

TITLE 26
LUMMI NATION CODE OF LAWS
COMMERCIAL CODE

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**TITLE 26
LUMMI NATION CODE OF LAWS
COMMERCIAL CODE**

**Chapter 26.01 Jurisdiction and Lummi
Tribal Revolving Loan Fund**

26.01.001 Jurisdiction

The provisions of this Title and all rules and regulations under it shall apply within the exterior boundaries of the Lummi Reservation and within the exterior boundaries all lands held in trust for the Lummi Nation by the United States regardless of location.

26.01.010 Name

The name of the Fund shall be the Lummi Tribal Revolving Loan Fund.

26.01.020 Duration

Duration of the Fund shall be perpetual.

26.01.030 Purpose

The purpose of the Fund shall be to promote commercial enterprises of those individuals or organizations who are eligible for loans and thus to promote the general welfare of the Lummi Indian Tribe within the Office of Economic Opportunity (OEO) approved Special Impact Area.

26.01.040 Eligibility

Those eligible for loans from the Fund are the following:

- (a) Individual enrolled members of the Lummi Indian Tribe;
- (b) Partnerships, joint ventures, or associations of individual enrolled members of the Lummi Indian Tribe;
- (c) Lummi tribal enterprises;
- (d) Partnerships, joint ventures, or associations of any of the foregoing and a recognized federal, state, or local government entity.

26.01.050 Applications for a Loan

Applicants for a loan from the fund shall submit a detailed application to the Lummi Indian Business Council (LIBC). The Council shall review the application and determine the

feasibility of the project. The Council shall thereupon determine whether to make a loan and shall establish all conditions of the loan, including modification of the application, loan agreements, amount of loan and repayment provisions, interest rate, collateral required, use of loan funds, and other conditions deemed necessary by the Council. Loans shall be made from the Fund only upon a determination by the Council that the person or persons receiving the loan could not obtain the loan from other sources on substantially the same terms. Such determination shall be supported by documentary evidence which the Council shall keep on file until the loan is repaid.

26.01.060 Accounting and Administration

The fund shall be kept separate from all other money of the Council. The Council shall cause the fund to be audited annually or more often by a certified public accountant and may pay the audit expenses and other expenses incurred in the administration of the Fund from the Fund.

26.01.070 Capitalization

The original capital of the Fund shall comprise a grant in the amount of \$500,000 which has been committed by the Office of Economic Opportunity to the LIBC. Additional capital shall be such further funds as shall be provided from time to time by the Council or received from other sources. All interest paid on loans from the Fund shall be paid into the Fund.

26.01.080 Revocation

The Fund shall be revoked only by a majority vote of the Lummi Indian Tribe's General Council and in accordance with OEO approval. Thereupon all assets of the Fund shall be distributed as determined by the General Council of the Lummi Indian Tribe. Moreover, if the Council at any time becomes legally unable to maintain the fund or determines that the fund is no longer needed, or, during any period of twenty-four (24)

successive months throughout which the Fund contains at least \$25,000, does not make any loans from the Fund, the Fund and all rights thereof shall, if OEO so elects, pass to the United States.

26.01.090 Process of Amending Chapter 26.01

Except for LCL §26.01.070 hereof, amendments hereto shall be made by the LIBC from time to time, subject to OEO approval.

Chapter 26.02 Close Corporation Code

26.02.010 Title

This Ordinance shall be known and may be cited as the “Lummi Indian Tribe Close Corporation Code.”

26.02.020 Definitions

(a) “Corporation” means a corporation subject to the provisions of this Code.

(b) “Articles of Incorporation” includes the original articles of incorporation and all amendments thereto, and includes articles of merger or consolidation.

(c) “Unanimous stockholders agreement” means an agreement to which every stockholder of a close corporation actually has assented and which is contained in its charter or bylaws or in a written instrument signed by all the stockholders.

(d) “Subscriber” means one who subscribes for shares in a corporation, whether before or after incorporation.

(e) “Incorporator” means one of the signers of the original articles of incorporation.

(f) “Shares” are the units into which the shareholder’s right to participate in the control of the corporation, in its surplus or profits, or in the distribution of its assets, are divided.

(g) “Shareholder” means one who is a holder of record of shares in a corporation.

(h) “Authorized Shares” means the aggregate number of shares, whether with or without par value, which the corporation is authorized to issue.

(i) “Shares of its Own Stock Belonging to a

Corporation” shall be deemed to be issued shares, but not outstanding shares.

(j) “Registered office” means that office maintained by the corporation on the Reservation or trust lands, the address of which is on file with the Tribe.

(k) “Insolvent” means that the corporation is unable to pay its debts as they become due in the usual course of its business.

(l) “Court”, except where otherwise specified, means the Lummi Tribal Court having jurisdiction over civil actions.

(m) “Reservation” means the lands within the exterior boundaries of the Lummi Reservation over which the Lummi Indian Tribe has jurisdiction.

(n) “Tribe” means the Lummi Indian Tribe.

(o) “Trust Land” means all lands held in trust for the Lummi Nation by the United States regardless of location.

26.02.030 Election as a Close Corporation

All corporations, by applying to be chartered pursuant to this Code, shall be deemed to have elected to be a close corporation. A close corporation is one that is designed for small businesses in which the stockholders already have a close relationship -- i.e., know each other. This close corporation ordinance:

(a) Permits a corporation to operate with greater informality and flexibility than may a non-close corporation. In many ways it may operate with the same informality as does a partnership. Specifically, a close corporation chartered by this Ordinance may

(1) be formed by a single incorporator;

(2) elect to have no board of directors and to have the corporation operated directly by the shareholders (LCL §26.02.310);

(3) have no annual shareholders’ meeting unless specifically requested by a shareholder (LCL §26.02.250).

(b) Permits the shareholders to enter into a unanimous stockholders’ agreement (a contract among the shareholders) in which they may agree to any arrangements for the operation of the corporation that are not

inconsistent with this Ordinance. Also provides that the Tribal Court is authorized to hear and grant relief in cases alleging breach of such agreements (LCL §26.02.040).

(c) Requires unanimous consent of all stockholders on major decisions.

(d) Prohibits the sale of stock by any stockholder without the consent of all stockholders, unless otherwise agreed to (LCLs §26.02.160-180). Thus, a close corporation is one in which the stockholders have no expectation that their stock will be freely and frequently sold on the open market.

(e) Assumes that all close corporations will elect the tax benefits available under Subchapter S of the U.S. Internal Revenue Code, and thus will have only a single class of stock. (A corporation that has more than one class of stock is not eligible for Subchapter S status.) Therefore, no provisions are made in the Code for a corporation to issue more than one class of stock.

(1) The charter of a close corporation may be amended to remove the statement of election to be a close corporation, but only by the affirmative vote of every stockholder and every subscriber for stock of the corporation; provided that any close corporation exercising its rights under this Section and wishing to continue to operate as a corporation chartered under the laws of the Tribe shall become subject to the requirements of LCL §26.02.050 of this Code.

26.02.040 Reference to Close Corporation Status

(a) Clear reference to the fact that the corporation is a close corporation shall appear prominently

- (1) at the head of the articles of incorporation;
- (2) in each subsequent charter document of the corporation; and
- (3) on each certificate representing outstanding stock of the corporation.

(b) The status of a corporation as a close corporation is not affected by the failure of any charter document or stock certificate to

contain the reference required by this Section.

26.02.050 Non-Close Corporations

If a corporation chooses not to be a close corporation but wishes to be incorporated under the laws of the Tribe, the application for a corporate charter and the operation of a corporation so chartered shall be consistent with the requirements of the For-Profit Code of the State of Washington; provided that wherever in that code mention is made of the State Corporation Commission, it shall be interpreted to read “Tribal Department of Commerce”.

26.02.060 Authorized Purposes for Organization of Corporation

Corporations for profit may be organized under this Code for any lawful purpose or purposes.

26.02.070 General Powers

Each corporation shall have the power

(a) to have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(b) to sue and be sued, complain and defend, in its corporate name;

(c) to have a corporate seal, which may be altered at its pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(d) to purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, and to own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest therein, wherever situated;

(e) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(f) to lend money to, and otherwise assist, its employees;

(g) to make contracts and incur liabilities; to borrow money at such rates of interest as the corporation may determine without regard to the restrictions of any usury law; to issue its notes, bonds, and other obligations; and to

secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income. No corporation formed hereunder shall plead any statutes against usury in any action;

(h) to invest its surplus funds from time to time and to lend money for its corporate purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned;

(i) to conduct its business, carry on its operations, and have offices and exercise the powers granted by this Code within and without the Reservation and trust lands and to exercise in any reservation, state, territory, district, or possession of the United States, or in any foreign country the powers granted by this Code, subject to the laws of such reservation, state, territory, district, or possession of the United States, or such foreign country;

(j) to elect or appoint officers and agents of the corporation, and to define their duties and fix their compensation;

(k) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of the Tribe, for the administration and regulation of the affairs of the corporation;

(l) to make contributions to charitable organizations;

(m) to cease its corporate activities and surrender its corporate franchise;

(n) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed;

(o) to indemnify any and all of its directors or officers or former directors or any person who may have served at its request as a director or officer of another corporation in which it owns shares or capital stock or of which it is a creditor against expenses actually and necessarily incurred by them in connection with the defense of any action, suit, or proceeding in which they, or any of them, are made parties, or a party, by reason of being or having been directors or officers or a director or officer of the corporation, or of such other corporation, except in relation to matters as to which any such director or officer or former director or officer or persons shall be adjudged

in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty. Such indemnification shall not be deemed exclusive of any other rights to which those indemnified may be entitled, under any bylaw, agreement, vote of stockholders, or otherwise.

26.02.080 Corporate Name

The corporate name

(a) shall contain the word “corporation,” “company,” “incorporated,” or “limited,” or shall contain an abbreviation of one of such words;

(b) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(c) shall not be the same as, or deceptively similar to, the name of any other entity licensed to do business by the Tribe.

26.02.090 Incorporators

One or more natural persons of the age of eighteen (18) years or more may act as incorporators of a corporation by signing and filing in duplicate in the office of the Tribal Commerce Department articles of incorporation for such corporation.

Organic Documents of Close Corporations Code

26.02.100 Articles of Incorporation - Contents

(a) The articles of incorporation shall set forth

- (1) the name of the corporation;
- (2) the period of duration, which may be perpetual;
- (3) the purpose or purposes for which the corporation is organized;
- (4) the aggregate number of shares which the corporation shall have the authority to issue and the par value of each of said shares, or a statement that all of said shares are without par value;
- (5) any provision limiting or denying to shareholders the preemptive right to

acquire additional shares of the corporations;

(6) any provision regarding restrictions on alienation of stock by shareholders;

(7) any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation;

(8) the address, including street and number, if any, of its principal office, and the name of its initial registered agent at such address;

(9) the number of directors constituting the initial board of directors and the names and addresses, including street and number, if any, of the persons who are to serve as directors until the first annual meeting of shareholders; or until their successors be elected and qualify; or until the shareholders elect to have no board of directors. The minimum number of directors constituting the initial board shall be one (1);

(10) the names and address, including street and number, if any of each incorporator.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Code. Whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

26.02.110 Effect of Issuance of Certificate of Incorporation

Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Code, except as against the Tribe in a proceeding to cancel or revoke the certificate of incorporation.

26.02.120 Organization Meeting of Directors

After the issuance of the certificate of incorporation an organization meeting of the

board of directors named in the articles of incorporation shall be held within the United States, at the call of a majority of the directors so named, for the purpose of adopting bylaws (unless the power to adopt bylaws has been reserved by the articles of incorporation to the shareholders, in which event the bylaws shall be adopted by the shareholders), electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least five (5) days notice thereof by mail to each director so elected, which notice shall state the time and place of the meeting; provided, however, that if all the directors shall waive notice in writing and fix a time and place for said organization meeting no notice shall be required of such meeting.

26.02.130 Bylaws

The power to make, alter, amend, or repeal the bylaws of the corporation shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

26.02.140 Unanimous Stockholders' Agreement

(a) The stockholders may enter into a unanimous stockholders' agreement, to regulate any aspect of the affairs of the corporation or the relations of the stockholders, including

(1) the management of the business and affairs of the corporation;

(2) restrictions on the transfer of stock;

(3) the right of one or more stockholders to dissolve the corporation at will or on the concurrence of a specified event or contingency;

(4) the exercise of division of voting power;

(5) the terms and conditions of employment of an officer or employee of the corporation, without regard to the period of his employment;

(6) the individuals who are to be directors

and officers of the corporation;

(7) the payment of dividends or the division of profits.

(b) A unanimous stockholders' agreement may be amended, but only by the unanimous written consent of the stockholders then parties to the agreement.

(c) A stockholder who acquires his stock after a unanimous stockholders' agreement becomes effective is considered to have actually assented to the agreement and is a party to it

(1) whether or not he has actual knowledge of the existence of the agreement at the time he acquires the stock, if acquired by gift or bequest from a person who was a party to the agreement; and

(2) if he has actual knowledge of the existence of the agreement at the time he acquires the stock, if acquired in any other manner.

(d) A court may enforce a unanimous stockholders' agreement by injunction or by any other relief which the court in its discretion determines to be fair and appropriate in the circumstances.

(e) As an alternative to the granting of an injunction or other equitable relief, on motion of a party to the proceeding, the court may order dissolution of the corporation under the provisions of this Code.

(f) This Section does not affect any otherwise valid agreement among stockholders of a close corporation or of any other corporation.

Stock and Stockholders of Close Corporations

26.02.150 Shares - Power to Issue

Each corporation shall have the power to create and issue the number of shares stated in its articles of incorporation.

26.02.160 Restriction on Issuance or Sale of Stock

If there is any stock of a close corporation outstanding, the corporation may not issue or sell any of its stock, including treasury stock, unless the issuance or sale is

(a) approved by the unanimous vote of the holders of all outstanding stock; or

(b) permitted by a unanimous stockholders' agreement.

26.02.170 Certain Securities and Stock Options Prohibited

A close corporation may not have outstanding any

(a) securities which are convertible into its stock;

(b) voting securities other than stock; or

(c) options, warrants, or other rights to subscribe for or purchase any of its stock, unless they are nontransferable.

26.02.180 Restrictions on Transfer of Stock

(a) In this Section "transfer" means the transfer of any interest in the stock of a close corporation, except:

(1) A transfer by operation of law to a personal representative, trustee in bankruptcy, receiver, guardian, or similar legal representative.

(2) The creation or assignment of a security interest.

(3) A foreclosure sale or other transfer by a person who acquired his interest or power in a transaction described in paragraph (1) of this Subsection is a transfer subject to all the provisions of this Section. For purpose of the transfer, the person effecting the foreclosure sale or other transfer shall be treated as and have the rights of a holder of the stock under this Section.

(b) A transfer of the stock of a close corporation is invalid unless

(1) every stockholder of the corporation consents to the transfer in writing within the 90 days before the date of the transfer; or

(2) the transfer is made under a provision of a unanimous stockholders' agreement permitting the transfer to the corporation or in trust for the principal benefit of

(A) one or more of the stockholders or security holders of the corporation or

their spouses, children, or grandchildren;
or

(B) one or more persons named in the agreement.

26.02.190 Denial or Restriction of Voting Rights

A close corporation may deny or restrict the voting rights of any of its stock. Notwithstanding any denial or restriction, all stock has voting rights on any matter required by this Code to be authorized by the affirmative vote of every stockholder or every subscriber for stock of a close corporation.

26.02.200 Expenses of Organization, Reorganization, and Financing

The reasonable charges and expenses of organization or reorganization of a corporation and reasonable compensation for the sale or underwriting of its shares may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid and non-assessable.

26.02.210 Stock Certificates - Representation of Shares; Signers; Restrictions or Limitations on Transferability; Contents

(a) The shares of a corporation shall be represented by certificates signed by the president or a vice-president and the secretary or treasurer and sealed with the seal of the corporation. Such seal may be a facsimile. Where such a certificate is countersigned by a transfer agent other than the corporation itself or an employee of the corporation, or by a transfer clerk and registered by a registrar, the signatures of the president or vice-president and the secretary or treasurer upon such certificate may be facsimiles. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if such officer had not ceased to hold such office at the date of its issue.

(b) Every certificate representing shares, the transferability of which is restricted or limited, upon the face or back thereof shall either set

forth a full or summary statement of any such restriction or limitation upon the transferability of such shares or shall state that the corporation will furnish to any shareholder upon request and without charge such full or summary statement.

(c) Each certificate representing shares shall also state:

(1) That the corporation is organized under the laws of the Tribe.

(2) The name of the person to whom issued.

(3) The number and class of shares which such certificate represents.

(4) The par value of each share represented by such certificate, or a statement that the shares are without par value.

(d) No certificate shall be issued for any share until such share is fully paid.

26.02.220 Liability of Subscribers and Shareholders

(a) A holder or a subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which said shares were issued or to be issued, which, as to shares having a par value, shall be not less than the par value thereof. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefore has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

(b) No person holding shares as executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall be personally liable as a shareholder, but the estate and funds in the hands of said executor, administrator, conservator, guardian, trustee, assignee, or receiver shall be so liable. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

26.02.230 Voting of Shares; Exclusion of Shares of Corporation's Own Stock; Determination of Number of Outstanding Shares

(a) Unless otherwise provided in the articles of incorporation, each outstanding share shall be entitled to one vote on each matter submitted to vote at a meeting of shareholders.

(b) Shares of its own stock belonging to a corporation shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding shares at any given time, but shares of its own stock held by it in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding shares at any given time.

(c) A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney in fact. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it or his personal representatives or assigned; but the parties to a valid pledge or to an executory contract of sale may agree in writing as to which of them shall vote the stock pledged or sold until the contract or pledge or sale is fully executed.

(d) The articles of incorporation may provide that in all elections for directors every shareholder entitled to vote shall have the right to vote, in person or by proxy, the number of shares owned by him, for as many persons as there are directors to be elected, or to cumulate said shares, and give one candidate as many votes as the number of such directors multiplied by the number of shares shall equal, or to distribute such votes on the same principle among any number of such candidates.

26.02.240 By Certain Holders; Proxy Presumed Valid

(a) Shares standing in the name of another corporation may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. A proxy purporting to be executed by a corporation

shall be presumed to be valid and the burden of proving invalidity shall rest on any challenger.

(b) Shares standing in the name of a deceased person may be voted by his administrator or executor, either in person or by proxy. Shares standing in the name of a guardian, conservator, or trustee may be voted by such fiduciary, either in person or by proxy, but no guardian, conservator, or trustee shall be entitled, as such fiduciary, to vote shares held by him without a transfer of such shares into his name.

(c) Shares standing in the name of a receiver or a trustee in bankruptcy may be voted by such a receiver or trustee, and shares held by or under the control of a receiver or a trustee in bankruptcy may be voted by such receiver or trustee without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver or trustee in bankruptcy was appointed.

(d) Except as otherwise provided, a shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred to the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(e) Shares standing in the name of a partnership may be voted by any partner. A proxy purporting to be executed by a partnership shall be presumed to be valid and the burden of proving invalidity shall rest on any challenger.

(f) Shares outstanding in the name of two or more persons as joint tenants, or tenants in common, or tenants by the entirety, may be voted in person or by proxy by any one or more of such persons. If more than one of such tenants shall vote such shares, the vote shall be divided among them in proportion to the number of such tenants voting in person or by proxy unless a different apportionment of the vote is requested by such tenants.

26.02.250 Stockholders' Meetings

(a) The bylaws of a close corporation shall provide for an annual meeting of stockholders, but the meeting need not be held unless requested by a stockholder.

(b) A request for an annual meeting shall be in writing and delivered to the president or secretary of the corporation

(1) at least thirty (30) days before the date specified in the bylaws for the meeting;

(2) if the bylaws specify a period during which the date for the meeting may be set, at least thirty (30) days before the beginning of that period.

(c) Meetings of shareholders may be held at such place within or without the boundaries of the Reservation as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the principal office of the corporation.

(d) Special meetings of the shareholders may be called by the president, the secretary, the board of directors, the holders of not less than one-fifth (1/5) of all the outstanding shares entitled to vote, or by such other officers or persons as may be provided in the articles of incorporation, the bylaws, or the unanimous stockholders' agreements.

26.02.260 Notice

(a) Except as provided herein, written or printed notice stating the place, day, and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, in the absence of a provision in the bylaws specifying a different period of notice, be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or person calling the meeting, to each shareholder of record entitled to vote at such meeting.

(b) If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the records of the corporation, with postage thereon prepaid.

26.02.270 Quorum of Shareholders Required

(a) Unless otherwise provided in the articles of incorporation or bylaws, a majority of the outstanding shares having voting power, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders; provided, that in no event shall a quorum consist of less than one-third (1/3) of the outstanding shares having voting power.

(b) The shareholders present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(c) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present when any business may be transacted that may not have been transacted at the meeting as originally called.

(d) If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number is required by this Code or the articles of incorporation, and except that in elections of directors, those receiving the greatest number of votes shall be deemed elected even though not receiving a majority.

26.02.280 Dividends - Declaration of and Payment of Outstanding Shares; Restrictions of Payment of Dividends

The board of directors, or stockholders where there is not a board of directors, of a corporation may declare and the corporation may pay dividends on its outstanding shares in cash, property, or its own shares, subject to the following provisions:

(a) No dividend shall be declared or paid at a time when the corporation is insolvent or its net assets are less than its stated capital, or when payments thereof would render the corporation insolvent or reduce its net assets below its stated capital;

(b) Dividends may be paid out of paid-in surplus or surplus arising from the surrender to the corporation of any of its shares, provided that the source of such dividends

shall be disclosed to the shareholders receiving such dividends, concurrently with payment thereof. The limitations of this paragraph shall not limit nor be deemed to conflict with the provisions of this Code in respect of the distribution of assets as a liquidating dividend;

(c) If a dividend is declared payable in its own shares having a par value, such shares shall be issued at the par value thereof and there shall be transferred to stated capital, at the time such dividend is paid, an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend;

(d) If a dividend is declared payable in its own shares without par value, such shares shall be issued at such value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital, at the time such dividend is paid, an amount of surplus equal to the aggregate value so fixed in respect of such shares. The amount per share transferred to stated capital shall be disclosed to the shareholders receiving such dividends, concurrently with payment thereof;

(e) A split up or division of issued shares into a greater number of shares of the same class shall not be construed to be a share dividend within the meaning of this Section;

(f) No dividend shall be declared or paid contrary to any restrictions contained in the articles of incorporation;

(g) Subject to any restrictions contained in its articles of incorporation, the directors of any corporation engaged in the exploitation of wasting assets may determine the net profits derived from the exploitation of such wasting assets without taking into consideration the depletion of such wasting assets resulting from lapse of time or from necessary consumption of such assets incidental to their exploitation and may pay dividends from the net profits so determined by the directors.

26.02.290 Stockholder's Right of Inspection

A stockholder of a close corporation or his agent may inspect and copy during usual business hours any records or documents of the corporation relevant to its business and

affairs, including any

- (a) bylaws;
- (b) minutes of the proceedings of the stockholders and directors;
- (c) annual statement of affairs;
- (d) stock ledger; and
- (e) books of account.

26.02.300 Statement of Affairs

(a) Once during each calendar year, each stockholder of a close corporation may present to any officer of the corporation a written request for a statement of its affairs.

(b) Within twenty (20) days after a request is made for a statement of a close corporation's affairs, the corporation shall prepare and have available on file at its principal office a statement, verified under oath by its president or treasurer or one of its vice-presidents or assistant treasurer, which sets forth in reasonable detail the corporation's assets and liabilities as of a reasonably current date.

Board of Directors

26.02.310 Election to Have No Board of Directors

(a) The stockholders may, by unanimous vote of holders of all shares, elect to have no board of directors.

(b) An election to have no board of directors becomes effective at the later of

- (1) the time that the organization meeting of directors and the issuance of at least one share of stock of the corporation are completed;
- (2) the time the charter document in which the election is made becomes effective; or
- (3) the time specified in the charter document in which the election is made.

(c) A director automatically ceases to be a director when an election to have no board of directors becomes effective.

26.02.320 Effect

If there is an election to have no board of directors

- (a) the stockholders shall manage the business and affairs of the corporation by their direct action and may exercise all powers of directors;
- (b) the stockholders of the corporation are responsible for taking any action required by law to be taken by the board of directors;
- (c) action by stockholders shall be taken by the voting of shares of stock as provided in this Article;
- (d) the stockholders may take any action for which this Article otherwise would require both a resolution of directors and a vote of stockholders;
- (e) by the affirmative vote of a majority of all the votes entitled to be cast, the stockholders may take any action for which this Article otherwise would require a vote of a majority of the entire board of directors;
- (f) a statement that the corporation is a close corporation which has no board of directors satisfies any requirement that an instrument filed with the Department contain a statement that a specified action was taken by the board of directors;
- (g) a stockholder is not liable for any action taken as a result of a vote of the stockholders, unless he was entitled to a vote on the action.

26.02.330 Powers Authorized; Qualifications

- (a) The business and affairs of a corporation shall be managed by a board of directors. Directors need not be shareholders in the corporation unless the articles of incorporation or bylaws so provide. The articles of incorporation or bylaws may prescribe other qualifications for directors.
- (b) Unless otherwise provided in the articles of incorporation or bylaws, the board of directors, by the affirmative vote of a majority of the directors then in office, and irrespective of any personal interest of any director, shall have authority to establish reasonable compensation of all directors for services to the corporation as directors, officers, or

otherwise.

26.02.340 At Least One Director Required Initially

A close corporation shall have at least one director until an election by the corporation in its charter to have no board of directors becomes effective.

26.02.350 Number; Election

The number of directors of a corporation shall not be less than one. Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number constituting the first board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders, until their successors shall have been elected and qualified, or until an election by the corporation to have no board of directors becomes effective pursuant to LCL §26.02.310. Each director shall hold office for the term for which he is elected or until his successor shall have been elected and qualified.

26.02.360 Classification

The bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual

meeting of shareholders.

26.02.370 Vacancies

Any directorship to be filled by reason of an increase in the number of directors may be filled by an election at an annual meeting or at a special meeting of shareholders entitled to vote called for that purpose. Any vacancy occurring in the board of directors for any cause other than by reason of an increase in the number of directors may be filled by affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation otherwise provide. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

26.02.380 Quorum

A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

26.02.390 Executive Committee; Powers

If the bylaws so provide, the board of directors, by resolution adopted by a majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, may designate two or more directors to constitute an executive committee, which committee, to the extent provided in such resolution or in the bylaws of the corporation shall have and may exercise all of the authority of the board of directors in the management of the business and affairs of the corporation; but the designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon it or him by law.

26.02.400 Place of Meeting; Special Meetings

Meetings of the board of directors, regular or special, may be held at such place within or without the boundaries of the Reservation as may be provided in the bylaws or by resolution adopted by a majority of the board of directors.

26.02.410 Notice of Meeting; Waiver of Notice

Meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of such meeting.

26.02.420 Officers - Powers Authorized

(a) The officers of a corporation shall consist of a president, one or more vice-presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. If the bylaws so provide, any two or more offices may be held by the same person. Where the corporation has elected to have no board of directors, the officers shall be elected by the stockholders.

(b) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

26.02.430 Removal

Unless otherwise provided in the unanimous stockholders' agreement, any officer or agent elected or appointed by the board of directors may be removed by a majority vote of the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

26.02.440 Execution of Documents

Notwithstanding any contrary provision of law, an individual who holds more than one office in a close corporation may act in more than one capacity to execute, acknowledge, or verify any instrument required to be executed, acknowledged, or verified by more than one officer.

26.02.450 Books and Records; Requirements for Right to Examine and Make Extracts Therefrom

(a) Each corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its shareholders and board of directors, and shall keep at its principal place of business or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each.

(b) Nothing herein contained shall impair the powers of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel by mandamus or otherwise the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders.

Merger and Dissolution

26.02.460 Consolidation, Merger, or Transfer of Assets

A consolidation, merger, or transfer of assets of a close corporation shall be made in a manner consistent with the applicable provisions of the laws of the State of

Washington. However, approval of the proposed transaction requires the affirmative vote of every stockholder of the corporation.

26.02.470 Involuntary Dissolution

(a) Any stockholder of a close corporation may petition a court of equity for dissolution of the corporation on the ground that there is such internal dissension among the stockholders of the corporation that the business and affairs of the corporation can no longer be conducted to the advantage of the stockholders generally.

(b) Unless a unanimous stockholders' agreement provides otherwise, a stockholder of a close corporation has the right to require dissolution of the corporation if

(1) the stockholder made a written a request for consent to a proposed bona fide transfer of his stock in accordance with the provisions of LCL §26.02.180 of this Ordinance, specifying the proposed transferee and the consideration, and the consent was not received by him within ninety (90) days after the date of the request; or

(2) another party to a unanimous stockholders' agreement defaulted in an obligation, set forth in or arising under the agreement, to purchase or cause to be purchased stock of the stockholder, and the default was not remedied within thirty (30) days after the date for performance of the obligations.

(c) A petition for dissolution under this Subsection shall be filed within sixty (60) days after the date of the request or the default, as the case may be.

26.02.480 Avoidance of Dissolution by Purchase of Petitioner's Stock

(a) Any one or more stockholders who desire to continue the business of a close corporation may avoid the dissolution of the corporation or the appointment of a receiver by electing to purchase the stock owned by the petitioner at a price equal to its fair value.

(b) If a stockholder who makes the election is unable to reach an agreement with the petitioner as to the fair value of the stock, then, if the electing stockholder gives bond or

other security sufficient to assure payment to the petitioner of the fair value of the stock, the court shall stay the proceeding and determine the fair value of the stock. Fair value shall be determined in accordance with acceptable business procedures, as of the close of business on the day on which the petition for dissolution was filed.

(c) After the fair value of the stock is determined, the order of the court directing the purchase shall set the purchase price and the time within which payment shall be made. The court may order other appropriate terms and conditions of sale, including

- (1) payment of the purchase price in installments; and
- (2) the allocation of shares of stock among electing stockholders.

(d) The petitioner

- (1) is entitled to interest on the purchase price of his stock from the date the petition is filed; and
- (2) ceases to have any other rights with respect to the stock, except the right to receive payment of its fair value.

(e) The costs of the proceeding, as determined by the court, shall be divided between the petitioner and the purchasing stockholder. The costs shall include the reasonable compensation and expenses of appraisers, but may not include fees and expenses of counsel or of other experts retained by a party.

(f) The petitioner shall transfer his shares of stock to the purchasing stockholder

- (1) at a time set by the court; or
- (2) if the courts sets no time, at the time the purchase price is paid in full.

Registered Agent

26.02.490 Registered Agent Required

Each corporation shall have and continuously maintain on the Reservation or trust lands a registered agent, which agent may be either an individual resident on the Reservation or trust lands or a corporation authorized by the articles of incorporation to act as such agent and authorized to transact business on the

Reservation or trust lands.

26.02.500 Change

(a) A corporation may change its registered agent by filing with the Tribe a statement setting forth:

- (1) the name of the corporation;
- (2) the name and address of its then-registered agent;
- (3) the name and address of its successor registered agent;
- (4) the date upon which such change shall take effect; and
- (5) that such change was authorized by resolution duly adopted by its board of directors or was authorized by an officer of the corporation duly empowered to make such change.

(b) Such statement shall be executed in duplicate by the corporation and delivered to the Tribe. If the Tribe finds that such statement conforms to the provisions of this Code, it shall

- (1) endorse on each of such duplicate originals the word "filed", and the month, day, and year of the filing thereof;
- (2) file one of such duplicate originals in its office;
- (3) return the other duplicate original to the corporation or its representative.

(c) The change of registered agent shall become effective upon the filing of such statement by the Tribe.

(d) Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Tribe, which shall forthwith mail one copy thereof to the corporation at its principal office on the Reservation or trust lands as shown on the records of the Tribe. The appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Tribe or upon the appointment of a successor agent becoming effective, whichever occurs first. No fee or charge of any kind shall be imposed with respect to filing under this Subsection.

(e) A registered agent may change his or her address by filing with the Tribe a statement setting forth:

- (1) The name of the registered agent;
- (2) The present address, including street and number, if any, of such registered agent;
- (3) The names of the corporation or corporations represented by such registered agent at such address;
- (4) The address, including street and number, if any, to which the office of such registered agent is to be changed; and
- (5) The date upon which such change will take place.

(f) Such statement shall be executed in duplicate by such registered agent in his individual name, but if such agent is a corporation, domestic or foreign, such statement shall be executed by such corporation by its president or vice-president and delivered to the Tribe. However, if the registered agent represents more than one corporation, he shall file an additional copy for each additional corporation. If the Tribe finds that such statement conforms to law, it shall, when all fees and charges have been paid prescribed in this Code

- (1) endorse on each of such duplicated originals the word "filed" and the month, day, and year of the filing thereof;
- (2) file one of such duplicate originals in its office; and
- (3) return the other duplicate original to the registered agent.

(g) The change of address of such registered agent as to the domestic corporation or corporations named in such statement shall become effective upon the filing of such statement by the Tribe or on the date set forth in such statement as the date on which such change of location of such registered office will take place, whichever is later.

26.02.510 Registered Agent as Agent for Service; Service When No Registered Agent

(a) The registered agent so appointed by a corporation shall be an agent of such corporation upon whom process against the corporation may be served, and upon whom any notice or demand required or permitted by law to be served upon the corporation may be served. Service of any process, notice, or demand upon a corporate agent, as such agent, may be made by delivering a copy of such process, notice, or demand to the president, vice-president, the secretary, or an assistant secretary of such corporate agent.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent on the Reservation or trust lands, or whenever any such registered agent cannot with reasonable diligence be found at his or her office on the Reservation or trust lands, or whenever the articles of incorporation of any domestic corporation shall be revoked, then the Tribe shall be an agent of such corporation upon whom any process against such corporation may be served and upon whom any notice or demand required or permitted by law to be served upon such corporation may be served. Service upon the Tribe of any such process, notice, or demand shall be made by delivering to and levying with the Tribe, or with any clerk having charge of its office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is so served, the Tribe shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its principal office.

(c) The Tribe shall keep a record of all processes, notices, and demands served upon it under this Section, and shall record therein the time of such service and its action with respect thereto.

26.02.520 Penalties - Failure to Maintain Registered Agent

Any corporation incorporated or reincorporated under this Code which fails or refuses to maintain a registered agent on the Reservation or trust lands, in accordance with the provisions of this Code, shall be subject to a civil fine by the Tribal Court.

Filings - Amendments

26.02.530 Articles of Incorporation - Procedure for Filing

(a) Duplicate originals of the articles of incorporation shall be delivered to the Tribal Commerce Department. If the Tribe finds that the articles of incorporation conform to law, it shall, when all fees have been paid as in this Code prescribed

- (1) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;
- (2) file one of such duplicate originals in its office;
- (3) issue a certificate of incorporation to which it shall affix the other duplicate original;

(b) The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the Tribe, shall be delivered to the incorporators or their representatives.

26.02.540 Amendment of Articles of Incorporation - Contents Restricted; Purposes

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired; provided, that its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, or cancellation.

26.02.550 Procedures Before Acceptance of Subscription to Shares

Amendments to the articles of incorporation before any subscriptions to shares have been accepted by the board of directors shall be made in the following manner:

(a) Amended articles of incorporation modifying, changing, or altering the original

articles of incorporation shall be signed by all of the living or competent incorporators who signed the original articles or incorporation and filed with the Tribal Commerce Department. Such amended articles of incorporation shall contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amended articles of incorporation.

(b) Such amended articles of incorporation shall be delivered in duplicate to the Tribal Commerce Department. If the Tribe finds that such amended articles of incorporation conforms to law, it shall, when all fees have been paid as in this Code prescribed

- (1) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;
- (2) file one of such duplicate originals in its office;
- (3) issue an amended certificate of incorporation, to which it shall affix the other duplicate original.

(c) The amended certificate of incorporation with the duplicate original of the amended articles of incorporation affixed thereto shall be delivered to the corporation or its representative.

(d) Upon the issuance of the amended certificate of incorporation, the amended articles of incorporation shall become effective and shall take the place of the original articles of incorporation.

26.02.560 Procedures After Acceptance of Subscription to Shares

Amendments to the articles of incorporation shall be made in the following manner:

(a) The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote at such meeting within the time and in the

manner provided in this Code for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting.

(c) At such meeting a vote of the shareholders entitled to vote shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds (2/3) of the outstanding shares entitled to vote.

(d) Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

26.02.570 Unanimous Stockholder Vote

Notwithstanding the provisions of LCL §26.02.560 of this Code, the charter of a close corporation may not be amended to lower the proportion of vote required to approve any action for which this Code requires the affirmative vote or assent of every stockholder or every subscriber for stock of the corporation.

26.02.580 Articles of Amendment - Contents

The articles of amendment shall be executed in duplicate by the corporation by its president or a vice-president and shall set forth:

- (a) The name of the corporation.
- (b) The amendment so adopted.
- (c) The date of the adoption of the amendment by the shareholders.
- (d) The number of shares outstanding and the number of shares entitled to vote.
- (e) The number of shares voted for and against such amendment, respectively.
- (f) If such amendment provides for an exchange, reclassification, or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected.
- (g) If such amendment effects a change in the amount of stated capital, or paid-in surplus, or both, then a statement of the manner in which the same is effected.

26.02.590 Effect of Certificate of Amendment

(a) Upon the issuance of the certificate of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(b) No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which the corporation shall be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

Tribal Commerce Department: Fees and Charges

26.02.600 Duties and Functions

(a) The Tribal Commerce Department shall be charged with the administration and enforcement of this Code. Said Department is authorized to employ such personnel as may be necessary for administration of this Code.

(b) Every certificate and other document or paper executed by the Department, in pursuance of any authority conferred upon it by this Code, and sealed with the seal of the Tribe, and any copies of such papers as well as the documents and other certificates filed in accordance with the provisions of this Code, certified by it and authenticated by said seal, shall have the force and effect as evidence as would the originals thereof in any action or proceeding in any court and before a public officer, or official body.

26.02.610 Fees and Charges

(a) There are hereby imposed the following fees and charges:

- (1) Fees for filing documents and issuing certificates;
- (2) License fees;
- (3) Miscellaneous charges.

(b) The Tribal Commerce Department shall charge for:

Filing articles of incorporation
\$20

Filing amendment to articles of incorporation
\$20

Filing articles of merger or consolidation
\$20

Filing a statement of intent to dissolve
\$ 5

Filing articles of re-incorporation
\$20

Filing articles of dissolution
\$10

Filing statement of change of address of
registered agent
\$1

Filing statement of the establishment of a
series of shares
\$5

Filing application for reinstatement of a
corporation and issuing certificate of
reinstatement
\$50

Filing any other statement or report of a
corporation
\$5

For indexing each document filed of a
corporation
\$2

For furnishing a certified copy of any
document, instrument, report, or paper relating
to a corporation
\$5

For furnishing a certificate as to the status of a
corporation or as to the existence or
nonexistence of facts relating to corporations
\$10

26.02.620 Penalties - Nonpayment of Fees

(a) The Tribal Commerce Department shall not file any articles, statements, certificates, reports, applications, notices, or other papers relating to any corporation organized under the provisions of this Code until all fees and charges provided to be paid in connection therewith shall have been paid to it or while the corporation is in default in the payment of

any fees, charges, or penalties herein provided to be paid by or assessed against it. Nothing in this Section shall prevent the filing, without the payment of all such fees, charges, and penalties, of a written notice of resignation by a registered agent of a corporation.

(b) No corporation required to pay a fee, charge, or penalty under this Code shall maintain on the Reservation and trust lands any action at law or suit in equity until all such fees, charges, and penalties have been paid in full.

Chapter 26.03 Uniform Commercial Code

Adoption of Washington State Uniform Commercial Code

Editor's Note: The LIBC adopted the Washington Uniform Commercial Code on December 3, 1985. Also adopted were several changes to the Washington Uniform Commercial Code. The changes adopted by the Council are identified in this Chapter.

26.03.010 Preamble

(a) It is generally recognized that the Indians of the Reservation have, beyond the memory of man, used the uplands, tidelands, wetlands, and waters within and adjacent to the Reservation and trust lands freely, continuously, and uninterruptedly for the purposes of fishing and the taking of shellfish, for the taking of driftwood, for firewood, for recreation purposes, commerce, and other purposes. Such uses are a result of the ownership of the uplands, tidelands, wetlands, and waters, and the rights established on any other uplands, tidelands, wetlands, and water, by custom, tradition, practice and long and continuous use, and in no way shall be abridged by the adoption of the Uniform Commercial Code.

(b) The Washington Uniform Commercial Code, as in effect from time to time, and except as amended or supplemented in this Chapter, shall be the governing law of the Lummi Reservation and trust lands regarding commercial transactions on the Lummi Reservation and trust lands and/or commercial transactions subject to the jurisdiction of the Lummi Tribal Courts.

26.03.020 Modification of R.C.W. 62A.1-105

Except as provided hereafter in this Section, when a transaction between Indians and non-Indians bears a reasonable relation to the State of Washington and also to another state, nation, or tribe, the parties may agree that the law of either the State of Washington or such other state, nation, or tribe shall govern their rights and duties. Failing such agreement, this Title applies to transactions between Indians and non-Indians bearing an appropriate relation to the State of Washington.

26.03.030 Modification of R.C.W. 62A.2-108 - Lummi Goods

In order to prevent confusion in the minds of consumers with regard to the source of Lummi goods, Lummi leased goods, or Lummi services, no goods, leased goods, or services which in any way resemble Lummi goods, Lummi leased goods, or Lummi services may be sold on the Lummi Reservation or trust lands without prior written approval of the LIBC. Goods, leased goods, or services, crafted, manufactured, or provided on or off the Lummi Reservation or trust lands, may not be represented in any way as being of Lummi origin without the prior approval of the LIBC and must bear the official mark issued by the LIBC.

26.03.040 Modification of R.C.W. 62A.1-201

(a) 62A.1-201(28): "Organization" includes a corporation, government, or governmental subdivision or agency, tribal business council, business trust, estate, trust, partnership, or association, or two or more persons having a joint or common interest, or any other legal or commercial entity.

(b) 62A.1-201(9A): Buyer who is an Indian is defined in Article 2, Sales, Part 3, Title 62A.2-313(2) (modified).

(c) 62A.1-201(35): "Representative" includes an agent or officer of a corporation, association, organization, and a trustee, executor, or administrator of an estate or any other person empowered to act for another.

(d) 62A.2-103(a): "Buyer" means a person who buys or contracts to buy goods. See

62A.2-313 for Indian Buyer.

26.03.050 Modification of R.C.W. 62A.2-313 - Express Warranties

(1) Express warranties by the seller are created as follows:

(a) any affirmation of fact or promise made by the seller to the buyer which relates to the goods, lease of goods, or offer of services, and becomes part of the basis of the bargain creates an express warranty that the goods, leased goods, or services shall conform to the affirmation or promise.

(b) any description of the goods, lease of the goods, or offer of services which is made part of the basis of the bargain creates an express warranty that the goods, leased goods, or services shall conform to the description.

(c) any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods, leased goods, or services shall conform to the sample or model.

(2) It is not necessary to the creating of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty.

(3) A buyer with the knowledge and skills of the particular buyer would rely on the representations if made by a seller with the particular seller's knowledge and skills. An Indian buyer with little education and with limited command of English might treat as a statement of fact a claim by a seller that an average consumer would not. Therefore, the seller's opinion or commendation of the goods, leased goods, or services creates a warranty.

26.03.060 Modification to R.C.W. 62A.2-316

Add: "A contract in which the buyer waives his right to assert the implied warranty of merchantability against the seller or assignee is considered defective and therefore void."

26.03.070 Modification to R.C.W. 62A.2-515

Add: “(c) In no case will an inspection or survey take place, as described in paragraphs (a) and (b) above, in the residence of a buyer without the prior consent of that buyer.”

26.03.080 Modification of R.C.W. 62A.3-313(2) - Indian Buyer

“Indian Buyer” is a buyer who is properly enrolled as a member of a federally recognized tribe.

26.03.090 Repossession

(a) All self-held remedies for the recovery of personal property, including but not limited to motor vehicles and mobile homes, secured to insure payment of obligations are hereby declared unavailable except as provided herein.

(b) Prior to repossessing personal property on the Lummi Reservation or trust lands, all secured creditors must first obtain an order from the Lummi Tribal Court authorizing the repossession of the property in question. The secured creditor must show the Court the following:

- (1) proof of a valid contract;
- (2) the amount owed by the secured debtor on the secured collateral; and
- (3) proof that notification was given to the secured debtor that they were delinquent in payments to the secured creditor.

Chapter 26.04 Limited Liability Companies

General Provisions

26.04.010 Definitions

As used in this Code, unless the context otherwise requires:

(a) “Certificate of formation” means the certificate referred to in LCL §26.04.100, and the certificate as amended.

(b) “Close Corporation Code” means the Lummi Indian Tribe Close Corporation Code, Chapter 26.02 of the Lummi Code of Laws, or any successor statute thereto.

(c) “Council” means the Lummi Indian Business Council (LIBC).

(d) “Event of dissociation” means an event that causes a person to cease to be a member as provided in LCL §26.04.190.

(e) “Limited liability company” means an entity that is an unincorporated association having one or more members that is organized and existing under this Code.

(f) “Limited liability company agreement” means any written agreement as to the affairs of a limited liability company and the conduct of its business which is binding upon all of the members. In the case of a limited liability company with only one member, a written document signed by the member stating that it is intended to be a limited liability company agreement shall constitute a limited liability company agreement. A limited liability company need not have a limited liability company agreement.

(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) “Lummi Nation Commerce Division” means the Commerce Division of the Economic Development Department of the Lummi Indian Tribe.

(i) “Manager” or “managers” means, 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 LCL §26.04.220(b).

(j) “Member” means a person who has been admitted to a limited liability company as a member as provided in LCL §26.04.160 and who has not been dissociated from the limited liability company.

(k) “Person” means a natural person, partnership (whether general or limited), limited liability company, trust, estate, association, corporation, custodian, nominee, or any other individual or entity in its own or any representative capacity.

(l) "Reservation" means the lands within the exterior boundaries of the Lummi Reservation over with the Lummi Indian Tribe has jurisdiction.

(m) "Trust Land" means all lands held in trust for the Lummi Nation by the United States regardless of location.

26.04.020 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) Must not contain any of the words or phrases: "Partnership," "corporation," "incorporated," or the abbreviations "corp.," "ltd.," or "inc.," or "L.P.," or any other words or phrases prohibited by any code promulgated by the Lummi Indian Tribe; and

(3) Must be distinguishable upon the records of the Lummi Nation Commerce Division from the names of any corporation formed under the Close Corporation Code, the names of any limited liability company formed under this Code, and the names of any other entity formed or licensed by the Lummi Indian Tribe.

(b) A limited liability company may apply to the Lummi Nation Commerce Division for authorization to use any name which is not distinguishable upon the records of the Lummi Nation Commerce Division from one or more of the names described in Subsection (a)(3) of this Section. The Lummi Nation Commerce Division shall authorize use of the name applied for if the other corporation or limited liability company consents in writing to the use and files with the Lummi Nation Commerce Division documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the Lummi Nation Commerce Division from the name of the applying limited liability company.

(c) A name shall not be considered

distinguishable upon the records of the Lummi Nation Commerce Division by virtue of:

(1) A variation in the designation, under Subsection (a)(1) of this Section, used for the same name;

(2) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(3) Punctuation, capitalization or special characters or symbols in the same name; or

(4) Use of abbreviation or the plural form of a word in the same name.

26.04.030 Registered Office-Registered Agent

(a) Each limited liability company shall continuously maintain on the Reservation or trust lands:

(1) A registered office, which may but need not be a place of its business on the Reservation or trust lands. The registered office shall be at a specific geographic location on the Reservation or trust lands;

(2) A registered agent for service of process on the limited liability company, which agent shall either be an individual or a limited liability company or corporation established under Lummi tribal law having a business address which is identical with such registered office; and

(3) A registered agent who shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the Lummi Nation Commerce Division. The written consent shall 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 Lummi Nation Commerce Division 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 address of the new registered office;

(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 addresses of its registered office and the business office of its registered agent will be identical.

(c) If a registered agent changes the address of the agent's business office, the registered agent may change the 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 Lummi Nation Commerce Division 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 Lummi Nation Commerce Division for filing a statement that the registered office is also discontinued. After filing the statement the Lummi Nation Commerce Division shall 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 (31st) day after the date on which the statement was filed.

26.04.040 Service of Process on 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 Lummi Nation Commerce Division shall be 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 on the Reservation or trust lands; or

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

registered office.

(c) 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 hereafter permitted by Lummi tribal law.

26.04.050 Nature of Business Permitted-Powers

(a) Every limited liability company formed under this Code may carry on any business or activity which is lawful under Lummi tribal law unless a more limited purpose is set forth in the certificate of formation.

(b) Unless this Code, 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.

26.04.060 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.

26.04.070 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 shall 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 LCL §26.04.370, 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 he or she is, or was, a member or a manager, provided that no such indemnity shall 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 LCL §26.04.370, 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 thereto to a limited liability company or to another member or manager (1) any such member or manager acting under a limited liability company agreement shall 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 (2) the member's or manager's duties and liabilities may be expanded or restricted by provisions in a limited liability company agreement.

26.04.080 Member Agreements

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

26.04.090 Membership Residency

Nothing in this Code requires a limited liability company or a professional limited liability company to restrict membership to persons residing in or engaging in business on the Reservation or trust lands.

Formation: Certificate of Formation, Amendment, Filing and Execution

26.04.100 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 shall be filed in the office of the Lummi Nation Commerce Division 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;
- (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 therein; 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 by the Lummi Nation Commerce Division. A delayed effective date for a certificate of formation may be no later than the ninetieth day after the date it is filed.
- (2) The Lummi Nation Commerce Division'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 Council to cancel the certificate.

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

26.04.110 Amendment to Certificate of Formation

(a) A certificate of formation is amended by filing a certificate of amendment thereto with the Lummi Nation Commerce Division. The certificate of amendment shall set forth:

- (1) The name of the limited liability company; and
- (2) The amendment to the certificate of formation.

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

(c) Unless otherwise provided in this Code or unless a later effective date (which shall be a date not later than the ninetieth day after the date it is filed) is provided for in the certificate of amendment, a certificate of amendment shall be effective when filed by the Lummi Nation Commerce Division.

26.04.120 Cancellation of Certificate

A certificate of formation shall be canceled upon the effective date of the certificate of cancellation, or as provided in LCL §26.04.450. A certificate of cancellation shall be filed in the office of the Lummi Nation Commerce Division to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company and shall set forth:

- (a) The name of the limited liability company;
- (b) The date of filing of its certificate of formation;
- (c) The reason for filing the certificate of cancellation;
- (d) The future effective date (which shall be a date not later than the ninetieth day after the

date it is filed) of cancellation if it is not to be effective upon the filing of the certificate; and

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

26.04.130 Execution

(a) Each document required by this Code to be filed in the office of the Lummi Nation Commerce Division shall be executed in the following manner:

- (1) Each original certificate of formation must be signed by the person or persons forming the limited liability company;
- (2) 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; and
- (3) A certificate of cancellation must be signed by the person or persons authorized to wind up the limited liability company's affairs pursuant to LCL §26.04.460.

(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 signator signed.

(c) The person executing the document shall 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 may be prescribed by the Lummi Nation Commerce Division.

(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.

26.04.140 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 pursuant to this Code (including without limitation initial and annual reports) shall be delivered to the Lummi

Nation Commerce Division. If the Lummi Nation Commerce Division determines that the documents conform to the filing and other provisions of this Code, the Lummi Nation Commerce Division shall, 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 Lummi Nation Commerce Division’s files; and
- (3) Return the duplicate copy to the person who filed it or the person’s representative.

(b) If the Lummi Nation Commerce Division 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 deemed to have been filed at the time of delivery if the Lummi Nation Commerce Division subsequently determines that:

- (1) The documents as delivered conform to the filing and other provisions of this Code; or
- (2) Within twenty (20) days after notification of nonconformance is given by the Lummi Nation Commerce Division to the person who delivered the documents for filing or the person’s representative, the documents are brought into conformance.

(c) If the filing and determination requirements of this Chapter are not satisfied completely within the time prescribed in Subsection (b)(2) of this Section, the documents shall not be filed.

(d) Upon the filing of a certificate of amendment or restated certificate in the office of the Lummi Nation Commerce Division, or upon the future effective date or time of a certificate of amendment or restated certificate, as provided for therein, the certificate of formation shall be amended or restated as set forth therein. Upon the filing of a certificate of cancellation, 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 of articles of merger which act as a certificate of cancellation, as provided for therein, or as specified in LCL §26.04.450, the certificate of

formation is canceled.

26.04.150 Initial and Annual Reports

(a) Each domestic limited liability company shall deliver to the Lummi Nation Commerce Division for filing, both initial and annual reports that set forth:

- (1) The name of the company and the state 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 or trust lands;
- (3) The address of the principal place of business of the company on the Reservation or trust lands;
- (4) 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
- (5) A brief description of the nature of its business.

(b) Information in an initial report or 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 Lummi Nation Commerce Division within one hundred twenty (120) days of the date on which a domestic company’s certificate of formation was filed. Subsequent annual reports must be delivered to the Lummi Nation Commerce Division on a date determined by the Lummi Nation Commerce Division, and at such additional times as the company elects.

Members

26.04.160 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 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 LCL §26.04.400(a), 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, when any such assignee's admission as a member is reflected in the records of the limited liability company.

26.04.170 Voting and Classes of Membership

(a) Except as provided in this Code, or in the limited liability company 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 LCL §26.04.200 of the contributions made, or required to be made, by all members shall 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 shall be required to:

(1) Amend the limited liability company 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 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 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 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 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 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.

26.04.180 Liability of Members and Managers to Third Parties

(a) The debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations, and liabilities of the limited liability company; and no member or manager of a limited liability company shall under any circumstances be obligated personally for any such debt, obligation, or liability of the limited liability company unless such member or manager specifically assumes or guarantees such debt, obligation, or liability by an instrument in writing.

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

(c) Notwithstanding the foregoing, LCL §26.04.070 or anything elsewhere in this Code to the contrary, nothing herein shall be taken, in the event the Lummi Indian Tribe is a member of a limited liability company, to diminish or affect in any way the sovereign immunity of the Tribe.

26.04.190 Events of Dissociation

(a) A person ceases to be a member of a limited liability company 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 (c) of this Section;

(2) The member ceases to be a member as provided in LCL §26.04.390(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 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

himself or herself 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 (E) 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.

(b) The limited liability company agreement may provide for other events the occurrence of which result in a person ceasing to be a member of the limited liability company.

(c) 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.

26.04.200 Records and Information

(a) A limited liability company shall keep at its principal place of business the following:

(1) A current and a past list, setting forth the full name and last known 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 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 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 tax returns and reports, if any, for the three (3) most recent years; and

(6) A copy of any financial statements of the limited liability company for the three (3) 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 shall 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.

26.04.210 Remedies for Breach of Limited Liability Company Agreement by Member

A limited liability company agreement may provide that (a) a member who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences, and (b) at the time or upon the happening of events specified in the limited liability company agreement, a member shall be subject to specified penalties or specified consequences.

Management and Managers

26.04.220 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 shall 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 Code restricting or enlarging the management rights and duties of any person or group or class of persons, the members shall 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 shall 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) Shall be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of members contributing, or required to contribute, more than fifty percent (50%) of the agreed value 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, shall hold office until their successors shall 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.

26.04.230 Liability of Managers and Members

Unless otherwise provided in the limited liability company agreement:

(a) A member or manager shall 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 him or her 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 him or her of its property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to him or her as a result of his or her status as manager or member.

26.04.240 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 his or her participation in the limited liability company as a member.

26.04.250 Voting and Classes of Managers

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

(b) A limited liability company 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 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 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 agreement a class or group of limited liability company interests that was not previously outstanding.

(c) A limited liability company 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 agreement so provides, voting by managers may be on a financial interest, class, group, or any other basis.

(d) A limited liability company 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.

26.04.260 Remedies for Breach of Limited Liability Company 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 agreement shall be subject to specified penalties or specified consequences, and

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

26.04.270 Reliance on Reports and Information by Member or Manager

In discharging the duties of a manager or a member, 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.

26.04.280 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 agreement. A limited liability company agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company. Notwithstanding that a limited liability company 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 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.

Finance

26.04.290 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.

26.04.300 Liability for Contribution

(a) Except as provided in a limited liability company 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 of the contribution that has not been made. This option shall 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 agreement or applicable law.

(b) Unless otherwise provided in a limited liability company agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this Code 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 by the limited liability company 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 shall 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 nondefaulting 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.

26.04.310 Allocation of Profits and Losses

The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, profits and losses shall be allocated in proportion to the agreed value of the contributions made, or required to be made, by each member.

26.04.320 Allocation of Distributions

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not

so provide, distributions shall be made in proportion to the agreed value (as stated in the records of the limited liability company required to be kept pursuant to LCL §26.04.200 of the contributions made, or required to be made, by each member.

Distributions

26.04.330 Interim Distributions

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

26.04.340 Distribution on Event of Dissociation

Unless otherwise provided in the limited liability company agreement, upon the occurrence of an event of dissociation under LCL §26.04.190 which does not cause dissolution (other than an event of dissociation specified in LCL §26.04.190(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.

26.04.350 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 he or she shares in distributions from the limited liability company.

26.04.360 Right to Distribution

Subject to LCL §26.04.370 and LCL §26.04.470, and unless otherwise provided in a limited liability company agreement, at the time a member becomes entitled to receive a distribution, he or she 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.

26.04.370 Limitations on Distribution

(a) A limited liability company shall 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 shall 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, shall 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, shall not be liable for the amount of the distribution. Subject to Subsection (c) of this Section, this Subsection (b) shall 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 shall have no liability under this Code 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 (3) year period in a court of competent jurisdiction and an adjudication of liability against such member is made in the said action.

Assignment of Limited Liability Company Interests

26.04.380 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.

26.04.390 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 agreement. The assignee of a member's limited liability company interest shall 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 his or her limited liability company interest; or

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

(b) Unless otherwise provided in a limited liability company 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 his or her limited liability company interest.

(c) For the purposes of this Code, unless otherwise provided in a limited liability company 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 shall not be deemed 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 shall be deemed to be an assignment of the member's limited liability company interest to the transferee pursuant 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, shall be deemed to be an assignment of such limited liability company interest, but the mere substitution or replacement of the trustee, personal representative, or other fiduciary shall not constitute an assignment of any portion of such limited liability company interest.

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

26.04.400 Right of Assignee to Become Member

An assignee of a limited liability company interest may become a member upon:

(a) The approval of all of the members of the

limited liability company other than the member assigning his or her limited liability company interest; or

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

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 Code. An assignee who becomes a member is liable for the obligations of his or her assignor to make contributions as provided in LCL §26.04.300, and for the obligations of his or her assignor under of this Code.

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 Articles V and Code.

Dissolution

26.04.410 Dissolution

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

(a) The dissolution date, if any, specified in a limited liability company agreement. If a date is not specified in the agreement or the agreement does not specify perpetual existence, then the dissolution date is thirty (30) years after the date of formation. If a dissolution date is specified in the agreement, it is renewable by consent of all the members;

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

(c) The written consent of all members;

(d) An event of dissociation of a member, unless the business of the limited liability company is continued either by the consent of all the remaining members within ninety (90) days following the occurrence of any such event or pursuant to a right to continue stated in the limited liability company agreement;

(e) The entry of a decree of dissolution under LCL §26.04.420;

(f) The expiration of two (2) years after the effective date of dissolution under LCL

§26.04.440 without the reinstatement of the limited liability company.

26.04.420 Council Dissolution

On application by or for a member or manager the Council 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 agreement; or (b) other circumstances render dissolution equitable.

26.04.430 Administrative Dissolution-Commencement of Proceeding

The Lummi Nation Commerce Division may commence a proceeding under LCL §26.04.440 to administratively dissolve a limited liability company if:

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

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

(c) The limited liability company is without a registered agent or registered office on the Reservation or trust lands for sixty (60) days or more; or

(d) The limited liability company does not notify the Lummi Nation Commerce Division 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.

26.04.440 Administrative Dissolution-Notice-Opportunity to Correct Deficiencies

(a) If the Lummi Nation Commerce Division determines that one or more grounds exist under LCL §26.04.430 for dissolving a limited liability company, the Lummi Nation Commerce Division shall give the limited liability company written notice of the determination by first class mail, postage prepaid, reciting the grounds therefor. Notice shall be sent to the address of the principal place of business of the limited liability company as it appears in the records of the Lummi Nation Commerce Division.

(b) If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Lummi Nation Commerce Division that each ground determined by the Lummi Nation Commerce Division does not exist within sixty (60) days after notice is sent, the limited liability company is thereupon dissolved. The Lummi Nation Commerce Division shall give the limited liability company written notice of the dissolution that recites the ground or grounds therefor 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.

26.04.450 Administrative Dissolution-Reinstatement-Application-When Effective

(a) A limited liability company administratively dissolved under LCL §26.04.440 may apply to the Lummi Nation Commerce Division 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 LCL §26.04.020.

(b) If the Lummi Nation Commerce Division determines that the application contains the information required by Subsection (a) of this Section and that the name is available, the Lummi Nation Commerce Division shall reinstate the limited liability company and give the limited liability company written notice, as provided in LCL §26.04.440(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 (2) year period set forth in Subsection (a) of this Section, or if the application made within this period is not granted, the Lummi Nation Commerce Division shall cancel the limited liability company's certificate of formation.

26.04.460 Winding Up

(a) Unless otherwise provided in a limited liability company 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 pursuant to LCL §26.04.200) 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 Lummi Tribal Court, upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, his or her legal representative or assignee, and in connection therewith, may appoint a receiver.

(b) Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in Chapter 26.04, 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.

26.04.470 Distribution of Assets

(a) Upon the winding up of a limited liability company, the assets shall 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 LCL §26.04.350 or LCL §26.04.360;

(2) Unless otherwise provided in a limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under LCL §26.04.350 or LCL §26.04.360; 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 shall 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 shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in a limited liability company agreement, any remaining assets shall be distributed as provided in this Code. 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.

Mergers

26.04.480 Merger-Plan-Effective Date

(a) One or more limited liability companies may merge with one or more corporations pursuant to a plan of merger approved or adopted as provided in LCL §26.04.490. For purposes of this Code, "corporation" means any close or non-close corporation which is organized and existing under the Close Corporation Code.

(b) The plan of merger must set forth:

(1) The name of each limited liability company and corporation planning to merge and the name of the surviving limited liability company or corporation into which the other limited liability company or corporation plans to merge;

(2) The terms and conditions of the merger; and

(3) The manner and basis of converting the interests of each member of each limited liability company and the shares of each corporation party to the merger into the interests, shares, obligations, or other securities of the surviving or any other limited liability company or corporation or into cash or other property in whole or part.

(c) The plan of merger may set forth:

(1) Amendments to the certificate of formation of the surviving limited liability company;

(2) Amendments to the articles of incorporation of the surviving corporation; and

(3) Other provisions relating to the merger

(d) If the plan of merger does not specify a delayed effective date, it shall become effective upon the filing of articles of merger. If the plan of merger specifies a delayed effective time and date, the plan of merger becomes effective at the time and date specified. If the plan of merger specifies a

delayed effective date but no time is specified, the plan of merger is effective at the close of business on that date. A delayed effective date for a plan of merger may not be later than the ninetieth (90th) day after the date it is filed.

26.04.490 Merger-Plan-Approval

(a) Unless otherwise provided in the limited liability company agreement, approval of a plan of merger by a limited liability company party to the merger shall occur when the plan is 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 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 LCL §26.04.200) of the contributions made, or obligated to be made, by all members or by the members in each class or group, as appropriate.

(b) If a corporation is a party to the merger, the plan of merger shall be adopted and approved as provided in the Close Corporation Code.

26.04.500 Articles of Merger-Filing

After a plan of merger is approved or adopted, the surviving limited liability company or corporation shall deliver to the Lummi Nation Commerce Division for filing articles of merger setting forth:

(a) The plan of merger;

(b) If the approval of any members or shareholders of one or more limited liability companies or corporations party to the merger was not required, a statement to that effect; or

(c) If the approval of any members or shareholders of one or more of the limited liability companies or corporations party to the merger was required, a statement that the merger was duly approved by such members and shareholders pursuant to LCL §26.04.490 or the Close Corporation Code.

26.04.510 Effect of Merger

(a) When a merger takes effect:

(1) Every other limited liability company or corporation that is party to the merger merges into the surviving limited liability company or corporation and the separate existence of every limited liability company or corporation except the surviving limited liability company or corporation ceases;

(2) The title to all real estate and other property owned by each limited liability company and corporation party to the merger is vested in the surviving limited liability company or corporation without reversion or impairment;

(3) The surviving limited liability company or corporation has all liabilities of each limited liability company and corporation that is party to the merger;

(4) A proceeding pending against any limited liability company or corporation that is party to the merger may be continued as if the merger did not occur or the surviving limited liability company or corporation may be substituted in the proceeding for the limited liability company or corporation whose existence ceased;

(5) The certificate of formation of the surviving limited liability company is amended to the extent provided in the plan of merger;

(6) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(7) The former members of every limited liability company party to the merger and the former holders of the shares of every corporation that is party to the merger are entitled only to the rights provided in the plan of merger, or to their rights under this article, or to their rights under the Close Corporation Code.

(b) Unless otherwise agreed, a merger of a limited liability company, including a limited liability company which is not the surviving entity in the merger, shall not require the limited liability company to wind up its affairs

under LCL §26.04.460 or pay its liabilities and distribute its assets under LCL §26.04.470.

26.04.520 Dissenter's Rights Definitions

As used in this article, unless the context otherwise requires:

(a) "Limited liability company" means the limited liability company in which the dissenter holds or held a membership interest, or the surviving limited liability company or corporation by merger of that limited liability company.

(b) "Dissenter" means a member who is entitled to dissent from a plan of merger and who exercises that right when and in the manner required by this article.

(c) "Fair value," with respect to a dissenter's limited liability company interest, means the value of the member's limited liability company interest immediately before the effectuation of the merger to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the merger unless exclusion would be inequitable.

(d) "Interest" means interest from the effective date of the merger until the date of payment, at the average rate currently paid by the limited liability company on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

26.04.530 Member-Dissent-Payment of Fair Value

(a) Except as provided in LCL §26.04.550 or LCL §26.04.570(b), a member of a limited liability company is entitled to dissent from, and obtain payment of, the fair value of the member's interest in a limited liability company in the event of consummation of a plan of merger to which the limited liability company is a party as permitted by LCL §26.04.480.

(b) A member entitled to dissent and obtain payment for the member's interest in a limited liability company under this article may not challenge the merger creating the member's entitlement unless the merger fails to comply with the procedural requirements imposed by this Code or the Close Corporation Code, or the limited liability company agreement, or is

fraudulent with respect to the member or the limited liability company.

(c) The right of a dissenting member in a limited liability company to obtain payment of the fair value of the member's interest in the limited liability company shall terminate upon the occurrence of any one of the following events:

- (1) The proposed merger is abandoned or rescinded;
- (2) The Lummi Tribal Court permanently enjoins or sets aside the merger; or
- (3) The member's demand for payment is withdrawn with the written consent of the limited liability company.

26.04.540 Dissenters' Rights-Notice-Timing

(a) Not less than ten (10) days prior to the approval of a plan of merger, the limited liability company must send a written notice to all members who are entitled to vote on or approve the plan of merger that they may be entitled to assert dissenters' rights under this article. Such notice shall be accompanied by a copy of this article.

(b) The limited liability company shall notify in writing all members not entitled to vote on or approve the plan of merger that the plan of merger was approved, and send them the dissenters' notice as required by LCL §26.04.560.

26.04.550 Member - Dissent - Voting Restriction

A member of a limited liability company who is entitled to vote on or approve the plan of merger and who wishes to assert dissenters' rights must not vote in favor of or approve the plan of merger. A member who does not satisfy the requirements of this Section is not entitled to payment for the member's interest in the limited liability company under this article.

26.04.560 Members-Dissenters' Notice-Requirements

(a) If the plan of merger is approved, the limited liability company shall deliver a written dissenters' notice to all members who

satisfied the requirements of LCL §26.04.550.

(b) The dissenters' notice required by LCL §26.04.540(b) or by Subsection (a) of this Section must be sent within ten (10) days after the approval of the plan of merger, and must:

- (1) State where the payment demand must be sent;
- (2) Inform members as to the extent transfer of the member's interest in the limited liability company will be restricted as permitted by LCL §26.04 580 after the payment demand is received;
- (3) Supply a form for demanding payment;
- (4) Set a date by which the limited liability company must receive the payment demand, which date may not be fewer than thirty (30) nor more than sixty (60) days after the date the notice under this Section is delivered; and
- (5) Be accompanied by a copy of this article.

26.04.570 Member-Payment Demand-Entitlement

(a) A member of a limited liability company who demands payment retains all other rights of a member of such company until the proposed merger becomes effective.

(b) A member of a limited liability company sent a dissenters' notice who does not demand payment by the date set in the dissenters' notice is not entitled to payment for the member's interest in the limited liability company under this article.

26.04.580 Member's Interests-Transfer Restriction

The limited liability company agreement may restrict the transfer of members' interests in the limited liability company from the date the demand for their payment is received until the proposed merger becomes effective or the restriction is released under this article.

26.04.590 Payment of Fair Value-Requirements for Compliance

(a) Within thirty (30) days of the later of the date the proposed merger becomes effective, or the payment demand is received, the

limited liability company shall pay each dissenter who complied with LCL §26.04.570 the amount the limited liability company estimates to be the fair value of the dissenting member's interest in the limited liability company, plus accrued interest.

(b) The payment must be accompanied by:

- (1) Copies of the financial statements for the limited liability company for its most recent fiscal year;
- (2) An explanation of how the limited liability company estimated the fair value of the member's interest in the limited liability company;
- (3) An explanation of how the accrued interest was calculated;
- (4) A statement of the dissenter's right to demand payment; and
- (5) A copy of this article.

26.04.600 Merger-Not Effective Within Sixty Days-Transfer Restrictions

(a) If the proposed merger does not become effective within sixty (60) days after the date set for demanding payment, the limited liability company shall release any transfer restrictions imposed as permitted by LCL §26.04.580.

(b) If, after releasing transfer restrictions, the proposed merger becomes effective, the limited liability company must send a new dissenters' notice as provided in LCL §26.04.540(b) and LCL §26.04.560 and repeat the payment demand procedure.

26.04.610 Dissenter's Estimate of Fair Value-Notice

(a) A dissenting member may notify the limited liability company in writing of the dissenter's own estimate of the fair value of the dissenter's interest in the limited liability company, and amount of interest due, and demand payment of the dissenter's estimate, less any payment under LCL §26.04.590, if:

- (1) The dissenter believes that the amount paid is less than the fair value of the dissenter's interest in the limited liability company, or that the interest due is incorrectly calculated;

(2) The limited liability company fails to make payment within sixty (60) days after the date set for demanding payment; or

(3) The limited liability company, having failed to effectuate the proposed merger, does not release the transfer restrictions imposed on members' interests as permitted by LCL §26.04.580 within sixty (60) days after the date set for demanding payment.

(b) A dissenter waives the right to demand payment under this Section unless the dissenter notifies the limited liability company of the dissenter's demand in writing under Subsection (a) of this Section within thirty (30) days after the limited liability company made payment for the dissenter's interest in the limited liability company.

26.04.620 Unsettled Demand for Payment-Proceeding-Parties-Appraisers

(a) If a demand for payment under LCL §26.04.570 remains unsettled, the limited liability company shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the dissenting member's interest in the limited liability company, and accrued interest. If the limited liability company does not commence the proceeding within the sixty (60) day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(b) The limited liability company shall commence the proceeding in the Lummi Tribal Court.

(c) The limited liability company shall make all dissenters (whether or not residing on the Reservation or trust lands) whose demands remain unsettled parties to the proceeding as in an action against their membership interests in the limited liability company and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by Lummi tribal law.

(d) The limited liability company may join as a party to the proceeding any member who claims to be a dissenter but who has not, in the opinion of the limited liability company,

complied with the provisions of this article. If the court determines that such member has not complied with the provisions of this article, the member shall be dismissed as a party.

(e) The jurisdiction of the Lummi Tribal Court is plenary and exclusive. The Court may appoint one or more persons as appraisers to receive evidence and recommend decisions on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(f) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the Court finds the fair value of the dissenter's membership interest in the limited liability company, plus interest, exceeds the amount paid by the limited liability company.

26.04.630 Unsettled Demand for Payment-Costs-Fees and Expenses of Counsel

(a) The Court in a proceeding commenced under LCL §26.04.620 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the Court. The Court shall assess the costs against the limited liability company, except that the Court may assess the costs against all or some of the dissenters, in amounts the Court finds equitable, to the extent the Court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment.

(b) The Court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the Court finds equitable:

(c) If the Court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the limited liability company, the Court may award to these counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

Miscellaneous

26.04.640 Construction and Application of Code and Limited Liability Company Agreement

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

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

26.04.650 Establishment of Filing Fees and Miscellaneous Charges

(a) The Lummi Nation Commerce Division shall adopt rules establishing fees which shall be charged and collected for:

- (1) Filing of a certificate of formation for a limited liability;
- (2) Filing of a certificate of amendment or cancellation for a limited liability company;
- (3) Filing any other certificate, statement, or report authorized or permitted to be filed;
- (4) Copies, certified copies, certificates, service of process filings, and expedited filings or other special services.

(b) In the establishment of a fee schedule, the Lummi Nation Commerce Division shall, insofar as is possible and reasonable, be guided by the fee schedule provided for close corporations governed by the Close Corporation Code.

26.04.660 Authority to Adopt Rules

The Lummi Nation Commerce Division shall adopt such rules as are necessary to implement the transfer of duties and records required by this Code.

26.04.670 Effective Date

This Code shall take effect December 1, 1998.

26.04.680 Short Title

This Code may be cited as the ‘Lummi Limited Liability Company Code.

26.04.690 Severability

If any provision of this Code or its application to any person or circumstance is held invalid, the remainder of the Code or the application of the provision to other persons or circumstances shall not be affected.

Title26.Res2016-014