a manager.

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

(e) Any action to enforce any right arising under this section will be brought in the tribal court.

11.11.32. Remedies for Breach of Limited Liability Company Operating Agreement by Member. (a) A limited liability company agreement may provide that:

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

(2) at the time or upon the happening of events specified in the limited liability company operating agreement, a member will be subject to specified penalties or specified consequences.

MANAGEMENT AND MANAGERS

11.11.33. Management. (a) Unless the certificate of formation vests management of the limited liability company in a manager or managers:

(1) Management of the business or affairs of the limited liability company will be vested in the members; and

(2) Each member is an agent of the limited liability company for the purpose of its business and the act of any member for apparently carrying on in the usual way the business of the limited liability company binds the limited liability company unless the member so acting has in fact no authority to act for the limited liability company in the particular matter and the person with whom the member is dealing has knowledge of the fact that the member has no such authority. Subject to any provisions in the limited liability company agreement or this chapter restricting or enlarging the management rights and duties of any person or group or class of persons, the members will have the right and authority to manage the affairs of the limited liability company and to make all decisions with respect thereto.

(b) If the certificate of formation vests management of the limited liability company in one or more managers, then such persons will have such power to manage the business or affairs of the limited liability company as is provided in the limited liability company agreement. Unless otherwise provided in the limited liability company agreement, such persons:

(1) Will be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of members contributing, or required to contribute, more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept according to §11.11.31) of the contributions made, or required to be made, by all members at the time of such action;

(2) Need not be members of the limited liability company or natural persons; and

(3) Unless they have been earlier removed or have earlier resigned, will hold office until their successors will have been elected and qualified.

(c) If the certificate of formation vests management of the limited liability company in a manager or managers, no member, acting solely in the capacity as a member, is an agent of the limited liability company.

11.11.34. Liability of Members and Managers. Unless otherwise provided in the limited liability company operating agreement:

(a) A member or manager will not be liable, responsible, or accountable in damages or otherwise to the limited liability company or to the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company unless such act or omission constitutes gross negligence, intentional misconduct, or a knowing violation of law.

(b) Every member and manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by that member or manager without the consent of a majority of the disinterested managers or members, or other persons participating in the management of the business or affairs of the limited liability company from:

(1) Any transaction connected with the conduct or winding up of the limited liability company; or

(2) Any use by that member or manager of its property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to that member or manager as a result of the member or manager's status as member or manager.

11.11.35. Manager – Members' Rights and Duties. A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as provided in a limited liability company agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of that individual's participation in the limited liability company as a member.

11.11.36. Voting and Classes of Managers. (a) Unless the limited liability company operating agreement provides otherwise, the affirmative vote, approval, or consent of more than one-half by number of the managers will be required to decide any matter connected with the business and affairs of the limited liability company.

(b) A limited liability company operating agreement may provide for classes or groups of managers having such relative rights, powers, and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company operating agreement of additional classes or groups of managers having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of managers. A limited liability company operating agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the limited liability company operating agreement a class or group of limited liability company interests that was not previously outstanding.

(c) A limited liability company operating agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. If the limited liability company operating agreement so provides, voting by managers may be on a financial interest, class, group, or any other basis.

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

11.11.37. Remedies for Breach of Limited Liability Company Operating Agreement by Manager. A limited liability company agreement may provide that:

(a) A manager who fails to perform in accordance with, or to comply with the terms and conditions of the limited liability company operating agreement will be subject to any specified penalties or specified consequences in the agreement; and

(b) At the time or upon the happening of events specified in the limited liability company operating agreement, a manager will be subject to any specified penalties or specified consequences in the agreement.

11.11.38. Reliance on Reports and Information by Member or Manager. In discharging the duties of a member or a manager, a member or manager of a limited liability company is entitled to rely in good faith upon the records of the limited liability company and upon such information, opinions, reports, or statements presented to the limited liability company by any of its other managers, members, officers, employees, or committees of the limited liability company, or by any other person, as to matters the member or manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports, or statements as to the value and amount of the assets, liabilities, profits, or losses of the limited liability company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

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

11.11.40. Loss of Sole Remaining Manager. In the event of the death, resignation, or removal of the sole remaining manager, or if one of the events described in §11.11.30(a)(4) through (9) occurs with regard to the sole remaining manager, and unless the limited liability company agreement provides otherwise, the limited liability company will become member-managed unless one or more managers are appointed by majority vote of the members within ninety (90) days after the occurrence of such an event.

FINANCE

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

11.11.42. Liability for Contribution. (a) Except as provided in a limited liability company operating agreement, a member is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability, or any other reason. If a member does not make the required contribution of property or services, the member is obligated at the option of the limited liability company to contribute cash equal to that portion of the agreed value as stated in the records of the limited liability company required to be kept according to §11.11.31 of the contribution that has not been made. This option will be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the limited liability company operating agreement or applicable law.

(b) Unless otherwise provided in a limited liability company operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit, after either the certificate of formation, limited liability company agreement or an amendment thereto, or records required to be kept according to §11.11.31 reflect the obligation, and before the amendment of any thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

(c) A limited liability company agreement may provide that the interest of any member who fails to make any contribution that the member is obligated to make will be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting

member's proportionate interest in a limited liability company, subordinating the member's limited liability company interest to that of non-defaulting members, a forced sale of the member's limited liability company interest, forfeiture of the member's limited liability company interest, the lending by other members of the amount necessary to meet the member's commitment, a fixing of the value of the member's limited liability company interest by appraisal or by formula and redemption or sale of the member's limited liability company interest at such value, or other penalty or consequence.

11.11.43. Allocation of Profits and Losses. The profits and losses of a limited liability company will be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company operating agreement. If the limited liability company operating agreement does not so provide, profits and losses will be allocated in proportion to the agreed value as stated in the records of the limited liability company required to be kept according to §11.11.31 of the contributions made, or required to be made, by each member.

11.11.44. Allocation of Distributions. Distributions of cash or other assets of a limited liability company will be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company operating agreement. If the limited liability company operating agreement does not so provide, distributions will be made in proportion to the agreed value as stated in the records of the limited liability company required to be kept according to §11.11.31 of the contributions made, or required to be made, by each member.

DISTRIBUTIONS AND RESIGNATION

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

11.11.46. Distribution on Event of Dissociation. Unless otherwise provided in the limited liability company operating agreement, upon the occurrence of an event of dissociation under §11.11.30 which does not cause dissolution (other than an event of dissociation specified in §11.11.30(a)(2) where the dissociating member's assignee is admitted as a member), a dissociating member (or the member's assignee) is entitled to receive any distribution to which an assignee would be entitled.

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

member exceeds a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company.

11.11.48. Right to Distribution. Subject to §11.11.49 and §11.11.60, and unless otherwise provided in a limited liability company agreement, at the time a member becomes entitled to receive a distribution, that member has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

11.11.49. Limitations on Distribution. (a) A limited liability company will not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution:

(1) The limited liability company would not be able to pay its debts as they became due in the usual course of business; or

(2) All liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited will be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability.

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

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

ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS

11.11.50. Nature of Limited Liability Company Interest – Certificate of Interest. (a) A limited liability company interest is personal property. A member has no interest in specific limited liability company property.

(b) A limited liability company agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company.

11.11.51. Assignment of Limited Liability Company Interest. (a) A limited liability company interest is assignable in whole or in part except as provided in a limited liability company operating agreement. The assignee of a member's limited liability company interest will have no right to participate in the management of the business and affairs of a limited liability company except:

(1) Upon the approval of all of the members of the limited liability company other than the member assigning that member's limited liability company interest; or

(2) As provided in a limited liability company operating agreement.

(b) Unless otherwise provided in a limited liability company operating agreement:

(1) An assignment entitles the assignee to share in such profits and losses, to receive such distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(2) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of that member's limited liability company interest.

(c) For the purposes of this chapter, unless otherwise provided in a limited liability company operating agreement:

(1) The pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of the limited liability company interest of a member will not be considered to be an assignment of the member's limited liability company interest, but a foreclosure or execution sale or exercise of similar rights with respect to all of a member's limited liability company interest will be considered to be an assignment of the member's limited liability company interest to the transferee according to such foreclosure or execution sale or exercise of similar rights;

(2) Where a limited liability company interest is held in a trust or estate, or is held by a trustee, personal representative, or other fiduciary, the transfer of the limited liability company interest, whether to a beneficiary of the trust or estate or

otherwise, will be considered to be an assignment of such limited liability company interest, but the mere substitution or replacement of the trustee, personal representative, or other fiduciary will not constitute an assignment of any portion of such limited liability company interest.

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

11.11.52. Rights of Judgment Creditor. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the limited liability company interest. This chapter does not deprive any member of the benefit of any exemption laws applicable to the member's limited liability company interest.

11.11.53. Right of Assignee to Become Member. (a) An assignee of a limited liability company interest may become a member upon:

(1) The approval of all the members of the limited liability company other than the member assigning that member's limited liability company interest; or

(2) Compliance with any procedure provided for in the limited liability company operating agreement.

(b) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under a limited liability company agreement and this chapter. An assignee who becomes a member is liable for the obligations of the assignee's assignor to make contributions as provided in §11.11.42, and for the obligations of his or her assignor under this ordinance.

(c) Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from his or her liability to a limited liability company under this ordinance.

DISSOLUTION

11.11.54. Dissolution. A limited liability company is dissolved and its affairs will be wound up upon the first to occur of the following:

(a) The dissolution date, if any, specified in the certificate of formation. If a dissolution date is not specified in the certificate of formation, the limited liability company's existence will continue until the first to occur of the events described in

subsections (b) through (f) of this section. If a dissolution date is specified in the certificate of formation, the certificate of formation may be amended and the existence of the limited liability company may be extended by vote of all the members;

(b) The happening of events specified in a limited liability company operating agreement;

(c) The written consent of all members;

(d) Unless the limited liability company operating agreement provides otherwise, ninety (90) days following an event of dissociation of the last remaining member, unless those having the rights of assignees in the limited liability company under §11.11.30(a) have, by the ninetieth(90th) day, voted to admit one or more members, voting as though they were members, and in the manner set forth in §11.11.28(a);

(e) The entry of a decree of judicial dissolution under §11.11.55; or

(f) The expiration of two (2) years after the effective date of dissolution under §11.11.57 without the reinstatement of the limited liability company.

11.11.55. Judicial Dissolution. On application by or for a member or manager the tribal courts may decree dissolution of a limited liability company whenever:

(a) It is not reasonably practicable to carry on the business in conformity with a limited liability company operating agreement; or

(b) Other circumstances render dissolution equitable.

11.11.56. Administrative Dissolution – Commencement of Proceeding. The Secretary may commence a proceeding under §11.11.57 to administratively dissolve a limited liability company if:

(a) The limited liability company does not pay any license fees or penalties, imposed by this statute, when they become due;

(b) The limited liability company does not deliver its completed initial report or annual report to the Secretary when it is due;

(c) The limited liability company is without a registered agent or registered office on this reservation for sixty (60) days or more; or

(d) The limited liability company does not notify the Secretary within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

11.11.57. Administrative Dissolution – Notice – Opportunity to Correct Deficiencies. (a) If the Secretary determines that one or more grounds exist under §11.11.56 for dissolving a limited liability company, the Secretary will give the limited liability company written notice of the determination by first class mail, postage prepaid, reciting the grounds for dissolution. Notice will be sent to the address of the principal place of business of the limited liability company as it appears in the Secretary's records.

(b) If the limited liability company does not correct each ground for dissolution or demonstrate to the Secretary's reasonable satisfaction that each ground for dissolution does not exist within sixty (60) days after notice is sent, the limited liability company is at that time dissolved. The Secretary will give the limited liability company written notice of the dissolution that recites the ground or grounds for such dissolution and its effective date.

(c) A limited liability company administratively dissolved continues its existence but may not carry on any business except as necessary to wind up and liquidate its business and affairs.

(d) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.

11.11.58. Administrative Dissolution – Reinstatement – Application – When Effective.

(a) A limited liability company administratively dissolved under §11.11.57 may apply to the Secretary for reinstatement within two (2) years after the effective date of dissolution. The application must:

(1) Recite the name of the limited liability company and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(3) State that the limited liability company's name satisfies the requirements of §11.11.6.

(b) If the Secretary determines that the application contains the information required by subsection (a) of this section and that the name is available, the Secretary will reinstate the limited liability company and give the limited liability company written notice, as provided in §11.11.57(a), of the reinstatement that recites the effective date of reinstatement. If the name is not available, the limited liability company must file with its application for reinstatement an amendment to its certificate of formation reflecting a change of name.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume carrying on its business as if the administrative dissolution had never occurred.

(d) If an application for reinstatement is not made within the two-year period set forth in subsection (a) of this section, or if the application made within this period is not granted, the Secretary will cancel the limited liability company's certificate of formation.

11.11.59. Winding Up. (a) Unless otherwise provided in a limited liability company operating agreement, a manager who has not wrongfully dissolved a limited liability company or, if none, the members or a person approved by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members contributing, or required to contribute, more than fifty percent (50%) of the agreed value (as stated in the records of the limited liability company required to be kept according to §11.11.31) of the contributions made, or required to be made, by all members, or by the members in each class or group, as appropriate, may wind up the limited liability company's affairs. The Suquamish Tribal Court, upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager or that member or manager's legal representative or assignee, and in connection with that, may appoint a receiver.

(b) Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in §11.11.21, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal, or administrative; gradually settle and close the limited liability company's business; dispose of and convey the limited liability company's property; discharge or make reasonable provision for the limited liability company's liabilities; and distribute to the members any remaining assets of the limited liability company.

11.11.60. Distribution of Assets. (a) Upon the winding up of a limited liability company, the assets will be distributed as follows:

(1) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members under §11.11.45 or §11.11.48;

(2) Unless otherwise provided in a limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under §11.11.45 or §11.11.48; and

(3) Unless otherwise provided in a limited liability company agreement, to members, first for the return of their contributions, and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

(b) A limited liability company which has dissolved will pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the limited liability company and all claims and obligations which are known to the limited liability company but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations will be paid in full and any such provision for payment made will be made in full. If there are insufficient assets, such claims and obligations will be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available there for. Unless otherwise provided in a limited liability company agreement, any remaining assets will be distributed as provided in this chapter. Any person winding up a limited liability company's affairs who has complied with this section is not personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding up the limited liability company.

DERIVATIVE ACTIONS

11.11.61. Right to Bring Action. A member of an LLC may bring an action in the Suquamish Tribal Courts in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

11.11.62. Proper Plaintiff. In a derivative action, the plaintiff must be a member of the LLC at the time of bringing the action and:

(a) At the time of the transaction of which the plaintiff complains; or

(b) The plaintiff's status as a member had devolved upon him or her by operation of law or according to the terms of a limited liability company agreement from a person who was a member at the time of the transaction.

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

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

MISCELLANEOUS

11.11.65. Construction and Application of Statute and Limited Liability Company Agreement. (a) The rule that statutes in derogation of the common law are to be strictly construed will have no application to this chapter.

(b) It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.

(c) Unless the context otherwise requires, as used in this chapter, the singular will include the plural and the plural may refer to only the singular. The captions contained in this chapter are for purposes of convenience only and will not control or affect the construction of this statute and do not constitute part of the law.

11.11.66. Establishment of Filing Fees and Miscellaneous Charges. (a) The Secretary will adopt rules establishing fees which will be charged and collected for:

(1) Filing of a certificate of formation for a domestic limited liability company or an application for registration of a foreign limited liability company;

(2) Filing of a certificate of cancellation for a domestic or foreign limited liability company;

(3) Filing of a certificate of amendment or restatement for a domestic or foreign limited liability company;

(4) Filing an application to reserve, register, or transfer a limited liability company name;

(5) Filing any other certificate, statement, or report authorized or permitted to be filed;

(6) Copies, certified copies, certificates, service of process filings, and expedited filings or other special services.

(b) In the establishment of a fee schedule, the Secretary will, as far as is possible and reasonable, be guided by the fee schedule provided for corporations governed by Tribal law.

(c) All fees collected by the Secretary of the Suquamish Tribal Council will be deposited with the Tribal Finance Department pursuant to law.

11.11.67. Authority to Adopt Rules. The Secretary will adopt such rules as are necessary to implement the transfer of duties and records required by this chapter.

11.11.68. Effective Date. This statute will take effect upon final passage by the Suquamish Tribal Council.

11.11.69. Short Title. This chapter may be cited as the "Suquamish Limited Liability Company Act."

11.11.70. Severability. If any provision of this statute or its application to any person or circumstance is held invalid, the remainder of the statute or the application of the provision to other persons or circumstances is not affected.